

THE PROPOSED INDIANA CODE OF 1971

This report brings up-to-date the progress on long needed statute revision in Indiana. An article by the same authors in the December, 1969 Res Gestae, outlined the plans of the Indiana Legislative Council to compile the state's statutes. We believe this report to be of high priority interest to all practicing lawyers.

By Phillip E. Gutman
and Marcia J. Oddi

The 1971 session of the General Assembly will be presented with a compilation of all the state statutes. This compilation, entitled the Indiana Code of 1971, will be in bill form, approximately 4,000 pages in length.

The legislature will be asked to enact this Code as one of the first items on its agenda. All *viable* statute law is reproduced in this bill. Additionally, the Code contains a provision repealing all existing statutes with the exception of current appropriations and carefully selected other items. The Code also contains an emergency clause making it effective immediately upon passage. Thus, the Code is intended to *replace* the present official source of Indiana statute law, the *Acts of Indiana*, found in some 60 volumes covering the period of years from 1852 to 1969. If passed, the official version of the Indiana statute law will be available in one act, the Indiana Code of 1971.

The Need for the Code

The compilation was prepared by the Statute Revision Commission, under the direction of the Indiana Legislative Council, the service and administrative agency of the General Assembly. The reasons the Council decided to embark upon a project of this size, which last was undertaken in Indiana more than 100 years ago, are set out below.

Availability of Statute Law

The official version of the law of Indiana, the Acts of the General Assembly, is virtually unusable. For the most part, volumes published from 1852 through the 1920's are unavailable. And even when available, there

Editor's Note: The article presented here provides in substance, the same information for Indiana lawyers as the verbal reports of Lewis C. Bose, chairman of the Indiana State Bar Association's Committee on State Legislation, assisted by Miss Marcia J. Oddi and Mr. Phillip E. Gutman, at the September meeting of the Board of Managers of ISBA, at Indianapolis, and the annual meeting of the House of Delegates of ISBA, October 29, at French Lick. It also includes and expands the information contained in the ISBA State Legislation Committee's written report to the House of Delegates, October 29, 1970.

is no comprehensive index to the more than 60 volumes of session laws; each volume is indexed independently. Further, the laws within a volume of the Acts are arranged by their order of passage, and not by subject. Thus, there is no way to determine whether an act has been amended or repealed by a later law without reading forward through all the remaining volumes.

It is the obligation of the General Assembly to keep the statute law up-to-date in an orderly and accessible form. Passage of the Code will make available, for the first time in more than 100 years, the official statutes in just such form by compiling in one set of volumes every act of the General Assembly, in its most recently amended version, arranged by subject and indexed. Further, acts will not be broken up in the Indiana Code. Each original act, as amended or modified by repeal, will be presented as a separate chapter.

Legislative Revision of the Present Statute Law

It is, at the present time, virtually impossible to do a "clean" job of revising and rewriting any subject area of the law. Using the education statutes as an example, the first step in any revision would be collecting and examining the existent statutory law relating to schools and colleges. The only way the Acts of Indiana

could be used in such a task would be by reading each volume, starting at 1852.

The alternative would be to use the unofficial compilation, which has collected most of the education laws in one title. However, the unofficial compilation is designed as a practical working tool for attorneys, not as a drafting base for legislation. Acts are not always presented in the form in which they were enacted by the General Assembly. Instead, the unofficial compilation often treats each section of an act as a separate entity, breaking the act apart and distributing its sections throughout the compilation. This may be useful to the attorney, but poses difficulties for the revisor, who must consider the total effect of all the sections of any act.

The unofficial compilation does not contain all the Indiana statute law which technically is still valid. It does not contain, for example, statutes which the editors have decided were intended to have been repealed by subsequent legislation, but which were not specifically repealed by the General Assembly. These statutes, which the editors term "superseded," are available only in the Acts. In most cases, a statute in this category would be declared to be "repealed by implication" if the question were presented to a court. However, until the court has so declared, the "superseded" statute technically is the law.

To do a clean job of revising and rewriting an area of the law under the present system, all such statutes must be located, examined and, if no longer relevant, repealed *specifically*.

Amendments to the Present Statute Law

The Indiana Constitution, Article 4, Section 19, requires that any

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amendment to an existing act must identify the original act, as last amended. This identification may be made by citation reference. Additionally, the section, as amended, must be set forth at length in the amendatory bill.

