

# How to Implement Criminal Justice Standards

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## HOW TO IMPLEMENT CRIMINAL JUSTICE STANDARDS



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Detroit, Michigan

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## PREFACE

"Standards and goals"—that often overused phrase to signify an attempt to achieve professional competence among criminal justice planners and practitioners—has suffered considerable misconception and political misuse ever since it was invented by the Law Enforcement Assistance Administration (LEAA) in 1973. On too many occasions have well-intentioned individuals referred to standards and goals as some kind of pre-packaged solution to all criminal justice problems.

Couple this with the emerging sensitivity among policymakers of the need for development and then implementation of goals and objectives for lasting criminal justice reform, and you have the reason for this brochure.

The American Bar Association Section of Criminal Justice brought to the LEAA standards and goals priority program, which was launched in 1973 to encourage criminal justice system planners and agencies to develop their own professional standards, five years of intensive effort to implement the recommendations of the *ABA Standards for Criminal Justice*. In 1972, to define a practical step-by-step procedure for implementation, the Section produced its basic "How To Do It" pamphlet.

Since that time, a number of developments have expanded and made more complex the criminal justice standards process, so that a fresh and more detailed approach to implementation is warranted.

These developments include:

- The final volumes of the ABA Criminal Justice Standards were produced and adopted—the *Urban Police Function Standards*, jointly endorsed by the ABA and the International Association of Chiefs of Police in 1973, and the *Compilation with Index* ("Volume 18") published in 1975.

- LEAA's National Advisory Commission on Criminal Justice Standards and Goals (NAC) released in 1973 its six reports for nationwide distribution: *Police*, *Courts*, *Corrections*, *A National Strategy to Reduce Crime*, *Community Crime Prevention*, and *Criminal Justice System*.

- 1973 amendments to the 1968 Omnibus Crime Control and Safe Streets Act, the statutory authority for all LEAA programs, established the requirement for "goals, priorities and standards" in state comprehensive plans. LEAA guidelines to implement this mandate required that the plans for fiscal year 1976 address *development* of standards and goals, and that those for fiscal year 1977 address their *implementation*.

- The ABA adopted a resolution in 1975 recommending that its members, state and local bar associa-

tions, and affiliated organizations involve themselves in criminal justice planning activities, utilizing the ABA standards and NAC standards and goals, and encouraging citizen participation.

- In 1974, the National Conference of Commissioners on Uniform State Laws approved the Uniform Rules of Criminal Procedure.

- The American Law Institute in May, 1975, adopted a Model Code of Pre-Arrestment Procedure.

- Congress passed amendments to the Federal Rules of Criminal Procedure which took effect in 1975.

- New standards were designed for judicial administration (*ABA Standards Relating to Court Organization, Trial Courts, and Appellate Courts*); juvenile justice (ABA/Institute of Judicial Administration Commission on Juvenile Justice Standards, National Advisory Committee on Juvenile Justice and Delinquency Prevention, and the LEAA Task Force on Juvenile Justice and Delinquency Prevention); and in the areas of private security, terrorism and civil disorders, research and development, and organized crime.

Given this array of recommended guidelines for criminal justice, members of the bench and bar, state and local government officials, and criminal justice personnel need a simple overview of how to effectively utilize these criminal justice standards. This brochure—written by Penelope D. Clute, staff attorney with the Michigan Department of Corrections—is designed to do just that.

The brochure is divided into three sections.

First, the basic steps of implementation strategy are presented: development and updating of a comparative analysis; creation of a task force; goal-setting and strategy development; and continuing education.

Second, three case studies of implementation activity are presented: Florida, Arizona, and Arkansas. A chart is also included on the extent of appellate court citation of the ABA Criminal Justice Standards.

Third, a bibliography of suggested standards and goals materials is offered to consolidate in one publication many of the basic technical assistance tools and to bring to the attention of criminal justice planners and practitioners the wealth of pertinent information available.

The suggestions presented herein are gleaned from the cumulative experience of the Section in its massive implementation project. They reflect the expertise of daily communication with individuals of different, and often differing, criminal justice perspectives: judges, prosecuting attorneys, private and public defense counsel, law teachers, public interest groups, the executive

and legislative branches of government, the organized bar, and the LEAA national network of regional offices, state planning agencies and state standards and goals projects.

This brochure is one of a series of booklets on cost implications and strategies for implementation of criminal justice standards. Others in the series are:

- (1) "How to Implement Criminal Justice Standards for Police-Bar Cooperation";

- (2) "How to Implement Criminal Justice Standards for Corrections";

- (3) "How to Implement Criminal Standards for Speedy Trial";

- (4) "How to Implement Criminal Justice Standards for Pretrial Release";

- (5) "How to Measure Criminal Justice in Your Community: Story Ideas for Journalists";

- (6) "How State and Local Governments Can Economize by Implementing Standards and Goals"; and

- (7) "How to Mobilize Citizen Support for Criminal Justice Improvement: A Guide for Civic and Religious Leaders."

