

## Recodifications, legislative histories, and tables, Part I

### The Disposition Table

Imagine that you had copies of all the volumes of the Acts of Indiana, going back to the 1852 Revised Statutes, each volume containing the laws passed during one session of the General Assembly. Now imagine that someone had noted in the margins of each page what had happened to each section of each act in the volume – was it repealed and by what law, is it part of the Indiana Code and what is its citation, etc.

That exercise actually was done in creating the original 1971 Indiana Code. Further, those marginal notes were compiled to form a "Session Law Disposition Table" that was published as part of the initial Code edition.

This Table was updated and republished with each subsequent edition of the Indiana Code, up through the 1998 edition, where the Session Law Disposition Table – Acts 1852-1998" ran from page 273 to 1,347 of the Tables volume.

But the current, 2004 edition no longer includes the Disposition Table. Nor is the Table available via the CD-Rom version of the Indiana Code, nor is it available online.

### **Virtues of the Disposition Table**

Last month's article, "*Can You Rely on the Indiana Code, Part II,*" discussed how the General Assembly's online resource labeled "Non-Code Acts" does not appear to be comprehensive. But the Disposition Table, had it been maintained, would have accounted for every section of every law, whether it had become part of the Indiana Code or not.

Here are some quotes from the prefatory language to the Session Law Disposition Table taken from the 1982 and 1998 editions of the Indiana Code:

The following table lists each section of all laws enacted by the Indiana General Assembly from 1852 through 1982. The sections are displayed chronologically in the left column and the disposition for each in the right column. The disposition will be an Indiana Code citation, a repeal note, or a categorization. Code citations are to provisions in the Indiana Code that correspond to the session law provision involved. A repeal note indicates that the session law provision was specifically repealed; for example, "Rep. 1969; 284; 30" indicates that the listed session law provision was repealed by Acts 1969, chapter 234, section 30. Session law provisions with corresponding code citations that have been repealed are listed with the repeal note and the Code citation in parentheses.

A session law provision with no corresponding Code citation indicates that it is neither a permanent law of general application nor current law concerning its subject matter; in such instances, one of the following categorizations explains its omission from the Code: Appropriation; Construction; Effectiveness; Legalizing; Obsolete; Purpose; Repealer; Savings; Severability; Special; Superseded; Temporary; Title Amendment; Unconstitutional.

.A session law provision so categorized, although not part of the general and permanent statute law of Indiana, may be in effect despite its omission from the Code; see for example, IC 1-1-1-2.

### **Using the Table to address the noncode issues**

IC 1-1-1-2 sets out a list of laws not included in the Indiana Code, but specifically excepted from repeal by the 1971/1976 codification. For the most part the provisions listed are acts of incorporation enacted before the 36th session of the General Assembly.

Similarly, in 1989 the legislature took an action that they may wish to repeat in the upcoming session; they repealed all statutes and parts of statutes "enacted after the 1975 session and before the 1985 session, and not compiled in the Indiana Code," with the exceptions that are listed in IC 1-1-1-2.1.

But as we learned in *Part II*, before this step may be taken, every noncode provision at least back to the 1985 session, must be identified, and a decision made as to whether it should be repealed, made part of the Code, or listed as an exception. And of course the exceptions currently set out in IC 1-1-1-2.1 should be reviewed anew.

In carrying out this process, I would urge that the Session Law Disposition Table not only should be brought up to date, but that it should be kept current in the future and be made available to the public via the internet.

### **Source and History Lines**

Except for a few original provisions necessary to implement the new Code, every section of the 1971 Indiana Code was followed by a line identifying what provision of the former law had been its source. This was done in part as reassurance that nothing substantive had been changed in the move from the session laws to the Indiana Code. But it also was a useful tool in tracing the history of a provision, echoing the introductory clauses in amendatory acts, which identify the original act, as last amended.

These "source lines" were made even more useful in the 1976 reenactment of the Indiana Code. The prefatory material to the 1976 edition explains:

As enacted, the Indiana Code contained partial credit lines, designated "Source" and "History" lines. Generally, these credit lines contained only citations to the original enactment and last amendment of the prior law corresponding to each Code section, intervening amendments were not included. ... In order for the credit lines to be complete, the Code Revision Commission arranged for Aspen Systems Corporation to compile, from the Commission's official records, the historical trail for each statute section and to include this information as new credit lines in the master data base from which the type was set for this official edition.

Thus, with the addition of the information about intervening amendments, the 1976 Indiana Code has a complete set of source lines. Subsequent changes to a provision were indicated by "history lines," making it relatively simple to trace the evolution of the law. For example, the text of IC 1-1-2-1, which describes the hierarchy of law governing the state, followed by this line: (*Formerly: Acts 1852, IRS, c. 61, s. 1.*)

In other words, chapter 61, section 1, of Volume 1 of the Revised Statutes of 1852, remains in force, unaltered, to this day.

The next section, IC 1-1-2-2, reads:

Sec. 2. Crimes shall be defined and punishment therefor fixed by statutes of this state and not otherwise.  
(*Formerly: Acts 1852, IRS, c.61, s.2.*) *As amended by Acts 1978, P.L.2, SEC.101.*

So section 2 was unaltered for 126 years. What was the change in 1978? Without using one of the privately published, annotated publication such as Burns or West, there are two ways to find out. Look at the 1852 provision. This does not mean you have to go back to the 1852 volume, because we know from the history line that the language remained the same until 1978. Or look at the amendatory language in PL 2, SEC. 101 in the volume of the Acts of 1978 – it will show the change via text styles.

I looked up the original language using a private compilation of the Indiana statutes from 1876. Here is the language, before the 1978 amendment:

Sec. 2. Crimes and misdemeanors shall be defined, and punishment therefor fixed, by statutes of this state, and not otherwise.  
(*Acts 1852, IRS, c.61, s.2.*)

A note following this statute in the 1876 volume indicates that this statute had been cited in a number of cases for the proposition that: "Crimes and misdemeanors in this state must be defined, and the punishment therefore fixed by the statute, and not otherwise. There are no common law offences [*sic.*] in this state."

### **Source lines now rare**

If you look through the Indiana Code today, you will learn that relatively few source lines continue to exist. The reason is that whenever a recodification of an area of law is enacted by the General Assembly, both the source line and prior history line are not retained, making understanding the genesis of a provision much more difficult.

For instance, a number of provisions in Indiana's public health laws had their origins in 1881, when the State Board of Health was created. But if you look at the Indiana Code, Title 16, Health , you will learn from the history lines only that most of Indiana's health laws were "added by PL 2-1993." Those not from 1993 are even more recent.

Part II of this article will look further preserving legislative history when a recodification is undertaken.