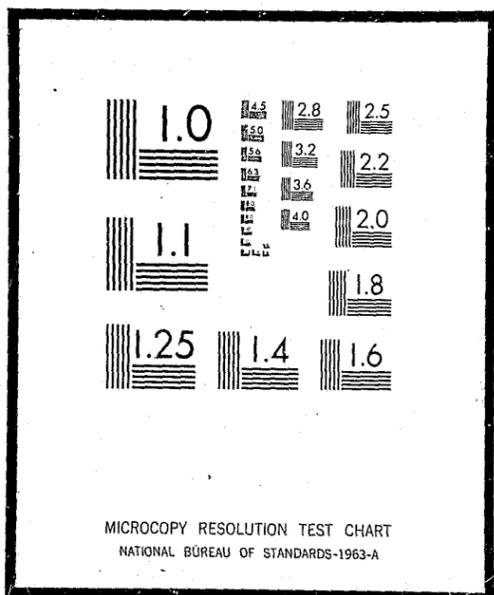


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A WORKING PAPER ON  
THE NEW OHIO REVISED CRIMINAL CODE - Working Paper

PREPARED BY THE  
SUBCOMMITTEE ON THE NEW OHIO CRIMINAL CODE

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JUSTICE COMMITTEE  
LEAGUE OF WOMEN VOTERS OF METROPOLITAN COLUMBUS

AUGUST 1, 1973

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A WORKING PAPER ON  
THE NEW OHIO REVISED CRIMINAL CODE

IT IS IMPORTANT TO REALIZE THAT THIS DOCUMENT IS A FACT SHEET, MEANT FOR DISCUSSION PURPOSES ONLY. IT HAS EMERGED FROM A STUDY BEGUN IN THE SPRING OF 1973 BY THE LEAGUE OF WOMEN VOTERS OF METROPOLITAN COLUMBUS. THE STUDY WAS BEGUN BECAUSE OF A CONCERN WITH THE NECESSITY TO INFORM THE PUBLIC AS TO THE STRENGTHS AND WEAKNESSES OF AN ALMOST TOTAL REVISION OF OHIO'S REVISED CRIMINAL CODE, AS PASSED BY THE LEGISLATURE AT THE END OF 1972. THE STUDY, SO FAR, HAS COVERED ONLY A FRACTION OF THE CODE'S CONTENTS (IN WHICH 735 SECTIONS OF CRIMINAL LAW ARE REPEALED, WHILE 295 SECTIONS ARE RETAINED), AND THE GATHERING OF CRITIQUES FROM DIVERSE LEGAL OPINION ON CONTROVERSIAL SECTIONS OF THE CODE HAS BY NO MEANS BEEN AS COMPLETE AS THE STUDY COMMITTEE WOULD WISH IT TO BE. THE FACT IS, ONLY A FEW CRITIQUES HAVE COME TO OUR ATTENTION BESIDE THE SUPPORTIVE MATERIALS PRODUCED BY THE LEGISLATURE'S TECHNICAL COMMITTEE RESPONSIBLE FOR THE ORIGINAL PROPOSAL OF THE REVISED CODE, AND THOSE MATERIALS WRITTEN LIKEWISE IN SUPPORT BY THE SPONSORS OF HB 511, AS THE PROPOSED CODE WAS CALLED DURING ITS PASSAGE THROUGH THE OHIO LEGISLATURE. WE HAVE CHECKED THE CRITIQUES EXTENSIVELY, MAKING SURE THEY CONTINUED TO APPLY TO THE OFTEN AMENDED VERSIONS IN WHICH SECTIONS OF THE CODE EMERGED FROM THE LEGISLATIVE PROCESSES, BEFORE THE FINAL VERSION WAS SIGNED INTO AN ACT BY THE GOVERNOR OF OHIO. WE SHALL PRESENT THESE CRITIQUES OF CONTROVERSIAL SECTIONS ALONG WITH NON-CONTROVERSIAL ITEMS STUDIED BY THE LWV OF METRO COLUMBUS HB 511 COMMITTEE, WITH THE ADMONITION THAT NONE OF THE MATERIAL COVERED HAS AS YET BEEN SUBJECTED TO CONSENSUS OPINION.

HISTORY AND PHILOSOPHY OF THE NEWLY REVISED CRIMINAL CODE.

ON DECEMBER 14, 1972, THE NEW OHIO CRIMINAL CODE (AM SUB HB511) WAS PASSED BY THE GENERAL ASSEMBLY - THE FIRST MAJOR REVISION SINCE 1815. THE NEW CODE WAS THE RESULT OF SEVEN YEARS OF STUDY BY A "TECHNICAL COMMITTEE" COMPOSED OF MEMBERS OF THE BENCH AND BAR, AND APPOINTED IN 1965 TO SERVE AS A SPECIAL LEGISLATIVE COMMITTEE TO MAKE A COMPREHENSIVE STUDY OF OHIO CRIMINAL LAWS AND PROCEDURES. USING THE MODEL PENAL CODE (PUBLISHED BY THE AMERICAN BAR ASSOCIATION IN 1962) AS A GUIDE, THE TECHNICAL COMMITTEE, ACCORDING TO HB 511'S CHIEF SPONSOR, STATE REPRESENTATIVE ALAN E. NORRIS, TRIED TO ADHERE TO FOUR PRINCIPLES WHILE DRAFTING THE PROPOSED LAWS:

1. THE FUNCTION OF CRIMINAL LAW IS THE PREVENTION OF ACTIVITY WHICH RESULTS IN HARM TO LEGITIMATE INDIVIDUAL OR PUBLIC INTERESTS;
2. GENERALLY, ONLY CONDUCT INVOLVING "FAULT" ON THE PART OF THE ACTOR SHOULD BE CONDEMNED AS CRIMINAL;
3. A CRIMINAL CODE SHOULD GIVE ALL PERSONS FAIR WARNING OF THE TYPES OF CONDUCT WHICH ARE PROHIBITED; AND
4. LAWS PROVIDING FOR SENTENCING AND TREATMENT OF OFFENDERS SHOULD HAVE AS THEIR PRIMARY OBJECTIVES THE PROTECTION OF THE PUBLIC FROM FURTHER HARM, AND THE RE-INTEGRATION OF OFFENDERS INTO SOCIETY AS USEFUL CITIZENS.

ADDITIONS MADE SINCE 1815 HAD RESULTED IN MANY DUPLICATIONS OR OVERLAPPING OF OTHER LAWS. THE COMMITTEE, THEREFORE, HAD AS A MAIN TASK THE WEEDING OUT OF OBSOLETE PROVISIONS AND LANGUAGE, AND TO RESOLVE INCONSISTENCIES. BY WAY OF HOUSEKEEPING, A MUCH SHORTER, MORE COMPACT CODE RESULTED.

SUBJECT MATTER CHAPTERS

THE NEW CODE DEALS ALMOST EXCLUSIVELY WITH SUBSTANTIVE CRIMINAL LAW (PROCEDURAL RULE-MAKING HAS BEEN VESTED IN THE OHIO SUPREME COURT SINCE ADOPTION OF THE MODERN COURT AMENDMENT TO THE OHIO CONSTITUTION); ONLY A FEW PROCEDURAL MATTERS ARE DEALT

(CONT)

WITH, SUCH AS JURISDICTION, VENUE, INDICTMENT, DISCHARGE FOR DELAY, SENTENCING, PROBATION, AND TREATMENT OF OFFENDERS. THE CODE IS DIVIDED INTO 12 SUBJECT MATTER CHAPTERS:

1. HOMICIDE AND ASSAULT, 2. KIDNAPPING AND EXTORTION, 3. SEX OFFENSES, 4. ARSON AND RELATED OFFENSES, 5. ROBBERY, BURGLARY AND TRESPASS, 6. THEFT AND FRAUD, 7. GAMBLING, 8. OFFENSES AGAINST THE PUBLIC PEACE, 9. OFFENSES AGAINST THE FAMILY, 10. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION, 11. CONSPIRACY, ATTEMPT AND COMPLICITY, AND WEAPONS CONTROL, AND 12. MISCELLANEOUS OFFENSES. AMONG THESE, CONSPIRACY AND ATTEMPT STATUTES, IT SHOULD BE NOTED, ARE ENTIRELY NEW TO THE OHIO CRIMINAL CODE; (THE OLD CODE PROVIDES LIABILITY ONLY FOR CONSPIRING TO COMMIT CERTAIN SPECIFIED OFFENSES).

