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Texas is in need of serious criminal code reform

In Texas, dredging for oysters at night can be a felony, but hiding a human corpse is a mere misdemeanor. The Texas Code is littered with irregularities like this, and no attempt has been made to create consistency since 1993.

To remedy this problem, legislation is expected to be filed that would establish an interim commission to review the more than 1,400 criminal offenses outside the penal code.



Code as originally enacted.

Texas has 11 crimes pertaining to the harvesting of oysters. None are located in the penal code and harm to a person is rarely an element of these offenses — meaning that the government is the purported victim.

When crimes are not in the penal code, legislators lose necessary context, and they fail to assess the relative severity of offenses. Frequently, they lose the sense of whether offenses ought to be crimes at all, rather than regulatory offenses.

Texas's 1993 penal code revision was an impressive achievement. An interim commission appropriately enhanced many sentences for violent offenders, improved treatment options for nonviolent offenders, removed several obsolete offenses, and generally reorganized the code.

The commission also made strides towards consolidating all crimes in the penal code, but in the ensuing 20 years, legislators have undone much of that commission's work.

Texas legislators add 39 new criminal laws per session, not including accompanying sentencing enhancements.

That is how lying in a fishing tournament became a crime in 2011. (Yes, that is a crime in Texas,



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and it is not in the penal code either.) In their rush to criminalize, lawmakers ignored the fact that there are more measured ways to address undesirable conduct such as the civil tort system, administrative fines, and revoking licenses and permits.

Moreover, Texas criminal law is obviously not transparent even though anybody can access the code books (of which there are more than two dozen, including the penal code, the alcoholic beverage code, the business and commerce code, the occupations code etc.).

In a famous G.K. Chesterton short story, a character remarks that the best place to hide a leaf is in a forest. Such is the case with Texas criminal law. The laws are so voluminous and disorganized that, effectively, they are hidden.

Because streamlining this morass is such a Herculean undertaking, Texas needs an interim commission charged with combing through Texas's byzantine, non-traditional criminal laws to identify offenses that are unnecessary, overlapping, duplicative, overly broad, overly vague, and lacking a culpable mental state as an element of the offense.

Under legislation creating such a volunteer panel that is expected to be considered this session, the members would be appointed by the Legislature, Governor, Texas Supreme Court, and Texas Court of Criminal Appeals. It would consist of stakeholders and experts such as judges, prosecutors, criminal defense lawyers, victims' advocates, community corrections officials and business leaders.

A just and efficient criminal justice system must punish and reform offenders, provide due process, empower and restore victims, maximize public safety and protect liberty. Accomplishing these goals begins with transitioning from the current hodgepodge of often overlapping, overreaching, and disproportionate set of criminal laws to one that is clear, limited and fair.

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