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Criminal Law Reform In Pennsylvania: The New Crimes Code

SHELDON S. TOLL*

I. HISTORICAL PERSPECTIVE

Criminal law reform does not come easily. Since 1860 there had been numerous efforts to codify the criminal laws of Pennsylvania. Pennsylvania's 1860 Criminal Code was not in any sense of the word complete because it did not purport to cover important areas of criminal law which were still controlled by the ancient and nebulous common law. Nor did the State's Penal Code, enacted in 1939, materially improve the situation, although the 1939 Code made some progress in organizing scattered pieces of criminal legislation.

That there was a crying need for a new crimes code in Pennsylvania cannot be disputed. If criminal law is weak or ineffective, basic human interests are in jeopardy. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community or for the individual.¹ Yet prior to the adoption of the new Crimes Code, criminal law in Pennsylvania, as in many other states, lacked comprehensive and systematic treatment.

The greatest contributions of Pennsylvania's new Crimes Code to more effective administration of criminal justice are its classification of crimes and its re-enactment of existing offenses in clear and modern language. The Code, by reforming present law and making it stronger and more effective, is tough on crime. The pur-

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1. Wechsler, *The Challenge of a Model Penal Code*, 65 Harv. L. Rev. 1097 (1952).

pose of this article is to provide a brief discussion of some of the major changes which have been enacted by the code and which are not given full treatment elsewhere in this issue.

A. *Role of the Model Penal Code*

In May, 1962, the American Law Institute released its final draft of a Model Penal Code, the result of ten years' research. On October 4, 1962, the late William A. Schnader, the then President of the Pennsylvania Bar Association, appointed a special committee to consider in what respect the recommendations contained in the Model Penal Code could be adopted by Pennsylvania. This committee submitted its first report to the Association at its January, 1965, meeting, and, pursuant to its urging, the Joint State Government Commission was authorized to draft a new code. As a result, House Bill No. 2272, a proposed "Act to consolidate, amend, and revise the penal laws of the Commonwealth" was introduced on December 8, 1965. The Bill was introduced again in the 1967 session as Senate Bill No. 38, but did not gain passage. In 1969, the Association, through its Special Committee on Crime and Juvenile Delinquency undertook a very careful analysis of the criticisms of Senate Bill No. 38, with a view toward submitting a revised Bill to the Legislature. This effort culminated in the introduction and successful passage of Senate Bill No. 455, Session of 1971. The Crimes Code was enacted by the Governor on December 6, 1972, as Act No. 334. It became effective on June 6, 1973.

B. *Why a New Code Finally Passed*

The total elapsed time for passage of criminal law reform in Pennsylvania, based on the Model Penal Code, was more than ten years. The renewed effort which began in 1969 was successful. The secret of the success of this effort, where previous ones had failed, was that the proponents of reform adopted a new approach. A painstaking analysis was made of all criticisms of previous versions of the proposed Code. An attempt was then made to modify the proposed Code to obviate each and every substantial criticism. Further, it was decided to prepare a new bill sidestepping, for the moment, certain controversial issues, such as abortion, homosexuality, the death penalty, insanity, and wiretapping. Experience had shown that a few controversial sections, amounting to a mere fraction of the entire bill's coverage, could sound the death knell for the entire reform legislation.

II. GENERAL PROVISIONS

A. *Section 105: The Rule of Strict Construction*

Prior Pennsylvania criminal law, following the common law, required that statutes be read subject to the rule of strict construction, that is that a prior interpretation of the statute is perpetuated

even though conditions and needs of the state are ever changing. The obvious result of this inflexibility was that some defendants were acquitted because they have not "technically" committed the crime of which they were accused. In other cases, before a defendant could be found guilty as charged, the court had to disregard *stare decisis* (relying on its own precedent) and, in effect, assume the legislative function of defining the nature of the crime. The new Code sensibly states in § 105: "the provisions of this title shall be construed according to the fair import of their terms." Situations not foreseen at the time of legislative enactment can be adequately and fairly dealt with. A common sense flexibility is provided.

B. Section 106: Classification of Crimes

Because of the patchwork accretion of Pennsylvania penal statutes originating over 150 years ago, a systematic grading or rationale of sentencing did not exist. Consequently, punishment frequently was highly disproportionate to the degree of culpability of the offender and the danger of his criminal act to the community when compared to similar criminal acts. For example, Pennsylvania's arson statutes were notorious for their gross illogic: under prior law, burning a barn or outhouse subjected the offender to a maximum of 20 years' imprisonment, while burning a crowded movie house or school involved a maximum of 10 years' imprisonment; burning hay, grain or vegetables carried a 2-year maximum—the identical sentence for burning a ship that might be carrying over 1,000 passengers.