CATEGORIES OF CRIMINAL OFFENSES

ACCORDING TO REPRESENTATIVE NORRIS, PROBABLY THE MOST NOTABLE ACHIEVEMENT OF THE NEW CODE IS ITS RESTRUCTURING OF CRIMES INTO 11 CATEGORIES OF CRIMINAL OFFENSES WITH EACH OF WHICH GOES A SPECIFIC PENALTY. THE CATEGORIES ARE AGGRAVATED MURDER, MURDER, FELONIES OF THE 1ST, 2ND, 3RD, AND 4TH DEGREES, MISDEMEANORS OF THE 1ST, 2ND, 3RD, AND 4TH DEGREES, AND MINOR MISDEMEANORS. THE PENALTIES ASSIGNED TO THESE RANGE FROM CAPITAL PUNISHMENT TO A FINE OF NOT MORE THAN \$100.

PRELIMINARY HEARING

A PERSON AGAINST WHOM A CHARGE OF FELONY IS PENDING MUST BE ACCORDED A PRELIMINARY HEARING WITHIN 15 DAYS AFTER HIS/HER ARREST (SECTION 2945.71 (C) (1)).

TRIAL DEADLINES

TO ASSURE A SPEEDY TRIAL, A PERSON AGAINST WHOM A 1ST AND 2ND DEGREE MISDEMEANOR CHARGE IS PENDING MUST BE BROUGHT TO TRIAL WITHIN 90 DAYS OF ARREST; ON A 3RD AND 4TH DEGREE MISDEMEANOR CHARGE, IT MUST BE WITHIN 45 DAYS; AND ON A MINOR MISDEMEANOR CHARGE, IT MUST BE WITHIN 15 DAYS. ON A FELONY CHARGE, THE ACCUSED MUST BE BROUGHT TO TRIAL WITHIN 270 DAYS. (SECTION 2945.71).

IN THE CASE WHERE THE ACCUSED IS UNABLE TO BE RELEASED ON OWN RECOGNIZANCE OR TO MAKE BAIL, EACH DAY SPENT IN JAIL (DETENTION) MUST BE COUNTED AS THREE DAYS TOWARDS THE MAXIMUM TIME SPAN ALLOWED TO ELAPSE BEFORE TRIAL (SECTION 2945.71 (D)). ULTIMATELY, ALSO, CREDIT AGAINST A SENTENCE MUST BE GIVEN DEFENDANTS FOR TIME SPENT IN JAIL AWAITING TRIAL (SECTION 2961.191).

STATUTES OF LIMITATION

STATUTES OF LIMITATION FOR CRIMINAL PROSECUTIONS ARE INTRODUCED IN THE NEW CODE. PROSECUTION MUST BE COMMENCED WITHIN 6 YEARS FOR FELONIES OTHER THAN AGGRAVATED MURDER OR MURDER, WITHIN 2 YEARS FOR MISDEMEANORS OTHER THAN MINOR MISDEMEANORS, AND WITHIN 6 MONTHS FOR MINOR MISDEMEANORS. THE PERIOD OF LIMITATION DOES NOT RUN DURING ANY TIME WHILE THE OFFENSE REMAINS UNDISCOVERED OR WHILE THE ACCUSED PURPOSELY AVOIDS PROSECUTION. (SECTION 2901.13).

SENTENCING

DEFINITE (FIXED) SENTENCING IS RETAINED FOR MISDEMEANORS, THE MAXIMUM (FOR A MISDEMEANOR OF THE 1ST DEGREE) BEING NOT MORE THAN 6 MONTHS. FOR FELONIES, "INDEFINITE" SENTENCING HAS BEEN RETAINED WHILE GIVING THE TRIAL JUDGE AN OPTION TO SELECT A MINIMUM TERM OF INCARCERATION FROM AMONG A RANGE OF SPECIFIED MINIMUM PERIODS. THE MAXIMUM TERM FOR FELONIES HAS REMAINED FIXED. WITHOUT ATTEMPTING TO GO INTO THE CONSIDERATIONS GOVERNING IMPOSITION OF SHORTER OR LONGER MINIMUM TERMS OF IMPRISONMENT, HERE ARE THE SENTENCES FOR FELONY OFFENSES (SECTION 2929.11 (B)):

FELONY IN THE 1ST DEGREE....MINIMUM: 4, 5, 6, OR 7 YEARS....MAXIMUM: 25 YEARS  
 FELONY IN THE 2ND DEGREE....MINIMUM: 2, 3, 4, OR 5 YEARS....MAXIMUM: 15 YEARS  
 FELONY IN THE 3RD DEGREE....MINIMUM: 1, 1½, 2, OR 3 YEARS....MAXIMUM 10 YEARS  
 FELONY IN THE 4TH DEGREE....MINIMUM: ½, 1, 1½ OR 2 YEARS....MAXIMUM 5 YEARS

IN ADDITION TO IMPRISONMENT, FELONY OFFENDERS MAY ALSO BE FINED AS FOLLOWS.  
 (SECTION 2929.11 (C)):

FELONY IN THE 1ST DEGREE.....NOT MORE THAN \$10,000  
 FELONY IN THE 2ND DEGREE.....NOT MORE THAN \$ 7,500  
 FELONY IN THE 3RD DEGREE.....NOT MORE THAN \$ 5,000  
 FELONY IN THE 4TH DEGREE.....NOT MORE THAN \$ 2,500

SECTION 2929.12 (E) SAYS: THE COURT SHALL NOT IMPOSE A FINE IN ADDITION TO IMPRISONMENT FOR FELONY, UNLESS A FINE IS SPECIALLY ADAPTED TO DETERRENCE OF THE OFFENSE OR THE CORRECTION OF THE OFFENDER, OR THE OFFENSE WAS COMMITTED WITH PURPOSE TO ESTABLISH, MAINTAIN OR FACILITATE AN ACTIVITY OF A CRIMINAL SYNDICATE....SECTION (F) GOES ON TO SAY THAT A FINE OR FINES FOR FELONY MAY NOT EXCEED "THE AMOUNT WHICH THE OFFENDER IS OR WILL BE ABLE TO PAY...WITHOUT UNDUE HARDSHIP TO HIMSELF OR HIS DEPENDENTS....".

IMPRISONMENT FOR MISDEMEANORS IS AS FOLLOWS (SECTION 2929.21 (B)):

MISDEMEANOR OF THE 1ST DEGREE.....NOT MORE THAN 6 MONTHS  
 MISDEMEANOR OF THE 2ND DEGREE.....NOT MORE THAN 90 DAYS  
 MISDEMEANOR OF THE 3RD DEGREE.....NOT MORE THAN 60 DAYS  
 MISDEMEANOR OF THE 4TH DEGREE.....NOT MORE THAN 30 DAYS  
 (NOTE: THERE IS NO IMPRISONMENT SENTENCE FOR A MINOR MISDEMEANOR).

ALSO, FINES MAY BE IMPOSED FOR MISDEMEANORS IN ADDITION TO OR INSTEAD OF IMPRISONMENT, AS FOLLOWS (SECTION 2929.21 (C)):

MISDEMEANOR OF THE 1ST DEGREE.....NOT MORE THAN \$1,000  
 MISDEMEANOR OF THE 2ND DEGREE.....NOT MORE THAN \$ 750  
 MISDEMEANOR OF THE 3RD DEGREE.....NOT MORE THAN \$ 500  
 MISDEMEANOR OF THE 4TH DEGREE.....NOT MORE THAN \$ 250  
 MINOR MISDEMEANOR .....NOT MORE THAN \$ 100

SECTION 2929.22 SAYS THAT WHEN DETERMINING IF A FINE SHOULD BE IMPOSED FOR MISDEMEANOR, THE COURT MUST CONSIDER "THE ABILITY AND RESOURCES OF THE OFFENDER AND THE NATURE OF THE BURDEN THAT PAYMENT OF A FINE WILL IMPOSE ON HIM."

IT SHOULD BE ADDED THAT WHEN AN ORGANIZATION IS CONVICTED FOR AN OFFENSE, THE FINE SCHEDULE IS FAR HIGHER, RANGING FROM \$1,000 FOR A MINOR MISDEMEANOR TO \$100,000 FOR AGGRAVATED MURDER.