You are encouraged to use these brochures in tandem to ensure a concerted thrust for criminal justice improvement in your state and local community. Free copies of each are available from the ABA Section of Criminal Justice, 1800 M St., N.W., Washington, D.C. 20036.

The Section is committed to the principle of comprehensive criminal justice planning. A great investment of time and money has been made by the ABA, its Section of Criminal Justice, LEAA, and other agencies in the development of standards for the improvement of criminal justice and the reduction of crime.

These standards, however, will be in vain unless they are put in proper perspective as invaluable assets for state and local communities.

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## IMPLEMENTATION STRATEGY

### STEP 1: A State Comparative Analysis

*What Is It?* The first essential step in implementation in any state is a comprehensive inventory showing how the state's criminal justice system measures up to criminal justice standards. The inventory compares each suggested standard with individual state statutes, court rules, substantive and procedural codes, case law, and legal practice in effect at the time of comparison.

*What Purpose Does It Serve?* The comparative analysis provides an accurate blueprint on:

1. Where the state is in terms of how the different standards compare with statutes, court rules, codes, case law, and legal practice;
2. What standards have already been implemented—wholly or partially; and
3. What has to be done to implement those standards considered appropriate for the state. This includes suggestions for legislation, court rule, constitutional amendment, or an appropriate combination of executive and administrative actions, as well as implementation by individual members of the bench and bar (see judicial citations chart, p. 19).

The comparative analysis is an invaluable criminal justice planning tool at state, regional and local levels. In addition, legislators and criminal code revision officials find that such an analysis puts the standards in an understandable perspective for development and/or revision of criminal codes and statutes relating to criminal justice.

The analysis also functions as a comprehensive reference work for practitioners, because it may bring together for the first time the state's statutory and case law, rules and legal practice arranged according to subject area. Many judges find the comparative analysis useful as a bench book.

*Which States Have Done a Comparative Analysis?* Initial comparative analyses utilizing the ABA Standards for Criminal Justice and/or NAC Standards and Goals are completed or underway in each state.

*What Format Works Best?* Formats vary from state to state, but a vertical three-column format has been found to be the most practical, as follows:

*First Column*—Sets forth the individual standards verbatim;

*Second Column*—Sets forth existing situation in the state vis-a-vis the particular standard; and

*Third Column*—Recommends action necessary to bring the state into compliance with the standard.

## SPEEDY TRIAL

### Pennsylvania Law

### Comment

#### ABA Standards

##### Part I. The Trial Calendar

##### 1.1 Priorities in Scheduling Cases.

To effectuate the right of the accused to a speedy trial and the interest of the public in prompt disposition of criminal cases, insofar as is practicable:

(a) (*Criminal Over Civil Cases*) the trial of criminal cases should be given preference over civil cases; and

(b) (*Defendants In Custody*) the trial of defendants whose pretrial liberty is reasonably believed to present unusual risks should be given preference over other criminal cases.

(a) & (b) "In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, . . . " Constitution of the United States, 6th Amendment. The right to a speedy trial was made binding on the states in *Klopfer v. North Carolina*, 386 U.S. 213, 87 S. Ct. 988 (1967).

"In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, . . . and, in prosecution by indictment or information, a speedy public trial . . . " Constitution of the Commonwealth of Pennsylvania, Article I, Section 9.

These explicit constitutional mandates for a "speedy trial" exist only for criminal prosecutions. They therefore imply a fundamental priority for the disposition of criminal cases.

(a) & (b) Pennsylvania rules of procedure do not expressly require that criminal cases be given priority over civil cases or that cases of criminal defendants held in custody be tried before other criminal cases. Priorities set forth in the ABA Standards should be implemented in the Commonwealth by rule.

##### 1.2 Court Control; Prosecutor's Duty to Report.

Control over the trial calendar should be vested in the court. The prosecuting attorney should be required to file as a public record periodic reports with the court setting forth the reason for delay as to each case for which he has not requested trial within a prescribed time following charging. The prosecuting attorney should also advise the court of facts relevant in determining the order of cases on the calendar.

##### Role of Administrative Judge

Pa. R. Crim. P. 300—*Business Of The Courts—Administrative Judge* provides:

"(a) In counties having more than one Court of Common Pleas, the Chief Justice may appoint one of the judges of that county to serve as Administrative Judge of the Criminal Courts. In all other counties the President Judge of the Court of Common Pleas shall be responsible generally for the orderly administration of criminal justice within the county subject only to the direction in administrative matters of the Chief Justice of the Supreme Court.

"(c) The Administrative Judge . . . shall direct the preparation of such calendars as are necessary for the disposition of criminal cases."

##### Report to Judge in Charge of Grand Jury by Authority in Charge of County Prison

Pa. R. Crim. P. 211—*Grand Jury—Report Of Undicted Prisoners In Custody* provides:

It is recommended that the ABA Standard be implemented by rule. However, there should be separate treatment of the court and prosecutor functions. The rule should provide that the prosecutor "may" (instead of "should") be required to file periodic reports with the court.