The new Code systematizes the classification of all crimes into grades and degrees. All crimes are dealt with. This is a massive improvement over the existing chaotic structure.

CLASSIFICATION OF CRIMES

Grading	Maximum Imprisonment	Maximum Fine ²
Murder	Death-life	
Felony, 1st degree	20 years	\$25,000
Felony, 2d degree	10 years	\$25,000
Felony, 3d degree	7 years	\$15,000
Misdemeanor, 1st degree	5 years	\$10,000
Misdemeanor, 2d degree	2 years	\$ 5,000
Misdemeanor, 3d degree	1 year	\$ 2,500
Summary Offense	90 days	\$ 300

2. The new Code provides for an alternative fine of any higher amount equal to double the pecuniary gain derived from the offense by the offender.

C. *Section 107: Abolition of Common Law Offenses*

Pennsylvania criminal law was a conglomeration of statutory law and common law—the latter filling the void in those areas where the former was silent. The common law is uncodified, judicially made law based upon the precedents of prior decisions, custom and usage. It may be used to establish the offense itself or to define the scope of imprecise statutory drafting. Pragmatically, the new Code abolishes all common law offenses and declares “No conduct constitutes a crime unless it is a crime under this title or another statute of this Commonwealth.”

III. CRIMES AGAINST THE PERSON

A. *Sections 2701 and 2702: Simple and Aggravated Assault*

Since assault and battery were not defined by the 1939 Penal Code, common law interpretations became necessary. Generally, an assault was said to be an attempt to inflict bodily harm upon another person in such a way as to be “offensive to a reasonable sense of personal dignity”—specifically when done in a “rude, angry or insolent manner”; or when putting that person in apprehension of such contact. A battery was committed “whenever the violence menaced in an assault is actually done though in ever so slight a degree upon the person”.

According to Pennsylvania law, the more serious statutory offenses of aggravated assault and battery, assault with intent to kill, assault with intent to maim, and mayhem (a disfigurement of one’s body or a deprivation of some bodily part that one needs to defend or take care of himself) included fairly measurable criteria to determine guilt. However, the required conditions were frequently similar enough to be interchangeable and overlapping. For instance, aggravated assault and battery was statutorily declared to be an unlawful and malicious infliction upon another person, “[of] any grievous bodily harm, or [results when a person] unlawfully cuts, stabs, wounds another person. . . .” The statute for assault with intent to kill stated that “whoever administers . . . poison . . . stabs, cuts or wounds any person . . .” or “[whoever] causes any person bodily injury dangerous to life, with intent to commit murder . . . ,” was guilty of this offense.

The new Code not only circumvents the problems of indefiniteness of terms and unnecessary duplication of offenses by explicitly defining all terms and necessary conditions for the commission of the crime, but also neatly orders this area of criminality into two categories—simple assault and aggravated assault, which are defined as follows:

Simple assault.

- (a) Offense defined.—A person is guilty of assault if he:

- (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
- (2) negligently causes bodily injury to another with a deadly weapon ; or
- (3) attempts by physical menace to put another in fear of imminent serious bodily injury.

Aggravated assault.

- (a) Offense defined.—A person is guilty of aggravated assault if he:
 - (1) attempts to cause serious bodily injury to another or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;
 - (2) attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to a police officer making or attempting to make a lawful arrest;
 - (3) attempts to cause or intentionally or knowingly causes bodily injury to a police officer making or attempting to make a lawful arrest; or
 - (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon.

Under prior Pennsylvania criminal law, assault offenses carried with them the following maximum penalties:

Crime	Maximum Imprisonment
Simple assault or assault and battery	2 years
Aggravated assault and battery	3 years
Assault with intent to kill	7 years
Mayhem	5 years
Assault with intent to maim	5 years
Assault and battery on police officer	1 year
Aggravated assault and battery on police officer	5 years

As a result of the synthesis reached in the new Code, simple assault is declared to be a misdemeanor of the second degree. The first and second subsections of the aggravated assault provision classifies these provisions as second degree felonies, while the last two subsections are considered first degree misdemeanors. (See Table *supra* with penalties commensurable with these classifications enumerated).

