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"Criminal Code" Recommended

BY THE HONORABLE JOSEPH E. COOK*

Sometime late in July your president, Edward L. Wood, asked me to head a temporary committee, the primary purpose of which would be to make recommendations concerning revision of the so-called "Criminal Code" and criminal procedure in Colorado.

We had discussed the matter intermittently during the spring, and had met once in informal conference with Stanley H. Johnson, Kenneth W. Robinson and Ralph L. Carr to consider the advisability of such a move. The unanimous opinion of this little group seemed to be, "*Let's go ahead.*"

Next came the question: How should we determine the sentiment of bench and bar? And again: What would be the proper agency to undertake the job?

It was not until early August that we decided to sound out sentiment. We sent letters to all the district judges, to all the district attorneys of the state, and to a representative group of lawyers, about twenty in number, who had also been named to the temporary committee by your president. The full committee list and the replies from members are on file with the report of the temporary committee.

Only three in each group failed to respond. In strong proportion, the remainder answered that our substantive criminal law and procedure are in need of some revision at this time. They further said that the Colorado Bar Association was the logical agency to do it.

You'll be interested to hear some of the suggestions concerning the proposed revision.

Of course, strictly speaking, we do not have a criminal code in Colorado. The substantive law is made up of a body of statutes, passed by the legislature, sometimes hurriedly, sometimes under pressure, and thrown piecemeal into the existing structure. Except for amendments offered by district attorneys here and there, to bridge gaps and to strengthen statutes and penalties already in force, and by groups interested in special legislation, no effort has been made to study the whole code, and to cast it into modern mold to meet present-day needs. All seem agreed that piecemeal amendments are not satisfactory.

Concerning special existing statutes, some members of the committee felt burglary should be broken down as between daytime and nighttime, the latter being the offense under the common law; and that

*District Judge, Second Judicial District of Colorado. Report of temporary committee for revision of the criminal code and criminal procedure in Colorado, made to the 1943 annual meeting of the Colorado Bar Association, at Colorado Springs.

breaking and entering a dwelling should be considered a more serious offense than entering an office building, a mercantile establishment or an empty schoolhouse. Others have felt that the larceny statute, with twenty dollars as the dividing line between grand and petty theft, and with the confusion and multiplicity of the laws governing automobiles, is outmoded and should be cleared up.

We have had much complaint about the uniformity of sentences, or the lack of it. Many believe the sentencing function should be taken from the courts and placed in a board of correction. The board, they say, could make a complete study of the individual prisoner, of his habits, aptitudes and background during the first months of his incarceration. It could study his reactions to prison life, and determine the time which might be required to readapt him to the social stream. The Federal Judicial Conference of the Committee on Punishment for Crime strongly recommends such an arrangement, though it concludes that the sentencing function should remain in the courts. Certainly, the effect of the present uneven sentences in most jurisdictions is apparent, and is one of the most serious obstacles to good prison morale.

Other members of the committee decry short term jail sentences. They point out that most county jails are not only overcrowded, but are often unsanitary—offer no outlet for physical, mental or emotional energy, and often afford a breeding ground for vicious habits. They say county farms or workhouses should be erected, or if already in operation, should be made available for prisoners serving misdemeanor sentences up to one year. They believe these prisoners should be allowed compensation for their work, and that their families should benefit therefrom; or, having no families, that the prisoners be allowed thereby to build up financial reserves, looking toward the day of their release.

Colorado has a statute, buried in the Children's Code, which makes mandatory the erection of a workhouse for men convicted of non-support. The number actually convicted is quite small, and the statute should be enlarged and extended to include all misdemeanants, and it should be enforced. Certainly a county workhouse or a county farm, or a combination of the two, would be most desirable, and should pay for itself eventually.

Some provisions of our adult probation law have come in for criticism. Many say the approval of the district attorney should not be required, and that Colorado is unique in this respect. Others say that by the very nature of its functions and purposes, probation in its operation should be divorced from law enforcement officers. Our law has been in operation a comparatively short time (since 1931) and we have made considerable progress since then. It may be that further study by a permanent committee of this association will disclose there is still much room for improvement.