"Prior to the commencement of each grand jury term, the authority in charge of the county prison or house of detention shall present to the judge in charge of the grand jury a calendar stating:

- (1) The name of each prisoner detained awaiting action of the grand jury;
- (2) The date when he was committed; and
- (3) The charges pending against him."

The ABA Standard requires periodic reports from the prosecuting attorney setting forth reasons for delay in each case for which he has not requested trial within a prescribed time following charging. Pa. R. Crim. P. 211—*Grand Jury—Report Of Unindicted Prisoners In Custody* is much more limited in scope, but the report on detained prisoners should alert the court to delays and extended detentions.

### 1.3 Continuances.

The court should grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecution

Pa. R. Crim. P. 301—*Business Of The Courts—Continuance* provides:

"(a) (Power to Grant Continuance)

Pennsylvania's rule is in substantial compliance with the ABA Standard.

For states wishing to utilize different sets of standards simultaneously, four or more columns may be necessary. Other states have followed a *narrative* format: the standards are listed first, followed by the relevant portions of state statutes, rules, case law, and legal practice, and comments regarding proposed methods of implementation.

The Oregon comparative analysis, completed in September, 1975, is a good example of the narrative approach.

#### CHAPTER 8

### STANDARDS RELATING TO PRETRIAL RELEASE

#### Standard 11: Policy favoring release.

The law favors the release of defendants pending determination of guilt or innocence. Deprivation of liberty pending trial is harsh and oppressive in that it subjects persons whose guilt has not yet been judicially established to economic and psychological hardship, interferes with their ability to defend themselves and, in many cases, deprives their families of support. Moreover, the maintenance of jailed defendants and their families represents a major public expense.

NAC, Corrections 31.14.1601, Police 1.3.

Oregon law.

There are no statutory provisions.

Comment:

With the exception of statutes controlling citations in lieu of custodial arrest, Oregon law generally adheres to the Pretrial Release Standards. Oregon's pretrial release statutes, adopted by Article 8 of ch. 636 (1973) [Or. Laws 2743], were modeled after the Illinois statutes and these standards. See Souffer, *An Article of Faith: Abolish Bail in Oregon*, 53 OR. L. REV. 273 (1974) and Zagat, *Criminal Justice in Oregon—Six Months Without Bail* [Oregon Law Enforcement Planning Agency, 1974]. The Oregon statutes have been upheld against constitutional challenge. *Burton v. Tomlinson*, 59 Adv. Sh. 2086. — Or. App. — 527 P. 2d 123 (1974).

The harsh effects of pretrial detention are discussed in Comment *Unconditional Discrimination in Pretrial Release Practices*, 7 MICH. L.J. 250 (1971). "Pretrial confinement may impair the suspect's job, interrupt his source of income, and impair his family relationships." *Gestein v. Pugh*. — U.S. — 955, Ct. 854, 663, 43 L. Ed. 2d 654 (1975).

Unless otherwise indicated, Oregon law conforms to these ABA Standards.

#### Standard 12: Conditions on release.

(a) Release on order to appear or on his own recognizance. Each jurisdiction should adopt procedures designed to increase the number of defendants released on order to appear or on their own recognizance. Additional conditions should be imposed on release only where the need is demonstrated by the facts of the individual case. Methods for providing the appropriate judicial officer with a reliable statement of the alternative to the release decision should be developed.



Inclusion in a *three-ring notebook* has been found to be most useful and also permits changes to be easily added as required. In Kansas, for example, the project director for an updated comparative analysis saved time and money by sending only the revised pages to individuals who received the original study. Recipients were then able to update their own notebooks. This procedure has also been followed in updating projects in New Jersey and Mississippi.

Who Does a Comparative Analysis? Project directors have included deans of law schools, law professors, committees of the state supreme courts and judicial conferences, and representatives of bar associations. Those analyses prepared at law schools have utilized capable law students in doing much of the essential research, supervised by the dean or law professor who served as project director.

How Much Does It Cost? The cost of preparing and updating a comparative analysis will vary from state to state depending on the type of analysis, quality of printing and extent of distribution. Updating studies will also vary according to the extent of change in laws, rules and legal practice in the state. Initial updating projects have cost from approximately \$2,000 in Mississippi to \$10,000 in New Jersey.

Where Can Funding Be Obtained? Contact the director of your LEAA criminal justice state planning agency (SPA) regarding funding. (See Appendix for the SPA in your area.) For many of the initial state comparative analyses, the Section of Criminal Justice made available up to \$3,000 as "seed money" to help states begin such a project. As in the past, the Section is continuing to request limited funding from the American Bar Endowment for use as "seed money" to update comparative analyses in the states.

Why Is It Important To Update? Many state comparative analyses were completed prior to formal adoption by the ABA House of Delegates of the final volume of the ABA Criminal Justice Standards, the *Urban Police Function* (1973). Some were completed prior to adoption of other volumes in the series.

