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WASHINGTON LAW REVIEW

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SYMPOSIUM—THE REVISED WASHINGTON CRIMINAL CODE

INTRODUCTION

Perry B. Woodall*

The present Washington criminal code was enacted in 1909 during the eleventh session of the Washington Legislature, and has been amended in a haphazard manner during each subsequent legislative session. At this point in time, much if not most of the 1909 code is either obsolete, unconstitutional, or simply not being enforced. In addition to this deadwood problem, the present criminal code does not adequately cover certain new types of "anti-social conduct" which are products of modern society. For example, the code does not generally deal with "theft of services" and is grossly inadequate in its treatment of white-collar crimes and crimes committed by corporate officials and managers. Still another criticism of the present code is that by and large it is very poorly drafted, replete with ambiguities, and, in many instances, extremely difficult to comprehend and apply.

In my opinion, the inadequacies in the existing criminal code have had profound detrimental effects on the quality and reputation of law enforcement and criminal justice in Washington. First, the poor quality of draftsmanship in the present code has effectively hampered the administration of justice and has necessitated a significant amount of "judicial law making." Second, the presence of loopholes in the code

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for some modern white-collar crimes does not mesh with the public's concern for crime control. Third, the glaring inadequacies in the present criminal code create a critical lack of public confidence not only in the code itself, but also in the police, prosecutors and courts who are placed in the delicate and frequently impossible position of enforcing the code. Fourth, the presence of many obsolete provisions in the present criminal code has placed law enforcement officials in the awkward position of having to select which criminal statutes are to be enforced. This, in effect, produces a "tolerance policy" and gives rise to cries of "injustice" and "selective law enforcement."

Because of the deficiencies in the existing criminal code, the Washington State Senate in 1967 and 1969 adopted resolutions requesting the Legislative Council to prepare a proposed revision of the criminal code. The Legislative Council carried out this task through its Judiciary Committee, which I chair, and through a Citizens' Advisory Committee created by the Judiciary Committee. The revision process included the following three stages: first, drafts of sections were prepared by a very competent project staff; second, these drafts were reviewed and either amended, accepted, or rejected by the Citizens' Advisory Committee; and third, drafts accepted by the Citizens' Advisory Committee were finally reviewed and either amended, accepted, or rejected by the Judiciary Committee. The product of this revision process is the Revised Washington Criminal Code, published by the Judiciary Committee on December 3, 1970, adopted by the full Legislative Council on January 15, 1971, and introduced in the 1971 regular session of the Washington Legislature where it died in the Senate committee to which it was originally referred.

That all the necessary reform of the criminal law will not be accomplished by enacting the Revised Washington Criminal Code is apparent when one considers that enactment of the Code will not revise that great body of crimes existing outside the present criminal code. In haphazard fashion, these crimes have been added onto the end of statutes regulating a wide assortment of business and professional activities. They frequently contain severe criminal sentences, reflecting more the special interests of the sponsoring agency or private organization than the needs of the criminal justice system. I am particularly distressed that this class of crimes would not be revised with the enactment of the Proposed Code. Nevertheless, it is my opinion that Washington's need for a new criminal code would in large part be satisfied

Introduction

by the enactment of the Revised Washington Criminal Code. In all likelihood, the Proposed Code, with a few necessary amendments, will be introduced during the 1973 regular session of the Washington Legislature. Hopefully, it will fare better at that time.