

New Jersey. Criminal Law Revision Commission.

Toward a new penal code for New Jersey.

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An Interim Report
of the
New Jersey
Criminal Law Revision Commission

April 15, 1970

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State of New Jersey

CRIMINAL LAW REVISION COMMISSION

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April 15, 1970

*His Excellency, Governor William T. Cahill, and the
Honorable Members of the Senate and the General Assembly:*

Our Commission was organized in the Spring of 1969 "to study and review the New Jersey statutory law pertaining to crimes . . . and prepare a revision . . . thereof for enactment by the Legislature." Since that time, the Commission and the Staff organized by it have been engaged in preparing for submission to the Governor, the Legislature, and the public, a new Penal Code for New Jersey. Drafting legislation of this scope and magnitude is an involved, time-consuming task. In order to familiarize you with our work while it is in progress, this Interim Report is submitted.

Respectfully,

Robert E. Knowlton
Chairman
T. Girard Wharton
Vice-Chairman
William K. Dickey
Dominick J. Ferrelli
Edward Gaulkin
Alvin E. Granite
Charles J. Irwin
Richard McGlynn
Ronald Owens

TOWARD A NEW PENAL CODE FOR NEW JERSEY

An Interim Report of the New Jersey
Criminal Law Revision Commission

The Need for Reform of the Criminal Law

The Report of the Joint Legislative Committee which resulted in the legislation establishing our Commission recognized the need for a complete reexamination of our criminal law:

" . . . it is clear that New Jersey's system for administering criminal justice would be strengthened, individual liberties and fair trials increased, and the cause of justice thereby advanced, if an independent commission were established to make a detailed analysis and redrafting of substantive . . . criminal law. We must make sure the system is fair and rational, while we seek to make it effective." Report, Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey 17-18 (1968)

Our study and observations has led us to the same conclusion. We, however, make the point more strongly: It is our opinion that the enactment of a modern, rational penal code in this State is essential to adequate law enforcement. In reaching this conclusion, we draw heavily upon the same conclusion of the President's Commission on Law Enforcement and the Administration of Justice:

"The substantive criminal law is of fundamental and pervasive importance to law enforcement and the administration of justice. In defining criminal conduct and authorizing punishment it constitutes the basic source of authority, directing and controlling the State's use of the criminal sanction. It has a profound effect upon the functioning of law enforcement. Sir Robert Peel, the father of the English police, saw this early in the last century. Before undertaking to reform the police system he insisted on the need to reform the criminal law itself.

* * * *

"American criminal codes reflect a broad consensus on the appropriateness of employing the criminal law to protect against major injuries to persons, property, and institutions. But the absence of sustained legislative consideration of criminal codes has resulted in the perpetuation of anomalies and inadequacies which have complicated the duties of police, prosecutor, and court and have hindered the attainment of a rational and just penal system.

"Some examples of these substantive inadequacies are the failure in most cases to treat as crimes highly dangerous conduct which does not produce injury, whether the conduct is undertaken negligently or recklessly; the unsatisfactory delineation of the line that separates innocent preparation from criminal attempt; the absence of laws that make criminal the solicitation to commit crimes; the amorphous doctrines of conspiracy that have grown unguided by considered legislative direction; the inconsistent and irrational doctrines of excuse and justification that govern the right to use force, including deadly force, self-defensively or in the prevention of crime, or in the apprehension of criminals; and the confusion that surrounds the definition of the intent or other culpable mental states required for particular crimes.

"Legislative criteria for distinguishing greater and lesser degrees of criminality are in no less need of reexamination than legislative definitions of criminal conduct. For these criteria determine such matters as eligibility for capital punishment, applicability of mandatory minimum sentences, availability of probation, and length of authorized maximum terms of imprisonment--matters that may be even more significant issues in a particular case than whether the defendant is in fact guilty. Yet here too legislative inattention has been marked.

* * * *

"The whole problem of sentencing structure, the laws governing judicial sentencing alternatives, the range of authorized imprisonment for particular crimes, and the distribution of authority between courts and correctional agencies, is also in need of legislative consideration." *Task Force Report: The Courts*, ch. 8 "Substantive Law Reform," pp. 97-98 (1967).

See also Wechsler, *The Challenge of a Model Penal Code*, 65 *Harv. L. Rev.* 1097 (1956).

The problem is particularly acute in New Jersey today. We are in an era of rising crime rates and we must be sure that we are using the law enforcement facilities available as effectively as possible. This includes both confining law to a proper sphere of activity and assuring ourselves that persons appropriately subject to a criminal sanction will not escape because of a poorly defined crime. We are in the midst of a crisis with regard to respect for law. We must be sure our criminal statutes do not add to it, breeding contempt for law and disrespect for the enforcers of it, by being anachronistic or hypocritical. Further, New Jersey has never had a comprehensive penal code. While most states have the problem of an outdated code, we must start virtually from scratch. Our statutes now only define the elements of the offenses. We have almost no statutes relating to the general part of the criminal law, i. e., those relating, for example, to principles of liability, responsibility, justification or excuse. Presently, this is found in our case law. Rationality demands that it be codified.

Approaching the Problem

Soon after its organization, the Commission arrived at three basic decisions as to the scope of its task:

First: The Commission would recommend codification of the general part of the criminal law. It is no longer sufficient for our statutes to simply define the elements of offenses. Modernization and rationalization compel enactment of statutory law on topics relating to culpability, excuse, justification, responsibility, etc. While our Supreme Court has done well to keep the common law alive and fluid in these areas, a more adequate job can be done by moving them into the area of legislative responsibility. The Court itself has recognized that many changes must come from the Legislature.

Second: The Commission would submit an entirely new set of statutory provisions relating to the definitions of specific offenses. Patchwork revision is insufficient to meet the demands placed upon these all important provisions.