WITH CERTAIN EXCEPTIONS, SENTENCES FOR IMPRISONMENT ARE SERVED CONCURRENTLY. HOWEVER, WHEN SENTENCES ARE TO BE SERVED CONSECUTIVELY - AS WHEN THE TRIAL COURT SPECIFIES IT, OR THE OFFENSE IS AGGRAVATED RIOT, ESCAPE, OR AIDING ESCAPE OR RESISTING TO LAWFUL AUTHORITY, OR SENTENCE IS IMPOSED FOR A NEW FELONY COMMITTED BY A PROBATIONER, PAROLEE, OR ESCAPEE - THE MINIMUM TERM TO BE SERVED IS THE AGGREGATE OF THE CONSECUTIVE MINIMUM TERMS IMPOSED, REDUCED BY THE TIME ALREADY SERVED ON ANY SUCH MINIMUM TERM, AND THE MAXIMUM TERM IMPOSED IS THE AGGREGATE OF THE CONSECUTIVE MAXIMUM TERMS IMPOSED (SECTION 2929.41 (C) (2)). CONSECUTIVE TERMS OF IMPRISONMENT, HOWEVER, MAY NOT EXCEED 1.) AN AGGREGATE MINIMUM OF 20 YEARS WHEN THE CONSECUTIVE TERMS IMPOSED INCLUDE A TERM OF IMPRISONMENT FOR MURDER; 2.) AN AGGREGATE MINIMUM TERM OF 15 YEARS WHEN THE CONSECUTIVE TERMS IMPOSED ARE FOR FELONIES OTHER THAN AGGRAVATED MURDER OR MURDER; 3.) AN AGGREGATE TERM OF 1½ YEARS WHEN THE CONSECUTIVE TERMS IMPOSED ARE FOR MISDEMEANORS. (SECTION 2929.41 (E)).

### PROBATION

ALL OFFENSES ARE PROBATIONABLE EXCEPT WHERE THE OFFENSE INVOLVED WAS AGGRAVATED MURDER OR MURDER OR WAS COMMITTED WHILE THE OFFENDER WAS ARMED WITH A FIREARM OR DANGEROUS ORDNANCE, OR IF THE OFFENDER IS A REPEAT OR DANGEROUS OFFENDER (SECTION 2951.02 (F)).

"SHOCK PROBATION" - WHERE THE TRIAL JUDGE HAS THE OPTION TO GRANT PROBATION ON CONDITION THE OFFENDER SERVE A DEFINITE TERM IN THE COUNTY JAIL OF NOT MORE THAN SIX MONTHS, AS AN ALTERNATIVE TO INCARCERATION IN A STATE PENAL INSTITUTION - HAS BEEN RETAINED.

### PAROLE

FOR AGGRAVATED MURDER THE SENTENCE IS DEATH OR LIFE IMPRISONMENT; A PRISONER SERVING LIFE FOR A CAPITAL OFFENSE BECOMES ELIGIBLE FOR PAROLE AFTER SERVING A TERM OF 15 FULL YEARS (SECTION 2967.13 (B)). IN THE CASE OF OTHER FELONY OFFENSES, A PRISONER BECOMES ELIGIBLE FOR PAROLE AT THE EXPIRATION OF HIS/HER MINIMUM TERM DIMINISHED BY A SPECIFIED NUMBER OF DAYS ("GOOD TIME") FOR EACH MONTH SERVED (SECTION 2967.19). THE NEW CONCEPT OF "SHOCK PAROLE" (SECTION 2967.31) - PAROLE AFTER SIX MONTHS OF INCARCERATION - LIKEWISE IS AVAILABLE PROVIDED 1.) THE OFFENSE WAS NOT MURDER, 2.) THE OFFENDER HAS NOT PREVIOUSLY SERVED TIME FOR ANY FELONY IN ANY PENITENTIARY OR REFORMATORY, 3.) HE/SHE IS NOT A DANGEROUS OFFENDER (AS DEFINED IN SECTION 2929.01) 4.) HE/SHE DOES NOT NEED FURTHER INSTITUTIONALIZATION FOR PURPOSES OF CORRECTION OR REHABILITATION, AND 5.) HIS/HER HISTORY, CHARACTER, CONDITION AND ATTITUDES INDICATE THAT HE/SHE IS LIKELY TO RESPOND AFFIRMATIVELY TO EARLY RELEASE.

### THE DEATH PENALTY

THE NEW CODE RE-INTRODUCES THE DEATH PENALTY WHICH, IN 1972, WAS IN EFFECT OUTLAWED THROUGHOUT THE UNITED STATES BY THE SUPREME COURT'S DECISION IN FURMAN V. GEORGIA, 408 U.S. 258. ON JUNE 29 OF THAT YEAR, THE COURT DECLARED THAT "THE IMPOSITION AND CARRYING OUT OF THE DEATH PENALTY IN THESE CASES CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHT AND FOURTEENTH AMENDMENTS." ALL THE COURT, EXCEPTING JUSTICE REHNQUIST, INDICATED SUBSTANTIAL BELIEF THAT CAPITAL SENTENCING IS ARBITRARY, AND SUBSTANTIAL DISBELIEF THAT IT IS UNIQUELY EFFECTIVE IN DETERRING CRIME. ALSO, THE MAJORITY OF THE JUSTICES AGREED WITH THE OVERWHELMING EVIDENCE THAT THE DEATH PENALTY HAD BEEN ADMINISTERED UNFAIRLY BY BEING IMPOSED INFREQUENTLY AND UNDER NO CLEAR STANDARDS. IT WAS WITH THESE OBJECTIONS IN MIND, THEN, THAT HB 511'S DEATH SENTENCING PROVISIONS WERE WRITTEN.

HISTORICALLY, THE MANDATORY DEATH PENALTY WAS ABOLISHED IN FAVOR OF A SENTENCE OF LIFE OR DEATH AT THE JURY'S DISCRETION, SINCE OTHERWISE JURIES OFTEN WOULD NOT CONVICT. UNDER OHIO'S NEW LAW, THE JURY'S SENTENCING DISCRETION WILL NOT BE INVOLVED. ITS ONLY TASK WILL BE TO FIND THE DEFENDANT GUILTY OR NOT GUILTY OF THE CHARGE OF AGGRAVATED MURDER (AS DEFINED IN SECTION 2903.01) AND OF ANY AGGRAVATING CIRCUMSTANCES SPECIFIED IN THE INDICTMENT (AS LISTED IN SECTION 2929.04 (A)). IF THE FINDING IS GUILTY OF THE CHARGE, BUT NOT GUILTY OF ANY SPECIFICATIONS OF AGGRAVATING CIRCUMSTANCES, THE PENALTY AUTOMATICALLY BECOMES LIFE IMPRISONMENT. HOWEVER, IF ONE OR MORE SUCH SPECIFICATIONS ARE PROVEN BEYOND A REASONABLE DOUBT, THE QUESTION OF DEATH OR LIFE IMPRISONMENT IS PLACED BEFORE THE TRIAL JUDGE OR A PANEL OF THREE JUDGES IF THE OFFENDER WAIVED THE RIGHT TO JURY TRIAL. THE TRIAL JUDGE OR PANEL OF JUDGES MUST THEN REQUIRE THAT A PRE-SENTENCE INVESTIGATION AND PSYCHIATRIC EXAMINATION OF THE DEFENDANT BE MADE AND REPORTED, AND MUST HEAR FURTHER TESTIMONY AND EVIDENCE AND ARGUMENTS, AND CONSIDER ANY OR ALL MITIGATING CIRCUMSTANCES (AS LISTED IN SECTION 2929.04 (B)). IF THE TRIAL JUDGE, OR PANEL OF JUDGES UNANIMOUSLY, AGREES THAT ANY OF THE ENUMERATED MITIGATING CIRCUMSTANCES HAS BEEN ESTABLISHED BY A PRE-ponderance OF EVIDENCE, THE SENTENCE IS LIFE IMPRISONMENT; IF NOT, THE DEATH PENALTY IS MANDATORY.

AIMING FOR CLEAR STANDARDS, THEN, OHIO'S EXTREME PENALTY WILL REMAIN INFREQUENTLY APPLICABLE IN VIEW OF ITS STRICT PROVISIONS - AND FOR THIS VERY REASON, IF FOR NO OTHER, IT IS ALMOST CERTAIN THAT THE CONSTITUTIONALITY OF OHIO'S CAPITAL PUNISHMENT STATUTE WILL BE TESTED IN THE COURTS.