This identification, of course, must be to the official citation—1 R.S. 1852, c. 32, s. 6; or Acts 1957, c. 233, s. 4; or, in the case of the Indiana Code of 1971, I.C. 1971, 4-3-2-6. It cannot be made to a number prefixed to a section by a private publisher.

Further, the text of the section to be amended must be set forth in the bill, incorporating therein any proposed changes to its text. The portions of the section which are not to be changed must be set forth exactly as they appeared when last enacted by the legislature. Any deviation from the original wording will result in an inadvertent amendment—a change which the General Assembly makes without notice.

When preparing amendatory legislation, therefore, reference must be made to the official statute. To find this statute, however, it is often necessary to use the index to the unofficial compilation, find the unofficial text of the statute and then, using the history line, find the official text in the proper volume of the Acts of Indiana.

This makes bill drafting much more difficult than it need be. Furthermore, it increases the chance of technical error. The problem is increased when one considers that the number of bills prepared for each session of the General Assembly continues to increase.

Enactment of the Code will ease these problems. The text of a statute, as reproduced in the Code, will be the official text. The citation affixed to each section will be the official citation. To help eliminate inadvertent error, the bill for the Code has been prepared on a computer tape. The bill itself is being printed

from this tape. Once the Code is enacted, therefore, the computer tape will exactly reflect the Indiana statute law. Through the use of computer terminals, amendatory bills can be prepared directly from this tape, thereby easing the pre-session typing load and eliminating the chance of typographic mistakes.

What Changes Does the Code Make?

The Indiana Code does not change the statute law. All of the *viable* statute law is reproduced in the bill for compilation. Each such act is printed as it was originally enacted, except that the latest amendment to any section is reproduced in the place of the former text. Original titles, and enacting, severability, emergency and repealer clauses have been deleted from the individual acts and have been replaced by comparable general provisions covering the entire bill.

What is meant by the term “viable statute”? A viable statute is one which has not been specifically repealed, or completely and totally replaced by a subsequent act, or declared void by the Supreme Court, or expired by its own terms, or been rendered completely obsolete by the passage of time or other circumstances.

In accordance with this definition, the bill for compilation will reenact more statutory law than is now published in the unofficial compilation. The text of acts eliminated by the unofficial compilation for reasons of space, such as county boundaries and acts establishing circuit courts, have been incorporated in the Code. Various provisions expressing the legislative intent also will be reenacted.

No attempt, however, has been made by the Statute Revision Commission to eliminate or merge provisions of the viable law which may conflict or overlap. It was strongly felt that such change could be made only by the General Assembly, with full knowledge of the implications of resolving such conflicts, and that this decision making could not be delegated. On the other hand, the

Code will make such conflicts, inconsistencies and overlaps more visible and easier to remedy.

Implications to the General Assembly

Passage of the Code will have one immediate effect on the members of the General Assembly. The official citation to every statute will be changed. Every amendatory act must refer to the official citation of the statute it seeks to amend.

The official citation to “Acts 1895, chapter 5, section 5,” for example, will be changed to “Indiana Code of 1971, 2-2-3-5.” Assuming passage of the Code, a bill seeking to amend this act would have to refer to the new citation. It is anticipated that the changing of such references in amendatory bills, a problem only in the upcoming session, will be accomplished by simple and mechanical committee amendment. Cross reference tables will be provided with the bill.

An advantage in having the Code take immediate effect is that any of its provisions can be amended or repealed as soon as the Code has been enacted. Any errors which may have occurred despite its numerous proof-readings, checks and rechecks, therefore, can be repaired by an amendatory bill in the same session.

It should be assumed that the Indiana Code of 1971, if adopted, will for the purposes of publication be treated just as any other act passed by the General Assembly. It will be published by the Secretary of State as part of the Acts of 1971 and distributed to the clerks of the 92 counties.

Implications to the Attorney

As noted previously, the Code will go into effect upon passage. This will have no effect, however, on the existing state of the viable statute law. The Code merely repeals and reenacts, in a more usable *form*, the present law. Such repeal and reenactment has no effect upon the interpretations previously given to a statute by the courts and it neither cuts

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off previously existing rights, remedies and liabilities nor creates new ones.