Third: The Commission would make only limited recommendations for revision in the fields of corrections and treatment. We intend to make such recommendations only to the extent necessary to implement a new penal code. This is not because we do not believe there to be a real need for work in this area. We do believe, however, the need for a new penal code to be so demanding that it should not await either the work or the funding necessary for correctional law reform.

In approaching our task, we are fortunate to have had many walk the same road. First, there is the American Law Institute's Model Penal Code. It has been the principle basis of our study. The product of 10 years work, it is a thoughtful and comprehensive examination of the substantive criminal law. The main drafter of the Code, Professor Herbert Wechsler, described the aims of it as follows:

"We are attempting to think through the problems of the law that governs the determination of what conduct constitutes a crime--at least within the major areas of criminality--and also governs what is done or may be done with the offender. In thinking through these problems we are seeking all the help that we can get. We look for legal wisdom --a quality that we believe to be both real and relevant--for we are dealing after all with law. We also look, however, for the knowledge, insight and experience offered by the other disciplines and occupations concerned with crime and its prevention. Armed with collaboration of this order, we mean to act as if we were a legislative commission, charged with construction of an ideal penal code--properly regardful of realities but free, as legislative commissions rarely are, to take account of long range values as distinguished from immediate political demands." Wechsler, *A Thoughtful Code of Substantive Law*, 45 *J. Crim. L.C. & P.S.* 524, 525 (1955).

We should say that all of us do not agree with or intend to recommend all that is in the Code. But this does not make it any less useful. It was not intended to be a ready-made statute for adoption as is--rather, it is a "plan for criminal law revision, a source of research material, and a guide to the development of modernization of the law." *Task Force Report: The Courts, supra.*

"It should be noted, however, that it was not the purpose of the Institute to achieve uniformity in penal law throughout the nation, since it was deemed inevitable that substantial differences of social situation or of point of view among the states should be reflected in substantial variation in their penal laws. The hope was rather that the model would stimulate and facilitate the systematic reexamination of the subject needed to assure that the prevailing law does truly represent the mature sentiment of our respective jurisdictions, sentiment formed after a fresh appraisal of the problems and their possible solutions. Of course, the Institute was not without ambition that in such an enterprise the model might seem worthy of adoption or, at least,

of adaptation. It coupled that ambition with the recognition that legislators working with the model might well find it unacceptable on given points and helpful upon others. It also recognized that much useful legislative work is addressed to particular problems of the penal law rather than to general revision, and wished the Code to be of aid, so far as possible, in undertakings of this kind." Wechsler, *Codification of the Criminal Law in the United States: The Model Penal Code*, 68 Col. L. Rev. 1425, 1427 (1968).

Additionally, many States have either enacted new penal codes or have had legislative commissions make recommendations as to such laws. Chief among these is the New York revision (N.Y. Rev. Pen. Law (McKinney 1967)) together with those of Illinois, Wisconsin, Michigan, California and Connecticut. We have drawn heavily upon the work of these States.

* * * *

The drafts of our new code have been broken into three Parts: *Part I* deals with the general part of the criminal law. Provisions applicable to all crimes are collected here. *Part II* deals with the definitions of specific offenses as found in the Model Penal Code. *Part III* deals with treatment and correction, to the extent they will be dealt with; definitions of specific offenses not included in Part II; and other necessary changes in statutes and court rules to implement the new code.

Each of these three Parts is going through three drafting stages. First, is a "Study Draft" which includes, on each topic, the Model Penal Code provisions and an explanation of it; a summary of existing New Jersey law, from cases or statutes; and a collection of important statutes from other States. This draft is submitted to the Commission and considered by it or a committee of it for tentative decisions. Second, a "Tentative Draft" will be written from the Study Draft. This consists of a draft of proposed statutory language together with a brief drafter's note. At this point, the Commission will make firm decisions on the recommendations it will make. Finally, a "Final Draft" will be submitted to the Governor and the Legislature. The Commission has established for itself and its staff a timetable which will make it possible for it to report by April 1, 1971.

The Commission Staff

The Commission has retained as its Secretary Professor John G. Graham. Professor Graham served in 1964-65 as an Assistant Essex County Prosecutor and, since that time has been a member of the Faculty of the Rutgers Law School in Newark, now in the capacity of Associate Professor of Criminal Law. He is a member of the Supreme Court's Committee on Criminal Procedure and a partner in the firm of McGlynn, McGlynn, Ruprecht and Graham.

The Secretary, with the approval of the Commission, has retained several consultants to the Commission who have participated in the research and drafting of the new legislation:

- Daniel Coburn, Esq., Assistant Public Defender (On leave to the Commission, Summers 1969, 1970)
- Florence E. Peskoe, Esq., (Summer 1969)
- Barry E. Evenchick, Esq., former Assistant Essex County Prosecutor; partner, Riccardelli, Evenchick and Franconero. (Summer 1970)
- Steven Gifis, Assistant Professor of Criminal Law, Rutgers Law School, Newark (Summer 1970)
- Louis A. Ruprecht, Esq., partner, McGlynn, McGlynn, Ruprecht and Graham. (Spring-Summer 1970)

The Secretary has also hired four students at the Rutgers Law School, Newark, as Research Assistants: Daniel Matyola, Edwin Jacobs, Michael Hess and Robert Gluck. The Commission's offices are in Ackerson Hall, Rutgers Law School, 180 University Avenue, Newark.

Conclusion

The Commission is convinced of the importance of-- even the compelling demand for--completion of its task and the enactment of a new penal code in this State. We are moving as swiftly as possible toward that goal.

Respectfully submitted,

April 15, 1970

Robert E. Knowlton
Chairman
T. Girard Wharton
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