B. *Section 2901: Kidnapping*

With the exception of a child ten years old or under, Pennsylvania statutes only applied to abductions in which the abductor intended "to extort money or other valuable thing." No provisions existed against kidnapping for rape, to facilitate commission of a felony, to prevent testimony, to terrorize, to coerce voting, or

any other political or official action or any other reason. This obvious and serious deficiency is corrected by the kidnapping provision of the new Code:

A person is guilty of kidnapping if he unlawfully removes another a substantial distance . . . from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation with any of the following intentions:

- (1) To hold for ransom or reward, or as a shield or hostage.
- (2) To facilitate commission of any felony or flight thereafter.
- (3) To inflict bodily injury, to terrorize the victim or another.
- (4) To interfere with the performance by a public official of any governmental or political function.

Under Pennsylvania law, for the child ten or under, the penalty for detaining him or stealing from him was up to fifteen years. Life imprisonment was the ultimate sentence when extortion was the motivation for the kidnapping. The new Code makes kidnapping a felony of the first degree. (See Table *supra* to determine the sentence in accordance with the classification of the crime.)

C. Section 3121: Rape

The offense of rape generates more community emotionalism than any other crime. The new Code evaluates the possible variances of the crime and realistically proposes changes to conform to today's mores and ethical standards.

As enacted by the Pennsylvania Legislature during the summer of 1966, any rape committed in which serious bodily injury was inflicted upon anyone invoked a minimum sentence of 15 years imprisonment and a maximum term of up to life. A "serious bodily injury" was stated as an injury which ". . . creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any member or organ of the body." In those rapes where no serious bodily injury was inflicted the maximum term of imprisonment was 20 years. Assault with intent to ravish was subject to a maximum penalty of 15 years imprisonment for a first offense in which a serious bodily injury was inflicted upon anyone. Otherwise for a first offense, attempted rape was punishable by a maximum term of 7 years. For a second or subsequent conviction of this crime a sentence up to life could be imposed.

The new Code defines rape as follows:

A person commits a felony of the first degree when he engages in sexual intercourse with another person not his spouse:

- (1) by forcible compulsion;

- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious; or
- (4) who is so mentally deranged or deficient that such person is incapable of consent.

An attempt to commit a rape (classified as a first degree felony) is a felony of the second degree. Attempts to commit other sexual crimes are punishable the same as if the offender's purpose had been consummated.

Additionally, not only can a wife not charge her husband with any sexual offense against her, but a woman living in a meretricious relationship cannot charge the man with whom she is living with these crimes either.

In contrast to the prior law, the new Code provides a definition of statutory rape in a section separate from the provisions dealing with forcible rape. The age of consent is unchanged.

D. *Sections 3123 and 3124: Involuntary and Voluntary Deviate Sexual Intercourse*

The state's former sodomy statute called for a maximum 10 year sentence to be imposed upon anyone who engaged in sexual intercourse that was not accomplished by a human penis penetrating the vagina of the human female. Thus, heterosexuals, and those who had sexual intercourse with animals were alike subject to this law. It was immaterial whether consent was established, or that the crime was committed forcibly, dangerously or under any threat. In fact, just soliciting another to engage in this type of sexual activity could bring a 5 year imprisonment.

The new Code differentiates between where the deviate sexual intercourse is committed by means of force, threat or is otherwise not freely consented to and where there are consenting adults, providing a reduced penalty in the latter case.

III. CRIMES AGAINST PROPERTY

A. *Section 3301: Arson*

Remembering that many of Pennsylvania statutes were originally formulated when the state was primarily rural, it was not surprising to find inordinately severe penalties for burning those objects most important to the farming community, and inadequately lax penalties for putting fire to some objects generally associated with our modern urban way of life. As a result, Pennsylvania

had statutory proscriptions against burning a “. . . barn, stable or other outhouse” punishable by a maximum of twenty years imprisonment. Burning hay, wheat, corn, grain, vegetables, or any pile of coal, wood, fuel, planks, boards, etc., with a value of over \$25 subjected the offender to a maximum of two years imprisonment. In contrast to these provisions were a ten-year maximum penalty for burning down a heavily populated school or theater, and a meager two-year maximum penalty for setting aflame a teeming tourist cruiser.

In the new Code, the harsher sentences for the unlawful burning of those structures deemed of first importance to a rural economy are gone. The Code encompasses all phases of the offense of arson by distinguishing between arson endangering life and arson endangering property only, classifying the former as a felony of the first degree and the latter merely as a felony of the second degree.

