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# MISSOURI LAW REVIEW



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## SYMPOSIUM—PROPOSED MISSOURI CRIMINAL CODE\*

### THE MODERN CRIMINAL CODE FOR MISSOURI (TENTATIVE DRAFT)—A CHALLENGE FULFILLED AND THE CHALLENGE PRESENTED

JOHN C. DANFORTH\*\*

*Let's have a rule*

*Which deals to crimes an equal punishment:  
Nor tortures with the horrid lash for faults  
Worthy a birchen twig.*

Hor. Sat. 1.3. 117-19.

The concept that the punishment should fit the crime is a simple one shared by both the layman and the lawyer. The concept becomes difficult in application, however, for it must be determined what acts are to be proscribed and what the consequences are to be for committing them. Our notions of fair play and due process also require that all proscribed acts and the penalties for committing them be well-defined and adequately publicized so as to provide notice to those who must regulate their conduct accordingly. Yet, the criminal laws of Missouri sometimes fail to define the prohibited acts in a readily comprehensible manner. What is more, the overall statutory scheme of punishment is uneven. Occasionally, the person acting immorally may be punished only if charged and convicted of an offense enacted to regulate unsocial conduct of lesser or greater

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\*Editor's note: This issue went to press before the Proposed Code was finalized. Possibly, there will be minor variations between the Proposed Code as presented in this symposium and the Proposed Code that is eventually approved by the committee. Three parts of the symposium, relating to sentencing, offenses against the person, and offenses against public order will appear in a future issue of the MISSOURI LAW REVIEW.

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importance. Too frequently, acts made criminal do not reflect present-day thought.

Deficiencies in the criminal laws of Missouri are directly related to the antique framework of those laws. Many of the present statutes are the same as, or slight variations of, those enacted in 1835, fourteen years after Missouri achieved statehood. With few exceptions<sup>1</sup> there has been little or no effort to improve the substantive criminal law in this state. To be sure, the antique structure has been embellished from time to time but, with the exceptions noted, only by ad hoc response to specific problems. There has been no attempt systematically and comprehensively to revamp the basic structure of the substantive law to promulgate an integrated and understandable criminal code.

There is a compelling need, which has been seen for some time,<sup>2</sup> for the enactment of a truly comprehensive and unified criminal code for this state. That is not to say that the Missouri legislature should be faulted for not having reworked the criminal laws into such a code. What was clearly required to meet the need was a special project concentrating the efforts of those particularly involved with the criminal law. The Modern Criminal Code for Missouri (Final Draft 1973) was produced in just such a manner.

In the Omnibus Crime Control and Safe Streets Act of 1968,<sup>3</sup> Congress established the Law Enforcement Assistance Administration (LEAA)<sup>4</sup> and made federal funds available to the states for law enforcement purposes and related projects.<sup>5</sup> The Missouri Law Enforcement Assistance Council (MLEAC)<sup>6</sup> was created to administer the allocated LEAA funds. There is a lively competition among the various governmental bodies involved in the criminal justice system—courts, police, correctional institutions, juvenile services, and others—for these funds. The office of the Attorney General of Missouri has also obtained LEAA funds for various programs and purposes. Early in 1969, it was decided that this office would submit a proposal to the MLEAC for a planning grant to fund a project that had as its objective a thorough revision of the substantive criminal laws of Missouri. The project was to be accomplished in two stages: the first stage would entail study of existing laws and evaluation of needed

1. The exceptions include the Sealing Statute, §§ 560.156-.161, RSMo 1969; the Mental Responsibility Law, §§ 552.010-.080, RSMo 1969; and the Drug Regulations Law, §§ 195.010-.270, RSMo 1969.

2. That reform is needed is clearly indicated by the work of the American Law Institute in its Model Penal Code, a work that is providing the basis for substantive criminal law reform in several states. See Wechsler, *Codification of Criminal Law in the United States: The Model Penal Code*, 68 COLUM. L. REV. 1425 (1968).

3. 42 U.S.C. §§ 3701-95 (1970).

4. *Id.* § 3711 (a).

5. See generally Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§ 3701-95 (1970).

6. For basic information concerning the MLEAC, see DEP'T. OF COMMUNITY AFFAIRS, THE MISSOURI STATE GOVERNMENTAL SERVICES CATALOG 136-37 (1970).

changes; the second would involve the drafting of a modern criminal code. Although the difficulties that had beset revisers in other states were recognized at that time,<sup>7</sup> it was anticipated that Missouri revisers could use other state codes as examples so that the time required for the completion of each stage would be approximately one year. The project budget submitted with the proposal estimated expenditures at less than \$20,000, including state contributions. As it turned out, the project has consumed the energies of the revisers for roughly four years and a considerably greater amount of money than originally anticipated.<sup>8</sup>

As proposed, the project was to be implemented by a committee that would be representative of all phases of law enforcement: the judiciary, police agencies, the prosecuting attorneys, defense attorneys, the Department of Corrections, the office of the Attorney General, and the legislature—at least one Democratic and one Republican legislator would be appointed to the committee. That idea was followed in selecting the original 13 members of the committee and necessary replacements. Two years into the project, the committee had refined its work and procedures to the point where it was felt desirable to increase its size substantially. The general principles and sentencing system that are common to the entire code and supply a unifying structure had been completed, so that the risk of becoming mired in endless argument due to a greater number of drafters had been reduced. Further, with an increased membership, additional subcommittees could be created so that the many subjects to be treated could be handled more quickly.

At the time of the proposal, although firmly convinced that the substantive criminal law of Missouri had to be reformed, I was personally awed by the amount of effort it would take to complete the project. Now that I have had the chance to see the committee in action and review the minutes of its meetings, my awe is all the greater. Judge Norwin D. Houser, as chairman of the committee, had what must have seemed a Herculean task in keeping the work flowing and not allowing the meetings to degenerate into futile argument. Those duties he performed with remarkable skill. The four reporters, all law school professors, who served the committee and whose responsibilities included initial drafting, received meager recompense for their labors. Surely, the entire summers and leaves of absence from employment they spent on drafting and other committee work indicate a devotion to the project that money

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7. For a discussion of the problems of revision in Kansas, whose "criminal code" also was basically derived from the Missouri statutes of 1835, see Wilson, *New Bottles for Old Wine: Criminal Revision in Kansas*, 16 KAN. L. REV. 585 (1968).

8. Roughly \$28,000 was spent by the committee during the first two years of the project. The last two years of the project required somewhat greater expenditures because additional reporters and research assistants were employed and there were more frequent meetings and disbursements for materials. Committee members kept records of the hours they spent on the project so that the time could be considered in determining the state's contributing funds.