

# THE ROBESONIAN

## NC should pare down criminal code

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North Carolina suffers from a severe case of overcriminalization. We have more activities and actions classified as a crime, something worthy of public condemnation, than just about any state.

In addition, those crimes are scattered far and wide — not only in Chapter 14 of the General Statutes, the “crime” chapter, but throughout an additional 141 chapters of N.C. laws. But it gets worse. Crimes are also created through the rule-making process by state agencies — from the Department of Insurance to the Department of Human Services to the Department of Environmental Quality and beyond.

If that’s not bad enough, crimes are found in rules regulating the state’s 400-plus boards and commissions. And that’s only the beginning; every local government identifies criminal activities and enacts penalties through their ordinances and rules. Cities even have an automatic default for any new ordinance to be designated a misdemeanor crime.

In short, North Carolina’s criminal laws are a mess: We are overcriminalized.

In addition to their sheer volume, criminal laws are confusing, complicated, duplicative, and hard to follow and find, making it next to impossible to comply. Many have been declared unconstitutional by our courts. Others are impossible to enforce or are no longer enforceable. Many are duplicated in various sources.

For example, we have 17 various crimes of larceny. Why not one, i.e., it is against the law to steal stuff. Others vary across county or city lines.

In Huntersville, you can’t grow your grass higher than 10 inches. But in Saluda you can let it grow to 24 inches before being a criminal. Confusion around what activity may put you in danger of becoming a convicted criminal is an impediment to starting a business, practicing a profession, or even making improvements to your property. Fear of overstepping the law and being charged with a crime is a deterrent to productivity and freedom.

North Carolina needs criminal law reform.

Recodification is legalese for cleaning up our criminal code. We need to evaluate every crime that’s on the books, across every entity, and review, evaluate, and reorganize it all into a unified code. Activities that we agree are worthy of public condemnation should be easy to find, understand, and follow. That may mean getting rid of some, consolidating others, and strengthening those that need it. A periodic review is in order. Changes could address criminal justice questions, such as appropriate sentencing, restitution, and rehabilitation. A unified criminal law system ensures equal justice and opportunity under the law. Recodifying the code is the reform we need to fix overcriminalization.

North Carolina leaders recognized the problem several years ago and have been working to fix it. In 2017, an amendment was added to House Bill 482. In the final hours of the long session it would have authorized a Criminal Code Recodification Commission, composed of experts in a variety of fields to address the problems of overcriminalization. The amendment wasn't enacted, but it set the groundwork for future legislation.

In 2018, Session Law 2018-69, An Act to Assist the Criminal Law Recodification Working Group, required the Administrative Office of the Courts, state agencies, boards and commissions, and all local governments to report to the General Assembly all the crimes on their books, with the intent of getting everything on the table.

In 2019, Session Law 2019-198 took it a step further by strengthening requirements for municipalities to comply with the reporting. State agencies proposing new rules with criminal penalties will have legislative review, and a working group under the General Statutes Commission would begin sorting through the reports, classifying groups of crimes, and making recommendations for real reform.

Legislators and decision-makers in other states and even federal government officials have expressed an interest in how we're moving forward with criminal law reform. Other states have made efforts at reform but have been unsuccessful. North Carolina has an opportunity to, once again, be a model to the rest of the nation in how to do reform right.

The 2019 session has been successful by setting the stage for criminal law reform while gathering more support, drawing good questions and broadening the interest in recodification. The John Locke Foundation and the Cato Institute held a criminal law reform summit in late October. Policy experts, legislators, law enforcement, academic scholars, district attorneys, city and county advocates, judges, law school deans, members of the legal community, and "just plain folks" came together for a full day of discussion and learning. They left in agreement North Carolina is overcriminalized, and with a commitment to do something about it.

A good starting point is a plan outlined by Professor Jessie Smith of the UNC School of Government. Smith's recommendations include answering the core question: What do we want to criminalize? Other recommendations are subjecting all activities classified as crimes to a regular review; eliminating duplication; and placing it all in a single place.

Let's do it. North Carolina is overcriminalized, we need criminal law reform, and recodification is the way to get there.