

Editor's note: This is the first piece in a three-part series reviewing the new Oregon Criminal Code.

By NAN HENDERSON
Of the Emerald

Crimes should be treated as crimes, but it is not the legislature's job to designate people's morals.

This is part of "a whole new philosophy" throughout Oregon's new criminal code explained by Pat Horton, former Lane County Deputy District Attorney, in a recent interview.

Horton, a 1967 graduate of the University's Law School and project director for a program to teach state law enforcers about the new code, feels that "Oregon is really fortunate in having such a contemporary code."

The contemporary philosophy of the code is evident not only in revisions in the sex laws, but also in sections dealing with drugs, murder, gambling and insanity pleas.

The court is given greater authority under the new code that includes being able to completely discharge some defendants in drug cases, under certain circumstances.

"On the other side of the scale, you find a toughening up on crimes that need to be strictly enforced, such as burglary, murder and rape," Horton said.

The revised code, which took almost four years for a 13-man commission to complete, is also simpler and more condensed than the previous code, Horton reported.

"In the old code, for example, there were about 11 separate crimes regarding theft. Now there is just one basic idea—anytime you wrongfully keep or withhold property of another, you commit the crime of theft," he said.

The code has also been simplified by identifying each criminal act as a Class A, B or C felony or misdemeanor and specifying the maximum sentence and fine for each class.

Under the new code, the maximum term of sentence for a Class A felony is 20 years, Class B, 10 years and Class C, five years.

Generally, fines for all classes of felonies may not exceed \$2,500.

The maximum term of sentence and fine for misdemeanors are Class A, one year, \$1,000; Class B, six months, \$500; Class C, 30 days, \$250.

Horton felt that students, especially, should be aware of the contemporary changes in the code.

"These changes show that some of the guys with button-down collars in the legislature are finally waking up to what young people have been wanting," he said.

The major change in the sex laws make it no longer illegal to engage privately in "sexual intercourse or deviate sexual intercourse" if both people involved consent to the act and are over 18 years of age.

There are no stipulations that two people must be married or of opposite sexes to engage in sexual practices.

The change in drug laws "is basically a break-down of three things," Horton explained.

The most liberal change is specification in the code that possession of less than one ounce of marijuana must be treated as a Class A misdemeanor.

In the previous code, it was classified as a felony.

Though in Eugene possession of a small amount of marijuana was treated lightly under the old code, "you saw judges in Eastern Oregon sending kids off to prison for having a joint," Horton said.

Secondly, though manufacturing, cultivating, transporting, possessing, furnishing, prescribing, administering and dispensing narcotic or dangerous drugs is a Class B felony, the code provides that a court may treat any of these violations as a Class A misdemeanor.

An example of "toughening up" exists in the third change in drug laws.

"The commission cracked down on older people selling to kids under 18," Horton said. "The code now states that if a person over 18 is caught selling drugs to a person under 18, and there is three or more years age difference, this must be treated as a Class A felony."

"The legislators revised the marijuana laws partially because it was frightening for them to realize that

New criminal code: modern revisions end 'moral watch dog' laws

treating the incidental use of marijuana as a felony created a class of criminals composed of the judges, lawyers and doctors of tomorrow," Horton said.

"They are also realizing that effective drug prevention doesn't always come through putting people in jail," he added. "This leaves the door open for drug prevention programs."

Another change in the code regarding "morals" makes it illegal to be a gambling promoter, but not illegal to gamble socially, "like in a friendly poker game," Horton said.

It is also no longer illegal "for a man to receive the favors of a prostitute," he stated.

A prostitute is still violating the law, under the new code, and is charged with a Class A misdemeanor. Promoting prostitution is a Class C felony.

The contemporary aspect of the code is also evident in changes in murder and insanity laws.

The statutes regarding murder in the new code abolish the degrees of murder.

Under the old code, a murder was considered the

first degree when it was committed with "premeditation and malice aforethought."

Yet old case law held that a person could form premeditation an instant or two before the unlawful killing.

"The distinction between first and second degrees many times became academic rather than practical," Horton stated.

Now, all murder is considered the same and the penalty is life imprisonment.