To discuss our parole system seems almost superfluous. We have none. No one knows better than our good warden, Roy Best, how hopelessly inadequate it is, and no one in the state has cried out more loudly than he for an effective parole law. Every prisoner discharged from Canon City should not only have some reserve of clothes and money, but should have employment waiting, and should have understanding, well-trained parole officers to guide him over the rough spots for upwards of two years. Otherwise, history of nearly all cases shows the prisoner returns to the old haunts, friendless, penniless, jobless, and with the stage all set for him to renew his criminal career.

And, certainly, it seems to me we need a broader base and greater flexibility in the law for treatment of youthful offenders.

Traditionally, we have relied upon punishment, and the threat of punishment, as the only way of defeating crime. This is not only logically unsound but historically ineffective.

It has not been successful in preventing first offenses, nor has it been effective in heading off recidivism. The possible consequence of punishment to certain types of personalities, perverted in their conceptions, may act as inducements rather than deterrents, in the opinion of the committee of the American Law Institute, which drafted the Youth Correction Authority Act. Where physical abnormalities are concerned, certainly prison confinement offers no amelioration.

And finally, punishment does not take into account the causal factors of crime, and generally returns the prisoner to the same community—to the same environment, not only no better equipped for absorption into the social stream, but often more handicapped than before.

We must lay more emphasis upon studying the criminal, and less upon the crime. We must be concerned less and less with trying to fit punishment to offenses, and more and more with fitting treatment to individuals.

We recommend to the consideration of any permanent committee which might be named by this association, a study of the Youth Correction Authority Act, under which young offenders from sixteen to twenty-one, instead of being sentenced to penal institutions, are committed to a correction authority for vocational, industrial and educational rehabilitation, as their aptitudes and interests justify. We recommend also for study the *Report to the Federal Judicial Conference of the Committee on Punishment for Crime*, and a *Critique of Criminal Prosecution in Colorado*, by Stanley H. Johnson, former district judge in Denver. And since two committee members have suggested a "Public Defender" law for Colorado, we can refer you to the California act as a model for study.

Concerning young women, we have been negligent in the matter of providing either a reformatory or any correction authority whatever. In lieu thereof, the practice has been to commit the less serious female offenders to any county jail that may be handy. We needn't comment upon the lack of foresight and the utter hopelessness of good results in any such policy.

District Attorney Burke has wisely suggested, we think, that statutory adjustments might be made committing these young women to the State Industrial School at Morrison, which has been eminently successful in reclaiming girls under sixteen.

Other suggestions made by the committee include advance notice of the defense of alibi, and pre-sentence investigations, as embodied in the proposed new *Federal Rules of Criminal Procedure*.

Some lawyers have found fault with the ambiguity of the Habitual Criminal Act; and others think we should amend the statute defining insanity, and providing for pleas thereunder. Still others believe exceptions should automatically be saved in criminal cases.

In closing, let us point out that Louisiana has recently amended its criminal code, and that the outstanding accomplishment of the framers, in the opinion of District Judge John R. Pleasant, was the reduction of some 504 statutes, and parts of statutes, into a compact and practical code of 142 articles. One article in plain and simple language, Judge Pleasant points out, replaces all of the previous statutes on larceny, embezzlement and false pretenses; makes penalties consistent, and substitutes one offense of theft for seven statutes relating to various types of embezzlement, thirty-three relating to larceny and eighteen on false pretenses.

We could do much the same in Colorado in similar situations. And let it be remembered that not all our criminal statutes are embodied in volume two 1935 COLORADO STATUTES ANNOTATED. They are scattered throughout all the volumes.

A resolution adopted July 19, 1943, by the General Interim Committee of the Thirty-fourth General Assembly of Colorado importunes the Colorado Bar Association to appoint a committee or committees to study the constitution and statutes of Colorado "for the purpose of finding obsolete and unnecessary statutes or parts thereof, and recommending their repeal or revision."

Your committee feels that a study along all the lines indicated would be productive of benefit to the state.

We think a modern criminal code is highly desirable in the battle against crime. We realize it will mean long and careful research; and one of our members has suggested that if a permanent committee be set up, it should include in its ranks one experienced annotator, a highly skilled legislative draftsman, and an executive secretary.