#### VICTIMLESS CRIMES

WHILE SO-CALLED "VICTIMLESS CRIMES" HAVE BEEN ESSENTIALLY RETAINED IN THE CODE, THEY HAVE BEEN CONSIDERABLY REDUCED IN NUMBER, AND THEY HAVE UNDERGONE SOME IMPORTANT CHANGES. ALTHOUGH IT IS DIFFICULT TO FIND AN EXACT DEFINITION OF THE VICTIMLESS CRIME, IT IS GENERALLY CONCEDED TO BE A CRIME BASED ON MORAL CODES, IN WHICH THE ONLY VICTIM IS THE PERSON WHO COMMITS THE CRIME WHICH OF ITSELF IS NOT A THREAT TO THE PUBLIC WELFARE. VICTIMLESS CRIMES GENERALLY ARE CONSIDERED TO BE DRUNKENNESS (INTOXICATION), GAMBLING ADDICTION, LOITERING, PROSTITUTION, HOMOSEXUALITY, NARCOTICS ADDICTION, AND MARIJUANA USE AND POSSESSION, AS WELL AS MINOR TRAFFIC OFFENSES. NEITHER THE LATTER NOR DRUG RELATED OFFENSES FALL UNDER TITLE 29 OF THE OHIO REVISED CODE, AND ARE THEREFORE NOT AFFECTED BY THE OHIO CRIMINAL CODE REVISION. ANOTHER CRIME COMMONLY THOUGHT OF AS "VICTIMLESS" IS THE CREATION, POSSESSION AND CONSUMPTION OF OBSCENE OR PORNOGRAPHIC MATERIALS BY CONSENTING ADULTS.

#### DRUNKENNESS OR INTOXICATION

THE STATUTE COVERING PUBLIC INTOXICATION HAS BEEN REPEALED, BUT THE OFFENSE IS RETAINED IN THE NEW CODE UNDER A DISORDERLY CONDUCT SECTION (SECTION 2917.11 (B)). THE REPEALED STATUTE (SECTION 3773.211) PROHIBITS BEING FOUND INTOXICATED, OR BEING INTOXICATED, DISTURBING THE PEACE AND GOOD ORDER, OR CONDUCTING HIMSELF IN A DISORDERLY MANNER. THE PENALTY IS A FINE OF \$5 TO \$100. THE NEW STATUTE DOES NOT PROSCRIBE BEING FOUND INTOXICATED, UNLESS THE OFFENDER, IN A PUBLIC PLACE OR IN THE PRESENCE OF TWO OR MORE PERSONS, ENGAGES IN CONDUCT LIKELY TO BE OFFENSIVE OR TO CAUSE INCONVENIENCE, ANNOYANCE OR ALARM, OR CREATES A SITUATION WHICH PRESENTS A RISK OF PHYSICAL HARM TO HIM- OR HERSELF OR ANOTHER, OR TO THE PROPERTY OF ANOTHER. DISORDERLY CONDUCT IS A MINOR MISDEMEANOR AND CARRIES A PENALTY OF A FINE OF NOT MORE THAN \$100. HOWEVER, IF THE OFFENDER PERSISTS IN DISORDERLY CONDUCT AFTER REASONABLE WARNING OR REQUEST TO DESIST, DISORDERLY CONDUCT IS A MISDEMEANOR OF THE 4TH DEGREE, AND CARRIES A PENALTY OF NOT MORE THAN 30 DAYS IMPRISONMENT AND/OR A FINE OF NOT MORE THAN \$250.

#### GAMBLING

SECTION 2915.02 OF THE NEW CODE IS DESIGNED TO PROHIBIT GAMBLING WHICH IS CONDUCTED FOR PERSONAL PROFIT, AND TO PERMIT PRIVATE GAMBLING AMONG FRIENDS, ACCORDING TO THE TECHNICAL COMMITTEE. SECTION 2915.03 CONCERNS OPERATING A GAMBLING HOUSE IN VIOLATION OF SECTION 2915.02; SECTION 2915.04 DEALS WITH THE OFFENSE OF PUBLIC GAMING (BUT EXCLUDES GAMBLING EXPRESSLY PERMITTED BY LAW); SECTION 2915.05 CONCERNS CHEATING; AND SECTION 2915.06 FORBIDS CORRUPTING SPORTS.

THE ABOVE SECTIONS REPLACE A GAMUT OF OFFENSES IN THE OLD CODE COVERING ALMOST EVERY CONCEIVABLE FORM OF GAMBLING (MAKING A WAGER BETTING ON AN ELECTION, POSSESSION OF A NUMBERS GAME TICKET, KEEPING A BUCKET SHOP, ETC., ETC.). IN THE OLD CODE, PENALTIES RANGE FROM FINES OF \$5 TO \$5,000 AND IMPRISONMENT FROM 10 DAYS TO 10 YEARS. IN THE NEW CODE, THE PENALTIES ARE DIVIDED INTO PENALTY FOR FIRST OFFENSE (A MISDEMEANOR OF THE 1ST DEGREE) WITH IMPRISONMENT OF NOT MORE THAN 6 MONTHS AND/OR A FINE OF NOT MORE THAN \$1,000, AND PENALTY FOR SUBSEQUENT OFFENSES (A FELONY OF THE 4TH DEGREE) CARRYING IMPRISONMENT OF 1/2 YEAR, 1 YEAR, 1 1/2 YEARS OR 2 YEARS TO 5 YEARS AND A POSSIBLE FINE OF NOT MORE THAN \$2,500.

#### LOITERING - VAGRANCY

THOUGH THE OLD CODE IS DEVOID OF A LOITERING OFFENSE, THE NEW CODE REPEALS THE RELATED VAGRANCY PROVISIONS.

#### PROSTITUTION

THE NEW CODE CONTINUES TO PROSCRIBE PROSTITUTION, BUT WITH SOME IMPORTANT DIFFERENCES FROM THE PREVIOUS STATUTE. THE NEW SECTION (SECTION 2907.25 (A)) SAYS "NO PERSON SHALL ENGAGE IN SEXUAL ACTIVITY FOR HIRE." THIS WORDING ELIMINATES THE CUSTOMER FROM ITS PROVISION - A NEW CONCEPT TO OHIO LAW.\* AS IN THE OLD LAW, HOWEVER, PROSTITUTE AND CUSTOMER CAN BE OF EITHER SEX. EVEN A SINGLE ACT FOR PAY REMAINS PROSCRIBED, BUT UNDER THE NEW PROVISION PROMISCUITY WITHOUT PAY IS NO LONGER A CRIME.

THE PENALTY FOR PROSTITUTION WHICH HAS BEEN IMPRISONMENT FOR UP TO ONE YEAR ON THE FIRST OFFENSE AND FROM 1 TO 3 YEARS FOR A SUBSEQUENT OFFENSE COMMITTED WITHIN ONE YEAR, UNDER THE NEW CODE IS A MISDEMEANOR OF THE 3RD DEGREE PUNISHABLE BY NO MORE THAN 60 DAYS IN PRISON AND/OR A FINE OF NOT MORE THAN \$500.

\* THE REASON GIVEN BY THE TECHNICAL COMMITTEE FOR ELIMINATING THE CUSTOMER FROM THE PROSTITUTION OFFENSE PROVISIONS IS AS FOLLOWS:

"...CUSTOMERS SHOULD NOT BE LIABLE FOR PROSECUTION UNDER THE PROSTITUTION SECTION AS SUCH, BECAUSE OF THE POTENTIAL FOR EXTORTION." THE COMMITTEE ALSO SAYS THAT IT REMAINS POSSIBLE, HOWEVER, TO PROSECUTE THE CUSTOMER UNDER SECTION 2923.03 WHICH RELATES TO COMPLICITY.

#### OTHER SEX OFFENSES

THE NEW CODE REPEALS MOST STATUTES IN OHIO LAW GOVERNING SEXUAL ACTS IN PRIVATE BETWEEN CONSENTING ADULTS. SEXUAL ASSAULTS ARE PUNISHABLE REGARDLESS OF WHETHER THE OFFENDER OR VICTIM IS MALE OR FEMALE, AND THIS MEANS THAT WOMEN CAN BE CHARGED WITH RAPE - A NEW CONCEPT UNDER OHIO LAW. RAPE OF A CHILD UNDER 13 YEARS OF AGE REMAINS PUNISHABLE BY LIFE IMPRISONMENT, WITH A NEW PROVISION ADDED WHICH IMPLIES THAT THE OFFENDER IS GUILTY WHETHER OR NOT HE/SHE KNOWS THE AGE OF THE CHILD. SEVERAL SECTIONS (SECTION 2907.04 - CORRUPTION OF A MINOR; SECTION 2907.06 - SEXUAL IMPOSITION; AND SECTION 2907.07 - IMPORTUNING) EMPHASIZE THE PROHIBITION OF SEXUAL ADVANCES ON THE YOUNG BY OLDER, MORE MATURE INDIVIDUALS. THE OLD CODE CONTAINS A PROVISION ANALOGOUS TO "CORRUPTION OF A MINOR", BUT "SEXUAL IMPOSITION" AND "IMPORTUNING" ARE ENTIRELY NEW PROVISIONS. "IMPORTUNING" ALSO APPLIES TO HOMOSEXUAL SOLICITATIONS. ANOTHER NEW OFFENSE, "VOYEURISM", IS ENACTED BY SECTION 2907.08.

