

Model Penal Code Selected Bibliography*

I. AMERICAN LAW INSTITUTE PUBLICATIONS¹

The American Law Institute (ALI or “the Institute”) is an organization that was formed to clarify and improve the law.² It began working on the Model Penal Code in 1952 after two previous attempts at a criminal code had been abandoned.³ In the following ten years, numerous reports, drafts, and revisions were produced in relation to the code.⁴ Many of these reports were initially confidential, but they have since been made available to the public.

What follows is a list of materials produced by the ALI during the process of considering, debating, and drafting the Model Penal Code. These documents are archived at the University of Pennsylvania’s Biddle Law Library. A list of what the Library has (and where in the archives it is located) is available at:

<<http://www.law.upenn.edu/bll/specoll/ali/findaid1.htm>>.

(Model Penal Code material is under Series 5, sub-series 11 on this page). Copies of these materials are available from the Biddle Law Library and may be obtained by calling (215) 898-5011 or (215) 898-7418. A copying fee and, for “non-academics,” a service charge may be assessed for this service.

* This bibliography was compiled by Howard S. Beyer, class of 2001, University at Buffalo Law School.

1. This bibliography is meant to highlight the major ALI publications concerning the Model Penal Code. For various miscellaneous reports, memos, and press releases not listed here see

<<http://www.law.upenn.edu/bll/specoll/ali/findaid1.htm>>.

2. See Herbert Wechsler, *Codification of the Criminal Law in the United States: The Model Penal Code*, 68 *Colum. L. Rev.* 1425, 1425 (1968).

3. See *id.* at 1425-26.

4. See *id.* at 1426.

A. Preliminary/Discussion Material

A project is undertaken by the Institute only upon careful consideration and prior approval of its Officers and Council. When a project has been authorized, an expert in the field of law to be considered, usually a legal scholar, is designated as Reporter. With the help of assistants, the Reporter does the basic research and prepares the initial draft of the material.⁵

The Proposal To Prepare a Model Penal Code
(June 1951).

Discussion Draft 1 (Nov. 17, 1952).
(Property Offenses).

Discussion Draft 1 (Nov. 23, 1952).
(Sentencing & Treatment).

Discussion Draft 1 (Nov. 25, 1952).
(Plan of the Code).

Discussion Draft 1 (Nov. 25, 1952).
(§ 2.10 – Definitions (Partial);

§ 2.04 – Liability for Behavior of Another; Complicity).

Discussion Draft 1 (Dec. 3, 1953).
(Art. 6; Art. 7; § 3.01).

Discussion Draft 2 (Nov. 2, 1953).
(Sentencing & Treatment).

Discussion Draft 3 (Nov. 20, 1953).
(Art. 206-Property Offenses).

Discussion Draft 4 (Feb. 13, 1954).
(Art. 206-Property Offenses).

B. Preliminary Drafts

After writing the initial draft (the Preliminary Draft), the reporter submits it to a group of advisors consisting of judges, lawyers, and law professors.⁶ These advisors

5. American Law Institute, About the American Law Institute (May 14, 2000) <<http://www.ali.org/ali/thisali.htm>> [hereinafter "ALI Homepage"].

6. See Geoffrey C. Hazard, Jr., The American Law Institute: What it is and What it Does (May 14, 2000) <<http://www.cnr.it/CRDCS/hazard.htm>>

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subject the Reporter's draft to a "critical review," with the end result being reviewed by the American Law Institute's Council.⁷

Preliminary Draft (Nov. 28, 1958).
(§§ 208.32, 208.40, 207.11-16).
Preliminary Draft (Jan. 16, 1959).
(§ 2.10 – Entrapment; Commentary).
Preliminary Draft (Jan. 19, 1959).
(Art. 2, § 2.08; Art. 5, §§ 5.01-04; Art. 201,
§§ 201.1-7, 201.10-11, 201.20, 201.40, 201.50, 201.60).
Preliminary Draft (Mar. 25, 1959)
(Art. 2 & Art. 201).
Preliminary Draft (Mar. 25, 1959).
(Art. 207 & Art. 208).
Preliminary Draft (Nov. 9, 1959).
(Art. 305 – Long Term Imprisonment;
Art. 403 – Administration of Institutions).
Preliminary Draft (Nov. 16, 1959).
(Parts of Art. 201 & 206).
Preliminary Draft (Nov. 19, 1959).
(§§ 5.01-05).
Preliminary Draft (Jan. 11, 1961).
(Art. 250; Art. 251; § 5.06; Text,
Comments & Illustrative Statutes).
Preliminary Draft (Jan., 23, 1961).
(§ 3.03 – Execution of Public Duty
(Revision); Comments).
Supplement to Preliminary Draft of January 11,
1961 (Feb. 5, 1961).
(Alternative Draft of § 250.1 – Disorderly
Conduct; Riot).