To emphasize the point again, all that the Commission has done is to compile the statute law, now scattered throughout more than 60 volumes of the Acts of Indiana, into one document, the Code. The acts upon which it is based are to be repealed, but they are replaced by the Code, which contains the same acts, arranged in a usable form.

In general, therefore, there will be no need to look to the Code itself for the text of a statute. The text will continue to be available and usable to the same extent that it has been in the past, in both the session laws and the unofficial compilation. If a new official citation is necessary, cross reference tables will be available.

Conclusion

The compilation in the Indiana Code of 1971 will not immediately produce a perfect set of statutes. In fact, it will not substantively change the law at all. It is, however, the necessary first step to ultimate codification and revision of the law. In this sense it serves many purposes. It is a complete and accurate statement of the law as it exists. It makes the official law readily accessible to the attorney, the legislator, and the public at large. It collects and arranges together laws on related subject matter so that the law, now physically available, is easily and quickly located. It provides the necessary basis for ultimate codification by indicating what presently is the law in a specific area.

The report to the House of Delegates of the Indiana State Bar Association by the ISBA Committee on State Legislation, October 29, 1970, advises that the committee members contacted approve in principle the work of the Statute Revision Commission of the Indiana Legislative Council. The ISBA committee's report follows:

The Indiana Legislative Council appointed a Statute Revision Commission charged with the duty of recodifying the existing state laws into

a Code. The Commission is composed primarily of judges and lawyers, including two representatives of the Bar Association. A list of the members is attached.

The Commission proposes that the Legislature adopt the Code in the 1971 session as Bill Number One. The Council staff has prepared a summary (which was attached to the report to the House of Delegates). Some further explanatory notes are desirable.

WHAT IS BEING ATTEMPTED?

This Code will be a restatement of every law with current validity. The restatement will be broken down into 35 titles, logically grouped. The titles will be broken down into articles. The chapters of each article will consist of separate existing acts. The Bill will be accompanied by conversion tables to the prior existing acts and to Burns Statutes. Each section will also show the legislative history, as is done in Burns.

MEMBERS OF THE STATUTE REVISION COMMISSION

Legislative Members

Senators: Phillip E. Gutman, chairman, Fort Wayne; Martin K. Edwards, New Castle; Marshall F. Kizer, Plymouth; Robert P. O'Bannon, Corydon; and Wilfrid J. Ullrich, Aurora. *Representatives:* Richard J. Lesniak, vice chairman, East Chicago; C. Joseph Anderson, Terre Haute; Frederick T. Bauer, Terre Haute; John Coates Cox, Evansville; Ray Richardson, Greenfield; and James T. Robison, Frankfort.

Lay Members

Lewis C. Bose, Indiana State Bar Association representative, Indianapolis; Hon. George B. Davis, Indiana Judges Association representative, Greenfield; F. Reed Dickerson, Professor, Indiana University School of Law, Bloomington; Cleon H. Foust, Dean, Indiana University Indianapolis School of Law; and Patricia J. Gifford, Indiana Attorney General's office, Indianapolis.

WHAT IS THE PURPOSE?

The purpose is to enact a compilation which will provide a sound and efficient basis for bill-drafting, and will avoid the increasing complex problem of being unable to draft a good statute because there is no adequate way to know the exact law. It will permit subsequent deletion of obsolete laws, and thus effective revision within existing area.

IN WHAT MANNER WILL THE CODE BE EVIDENCED?

It will be evidenced as any other session law. However, it will be backed up by a computer tape which will operate the composing machine for the printed pages. The tape will be available for searches in statutory law, and will be available for better indexing.

HOW HAS THIS PROJECT BEEN CARRIED OUT TO DATE?

It has been carried out by a large staff under the direction of Marcia Oddi, who is outstanding in this area, under the policy direction of the Commission, and under a contract with Aspen Systems Corporation. Aspen has all the statutes on tape and has used computer services to verify repeals, implied repeals, and other similar problems. It is a lawyer-oriented computer firm, originally sponsored by the University of Pittsburgh. It has furnished print-outs, and the Staff has isolated areas where problems occur. These have been given to the Commission, which has made policy decisions, to be put into book form.

IN GENERAL

The Code will probably be available in printed form by the end of December, 1970. It is not intended to revise the State Law, but to put it in shape so that effective legislation can be drafted, effective revision can be made, and effective research can be conducted. It is vital to the continuing validity of our system of statutory law; it is a monumental task which could be carried out only

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YOUNG LAWYERS REPORT

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Committee was of the opinion that state-wide participation on a local level reached an all-time high this year and that there were more Law Day programs by local associations than ever before.