SEVERAL SECTIONS OF THE NEW CODE DEAL WITH COMMERCIAL EXPLOITATION OF OBSCENE MATERIAL. PARTICULAR ATTENTION IS GIVEN TO PREVENT OBSCENE MATERIAL FROM REACHING JUVENILES. ACCORDING TO THE TECHNICAL COMMITTEE, CREATING OR PRODUCING OBSCENITY IS NOT AN OFFENSE UNDER THE NEW PROVISIONS UNLESS THE MATERIAL OR PERFORMANCE IS DESTINED FOR COMMERCE OR PUBLIC CIRCULATION OR EXHIBITION. "PANDERING OBSCENITY" IS A MISDEMEANOR OF THE 1ST DEGREE, UNLESS THE OFFENDER HAS BEEN CONVICTED ON THE SAME VIOLATION BEFORE, IN WHICH CASE IT IS A FELONY OF THE 4TH DEGREE. THE PENALTY, THEREFORE, IS EITHER NOT MORE THAN 6 MONTHS IMPRISONMENT AND/OR \$1,000 FINE, OR CARRIES A MINIMUM TERM OF 1/2, 1, 1 1/2, OR 2 YEARS WITH A MAXIMUM TERM OF 5 YEARS AND A POSSIBLE FINE OF NOT MORE THAN \$2,500. UNDER THE OLD PROVISIONS, IT IS POSSIBLE TO GET A PRISON TERM OF UP TO 1 YEAR FOR THE FIRST CONVICTION, AND/OR A FINE OF NOT MORE THAN \$5,000; AND FOR EACH SUBSEQUENT OFFENSE, IMPRISONMENT OF 1 TO 7 YEARS AND/OR A FINE OF NOT MORE THAN \$10,000. THE NEW LAW, THEN, IS MORE LENIENT IN DEALING WITH COMMERCIAL EXPLOITATION OF OBSCENE MATERIAL. IT IS INTERESTING TO NOTE, HOWEVER, THAT THE PRESIDENT'S COMMISSION ON OBSCENITY AND PORNOGRAPHY IN 1970 RECOMMENDED THAT ALL LAWS PROHIBITING THE SALE OF SEXUAL MATERIALS TO CONSENTING ADULTS BE REPEALED. THE LATEST (1973) U.S. SUPREME COURT DECISION ON OBSCENITY AND PORNOGRAPHY, OF COURSE, IS NOT IN FAVOR OF SUCH REPEAL - BUT WOULD PERMIT IT IF LOCAL GOVERNMENT CHOSE TO DO SO.

CONTROVERSIAL SECTION IN THE NEW OHIO REVISED CRIMINAL CODE

SECTION 2917.01 - INCITING TO VIOLENCE. THIS OFFENSE CARRIES A SENTENCE OF 1, 1½, 2, OR 3 YEARS TO 10 YEARS (PLUS A POSSIBLE FINE OF NOT MORE THAN \$5,000) FOR INCITING ONE OTHER PERSON TO COMMIT ANY OFFENSE OF VIOLENCE. PRESENT PROVISION (INCITING TO RIOT) REQUIRES THAT FOUR OR MORE PERSONS BE INCITED TO FIRST-DEGREE RIOT, I.E., TO COMMIT A FELONY, AND CARRIES TWO POSSIBLE SENTENCES: UP TO ONE YEAR IMPRISONMENT AND/OR NOT MORE THAN \$1,000 FINE; OR, 1 TO 3 YEARS IMPRISONMENT. "INCITING TO VIOLENCE" THUS IS A MORE SEVERE OFFENSE AND CARRIES A HEAVIER SENTENCE THAN THE COMPARABLE "INCITING TO RIOT."

SECTION 2917.04 - FAILURE TO DISPERSE. THIS PROVISION PERMITS THE POLICE TO DISPERSE CITIZENS WHERE FIVE OR MORE PERSONS ARE ENGAGING IN DISORDERLY CONDUCT AND WHERE THERE ARE OTHER PERSONS IN THE VICINITY WHOSE PRESENCE CREATES THE LIKELIHOOD OF SUBSTANTIAL HARM OR SERIOUS INCONVENIENCE. PRESENT LAW PERMITS DISPERSAL BY POLICE ONLY WHERE FIVE OR MORE PERSONS ARE ENGAGING IN VIOLENT OR TUMULTUOUS CONDUCT CREATING A CLEAR AND PRESENT DANGER TO PERSONS. THE PENALTY HAS BEEN RAISED FROM \$50 TO \$100.

SECTION 2921.13 - FALSIFICATION. THIS MAKES ANY FALSE STATEMENT TO A POLICE OFFICER OR PUBLIC OFFICIAL A CRIME, AND IS SUBJECT TO ABUSE SINCE IT WILL BE THE CITIZEN'S WORD AGAINST THE OFFICER'S IN MANY CASES. AT THE PRESENT TIME THERE IS NO SUCH PROVISION IN THE LAW. THIS MAY MAKE CITIZENS RELUCTANT TO TALK WITH POLICE OFFICERS SINCE THEY WILL BE UNDER THREAT OF PROSECUTION IF THE STATEMENT THEY MAKE TURNS OUT TO BE FALSE. THE PENALTY FOR FALSIFICATION IS NOT MORE THAN 6 MONTHS IMPRISONMENT AND/OR NOT MORE THAN \$1,000 FINE.

SECTION 2921.23 - FAILURE TO AID A LAW ENFORCEMENT OFFICER. MAKES IT A CRIME "NEGLIGENTLY" TO FAIL OR REFUSE TO AID A LAW ENFORCEMENT OFFICER WHEN CALLED UPON, AND WHEN SUCH AID CAN BE GIVEN WITHOUT SUBSTANTIAL RISK OF PHYSICAL HARM. THIS IS NOT A CRIME AT PRESENT. THE DEFINITION OF "NEGLIGENTLY" (SECTION 2901.22 (D)) DOES NOT IMPLY CONSCIOUS AWARENESS, AND THIS PROVISION COULD THEREFORE BE INVOKED AGAINST PERSONS WHO ARE NOT ABSOLUTELY CERTAIN OF WHAT A POLICE OFFICER MAY BE ASKING THEM TO DO, OR FOR THAT MATTER, IF GIVING AID WOULD INVOLVE A SUBSTANTIAL RISK OF PHYSICAL HARM TO HIM- OR HERSELF.

SECTION 2921.33 - RESISTING ARREST. THIS PROVISION MAKES IT A CRIME TO RESIST OR INTERFERE WITH A LAWFUL ARREST OF ONESELF OR ANOTHER, RECKLESSLY OR BY FORCE. PRESENT LAW REQUIRES THAT A PERSON MUST RESIST "KNOWINGLY AND WILLFULLY". THIS CHANGE IS IMPORTANT: IT DOES NOT REQUIRE PROOF OF INTENTION TO RESIST. ALSO, UNDER THE "RECKLESS" STANDARD A PERSON COULD BE DEEMED TO HAVE INTERFERED WITH THE LAWFUL ARREST OF ANOTHER PERSON, EVEN THOUGH HE/SHE DID NOT ACTUALLY KNOW THE OTHER PERSON WAS UNDER ARREST.

SECTION 2921.34 - ESCAPE. THIS PROVISION CREATES A NEW CRIME OF ESCAPING WHILE IN POLICE CUSTODY FOLLOWING ARREST. PRESENT LAW PROVIDES A PENALTY FOR ESCAPE ONLY WHERE A PERSON IS HELD PURSUANT TO THE ORDER OF A JUDGE. THE NEW SECTION PROVIDES A PENALTY FOR ANYONE "KNOWING HE IS UNDER DETENTION OR BEING RECKLESS IN THAT REGARD" AND COULD THUS BE USED AGAINST PERSONS WHO DID NOT ACTUALLY KNOW THEY WERE UNDER ARREST.

