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WASHINGTON LAW REVIEW

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The Revised Washington Criminal Code

Introduction

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Overcriminalization and Washington's Revised Criminal Code

Arval A. Morris 5

The Proposed Code perpetuates the criminalization of public drunkenness (intoxication due to alcohol or drugs), vagrancy, loitering, disorderly conduct, bigamy, incest, and prostitution. While recognizing the profound social problems inherent in some of this conduct, Professor Morris contends that inclusion of such vague and tenuous offenses within the ambit of the criminal law undermines and frustrates its proper aims. According to Professor Morris, these proper goals include protecting persons and property, preventing exploitation of those in need of special protection, and preserving individual freedom by restricting the scope of the criminal law. Professor Morris examines the real social harms implicit in the conduct criminalized by these peripheral provisions and suggests alternative means of dealing more effectively with the actual problems without morally and financially prostrating the criminal law.

The Revised Washington Criminal Code's Vital Substructure:
The Burden of Proof, Felony Murder, and Justification
Provisions

Richard Cosway

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This article examines three vital areas of the Proposed Code: affirmative defenses (burden of proof), felony murder, and justification. Identifying those defenses which the Code classifies as affirmative, Professor Cosway explores the motivation for, the ultimate effect of, and the constitutional restrictions on the selection of affirmative defenses. Professor Cosway's detailed evaluation of the proposed felony murder rule reveals both the improvements it makes on existing law and potential problems in construing the statute due to inadvertent imprecision in drafting. Scrutinizing the Code's provisions on justification, Professor Cosway translates the Code's technical language into its tangible implications for citizens, law enforcement officers, and criminals.

The Death Penalty Cases: A Preliminary Comment

John M. Junker

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The Proposed Code severely restricts the availability of the death penalty in a provision that was drafted before the United States Supreme Court rendered its decision in *Furman v. Georgia*, which held the infliction of the death penalty to be cruel and unusual punishment in violation of the eighth and fourteenth amendments. Professor Junker discusses the implications of the *Furman* decision, synthesizing the Justices' nine separate opinions and distilling both their common ground and areas of profound disagreement. Exploring the majority's unanimous condemnation of the arbitrariness and infrequency with which capital punishment is administered, Professor Junker considers the constitutionality of a *mandatory* death penalty for specified offenses and concludes that the moral weight of the *Furman* decision probably will terminate the use of capital punishment in the United States.

The Practitioner's View

The Revised Washington Criminal Code: A Defense Perspective

John M. Darrah

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A Prosecutor's View of the Revised Washington Criminal Code

Robert E. Schillberg

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Defense Attorney Darrah and Prosecutor Schillberg analyze and comment upon many of the controversial provisions in the Code, including the burden of proof and affirmative defense provisions, the insanity defense provision, and the culpability requirements of the Code. In examining the Code as it will affect them in their professional capacities, each expresses his opinion as to the strengths and weaknesses of the Code as drafted. In addition, Prosecutor Schillberg often reveals the position taken by the Prosecuting Attorney's Association with respect to these provisions of the Code. Both authors examine the Code not as detached intellectuals or concerned citizens, but rather as attorneys whose daily practice will be affected if the Code is adopted by the Washington Legislature.

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