Under the old law, the tendency of parole boards was to parole a person convicted of second degree murder after seven years and a person convicted of first degree murder after 10 years.

"Now we are saying that a parole board can better determine when a murderer has been rehabilitated and should be eligible for parole without necessarily following the old tendencies," Horton said. "Certainly not anyone knows at the time of sentencing if a murderer should be eligible after seven or ten years."

"Another reason for abolishing the degrees is that Oregon no longer has capital punishment," he added.

A new insanity test was adopted in the new code, and the old one was repealed.

The old test, called the "M'Naughten Rule" stated that a person was legally insane if he was unable to distinguish right from wrong at the time of the criminal act.

"Often, a person can distinguish right from wrong and still be insane because he can't conform his conduct to the requirement of the law," Horton said.

Under the new test, a defendant is considered legally insane if it is proven he was unable to substantially conform his conduct to the requirement of the law at the time of the criminal act.

"Far more defendants will now plead legal insanity," Horton predicted. "However, the court also has more authority to effectively deal with people who are insane, under the new code," he added.

Another example of the "toughening up" aspects of the code is found in certain laws dealing with crimes that can be termed "anticipatory" in nature, Horton reported.

A person found carrying forgery devices, burglary tools or a forged document, for example, could be convicted of such a crime if it was proven he intended to unlawfully use any of these things.

Conspiracy also falls under the class of anticipatory crimes. A person that agrees to sell or give drugs to another person, for example, technically can be charged with a violation of conspiracy laws, though no sale actually took place.

The commission that drafted the new code, which included senators, representatives, attorneys, a judge, public citizens and headed by former Lane County District Attorney Don Paillette, was authorized to begin work on the new code by the 1967 Legislature and began in July of that year.

In drafting the code, the commission drew from the newly revised codes of New York, Illinois, Michigan and Connecticut and from the Model Penal Code.

"The Model Penal Code is the most contemporary body of proposed criminal statutes and the most liberal," Horton said.

"The removal of the state as watchdog of morals is a very modern concept," he added.

Policemen must change asserts D.A. candidate

"Law enforcement must adapt...to modern social changes," said former Lane County Deputy District Attorney J. Pat Horton Monday, as he announced his candidacy for the office of Lane County District Attorney.

Horton, 29, is a member of the Democratic party. He has served over four years in the D.A.'s office as a trial attorney. In September 1971 he was selected statewide project director for criminal law revision training. In this position he trained approximately four-thousand peace officers in the new state criminal code.

"The new criminal code is a tremendously effective piece of legislation," Horton said. "Our new criminal laws effectively recognize not only social changes that have taken place in our society in recent years, but also identify new areas of concern that we will be facing in the years to come," he added.

Horton said one of his prime concerns is "to give the taxpayer better services with his tax dollar." To accomplish this he said, "The chief law enforcement officer in each county should investigate consolidation of services, such as record keeping, among all law enforcement agencies in the county."

Another way, Horton said, to save the tax dollar is to alleviate congestion in the courts. He said the state needs an "open file" policy which would advise the defense attorney and the defendant on the strength of the state's case. "This policy, he feels, would serve to clear up the clogged dockets."

Horton commented on the problem of drug abuse in Lane County. He was involved in the original formulation of policy for the Lane Inter-agency Narcotics Team (LINT). "The idea originally was to investigate and prosecute the pusher...it was not intended to ferret out incidental users of marijuana," he said.

"I want the youth to know I am obligated to enforce the laws, fairly," Horton said. "I have empathy for their position. I will talk, counsel, listen to them about their problems...I won't believe youth wants to perpetuate a program of pushers," he added.

Horton attended Drake University and the University Law School.
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EMU planning group okays student offices

By JUDY SLY
Of the Emerald

Student Union Planning Committee members approved "the office landscape concept" of area planning for student offices at their meeting last night.

The committee reacted favorably toward the landscape concept at their last meeting but were awaiting word from ASUO executives. The

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OSPIRG refunds now available

Students who don't want to contribute to OSPIRG (Oregon Student Public Interest Research Group) this term may pick up their one dollar refunds anytime this week, 8:30 a.m.-5:30 p.m. at the EMU Main Desk. To pick up the refund check a student will need to show his pink student body card.

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