[hereinafter "Hazard"]; ALI Homepage, *supra* note 5.

7. See ALI Homepage, *supra* note 5; Hazard, *supra* note 6.

C. Council Drafts

The council of the American Law Institute, whose membership changes from year to year, governs the Institute and is comprised of about sixty people.⁸ Procedurally, nothing can be published as a work of the Institute unless it has been approved by this body.⁹ From 1953 to 1962, council members examined, considered, and debated the products of Reporters and Advisers in thirty-one Council Drafts.¹⁰

- Council Draft 1 (Feb. 17, 1953).
(Reporter: Herbert Wechsler).
- Council Draft 2 (Feb. 23, 1953).
(Selected Sections 5-346).
- Council Draft 3 (Feb. 23, 1953).
(§§ 2.01, 2.04).
- Council Draft 4 (Mar. 4, 1953).
(Art. 206 - Property Crimes).
- Council Draft 5 (Mar. 3, 1954).
(Art. 1; Art. 6; Art. 7; Art. 301).
- Council Draft 6 (Mar. 5, 1954).
(Art. 206 - Property Crimes).
- Council Draft 7 (Feb. 16, 1955).
(Criminal Responsibility of Private Corporations).
- Council Draft 8 (Mar. 1, 1955).
(Art. 207 - Sexual Offenses, Part 1).
- Council Draft 8 (Feb. 16, 1956).
(Art. 207 - Sexual Offenses, Part 2).
- Council Draft 9 (Mar. 1, 1955).
(Art. 1; Art. 2; Art. 4).
- Council Draft 10 (Feb. 16, 1956).
(Art. 207 - Sexual Offenses & Offenses)

8. See Norman Silber & Geoffrey Miller, Toward "Neutral Principles" in the Law: Selections from the Oral History of Herbert Wechsler, 93 Colum. L. Rev. 854, 923 (1993).

9. See *id.*

10. See Wechsler, *supra* note 2, at 1426.

- Against the Family, Vol. 1).
Council Draft 10 (Feb. 16, 1956).
(Art. 207 – Sexual Offenses & Offenses
Against the Family, Vol. 2).
Council Draft 11 (Feb. 23, 1956).
(Territorial Applicability; Time Limitations;
Double Jeopardy).
Council Draft 12 (Feb. 27, 1956).
(Sentencing; Parole; Organization of Correction).
Comments on Council Draft 12 (Feb. 27, 1956).
(Comments).
Council Draft 13 (Mar. 4, 1957).
(Louis B. Schwartz, Reporter; Includes Council
Draft 14).
Council Draft 14 (Mar. 5, 1957).
(Sentencing & Treatment of Young Adult
Offenders – Text, Comments & Appendix).
Council Draft 15 (Mar. 6, 1957).
(Chpt. 208 – Offenses Against Government –C;
Perjury & Other Falsification to Authorities).
Council Draft 16 (Nov. 23, 1957).
(Art. 207; §§ 11, 13-17).
Council Draft 17 (Feb. 20, 1958).
(Art. 208 – Offenses Against Government
& Other Public Institutions; §§ 10-15, 25-28, 33-35,
40-44, 50).
Council Draft 18 (Mar. 3, 1958).
(Art. 3 – General Principles of Justification;
§§ 3.01-3.10, 7.01, 305.13).
Proposed Revision of Section 3.06 (June 3, 1958).
Council Draft 19 (Nov. 20, 1958).
(§§ 3.06-3.07; Appendix A; Appendix B).
Council Draft 20 (Nov. 26, 1958).
(§§ 208.32-32(c), 208.40, 207.11-16).
Council Draft 21 (Mar. 5, 1959).
(Art. 2; §§ 8, 10; Art. 201, §§ 1-6, 10, 11, 60;
Text, Comments & Appendices).
Council Draft 22 (Mar. 3, 1959).
(§§ 207.11-16, 208.32-32(a), 208.40).

Council Draft 23 (Nov. 23, 1959).
(§§ 5.01-05; Text, Comments & Illustrative Statutes).
Council Draft 23A (Dec. 1, 1959).
(§ 2.09 – Duress as a Defense; Text,
Comments & Illustrative Statutes).
Council Draft 24 (Nov. 19, 1959).
(§§ 201.12, 201.20-23, 206.16, 206.20-22,
206.25-28, 206.50-52, 206.60-61).
Council Draft 25 (Feb. 5, 1960).
(§ 2.09 – Duress as a Defense; Text,
Comments & Illustrative Statutes).
Council Draft 26 (Feb. 29, 1960).
(Revised § 6.06; Art. 305; Art. 403; Appendix A & B).
Council Draft 27 (Mar. 1, 1960).
(§§ 5.01-05).
Council Draft 28 (Jan. 23, 1961).
(Sentencing & Correction).
Council Draft 29 (Feb. 23, 1961).
(Art. 250; Art. 251; §§ 5.06-07; Text,
Comments & Illustrative Statutes).
Council Draft 30 (Oct. 25, 1961).
(Part II – Definition of Specific Crimes).
Council Draft 31 (Feb. 22, 1962).
(Arts. 1-5, §§ 224.1, 224.X, 224.Y, 50.5).

