



1969

## Student Criminal Law Symposium

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# Student Criminal Law Symposium

*Editor's Note: JOINT RESOLUTION 43, passed by the 1968 Kentucky General Assembly, directed the Legislative Research Commission and the Kentucky Crime Commission to make a joint study of the penal provisions of the Kentucky Revised Statutes, and to submit recommendations for the substantive revision thereof to the 1970 General Assembly. On June 28, 1968, the Kentucky Crime Commission transmitted to the Legislative Research Commission for further study, the OUTLINE FOR PROPOSED CRIMINAL LAW REVISION.*

*The following Student Symposium is based upon those areas of the Criminal Law which the Crime Commission recommended be revised. Due to the comprehensive nature of the OUTLINE, the Journal was necessarily selective in choosing which areas to examine. The topics discussed in the Symposium represent those facets of Kentucky Criminal Law which the Journal considers to be most in need of revision.*

## FOREWORD

This issue of the *Kentucky Law Journal* contains a Student Symposium based on the *Outline for Proposed Revision of Kentucky Criminal Law*. The substance of the *Outline*, in the form of proposed legislation, is to be submitted to the 1970 Kentucky General Assembly.

The facets of substantive law considered in the Symposium have long been in need of discussion. There are many who think that the weakest part of the prosecution and treatment of criminals, and, perhaps, the one most responsible for the growth of crime, is sentencing, probation and parole. It is argued that, in an attempt to reclaim criminals, the courts and parole boards are often too lenient with repeaters who are released to commit additional serious offenses. In a new approach to that problem, the Model Penal Code and the Model Sentencing Act permit the judge to increase the penalty of imprisonment in the case of "dangerous acts by dangerous offenders" up to a limit of thirty years for persistent repeaters. Another innovation in these Model Acts is to abolish specific penalties for specific offenses and to divide felonies and misdemeanors into degrees. Presently there are 357 separate penalties for the approximately 357 separate crimes in Kentucky. Among the advantages in the classification proposed by the *Outline* is the increased opportunity it provides for creating a

rational sentencing structure in accordance with the seriousness of the offense.

The defense of insanity has long been one of the most difficult problems in the administration of the criminal law. Now that Kentucky has repudiated the Rule in *McNaghten's Case* and substituted a much more liberal definition of mental incompetency, it is even more imperative that procedures be devised to protect the public from the mentally disturbed who commit serious crimes. Some legislatures have provided that, if in an upcoming trial insanity is to be a defense, the court, with or without a motion from the prosecution, may order a mental examination of the accused before the trial begins.

The *Outline for Proposed Revision* is very promising. Instead of breaking with the past and drafting altogether new words and definitional phrases, the *Proposed Outline*, in the main, builds upon the common law and current statutes, adopting new ones only where changing needs and modern trends so indicate. Theft, a monumental category, is a good illustration. Building on the common law, but eliminating the technical distinctions between larceny and embezzlement, the *Outline* proposes to incorporate modern types of offenses, including the variations of "deception" (modernized common law false pretenses). Homicide, the other major criminal category, apparently will not be much affected. This would appear logical; homicide was studied intensively several years ago by the Legislative Research Commission and Kentucky seems to have, largely speaking, good homicide classifications and definitions. On the other hand, the *Outline* indicates that sentencing and probation should be handled largely as the present law provides. It is believed that a departure should be made from current practices in these two categories. The current Revision of the Texas Penal Code, for example, contains excellent recommendations for sentencing and probation procedures.

Naturally, the *Law Journal* has been able to discuss only a few of the many crimes and procedures considered by the Kentucky Crime Commissions *Outline for Proposed Revision*. However, it is hoped that the Symposium will offer some useful suggestions, and, more importantly that the Symposium will contribute to the modernization and improvement of Kentucky criminal law.

*Roy Moreland*