Other volumes of standards have also recently appeared, all of which warrant consideration in a comparative analysis. These include the NAC standards and goals, the ABA Judicial Administration Division Standards Relating to Court Organization and Trial Courts, the Uniform Rules of Criminal Procedure, and the American Law Institute's Model Code of Pre-Arrestment Procedure. Additionally, standards on juvenile justice are expected

to be published for ABA consideration in 1976, with other sets soon to be developed by LEAA. LEAA also has task forces drafting standards relating to private security, disorders and terrorism, organized crime, and research and development.

To include all of the relevant standards from these efforts, comparing them with the latest revisions of statutory and case law, court rules, and legal practice in the state, requires updating the comparative analysis on a continual basis.

How Can Updating A Comparative Analysis Be Accomplished? If possible, consider utilizing the project director of the initial comparative analysis. This will help eliminate wasteful duplication of effort in the drafting stage.

Call upon the ABA Criminal Justice Section for resource materials. In addition to volumes of the ABA Criminal Justice Standards, the Section can provide you with copies of the *Comparative Analysis of the ABA Criminal Justice Standards and NAC Standards and Goals*; and the *Uniform Rules of Criminal Procedure: Comparison and Analysis*, which is a five-way comparison of the ABA Criminal Justice Standards, NAC Standards and Goals, the Federal Rules of Criminal Procedure, the ALI Model Code of Pre-Arrestment Procedure, and the Uniform Rules of Criminal Procedure.

The Section can also discuss funding possibilities.

For more detail, contact Lauren A. Arn, Project Director for the Implementation of Criminal Justice Standards, ABA Section of Criminal Justice, 1800 M Street, NW, Washington, DC 20036 (telephone 202/331-2260).

## STEP 2: Task Force

The comparative analysis provides a blueprint for implementation of criminal justice standards and goals. To effectively utilize this blueprint requires a carefully chosen task force or task forces to coordinate implementation activity.

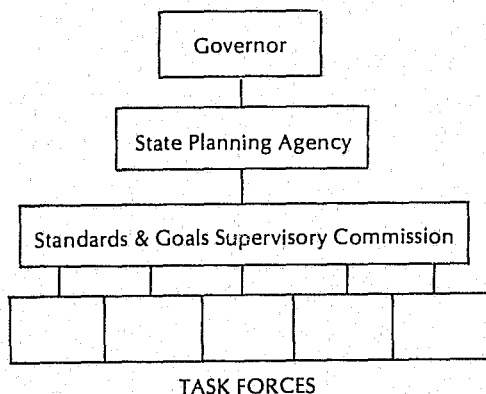
What Is the Role of the Task Force? The role of the task force is to function as a tightly-knit action coalition to improve the state's criminal justice system. It designs and implements projects related to development and implementation of criminal justice standards and goals. The state comparative analysis provides the basic map for a carefully conceived and executed criminal justice improvement effort.

How Does the Task Force Relate to State Governmental Structure? After the NAC Standards and Goals reports were completed in 1973, LEAA began to award Criminal Justice Standards

discretionary grants to the states to develop state standards and goals. Once developed, these state standards and goals were to be incorporated into the state's comprehensive plan for LEAA funding under the "block grants" system. Block grants are given to the states on the basis of population, to be distributed by a state planning agency based on the needs of law enforcement and criminal justice agencies, as described in the comprehensive plan.

To assist state planning agencies (SPA) in development and implementation of standards and goals, state supervisory commissions for standards and goals were established. Some states elected to organize a separate office for the supervisory commission; others chose to establish the commission within the SPA itself. In either case, however, the supervisory commission's duties are specialized to address the standards and goals effort.

Within the supervisory commission, separate task forces are usually created to focus on specific aspects of standards and goals. Many states have utilized the subject areas of the NAC Standards and Goals to designate the particular task force function. Examples are Police, Courts, Juvenile Justice, and Corrections. A typical organizational chart follows:



What Can I Do? Although many states have already established operating task forces to implement criminal justice standards and goals, with LEAA funding assistance, here are some considerations to be kept in mind to implement this Second Step:

(1) Find out what task force(s) is (are) operating in your state. Pin down its organizational structure, and assess its objectives.

(2) Ensure that the task force includes a wide representation of state and local elected or appointed officials, legislators, prosecutors, defense attorneys, judges, correctional officials, law enforcement officials, and citizens.

(3) In states which do not have an operating mechanism for implementing standards and goals, begin to discuss with leaders of the above constituencies how one could be formed. Once a strategy is developed for beginning the task force, make certain that it is representative of every component sharing responsibility for the criminal justice system as well as key citizen organizations.

(4) Investigate the task force's utilization of resource materials such as the ABA Standards for Criminal Justice, NAC Standards and Goals, ABA Standards for Judicial Administration, and other sets of standards as appropriate. The Section staff office can be of assistance in locating supply quantities of this material for you.

### STEP 3: Goal-Setting and Strategy Development

The actual drafting by the task force of achievable goals and strategies to obtain them is perhaps the most delicate step in the implementation process. All too often, criminal justice reform efforts are programmed for failure because they either try to "reinvent the wheel," do not consult with key officials in government or the judicial branch, or fail to take into account existing resources.