SECTION 2923.01 - CONSPIRACY. THIS PROVISION MAKES IT A CRIME TO CONSPIRE TO COMMIT CERTAIN FELONIES (AGGRAVATED MURDER OR MURDER, KIDNAPPING, COMPELLING PROSTITUTION OR PROMOTING PROSTITUTION, AGGRAVATED ARSON OR ARSON, AGGRAVATED ROBBERY OR ROBBERY, AGGRAVATED BURGLARY OR BURGLARY, OR A FELONY OFFENSE OF UNAUTHORIZED USE OF A VEHICLE). ALL THAT IS REQUIRED IS THAT THE ACTOR AGREE WITH ANOTHER PERSON, AND THAT ONE OF THEM (NOT NECESSARILY THE ACTOR) DO SOME ACT TO FURTHER THE CONSPIRACY. WHETHER THE CRIME WAS EVER COMMITTED IS IRRELEVANT, AND IT IS NO DEFENSE "THAT, IN RETROSPECT, COMMISSION OF THE OFFENSE WHICH WAS THE OBJECT OF THE CONSPIRACY WAS IMPOSSIBLE UNDER THE CIRCUMSTANCES." ALSO, THE CONSPIRATORS NEED NOT KNOW EACH OTHER. THIS LAW IS SUBJECT TO SERIOUS ABUSE, AS MAY BE SHOWN BY THE MANY RECENT

UNSUCCESSFUL FEDERAL STATUTES (THE BEST KNOWN BEING THE RAP BROWN ACT). OHIO DOES NOT, AT PRESENT, HAVE A GENERAL CONSPIRACY LAW. THE (OLD) CODE PROVIDES LIABILITY ONLY FOR CONSPIRING TO COMMIT CERTAIN SPECIFIED OFFENSES.

SECTION 2923.02 - ATTEMPT TO COMMIT AN OFFENSE. THIS PROVISION MAKES IT A CRIME TO ATTEMPT TO COMMIT ANY OFFENSE. IT DOES NOT STATE HOW CLOSE THE ACTOR MUST COME TO COMPLETING THE OFFENSE, AND COULD MAKE A PERSON LIABLE WHOSE ACTS ARE ONLY REMOTELY RELATED TO COMPLETION OF THE OFFENSE. IN FACT, PERSONS ENGAGED IN INNOCENT ACTIVITY COULD BE CHARGED WITH INTENT TO COMMIT AN OFFENSE AND CRIMINALLY PROSECUTED UNDER THIS STATUTE. ALSO, SECTION 2923.02 (B) STATES THAT IT IS NO DEFENSE THAT "COMMISSION OF THE OFFENSE WHICH WAS THE OBJECT OF THE ATTEMPT WAS IMPOSSIBLE UNDER THE CIRCUMSTANCES."

SECTION 2935.03 - ARREST BY LAW ENFORCEMENT OFFICER ON VIEW OR REASONABLE CAUSE. THIS PROVISION BROADENS THE POWER OF A POLICE OFFICER TO ARREST MISDEMEANANTS ON PROBABLE CAUSE. AT PRESENT A POLICE OFFICER MAY ARREST ON PROBABLE CAUSE FOR A FELONY, OR FOR CERTAIN ENUMERATED MISDEMEANORS (ASSAULT AND BATTERY AND MENACING THREATS; LARCENY; SHOOTING AT TRAINS, MOTOR VEHICLES OR VESSELS; AND CARRYING CONCEALED FIREARMS). UNDER THE NEW PROVISION THE OFFICER MAY ARREST WITHOUT A WARRANT WHERE HE HAS PROBABLE CAUSE TO BELIEVE THE PERSON HAS COMMITTED ANY MISDEMEANOR OFFENSE OF VIOLENCE OR MISDEMEANOR THEFT OFFENSE. PRESENT LAW IS BASED ON THE PRINCIPLE THAT MISDEMEANORS ARE NOT SUFFICIENTLY SERIOUS TO JUSTIFY ARREST WITHOUT A WARRANT, IN VIEW OF THE OBVIOUS DANGER THAT THE POLICE OFFICER MAY BE MISTAKEN IN HIS DETERMINATION THAT THE PERSON HAS PROBABLY COMMITTED THE OFFENSE.

SECTION 2913.02 - THEFT. THIS STATUTE BROADENS THE DEFINITION OF THEFT IN TWO WAYS. FIRST, IT DEFINES "PROPERTY" TO INCLUDE BOTH REAL AND PERSONAL PROPERTY. UNDER THE OLD CODE, ONLY THE TAKING OF PERSONAL PROPERTY (BY WHICH IT MEANT MONEY, GOODS AND CHATTELS, COMMERCIAL PAPER, RECEIPTS, RIGHTS IN ACTION, AND PROPERTY ATTACHED TO REAL ESTATE WHICH BY SEVERANCE BECOMES PERSONALTY) IS CONSIDERED THEFT. UNDER THE NEW DEFINITION, A TENANT WHO OVERSTAYS HIS/HER LEASE, OR REMAINS IN LEASED PREMISES WHEN HIS/HER LEGAL RIGHTS TO DO SO HAS EXPIRED, COULD BE PROSECUTED FOR THEFT; THIS COULD BE A POWERFUL WEAPON IN THE HANDS OF A LANDLORD INVOLVED IN A DISPUTE WITH A TENANT. SECOND, "PROPERTY" IN THE NEW CODE IS DEFINED TO INCLUDE SERVICES (WHICH INCLUDES LABOR; PERSONAL SERVICES, PROFESSIONAL SERVICES, PUBLIC UTILITY SERVICES, COMMON CARRIER SERVICES, FOOD, DRINK, TRANSPORTATION, AND ENTERTAINMENT). THIS CONCEPT IS ALSO ENTIRELY NEW TO OHIO LAW. BY WAY OF EXAMPLE, IT WOULD BE THEFT TO FAIL TO PAY A DOCTOR'S, LAWYER'S, TELEPHONE, GAS, ELECTRICITY OR WATER BILL. SINCE THERE OFTEN IS CONTROVERSY AS TO WHETHER MONEY IS INDEED OWED - AND HOW MUCH - IN SUCH SITUATIONS, AN INDIVIDUAL WILL BE RISKING CRIMINAL PROSECUTION IF HE/SHE FAILS TO MAKE PROMPT PAYMENT, OR EVEN DISPUTES THE AMOUNT OF THE BILL.

ANOTHER WAY BY WHICH THE NEW CODE UP-GRADES THEFT OFFENSES IS BY PROVIDING THAT THEFT BY A PERSON PREVIOUSLY CONVICTED OF ANY THEFT OFFENSE CONSTITUTES GRAND THEFT REGARDLESS OF THE TYPE OR VALUE OF THE PROPERTY INVOLVED. PETTY THEFT IS A MISDEMEANOR OF THE 1ST DEGREE; GRAND THEFT IS A FELONY OF THE 4TH DEGREE. NORMALLY, UNDER THE NEW PROVISION, THEFT OF PROPERTY OR SERVICES VALUED AT LESS THAN \$150 CONSTITUTES PETTY THEFT, AND IF THE VALUE IS \$150 OR MORE, IT CONSTITUTES GRAND THEFT.

FINALLY, UNDER THE OLD CODE A PERSON IS NOT GUILTY OF THEFT IF HE/SHE BELIEVES TO HAVE A LEGAL RIGHT TO THE THING HE/SHE IS TAKING. THE NEW CODE PROVISION ELIMINATES THIS DEFENSE.

SECTION 2911.02 - ROBBERY. THIS PROVISION DEFINES "ROBBERY" TO INCLUDE THE TAKING OF PROPERTY - THEFT - WITHOUT FORCE OR THREAT OF FORCE, PROVIDED FORCE OR THREAT OF FORCE IS USED IN FLEEING. BY WAY OF EXAMPLE, IF A FLEEING PICKPOCKET IS GRABBED BY THE VICTIM AND SHAKES HIM-OR HERSELF FREE, HE/SHE IS SUBJECT TO THE SAME PENALTY AS A MUGGER THOUGH CLEARLY MUCH LESS DANGEROUS.