D. Tentative Drafts

Once the Council approves a draft, it is then presented at the Institute's annual meeting for discussion and debate by all of the Institute's members.¹¹ Members may approve the Tentative Draft, modify it slightly, or send it back to the Reporter and Advisors for additional consideration.¹² Typically, a series of Tentative Drafts is produced over a period of years and these drafts are made available for public distribution.¹³

11. See ALI Homepage, *supra* note 5.

12. See *id.*

13. See *id.*

- Tentative Draft 1 (May 1, 1953).
(Plan of Code; Art. 2; Art. 206).
Tentative Draft 2 (May 3, 1954).
(§§ 1.01, 1.02, 1.05; Art. 6, Art. 7, Art. 206, Art. 301).
Tentative Draft 3 (Apr. 25, 1955).
(Memos: Paul W. Tappan, Proposals for the Sentencing & Treatment of the Young Adult Offender Under the Model Penal Code; Thorsten Sellin, The Youth Correction Authority Act (YCAA) and the Draft Code).
Tentative Draft 4 (Apr. 25, 1955).
(Preliminary Art. 1; Art. 2; Art. 4; Art. 207).
Tentative Draft 5 (Apr. 27, 1956).
(Territorial Applicability; Time Limitations; Double Jeopardy; Liability of Corporations; Parole; Organization of Correction).
Tentative Draft 6 (May 6, 1957).
(Obscenity, Perjury & Other Falsification to Authorities).
Tentative Draft 7 (May 3, 1957).
(Immaturity Excluding Criminal Conviction; Sentencing & Treatment of the Young Adult Offender; Paul W. Tappan, The California Youth Authority and the Model Penal Code).
Tentative Draft 8 (May 9, 1958).
(Art. 3; Art. 208).
Tentative Draft 9 (May 8, 1959).
(Art. 2; Art. 201; Art. 207; Art. 208).
Tentative Draft 10 (May 6, 1960).
(§§ 2.09, 5.01-5.05).
Tentative Draft 11 (Apr. 27, 1960).
(Art. 211; Art. 212; Art. 220; Art. 221; Art. 222; Art. 213).
Tentative Draft 12 (Apr. 29, 1960).
(Art. 305; Art. 403).
Tentative Draft 13 (Apr. 19, 1961).
(Art. 250; §§ 5.07-5.07).
Tentative Draft (Sentencing & Correction

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Provisions) (June 29, 1960).
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Reprint-Tentative Drafts 1-4 (1968).
Reprint-Tentative Drafts 5-7 (1968).
Reprint-Tentative Drafts 8-10 (1968).
Reprint-Tentative Drafts 11-13 & P.F.D. 1 (1968).

E. Final Drafts

According to the ALI:

[w]hen the treatment of a subject has thus been completed, a Proposed Final Draft, consisting of all prior Tentative Drafts and reflecting membership action, may be submitted to the Council and the membership. When the project has been approved by both, the official text of The American Law Institute is prepared for publication.¹⁴

Proposed Final Draft 1 (Apr. 24, 1961).
Proposed Official Draft (May 4, 1962).
Proposed Official Draft:
Changes & Editorial Corrections (July 30, 1962).
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Changes & Editorial Corrections (May, 4. 1962).
Model Penal Code Official Draft & Explanatory Notes,
as Adopted by ALI (1985).

F. Commentaries

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(1985).
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(1985).
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(1985).
Model Penal Code Commentaries: Part II §§ 210.0-
213.6 (1980).
Model Penal Code Commentaries: Part II §§ 220.1-

14. See *id.*

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230.5 (1980).
Model Penal Code Commentaries: Part II §§ 240.0-
251.4 (1980).

*G. Selected Miscellaneous Materials*¹⁵

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Schwartz, Louis B. Article 207-Sexual Offenses (Jan. 7, 1955).

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Sellin, Thorsten. *The Adult Authority of California as a Sentencing & Parole Board* (Dec. 6, 1954).

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II. BOOKS

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WECHSLER, HERBERT, CODIFICATION OF CRIMINAL

15. For other miscellaneous material see
<<http://www.law.upenn.edu/bll/specoll/ali/findaid1.htm>>.

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Child, James W. *Donald Davidson and Section 2.01 of the Model Penal Code (definition of "act" for criminal liability)*, 11 CRIM. JUST. ETHICS 31 (1992).

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