How Should the Task Force Design Its Strategy? In designing implementation strategy, the task force should carefully consider the most cost-effective and efficient methodology to achieve its objectives. Consultation with budget and fiscal planners in the state will help, and there should be free utilization of the Section's brochures on implementing standards relating to the police function, speedy trial, corrections, pretrial release, and the economics of implementation (see Bibliography, p. 20).

Goal-setting and strategy development should follow all of the recommended guidelines for defining measurable objectives. First, *brainstorm* needs of the criminal justice system in your locale. Then *refine* these needs into attainable objectives which can be measured. Unless you do, you won't know whether you've achieved any of your goals. *Design* strategies which take into account the practical limitations (political and financial) of your program. Finally, *follow through* with specific projects and evaluate their effectiveness.

The preceding paragraph may sound like a grade school primer, but all too often this amazingly simple

procedure is blatantly violated by the most well-intentioned action groups!

What Should the Task Force Watch Out For? The standards and goals task force cannot function in a political or economic vacuum. There must be a high degree of interaction between it and all existing criminal justice planning and action programs. *One of the greatest weaknesses that has been observed in the Section's implementation project has been the lack of communication among various criminal justice components.* As the task force defines its goals and develops strategies for obtaining these goals, municipal, county and state criminal justice agencies and planning entities must be continually brought in to the task force deliberations. Failure to do so will inevitably result in an idealized and unrealistic appraisal of criminal justice needs, priorities and solutions.

Remember: The major objective of the standards and goals initiative has been to enable criminal justice agencies and practitioners to recognize each other's needs and relationship in the total "system." The task force must function in this manner both to create a relevant standards and goals product, and to arrive at workable strategies for its implementation.

#### STEP 4: Education

A crucial ingredient in the state standards and goals process is intensive and continuing education aimed at both criminal justice practitioners and the public at large.

The Method? Anything that will work.

Educational techniques for reaching both mass segments of the general population and individual professional specialties cover a wide field. Continuing legal education programs sponsored by the state bar association, as well as annual and midyear meetings, are a natural opportunity for special programs on criminal justice standards. Judicial conferences are another. Training academies for corrections and police personnel should definitely have a standards and goals component.

A variety of techniques works best.

Cassettes, films, video tapes, articles, implementation seminars, workshops, demonstration teams can all be programmed to awaken people to the need for and value of standards and goals. As particular pieces of legislation or articles come before the public for ratification, focused lobbying efforts throughout the state can marshal support among legislators and other elected officials.

The media play an enormous role in this respect. In February, 1976, the Criminal Justice Section held a three-day workshop for working journalists and editors to look at problems in criminal justice, using criminal justice standards for perspective. Educational workshops such as this can go far towards engendering in reporters' minds a sense of the wider problems in criminal justice beyond the sensational individualized case.

In working with the media, utilize the Section's pamphlet: "How To Measure the Quality of Criminal Justice in Your Community: Story Ideas for Journalists." This booklet provides reporters with questions they can ask of law enforcement, courts-related and corrections officials. Answers to these questions will reveal how the local criminal justice system is actually operating.

What About Citizen Support? The public ultimately decides who will be elected to office and how its taxes are spent. Citizen input on criminal justice procedures may not have an immediate effect, but without the support of the lay public no criminal justice system can expect to operate for very long.

The ABA Section of Criminal Justice has produced a series of audio-visual materials on mobilizing citizen support for the criminal justice standards process. In cooperation with the Chamber of Commerce of the U.S., the Section produced in 1973 an audio-video tape, "Modernizing Criminal Justice Through Citizen Power," which has since been transferred on to 16mm film. The tape features a panel discussion of the history of the ABA Criminal Justice Standards and the importance of citizen support for their implementation. A brochure under the same title specifies steps citizens can take to monitor and effect change in criminal justice procedures.

In 1975, the Section began disseminating three TV spot announcements for public service broadcasting nationwide. The first of these alone registered some 82,500,000 viewer impressions. A flyer on steps citizens can take to improve the criminal justice system was then sent to viewers who wrote to the ABA for more information.

Those who would attempt to educate the general public about the needs of and viable alternatives available to criminal justice agencies should also consult "How to Mobilize Citizen Support for Criminal Justice Improvement: A Guide for Civic and Religious Leaders." This new booklet contains suggestions for leaders of citizen groups who wish to effect institutional change to make our criminal justice system and those who operate it worthy of respect.

## Summary Statement

The basic *modus operandi* of implementing standards and goals is really quite simple and, if followed, can result in a cost-efficient and impressive thrust for criminal justice improvement. A comprehensive inventory of needs at the state level; selection of qualified key leaders to serve as an implementation task force; careful setting of goals and design of strategy in concert with all other criminal justice planning activities; and intensive and continuing education—these are the essential steps toward lasting modernation.