SECTION 2903.03 - VOLUNTARY MANSLAUGHTER; AND SECTION 2903.04 - INVOLUNTARY MANSLAUGHTER. THE OLD CODE'S SECTION 2903.06 RELATES TO MANSLAUGHTER IN THE 1ST DEGREE AND DEFINES IT AS UNLAWFULLY KILLING ANOTHER. IT ENCOMPASSES, ACCORDING TO THE TECHNICAL COMMITTEE, BOTH VOLUNTARY (INTENTIONAL) AND INVOLUNTARY (UNINTENTIONAL) MANSLAUGHTER, AND IT CARRIES A PENALTY OF 1 - 20 YEARS. IN THE NEW CODE, WE HAVE TWO DISTINCT SECTIONS: SECTION 2903.03, VOLUNTARY MANSLAUGHTER, IS DEFINED AS "UNDER EXTREME EMOTIONAL STRESS...KNOWINGLY CAUSE THE DEATH OF ANOTHER", AND IT IS A FELONY OF THE 1ST DEGREE CARRYING A PENALTY OF 4, 5, 6, OR 7 TO 25 YEARS IMPRISONMENT, AND A POSSIBLE FINE OF NOT MORE THAN \$10,000. THE NEW PENALTY IS OBVIOUSLY HARSHER THAN THE OLD. SECTION 2903.04, INVOLUNTARY MANSLAUGHTER IS DEFINED IN TWO WAYS. UNDER (A) IT IS DEFINED AS CAUSING THE DEATH OF ANOTHER "AS A PROXIMATE RESULT OF..... COMMITTING OR ATTEMPTING TO COMMIT A FELONY". (A) CONSTITUTES A FELONY IN THE 1ST DEGREE, AND CARRIES A PENALTY OF 4, 5, 6, OR 7 TO 25 YEARS IMPRISONMENT AND A POSSIBLE FINE OF UP TO \$10,000. AGAIN, THIS IS A MUCH HEAVIER PENALTY THAN THE OLD CODE'S PENALTY FOR MANSLAUGHTER IN THE 1ST DEGREE. UNDER (B) INVOLUNTARY MANSLAUGHTER IS DEFINED AS CAUSING THE DEATH OF ANOTHER "AS A PROXIMATE RESULT OF ....COMMITTING OR ATTEMPTING TO COMMIT A MISDEMEANOR". THIS CONSTITUTES A FELONY OF THE 3RD DEGREE CARRYING IMPRISONMENT OF 1, 1½, 2, OR 3 TO 10 YEARS, AND A POSSIBLE FINE OF UP TO \$5,000.

SECTION 2903.05 - NEGLIGENT HOMICIDE; SECTION 2903.06 - AGGRAVATED VEHICULAR HOMICIDE; AND SECTION 2903.07 - VEHICULAR HOMICIDE. THERE IS PRESENTLY NO CRIME IN OHIO ANALOGOUS TO THE OFFENSE OF NEGLIGENT HOMICIDE. THE NEW CODE'S SECTION 2903.05 DEFINES IT AS "NEGLIGENTLY" CAUSING THE DEATH OF ANOTHER "BY MEANS OF A DEADLY WEAPON OR DANGEROUS ORDNANCE". "NEGLIGENT" IS DEFINED IN SECTION 2901.22 (D) AS FOLLOWS: "A PERSON ACTS NEGLIGENTLY WHEN, BECAUSE OF A SUBSTANTIAL LAPSE FROM DUE CARE, HE FAILS TO PERCEIVE OR AVOID A RISK THAT HIS CONDUCT MAY CAUSE A CERTAIN RESULT OR MAY BE OF A CERTAIN NATURE. A PERSON IS NEGLIGENT WITH RESPECT TO CIRCUMSTANCES WHEN, BECAUSE OF A SUBSTANTIAL LAPSE FROM DUE CARE, HE FAILS TO PERCEIVE OR AVOID A RISK THAT SUCH CIRCUMSTANCES MAY EXIST." NEGLIGENCE IS MISCONDUCT USUALLY HANDLED UNDER TORT LAW; CRIMINAL NEGLIGENCE, BY DEFINITION BEING A SUBSTANTIAL DEVIATION FROM A STANDARD OF DUE CARE, OF COURSE THUS DOES FALL UNDER CRIMINAL LAW. SECTION 2903.06, AGGRAVATED VEHICULAR HOMICIDE, IS DEFINED AS "RECKLESSLY" CAUSING THE DEATH OF ANOTHER WHILE OPERATING OR PARTICIPATING IN THE OPERATION OF A MOTOR VEHICLE, MOTORCYCLE, SNOWMOBILE, LOCOMOTIVE, WATERCRAFT, OR AIRCRAFT. A FIRST OFFENSE IS A FELONY OF THE 4TH DEGREE CARRYING A PENALTY OF ½, 1, 1½, OR 2 TO 5 YEARS AND A POSSIBLE FINE OF UP TO \$2,500. SUBSEQUENT OFFENSES CARRY THE PENALTY FOR 3RD DEGREE FELONY, WHICH IS 1, 1½, 2 OR 3 TO 10 YEARS IMPRISONMENT AND A POSSIBLE FINE OF UP TO \$5,000. THE ANALOGOUS LAWS UNDER THE OLD CODE ALL DEMAND THAT TO BE GUILTY OF THE CHARGE ANOTHER LAW IS BEING VIOLATED... (SUCH AS DRAG-RACING, DRIVING WHILE INTOXICATED, ETC.). THE KEY DISTINCTION, THEREFORE, ACCORDING TO THE TECHNICAL COMMITTEE BETWEEN THE NEW OFFENSE AND THE EXISTING OFFENSES IS THAT THE NEW OFFENSE "DOES NOT PREDICATE LIABILITY ON THE VIOLATION OF A SAFETY STATUTE, BUT ON RECKLESSNESS" (AS DEFINED IN SECTION 2901.22 (C)). AS FOR SECTION 2903.07, VEHICULAR HOMICIDE, AGAIN THERE IS NO SUCH LAW IN THE OLD OHIO CRIMINAL CODE, THOUGH TITLE 45 OF THE OHIO REVISED CODE CONTAINS AN ANALOGOUS SECTION. VEHICULAR HOMICIDE IN THE NEW CODE IS DEFINED AS "NEGLIGENTLY" CAUSING THE DEATH OF ANOTHER WHILE OPERATING OR PARTICIPATING IN THE OPERATION OF A MOTOR VEHICLE, MOTORCYCLE, SNOWMOBILE, LOCOMOTIVE, WATERCRAFT OR AIRCRAFT. A FIRST VIOLATION IS A MISDEMEANOR OF THE 1ST DEGREE AND CARRIES IMPRISONMENT OF NOT MORE THAN 6 MONTHS AND/OR A FINE OF NOT MORE THAN \$1,000. SUBSEQUENT VIOLATIONS CARRY A PENALTY FOR 4TH DEGREE FELONY, WHICH IS ½, 1, 1½, OR 2 TO 5 YEARS IMPRISONMENT AND A POSSIBLE FINE OF \$2,500.

ALL THE ABOVE, THEN, ARE EITHER NEW OFFENSES UNDER OHIO LAW, OR CONSTITUTE AN UP-GRADING OF THE OFFENSES IN EXISTENCE PRIOR TO THE NEW CODE.

SECTION 2903.13 (B) - ASSAULT; AND SECTION 2903.14 - NEGLIGENT ASSAULT. SECTION 2903.13 (B) SAYS "NO PERSON SHALL RECKLESSLY CAUSE SERIOUS PHYSICAL HARM TO ANOTHER." SECTION 2903.14 (A) SAYS "NO PERSON SHALL NEGLIGENTLY, BY MEANS OF A DEADLY WEAPON

OR DANGEROUS ORDNANCE...CAUSE PHYSICAL HARM TO ANOTHER." UNDER THE OLD CODE, THERE IS NO SUCH GENERAL LIABILITY FOR UNINTENTIONALLY CAUSED HARM. DETERRENCE TO UNINTENDED HARM IS MINIMAL, AND APPROPRIATE REMEDY IS THEREFORE PROVIDED BY TORT LAW. A POSSIBLY BETTER WAY TO HAVE HANDLED THE ABOVE BROADENING OF LIABILITY WOULD HAVE BEEN BY ANALOGY TO INVOLUNTARY MANSLAUGHTER: A SERIOUS INJURY CAUSED BY ALREADY PROSCRIBED CONDUCT CREATES AN ADDITIONAL MISDEMEANOR.

THIS CONCLUDES THE FACT SHEET WHICH IS SUBJECT TO REVISIONS.