ABA ACTIVITIES

As in the past, the Young Lawyers Section was represented at the annual American Bar Association meeting which, this year, was held in St. Louis, Missouri. The two delegates for the Young Lawyers Section who attended the Assembly of the Young Lawyers of the American Bar Association were Ted C. Ziemer, Jr., and Joseph A. Franklin. As in the past, participation in the activities of the Young Lawyers Section of the American Bar Association has been of great benefit to the Indiana Young Lawyers Section in offering materials, thoughts and ideas for future programs and the handling of present programs.

LEGAL AID STUDY COMMITTEE

As a result of intense interest on the part of many members of the Young Lawyers Section a resolution was adopted at the April meeting of the Section directing the formation of a committee to study the existing system of legal aid to the poor and underprivileged in Indiana and to explore the alternative of supplanting the present legal aid program with a program of legal assistance whereby the poor and underprivileged might select an attorney of their choice and have that attorney look directly to the state or federal government or an agency thereof for remuneration for his services. This committee has been formed and Daniel A. Roby of Fort Wayne, Indiana, has been named chairman. The committee is expected to make a report to the Section at its meeting in French Lick on October 29, 1970. While the Indiana State Bar Association presently has a standing Legal Aid Committee it is believed that the investigation

to be conducted by this committee of the Young Lawyers Section will provide valuable information for use by the Bar's Legal Aid Committee in determining future directions for its activities.

HIGH SCHOOL PROGRAM

This year, as in the past, the Section sponsored an expanded mock trial program in Vanderburgh County, Indiana, under the direction of the Superior Court Judge Benjamin Buente. This program is always well received by high school students in the Vanderburgh County area and the Section is continuing its efforts to adopt the program format established by Judge Buente as a guideline for future high school programs throughout the state.

SPEAKERS BUREAU FOR JUDICIAL AMENDMENT

The Young Lawyers Section has undertaken as one of its principal activities for this year the enlistment of speakers in the Judicial Amendment Education Campaign and the securing of speaking engagements during September and October of 1970. In this project, the Young Lawyers Section is working in cooperation with the Speakers Bureau of the Indiana State Bar Association. The council members of the Young Lawyers Section have been appointed Judicial Amendment Speakers Bureau Chairmen in their respective districts and they in turn have enlisted large numbers of young lawyers to secure speaking engagements and to give speeches on the occasions of these engagements.

LEGAL INSTITUTES

Early this year the Section decided to redirect its efforts where legal institutes are concerned. Instead of the traditional "Bridge-The-Gap Institutes" it was felt that the Section might better attempt a two-fold objective through "Legal Skills" courses aimed at newly admitted lawyers and, in conjunction with the Indiana Continuing Legal Education Forum, a Bar review course for law graduates preparing for the Bar exam. Various

officers of the Section have therefore devoted their time in attempting to work out arrangements with I.C.L.E.F. to accomplish this two-fold objective. As a result of action to be taken by I.C.L.E.F. in the near future it is contemplated that the way will soon be paved for presenting both "Legal Skills" and "Bar Review" courses early in 1971.

DRUG ABUSE PROGRAM

The Section is involved in acting as liaison between the Drug Abuse Committee of the Indiana State Bar Association and the Drug Abuse Education Program of the Young Lawyers Section of the American Bar Association. Through the kindness of Mr. K. Edwin Applegate, the Chairman of the Drug Abuse Committee of the Indiana State Bar Association members of the Young Lawyers Section of the Indiana State Bar Association will be serving on his committee. Their specific responsibility will be to implement for his committee the pilot program for a Drug Abuse Education Program that was initiated in Tampa, Florida, and which is being advocated as a nationwide program.

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with the resources of the State. It should, over a period of time, increase the efficiency of all the legal profession. Its immediate impact will be one of more efficient legislation, but it should have a long-range impact on us all.

Your Indiana State Bar Association State Legislation Committee has made this a report for your information rather than a recommendation for action, since it was impossible to obtain the opinion of all Committee members, and since the Bill is not in final form and has not been finally approved by the Indiana Legislative Council. The available members of the Committee, however, strongly support the project in principle.

Respectfully submitted,
LEWIS C. BOSE, Chairman