## II. IMPLEMENTATION STRATEGY AT WORK: CASE STUDIES

### A. Florida

By Robert M. Ervin\*

By order of the state supreme court, effective February 1, 1973, Florida became the first state to implement most of the ABA Standards by formal court rule. It was also the first of three pilot states chosen by the Section in 1968 to substantially complete the implementation job. The Florida story is thus illustrative of how the Standards can actually be implemented in a state.

Like a number of its sister states, Florida is a "rule state" with an integrated court rule system. Under the state constitution the Florida Supreme Court exercises the power to prescribe rules of practice and procedure for all courts in the state. Thus, the Florida Supreme Court had the capacity by rule-making to adopt many of the Standards addressing themselves to procedural matters. Some Standards of a substantive nature, however, such as those on sentencing, required legislative enactment in Florida. The state thus became the Section's pilot "combination" state where both court rules and legislation would be necessary to accomplish the implementation job.

Further, the Section was attracted by the fact that Florida has a strong, forward-looking, well-organized state bar association with a strong interest in criminal justice reform. Moreover, among the bar's leadership were a great number of officers and active members of the ABA Criminal Justice Section. Accordingly, the Section selected Florida as one of the three pilot states in which

\* Chairman, ABA Section of Criminal Justice, 1975-76. Article reprinted from 12 Am. Crim. L. Rev. 493 (1975). Attorney at Law, Tallahassee, Florida.

the "do's" and "don'ts" of implementation would be developed.

### *Initial State Organization and Planning*

Experienced Jacksonville trial lawyer Albert J. Datz, long active in the Section, agreed to chair Florida's Implementation Committee. Serving as deputy chairman was George R. Georgieff, assistant state attorney general for criminal law matters. The initial 25 member steering committee included Florida's chief justice, district court judges, trial court judges, prosecuting and defense attorneys (both public and private), law school deans, and legislators. This group was assigned the task of formulating a detailed funding and implementation plan. As part of its orientation, the Florida implementation leaders had the benefit of attending the Section's first national implementation seminar, held at the Tenth Circuit Judicial Conference in July 1969.

In February 1970, Section Staff Director H. Lynn Edwards met for a full day in Fort Lauderdale, with the 25 member committee, rendering them valuable advice in setting priorities, undertaking long-range planning, and establishing a vital link with the national implementation effort. His close ties to and technical knowledge of the Law Enforcement Assistance Administration enabled him to obtain substantial funding assistance from LEAA state planning agencies in Florida; additional funding help came from the Section itself. The Florida committee also maintained close ties with the Section's national implementation committee, chaired by Justice Tom Clark.

### *Comparative Analysis*

With the committee's help, Professor Gerald T. Bennett of the University of Florida College of Law assembled a team of exceptional law students and prepared an excellent comparative analysis of the nine approved ABA Standards with Florida criminal rules and laws. The widely distributed analysis readily disclosed how Florida's criminal justice system measured up against the Standards. With its principal tool available as a blueprint for action, the committee took its case to the public.

### *State Organization, Planning, and Implementation*

In February 1970, the Committee sponsored a successful implementation conference for some 200 carefully-chosen guests and with outstanding speakers provided from among the Standards' drafters and Florida's criminal justice authorities. Each of the 25 members of the Implementation Committee

mentation committee was authorized to invite 10 guests to the seminar. Every member of the Florida Supreme Court attended the educational conference, as did every member of Florida's four district courts of appeal, members of the state legislature, legal scholars, prosecutors, defense lawyers, and, significantly, a large group of non-lawyers, including news media personnel. The results were outstanding with at least two prominent newspapers printing favorable editorials.

#### *Special Advisory Committee to the Supreme Court*

At the end of the two-day meeting, Chief Justice Richard W. Ervin announced that the state supreme court had informally resolved to appoint a committee to draft and submit to the court proposed revised criminal procedure rules which would implement the ABA Standards. An Advisory Committee was named several days later, with Albert J. Datz as chairman.

On May 1, 1972, the Advisory Committee filed its work product with the supreme court, a document representing more than 30 days of actual meeting time by the full committee. The product covered all the approved ABA Standards of a procedural nature. Funds provided by the Section permitted printing of the document and distribution throughout Florida and solicitation of the comments of the bar, news media, judges, legislators, and civic leaders.

The supreme court announced hearings on the proposals and, pursuant to the practice prevailing in Florida, formally sought the opinions of the Florida Bar and its standing committee on Florida court rules. On almost every point, the Florida Bar offered its support. Oral arguments were heard by the court sitting en banc on July 11, 1972. The court filed its opinion and an implementing order on December 6, 1972; on rehearing the court slightly amended its former order by opinion and order filed January 29, 1973. Florida's new rules of criminal procedure became effective February 1, 1973.

#### *What Was Accomplished in Florida?*

The new rules of criminal procedure in Florida embody most of the *ABA Standards for Criminal Justice*, although the language is not always identical to the black-letter Standards. Steps were also taken to implement Standards requiring legislative implementation. By November 1974, the staff director of the Florida legislature's House of Representatives Criminal Justice Committee had found that at least 85 percent of the principles in the Standards

needing statutory implementation had been adopted in Florida.