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THE LEAGUE OF WOMEN VOTERS OF METROPOLITAN COLUMBUS' STUDY COMMITTEE THANKS PROFESSOR JOHN QUIGLEY OF THE OHIO STATE UNIVERSITY'S COLLEGE OF LAW, WHO WORKED AND TESTIFIED AT LENGTH ON CONTROVERSIAL PROVISIONS OF HB 511 DURING ITS PASSAGE, FOR THE MANY HOURS OF PATIENT HELP HE EXTENDED IN POINTING OUT ANALOGIES AND DIFFERENCES BETWEEN THE OLD AND THE NEW CODE. THE COMMITTEE ALSO IS GRATEFUL FOR THE ABUNDANT MATERIALS PREPARED BY PROFESSORS MICHAEL GELTNER AND LAWRENCE HERMAN, LIKEWISE OF OSU COLLEGE OF LAW, PRESENTED IN TESTIMONY BEFORE THE LEGISLATIVE JUDICIARY COMMITTEE HEARINGS ON HB 511. THE EFFORTS OF THESE THREE INDIVIDUALS PROVED TO BE OF THE GREATEST HELP TO THE COMMITTEE IN EDUCATING ITSELF, AND DID, WE BELIEVE, AN INESTIMABLE SERVICE TO THE PEOPLE OF OHIO.

(SEE APPENDIX ON REVERSE SIDE.)

DEFINITIONS OF CULPABLE MENTAL STATES ("CULPABILITY")

SECTION 2901.22. (A) A PERSON ACTS PURPOSELY WHEN IT IS HIS SPECIFIC INTENTION TO CAUSE A CERTAIN RESULT, OR, WHEN THE GIST OF THE OFFENSE IS A PROHIBITION AGAINST CONDUCT OF A CERTAIN NATURE, REGARDLESS OF WHAT THE OFFENDER INTENDS TO ACCOMPLISH THEREBY, IT IS HIS SPECIFIC INTENTION TO ENGAGE IN CONDUCT OF THAT NATURE.

(B) A PERSON ACTS KNOWINGLY, REGARDLESS OF HIS PURPOSE, WHEN HE IS AWARE THAT HIS CONDUCT WILL PROBABLY CAUSE A CERTAIN RESULT OR WILL PROBABLY BE OF A CERTAIN NATURE. A PERSON HAS KNOWLEDGE OF CIRCUMSTANCES WHEN HE IS AWARE THAT SUCH CIRCUMSTANCES PROBABLY EXIST.

(C) A PERSON ACTS RECKLESSLY WHEN, WITH HEEDLESS INDIFFERENCE TO THE CONSEQUENCES, HE PERVERSELY DISREGARDS A KNOWN RISK THAT HIS CONDUCT IS LIKELY TO CAUSE A CERTAIN RESULT OR IS LIKELY TO BE OF A CERTAIN NATURE. A PERSON IS RECKLESS WITH RESPECT TO CIRCUMSTANCES WHEN, WITH HEEDLESS INDIFFERENCE TO THE CONSEQUENCES, HE PERVERSELY DISREGARDS A KNOWN RISK THAT SUCH CIRCUMSTANCES ARE LIKELY TO EXIST.

(D) A PERSON ACTS NEGLIGENTLY WHEN, BECAUSE OF A SUBSTANTIAL LAPSE FROM DUE CARE, HE FAILS TO PERCEIVE OR AVOID A RISK THAT HIS CONDUCT MAY CAUSE A CERTAIN RESULT OR MAY BE OF A CERTAIN NATURE. A PERSON IS NEGLIGENT WITH RESPECT TO CIRCUMSTANCES WHEN, BECAUSE OF A SUBSTANTIAL LAPSE FROM DUE CARE, HE FAILS TO PERCEIVE OR AVOID A RISK THAT SUCH CIRCUMSTANCES MAY EXIST.

## BIBLIOGRAPHY FOR STUDIES OF COURTS IN OHIO AND THE ADMINISTRATION OF JUSTICE

- A. OBTAIN A TEXT ON STATE-LOCAL GOVERNMENT AND READ THE CHAPTER PERTAINING TO THE COURTS, IN ORDER TO GET A QUICK SURVEY OF THE SUBJECT. FOR EXAMPLE:

ADRIAN, CHARLES R., AND CHARLES PRESS. GOVERNING URBAN AMERICA. 3RD ED. NEW YORK: MCGRAW-HILL BOOK COMPANY, INC., 1968

ADRIAN, CHARLES R. STATE AND LOCAL GOVERNMENT. NEW YORK: MCGRAW-HILL BOOK COMPANY, INC., 1960

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- B. AMONG THE MORE COMPREHENSIVE TEXTS ON THIS SUBJECT ARE:

AUMANN, F. R. THE INSTRUMENTALITIES OF JUSTICE. COLUMBUS: OHIO STATE UNIVERSITY PRESS. 1956

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SCHMANDT, HENRY J. COURTS IN THE AMERICAN POLITICAL SYSTEM. BELMONT, CALIFORNIA: DICKENSON PUBLISHING CO., INC. 1968 (ABOUT \$3.00 PAPERBACK)

PERIODICALS ARE AN EXCELLENT SOURCE OF CURRENT INFORMATION. CONSULT THE READERS' GUIDE TO PERIODICAL LITERATURE OR KEEP YOUR EYES OPEN FOR MAGAZINE ARTICLES OF INTEREST.

- C. REPORTS OF PRESIDENTIAL COMMISSIONS (AVAILABLE FROM THE U.S. DEPARTMENT OF COMMERCE FIELD OFFICE, 666 EUCLID AVENUE, CLEVELAND, OHIO):

PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE. THE CHALLENGE OF CRIME IN A FREE SOCIETY. 1967, \$2.25

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D. FOR BASIC INFORMATION ON OHIO'S COURT SYSTEM:

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EELLS, WILLIAM H. YOUR OHIO GOVERNMENT (ORDER FROM MIDWEST LAW PRINTERS AND PUBLISHERS, INC., 372 S. FOURTH STREET, COLUMBUS, OHIO 43216, \$3.00)

THE LAW AND YOU: A BOOKLET ON GENERAL AND EVERYDAY LAW. PREPARED BY THE OHIO STATE BAR ASSOC., 33 W. 11TH AVE., COLUMBUS, OHIO 43201 (OR YOUR LOCAL BAR ASSOCIATION) FREE.

OHIO GOVERNMENT DIGEST (MAY BE ORDERED FROM THE AMERICAN LEGION AUXILIARY, DEPARTMENT OF OHIO, 737 FOREST AVENUE, ZANESVILLE, OHIO, \$2.00)

OHIO LEGISLATIVE SERVICE COMMISSION, STATEHOUSE, COLUMBUS, OHIO 43215.  
PROBLEMS IN JUDICIAL ADMINISTRATION, REPORT #75. FREE. WRITE FOR IT.  
OUT OF PRINT REPORTS, LISTED BELOW, MAY BE IN YOUR LOCAL LIBRARY. IF NOT, YOUR LOCAL LIBRARIAN CAN ORDER THEM FOR YOU ON INTERLIBRARY LOAN FROM OHIO STATE LIBRARY, 65 S. FRONT ST., COLUMBUS, OHIO 43215.

OHIO'S COURT SYSTEM, ITS ORGANIZATION AND CAPACITY - REPORT #47.  
OHIO'S JUVENILE CORRECTION SYSTEM - REPORT #83.

E. OHIO COURTS PUBLISH ANNUAL REPORTS. ANNUAL REPORTS AND THE COURT'S BUDGET MAY BE OBTAINED FROM THE CLERK OF THE COURT OR FROM THE PRESIDING JUDGE.

F. THE LEGAL BASIS FOR THE OHIO COURT SYSTEM IS FOUND IN:

OHIO CONSTITUTION: ARTICLE IV - JUDICIAL AND ARTICLE XVII (SECTION 2)

OHIO REVISED CODE: TITLE 19 - COURTS: MUNICIPAL, POLICE, MAYOR'S, COUNTY  
TITLE 21 - COURTS: PROBATE, JUVENILE  
TITLE 23 - COURTS: COMMON PLEAS  
TITLE 25 - COURTS: APPELLATE  
TITLE 27 - COURTS: GENERAL PROVISIONS  
CHAPTER 309 - PROSECUTING ATTORNEY  
CHAPTER 311 - SHERIFF  
CHAPTER 313 - CORONER

G. WRITE TO THESE ORGANIZATIONS AND ASK FOR THEIR PUBLICATIONS LISTS:

THE AMERICAN BAR ASSOCIATION  
1155 EAST 60TH STREET  
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END