B. *Section 3501: Burglary*

By statute, burglary was committed “when . . . at any time, [someone] willfully and maliciously, enters any building with intent to commit any felony therein.” In addition to the enacted definition, the courts had required the common law concept of “breaking” to be established before burglary was effectuated. “Breaking” was generally said to be an opening or maneuvering of any door, window, or other physical barrier so as to gain access inside the building in order to commit a felony. This “breaking” could also be accomplished constructively by fraud, conspiracy, or threats where someone, not the burglar, actually provided the means of entrance into the building.

The required intent of the offender had to be to commit a crime classified by Pennsylvania law as a felony, i.e., murder, rape, larceny, etc. If the intent was to commit a misdemeanor, i.e., assault and battery, indecent exposure, etc., a burglary was not accomplished. Also, the intent had to be crystallized in the mind of the offender before the breaking was completed.

That the purpose of the breaking was not achieved was of no consequence to the crime. Burglary or unlawful entry was established when the breaking was completed, regardless of what followed. When the ultimate purpose of the burglary or unlawful entry was consummated, however, no merger of offenses resulted. Both burglary and the consequently committed felony or misdemeanor were indictable and separately punishable with consecutive sentences.

The new Code’s provisions are essential to rectify the irrationalities in this area. To facilitate the much needed overhaul, clear and concise words and definitions are used. No more simply and

understandably could a statute be phrased than declaring that "a person is guilty of burglary if he enters a building or occupied structure . . . with intent to commit a crime therein" If at the time of entry, "the premises are at the time open to the public or the actor is licensed or privileged to enter," no burglary results. In that situation only the ultimate criminal purpose of the entry is punishable.

The changes that the new burglary section makes are as follows:

1. No longer is the common law concept of "breaking" necessary. This requirement is eliminated since both actual and constructive breaking are encompassed in any entry not of right, privilege or license where there is an intent to commit a crime.

2. The entry has to be into any "building or occupied structure." Occupied structure is defined to include vehicles and it does not matter whether at the time of the entry someone is actually occupying the structure or building, though it is a defense to the crime if the structure or building is abandoned.

3. No burglary conviction can be had where the entry is into a public place open at the time of the entry, or where the person has a privilege or license to enter.

4. To constitute burglary, the purpose of the entry need only be to commit *any crime* therein. Gone is the requirement that the objective be to commit a felony. A crime is defined in the new Code simply as any offense for which a sentence of imprisonment is authorized.

5. Double or multiple convictions for the burglary and those crimes committed once entrance is gained are continued where the purpose of the entry is to commit a felony categorized by the Code as a first or second degree felony. Second degree murder, rape, robbery, burglary, manslaughter, kidnapping, arson, and some aggravated assaults are listed as being in this grouping. All other crimes including theft (as will be discussed later) are not in this classification, and consequently merge into one indictable and punishable offense with the burglary.

C. Section 3701: Robbery

The relevant Pennsylvania statute stated that "[w]hoever . . . steals any property from the person or another or assaults any person with intent to rob him, or by menace or force, demands any property of another with intent to steal the same, is guilty of

[robbery]. . .” In addition to this provision, there were three other practically self-defining statutes entitled “Robbery with accomplice or while armed or by violence,” “Robbery of bank vaults,” and “Train robbery.”

In their application of these statutes, the courts employed certain criteria to assist them in defining the crime of robbery:

1. The taking of property must be in the presence of another or from his person.
2. The taking must be with force or violence or by putting in fear of violence.

Instead of four individual robbery statutes, the new Code contains a single provision encompassing all possibilities of this crime:

A person is guilty of robbery if, in the course of committing a theft, he:

- (i) inflicts serious bodily injury upon another;
- (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or
- (iii) commits or threatens immediately to commit any felony of the first or second degree.

To replace the requirements of actual or threats of “violence” or “force,” which were too loosely definable, the Code prescribes the criterion of “serious bodily injury,” which is defined by the Code. Alternatively, to constitute robbery, the Code requires a theft accomplished by a commission or immediate threat of commission of those crimes identified as first or second degree felonies: murder, manslaughter, rape, kidnapping, burglary, arson, and some aggravated assaults.

Former maximum penalties for robbery were established as follows:

Crime	Maximum Imprisonment
Robbery and robbery by assault, force	10 years
Robbery with accomplice or while armed or by violence	20 years
Robbery of bank vaults	20 years
Train robbery	15 years

The new Code provides that robbery is a felony of the first degree and thus subject to a maximum sentence of twenty years.