The Florida experience has served not only Florida—but immeasurably improving the administration of criminal justice in that state—but has benefited the nation as a whole. By experience gained, documented analyzed, Florida has served as a model for implementation efforts elsewhere.

#### **B. Arkansas**

**By Edwin R. Bethune\***

The State of Arkansas now has a modern, completely new code of criminal substantive law and procedure. This memo is to summarize the important steps in the revision effort, which began in 1970.

Since achieving statehood in 1836, Arkansas had never had a systematic revision of criminal law and procedure. In the past, changes were piecemeal and, more often than not, took the form of ad hoc responses to specific problems or particular court decisions. The scheme of substantive and procedural law was antiquated and internally inconsistent. In 1970, leaders of the Arkansas bar and bench decided it was time to do something.

Arkansas needed a starting point. Fortunately, the concern in Arkansas coincided with the American Bar Association effort to implement its series of *Standards Relating to the Administration of Criminal Justice*. The Criminal Justice Section of the American Bar Association was offering to help states that were interested in reforming criminal law and procedure. Arkansas took the bait and, with the full and continuous support of the ABA, revised its entire body of criminal law and procedure in the space of five years.

The Arkansas revision story can be used as a guide and example for your state.

The first order of business is to prepare a comparative analysis to determine differences between existing law and the ABA Standards. In Arkansas, with a little seed money from the American Bar and some help from LEAA, University of Arkansas law students quickly prepared comparative analyses covering the entire scope of the ABA Standards.

Next, Arkansas, with the help of the ABA experts, conducted three separate workshops to study the Standards and the comparative analyses. The workshops were imminently successful. Judges, prosecutors, defense

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attorneys, law enforcement officials and others in the criminal justice system were invited to insure a good balance of participants. Sets of Standards and comparative analyses were distributed to workshop participants in advance and the participants were given reading assignments and asked to be responsible for the discussion of particular concepts. To encourage participation, an LEAA grant was obtained which underwrote the travel and lodging expenses of participants. Press coverage of the workshops was intense and much favorable publicity for the Arkansas bench and bar and the American Bar was obtained. At that point the reform idea was rolling and gathering momentum in Arkansas.

Along about the time of the last workshop, the Chief Justice and Attorney General of the State of Arkansas entered into joint sponsorship of an 18-member Arkansas Criminal Code Revision Commission. The Commission was charged with the responsibility of revising both substantive and procedural law. It was divided into two 9-member committees. Composition of each committee was carefully considered in order to insure proper representation of concerned groups and institutions. Members included an associate justice of the state's Supreme Court, a sheriff, a municipal judge, two circuit judges, a chancellor, three former prosecuting attorneys, a state senator, a state representative, two law professors, and several attorneys skilled in the practice of criminal law. The respective committees were given carte blanche to reform the Arkansas criminal process, and it was understood that they would rely heavily on the work product emanating from the workshops.

Members of the Arkansas Criminal Code Revision Commission donated their time and expertise, being reimbursed only for their expenses. Expenses incidental to the reform effort were borne by LEAA grants, American and Arkansas Bar contributions and \$25,000 which was appropriated by the Arkansas legislature in 1973.

By the early part of 1975, both the substantive committee and the procedural committee of the Arkansas Criminal Code Revision Commission had completed their work. The substantive work was based largely on the Model Penal Code, and, of course, was presented to the legislature for adoption. The legislature did adopt the substantive code and it became effective January 1, 1976.

The procedural rules, based largely on the American Bar Association Standards and the work product emanating from the workshops, were filed with the Arkansas Supreme Court in early 1975. On December 22, 1975, the court issued a per curiam order effective January 1, 1976,

adopting and promulgating the rules of criminal procedure recommended by the procedural committee of the Arkansas Criminal Code Revision Commission.

Prior to 1975 changes in the Arkansas criminal procedural law had to be made in the legislature. As a part of the revision process it was determined by key persons that Arkansas would do well to shift the responsibility for making procedural law from the legislature to the Supreme Court. Thus, a fundamental decision was made that Arkansas would overcome the inertia of custom and opt for judicial rulemaking in the area of pleading, practice, and procedure. The Arkansas court has since found that it had the inherent power to make rules of procedure but to clear the air, once and forever, a bill was introduced in the Arkansas legislature in 1971 which affirmatively shifted the responsibility from the General Assembly to the Supreme Court. In other words, the legislature quitclaimed the responsibility for pleading, practice, and procedure in criminal cases to the Supreme Court.

The Arkansas experience proves the old adage, "Where there's a will, there's a way." The entire reform effort was completed in five years at small cost to the taxpayers. When it is remembered that the existing law was a hodge-podge of anomalies and contradictions which had not been dealt with seriously since 1836, one can appreciate the great progress that was made.

