

Criminal Code Revision Near Congress Test

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WASHINGTON, April 23—A massive and controversial revision of the Federal Criminal Code is approaching its first test in Congress, with a powerful coalition of sponsors determined to push the complex legislation through before the 1976 election.

The 750-page-bill, more than four years in the drafting, would reinstate capital punishment, expand Federal criminal jurisdiction, rewrite the law in such sensitive areas as insanity and obscenity and impose new limits on press access to Government information that have aroused strong opposition.

Among the press limits are a provision that would subject a reporter to a fine up to \$100,000 and a seven-year jail sentence in peacetime for making unclassified "national defense information" public if he knows that information "may be used to the prejudice of the safety or interest of the United States or to the advantage of a foreign power."

Critics of the bill charge that this would eliminate virtually all reporting of activities of the State and Defense Departments other than official public positions of those agencies.

The chief backer of the measure, Senator John L. McClellan, Democrat of Arkansas, has assembled a list of co-sponsors that includes both party floor leaders—Senators Mike Mansfield, Democrat of Montana, and Hugh Scott, Republican of Pennsylvania — conservatives like Senators James O. Eastland, Democrat of Mississippi, and Roman L. Hruska, Republican of Nebraska, and liberals like Senator Birch Bayh, Democrat of Indiana, and Frank E. Moss, Democrat of Utah.

The Senate Judiciary Subcommittee on Criminal Laws held perfunctory final hearings on the bill two days last week, and the full committee, prodded by Senator McClellan, is expected to process the new code in time to reach the Senate floor by July.

Even before the Senate acts, a House Judiciary subcommittee plans to begin its hearings. This timetable, unusually condensed by Congressional standards, is regarded as necessary if the code is to have any chance of enactment before the legislators adjourn next year.

Apart from numerous controversial features, the McClellan bill is so long and complicated that getting an agreed version through both Houses in 16 months presents a formidable practical problem for its sponsors. The fact that so many members are lawyers given to fault-finding is not likely to speed the process.

Federal criminal laws have never been codified but have simply accumulated over nearly

200 years as Congress added them to the code. A major purpose of the legislation is to replace this patchwork collection of offenses, defenses and punishments with an ordered, logical and uniform statute.

In the process, however, Senate staff lawyers worked into the text a number of new provisions, some of them revisions of existing law, others, interpretations of court decisions, and still others, fresh attempts to deal with events like the publication of the Pentagon papers.

As a result, if the proposed code were adopted, it would do the following:

¶Reverse the 1972 decision of the Supreme Court abolishing capital punishment by reinstating the death penalty for the Federal crimes of treason, sabotage, espionage and murder under certain circumstances, with a special second trial on imposition of the sentence.

¶Revise the defense of insanity so that defendants who raised it successfully would be found guilty and then institutionalized rather than found not guilty and committed to a mental hospital.

¶Redefine obscenity, using the 1973 Supreme Court ruling as a base, to ban "patently offensive" sexual material, both generally accepted and deviant, but exempting any book, magazine or motion picture with "serious artistic, scientific, literary or political value."

¶Establish a new category of "national defense information" about military strength, weapons and intelligence that carries no security classification and make it a felony to disclose such information to "a person not authorized to receive it."

¶Class as espionage, punishable by maximum jail sentences of 30 years to life for offenses in wartime, the collection of unclassified "national defense information" that may help a foreign power, knowing that it "may be communicated to such a power," without any requirement that the collector plans such communication.

¶Authorize for the first time an appeal from a Federal criminal conviction based on a claim of excessive sentence for all defendants whose fine or jail sentence was more than one-fifth of the maximum allowed.

¶Expand Federal criminal jurisdiction by classing as Federal offenses some acts, previously subject only to state prosecution, if they were committed during a recognized Federal crime.

¶Make it a crime for the first time, apparently in response to Watergate, to impair or pervert "the lawful conduct" of any election in which Federal officials are running or to induce another person to commit any Federal crime.

The last provisions did not go far enough toward protect-

ing the public against a recurrence of the Watergate scandal to satisfy the Reporters Committee for Freedom of the Press, which attacked the code at last week's hearings as "unwise and unconstitutional" on the ground that it created new varieties of "criminal censorship."

Jack C. Landau of the reporters' committee urged Senator Hruska to include in the bill a provision making it a crime for Federal officials to make false statements to the public or to omit important facts from an accounting of their responsibilities.

Mr. Landau, who is Supreme Court correspondent for the Newhouse newspapers, criticized sections of the criminal code that he said would make it a crime for Federal employees to report to the press evidence of corruption or even inefficiency within their agency.

Senator Hruska responded that Federal employees should not air their grievances by making "irresponsible charges" in newspapers but, instead, should demonstrate loyalty by passing any such adverse information confidentially to their superiors through regular channels.

In an analysis of the bill submitted to the Senate subcommittee, the American Civil Liberties Union said that the criminal sanction limiting "national defense information" to "authorized" recipients "delivers to Congress and the Administration the exclusive power to determine who shall and who shall not learn, speak or write about a vast array of politically as well as militarily sensitive information."

"To state this proposition is to refute it," the A.C.L.U. observed. "The Constitution permits no such law."

Melvin L. Wulf, legal director of the civil liberties group, called for decriminalizing pornography and the use or possession of marijuana, for narrowing the codes' definition of espionage, sabotage and disorderly conduct, for reducing penalties for criminal contempt and for abolishing all legalized wiretapping.

"Enactment of this statute," Mr. Wulf declared, "would irreparably damage, if not virtually destroy, the freedom of the press upon which an informed public and democratic self-government itself rely. If the press is not to become merely a withered arm of government instead of the adversary force the Constitution intended, it must have sources other than official press releases for the information it publishes."

Significant over-all support for the criminal code came last week from the Judicial Conference of the United States, the administrative agency of the Federal court system of which Chief Justice Warren E. Burger is the chairman.

Federal District Judge Alfonso J. Zirpoli, chairman of the conference's criminal law committee, told the Senate subcommittee that the measure represented "the best thinking of legal scholars and practicing attorneys" and had the "general approval" of the Federal court system, with some reservations.

The judicial conference did not oppose substantive sections of the code dealing with such matters as capital punishment and Government information. Instead, it objected to definitions of criminal intent, to the attempt to codify some court-defined defenses such as entrapment and to the establishment of appellate review of criminal sentences.