IV. MISCELLANEOUS CRIMES

A. Sections 4101 to 4116: *Forgery and Fraudulent Practices*

To constitute forgery, Pennsylvania required a fraudulent alteration of a written instrument. The new Code widens this concept of forgery to encompass the forged painting, the false antique,

and anything else that is altered to appear "to have value because of antiquity, rarity, source, or authorship which it does not possess." This is a first degree misdemeanor.

One area that was not provided for under former law was the instance of a disc jockey taking "payola" from a distributor to stimulate the buying of a particular record. The new Code regulates this as well as similar fraudulent practices by stating that when one

holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services [he] commits a misdemeanor of the second degree if he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal or criticism.

Statutes entitled "Fraudulent Entry of Horses in Races" and "Bribery in Athletic Contests," which were punishable by sentences up to six months imprisonment and/or \$200 fine and 10 years imprisonment respectively were the only laws existing to control "fixing" or rigging of public contests. In one brief section, the Code is sufficiently comprehensive to penalize as a first degree misdemeanor those who arrange, attempt to arrange, solicit, knowingly benefit by, or knowingly participate in or sponsor any rigged contest. Included in the coverage of this section would be all those who were knowingly connected with television quiz show riggings, for example.

Formerly, concomitant to each of the large number of forgery and counterfeiting crimes was a penalty ranging from 3 months to 15 years imprisonment. The new Code separates all crimes in this area of criminality into just three classifications.

Forgery is a felony of the second degree if the writing is or purports to be part of an issue of . . . [any] instruments issued by the government, or [any] instruments representing interests in or claims against any property or enterprise.

Examples of the offenses covered by this would be the counterfeiting of money, postage stamps, stocks and bonds.

Forgery is a felony of the third degree if the writing is or purports to be . . . [any] document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations.

Examples of the offenses to be provided for by this provision are the forgeries of a will, deed, and contract. Those forgeries not encompassed by the above two quotations are declared to be misdemeanors of the first degree. A crime included for this least punishment would be forging a message to deceive or injure another.

B. *Section 4701 and 4703: Bribery and Corrupt Influence*

For no logically apparent reason, Pennsylvania criminal law provided that the person who bribed a state official could be sentenced to no more than one year imprisonment, whereas the corrupted official was subject to a maximum sentence of five years. A partially overlapping and contradicting statute, "Corrupt Solicitation," invoked a maximum imprisonment of two years for the solicitor of the bribe. These two provisions should be compared to the extreme ten year maximum sentence which might have been imposed upon the solicitor and acceptor of a bribe to rig an athletic contest.

The new Code, in section 4701, "Bribery in Official and Political Matters," treats alike the solicitor and acceptor of the bribe. Both are guilty of a third degree felony. In contrast, bribery to influence the outcome of an athletic contest is punishable as a first degree misdemeanor.

C. *Sections 4901 and 4912: Falsification in Official Matters*

The Pennsylvania statute broadly asserted that one who knowingly made any false statement or false affirmation under a legally administered oath was guilty of perjury and in consequence thereof could be sentenced to a term of up to 7 years. This false swearing could take place in a courtroom, before a notary public, in the taking of depositions, or in any official proceedings. Strictly interpreting this provision, it did not matter whether or not the statement or affirmation was material to the outcome of the proceeding or was completely irrelevant or innocuous. However, the courts took it upon themselves to require that false testimony under oath must have been material to the issue being tried. If it was not material, the person might escape conviction.

To counter the "Judicial Remedy," the new Code distinguishes between the different types of false swearing. Perjury is a third degree felony requiring that a knowingly false statement or affirmation of a previous statement, made in any official proceeding, be material to the issue being tried, i.e., that it ". . . could have affected the course or outcome of the proceeding." Other known falsifications under oath, depending upon their nature and where made, are punishable either as second or third degree misdemeanors.

Also included are provisions for sworn as well as unsworn falsifications to public servants to mislead them in performing their official functions; knowingly causing a false alarm; witness tampering; destroying, concealing, or altering evidence believing that such evidence would be used in an official proceeding or investigation; and impersonating a public servant.

D. *Section 5902: Prostitution and Related Offenses*

Pennsylvania formerly set out nine statutes to cover this area of criminality, some of which overlapped. Sentences ranged from up to one year for prostitutes to up to 10 years for the organizers and managers of this illegal activity. The new Code consolidates all these offenses into one section. Homosexual as well as other deviate relations are included. Those who patronize prostitutes are guilty of a summary offense, while the prostitutes are guilty of a third degree misdemeanor and those who control and exploit this illicit commercialization are guilty of either a second degree misdemeanor or a third degree felony, depending on their degree of culpability.



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