



To Improve Michigan's Political Culture, Reverse the Trend Toward Overcriminalization

By Kahryn Riley

Summary

A legal system that has too many criminal penalties undermines confidence in government and is bad for society's health. Michigan needs to reverse the trend toward overcriminalization.

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When the Mackinac Center for Public Policy set out to count the number of statutory laws on the books, we came up with over 3,100. And that doesn't count all the criminally enforceable administrative laws and regulations such as those contained in the environmental and public health codes. That number is problematic. It's called "overcriminalization," which refers to the astonishingly massive volume of criminal laws in effect in Michigan and elsewhere.

In 2014, the Mackinac Center partnered with the Manhattan Institute to publish a study on the issue of overcriminalization. The Manhattan Institute published a 2017 update to the study, concluding that many of the reforms suggested in the original publication had been implemented only in part or not at all. It is time to revisit the discussion.

The problem with overcriminalization is that with such an overwhelming number of laws on the books, it's very easy for well-intentioned citizens to run afoul of some criminal law or another while going about their daily lives. It's also practically impossible for government to enforce them all, which encourages disrespect for lawmakers and law enforcement agencies.

A surplus of laws and legal penalties also can wreck the social fabric through dividing people by race and income. The people who are most likely to suffer from overcriminalization are those with the fewest resources to protect themselves legally. If local prosecutors and other government officials can use obscure laws and regulations to make arrests or obtain plea bargains, the result could be racial and economic disparities. It's little wonder, then, that overcriminalization has been faulted with damaging race relations and contributing to wasted lives and money by sending too many people to prison for insufficient reasons.

Michigan lawmakers should, then, examine our body of criminal laws — which is disorganized and significantly larger than those in the nearby states of Ohio, Illinois and Wisconsin — and take steps to streamline it into a coherent, effective tool for protecting Michiganders.

Lawmakers will find the American Law Institute's Model Penal Code an invaluable resource. It is just what its name suggests: an example of what a state's body of criminal laws should include. Many lawmakers have no legal background and can be susceptible to the incorrect assumption that every problem can and should be effectively resolved by passing a law



Unnecessary criminal penalties impose high costs.

criminalizing undesirable behavior. That may be how Michigan’s penal code has come to contain 918 sections — eight times the number of sections recommended in the Model Penal Code.

Reformers should also look to states like Minnesota, which called a special legislative “un-session” in which it excised more than 1,000 unnecessary, duplicative, or anachronistic laws from its books. (It streamlined its taxation and business permitting processes, to boot). Michigan took the first steps toward addressing this problem in 2015 by passing criminal intent reform and removing about 65 silly laws from its books. But the state Legislature has been adding new crimes at a rate of about 45 per year since 2008, leaving the law books in the same or even worse condition.

The Mackinac Center has called for a legislative commission to review new laws before their adoption and for consolidating, organizing and clarifying the criminal laws that are currently in effect. The Michigan Law Revision Commission, whose job is to identify and resolve defects in the law, could be told to overhaul and reform our state’s criminal intent requirements. It has already recommended that all the criminal laws scattered throughout the law books be relocated into the penal code itself, or at least collected into a single location on the internet. Finally, it has called on lawmakers to expand the number of laws for which prosecutors must show criminal intent, not just criminal activity.

These and other measures are critical steps toward making Michigan a better place to live and do business. A healthy, modern criminal code helps people go confidently about their lives, knowing that they are both protected from wrongdoing and from inadvertently becoming criminals themselves. It also protects people from having to rely on prosecutorial discretion and promotes consistency and predictability in the criminal justice system. Michigan has taken a couple steps toward creating effective, comprehensible criminal laws — but not enough. It’s time to start moving in the right direction again.

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