Justice Tom C. Clark, in paying tribute to Arkansas, noted that the state has a system comparable to any other state and certainly has the highest standards of any state of comparable size. He has complimented the speed with which the state passed both a substantive and procedural code and has indicated that other states would do well to adopt such an "enlightened code." He has also been very complimentary of the use of non-lawyers in the work of the Criminal Code Revision Commission. He suggested that other states should use the "cross discipline" approach in forming working committees. *Finally, Mr. Justice Clark said that Arkansas can be an example for the rest of the nation-Arkansas not only believes in justice, Arkansas does something about it.*

### C. Arizona

By Sarah Dickinson Grant\*

On July 15, 1972, the Arizona State Bar Committee on Criminal Law presented to the Arizona Supreme Court

\* Chief Staff Attorney, Arizona Supreme Court.

Proposed Rules of Criminal Procedure. This work was the culmination of literally thousands of hours of effort on the part of the committee and its staff.

The Rules of Criminal Procedure had last been revised in 1955. In 1970, the Arizona Supreme Court, under the leadership of the then Chief Justice Jack D. Hays, determined that a thorough review of the criminal justice system was in order. The Supreme Court has broad rule-making power as the Arizona Constitution provides it with "power to make rules relative to all procedural matters in any court." Article VI, Section 5, paragraph 5.

The State Bar Committee on Criminal Law was appointed to act as the Supreme Court's advisory board. Research and drafting work was done by a full-time staff employed under a U.S. Department of Justice grant and funds made available by the Supreme Court and the Arizona Legislature. Grants came through the Arizona State Justice Planning Agency and the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistant Administration of the United States Department of Justice (pursuant to Part C, Section 301B or Title I of the Omnibus Crime Control and Safe Streets Act of 1968). The committee was chaired by the then Dean of the University of Arizona College of Law, Charles E. Ares. Committee members were representative of prosecution and defense, both public and private, as well as trial judges and justices of the peace.

The committee drew heavily from the ABA Project on Standards for Criminal Justice. After the committee submitted the proposed rules to the Supreme Court, the Supreme Court requested comments from the bar and bench of the state. The comments were collated by a central staff attorney of the Supreme Court. The Supreme Court then set about the arduous task of considering the committee's work as well as criticisms and comments pertaining thereto. The Court made certain revisions in the rules as proposed to them. The new Arizona Rules of Criminal Procedure were then promulgated April 17, 1973, to be effective September 1, 1973. At that time, Chief Justice Jack D. Hays announced that after the rules had been in effect for one year, the Court would again call for comments and criticisms from the bench and bar. This was done in September, 1974. As the comments came into the court, they were collated by central staff attorneys. The Supreme Court, under the leadership of Chief Justice James Duke Cameron, then revised the rules accordingly and on August 1, 1975, issued the 1975 Revisions to the 1973 Rules of Criminal Procedure.

Areas of major revisions occurred in speedy trial, omnibus hearing, and probation revocation. Generally speaking, in these areas there was a retrenchment to a less rigid position. For example, omnibus hearings were made optional rather than mandatory. Also, trial judges were given the option of dismissing a case with or without prejudice for a non-constitutional speedy trial violation. The Arizona Rules of Criminal Procedure, however, still incorporate most of the ABA procedural standards for criminal justice. The ABA standards are cited frequently throughout the comments to the rules. Rules on discovery and on post-conviction relief have been particularly successful. Interestingly, the rule on discovery raised the most fears when promulgated, but has caused very few problems since it has been in effect and is now generally accepted. The rule on post-conviction relief which provides for an evidentiary hearing in the trial court and consolidation with an on-going appeal has saved many judicial man-hours as well as duplication of effort by court clerks. This is a great boon with the ever-increasing case load. The Arizona experience has been that the rules have worked well and have continued to receive increasing enthusiasm and acceptance the longer they are in effect.

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## Application For Membership Section of Criminal Justice American Bar Association

(Please note: ABA Membership is prerequisite to Section Membership. Mail to 1800 M St. NW, Washington, DC 20036.)

### PLEASE CHECK APPLICABLE SQUARE

- ☐ I apply for Section membership and enclose annual dues of \$20.
- ☐ I apply for Law Student Section membership and enclose annual dues of \$5. I already belong to the ABA Law Student Division.
- ☐ I apply for Law Student membership in both the ABA and the Section. I enclose \$10.
- ☐ I am a non-U.S. lawyer. I apply for membership in the Section as an International Associate, and enclose \$20.
- ☐ I am a non-lawyer, but apply for Section membership and enclose \$20.00 for
  - ☐ Judicial Associate (non-lawyer judges, court administrators, federal court executives).
  - ☐ Bar Executive Associate.
  - ☐ Administrative Law Associate.
  - ☐ Educational Associate.

I am a:

- ☐ prosecutor
  - ☐ state ☐ federal
- ☐ defense counsel
  - ☐ public ☐ private
- ☐ judiciary member
  - ☐ state ☐ federal ☐ local
  - ☐ trial ☐ appellate
- ☐ law enforcement official
- ☐ law professor
- ☐ law student
- ☐ military
- ☐ other (specify): \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

# END

*7 files/min*