
SUBJECT COMPILATIONS OF STATE LAWS

Research Guide and Annotated Bibliography

Lynn Foster and Carol Boast

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To my parents
James and Janet Foster
And to my husband
James Browning Dinkins

To my parents
Lorraine and Gerald Cunningham
And to my husband and children
Charles, Stokely, and Saul Boast

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PREFACE

This book grew out of the frustration of being asked simple-sounding questions and having to give long, involved answers. Every week at least one person approaches the reference desk at the University of Illinois School of Law Library and asks, "What are all the states' laws on _____?" Whether the patron needs really current information straight from the primary sources or could make do with a somewhat out-of-date list of citations or summaries, or a table compiled by someone else, the ensuing instructions on how to do the search are lengthy and complicated, and the search itself can take several days. Frequently adding to the frustration are the feeling that a compilation on the patron's topic has been done and even published, and the knowledge that present cataloging and indexing practices leave most compilations buried.

To save ourselves and our patrons time and tedium, a pile was started (scraps of paper with citations scribbled on them and thrown in a drawer), and those of us who examined new books and government documents kept an eye out for the treasured but elusive compilations. Anyone who has gathered information in this way can well appreciate how quickly the pile grew. It soon required some arranging in a box; then it became a file, and the vague feeling that a relevant compilation had been done could be verified. We enjoyed watching patrons who were thrilled by the time they could save with our scraps of paper.

The success of the file prompted us to become more systematic in our search. A reclassification project in the law library necessitated reviewing all 50,000 treatises and provided an unusual opportunity to do a thorough retrospective search for compilations. As the file grew and grew it occurred to us that it could be useful to our colleagues in other libraries: those reference librarians who time and again have to teach state law research techniques and those research librarians who actually do compilations.

We soon realized that we had a great deal to learn. There was very little written on this subject, and we thus asked for help (via a questionnaire) from the group who clearly has the most experience and expertise—librarians who provide research services to state legislatures. Their response was generous and confirmed our belief that our file could be useful to others. It also confirmed our suspicion that we were not the only ones keeping such a file. Unfortunately this book does not draw on the numerous in-house compilations or lists of citations to compilations that some librarians have been keeping for several years. The time and resources for such a project simply were not immediately available. However, the interest and need for such a cooperative effort does exist, and we hope it will materialize, perhaps under the sponsorship of the American Library Association or the American Association of Law Libraries. Of course, the need could be quickly satisfied by West Publishing Company or anyone computerizing a comprehensive index to the state statutes, but this does not seem likely in the foreseeable future.

Predictably, the more effort we exerted on this seemingly straightforward project, the more we realized how very much needed to be done to call it a thorough job. But we had to stop, and entries are missing for that reason and because of the usual problems of missing books or books being checked out to unreachable patrons. Undoubtedly, research techniques are missing because we simply did not think of them. Although we have stopped for now, our efforts will continue, so we would appreciate hearing about omissions, errors, and new compilations. We also would like to hear from anyone interested in a more comprehensive cooperative effort.

Actually, when we list all the people we want to acknowledge, it appears that this book was indeed a cooperative effort. We first thank Edward F. Hess, Jr., Law Librarian at the University of Illinois, whose vision goes beyond the walls of his library and whose encouragement and understanding made this work possible. The University of Illinois Research Board and the Library Research and Publication Committee, especially Sue Schneider, provided us with the funds to hire graduate research assistants, and we were fortunate to find outstanding individuals: Janice L. Gross, Carol R. Newman, Roberta Shallenberger, and Vicki L. Tate. At the outset, Cheryl Rae Nyberg helped build the file and at the end, Elisabeth Bissel helped meet the deadlines.

Many colleagues provided us with encouragement and information. In particular we must mention Roger F. Jacobs of the U.S. Supreme Court Library, Liz Kelly of Southern Illinois University Law Library, Cameron Allen of Rutgers Law School Library, and D. A. Divilbiss of the Missouri Supreme Court Library for their never-tiring support. Charlotte Stillwell of Cook County Law Library also provided us with several leads, and Ann Puckett of Southern Illinois University kindly offered her assistance. The legislative reference and court librarians who provided information in response to our questionnaire are acknowledged in Chapter 1.

The staff of the Illinois State Library and Martha Landis of the University of Illinois Reference Department were very helpful in our search for compilations. In addition to providing much support, the staff of the University of Illinois Law Library often bore the brunt of our absences: Nancy P. Johnson, Tim Kearley, Kay Webster, Jean Samet, Sally Stephan, Melony Barrett, Sharon Person, Ken Colberg, Peggy Williams, Madelon Gauer, Chris Coffey, Pat Bingham, and Maria Porta.

Many hours of typing, proofreading, and technical advice were expertly provided by Mary Dawson, Char Morris, Dave Richards, Phyllis Blackwood, Judy Cadle, Lee Ford, and Tom Robertson. Carol Boast completed her work on the manuscript while in Grenoble, France, where Georges Vachaud and Randel Haverkamp were very helpful in locating pleasant living and working facilities. The librarians at Oxford and at the Institute of Advanced Legal Studies in London were generous with their time and splendid U.S. law collections.

Our families provided emotional support and helped with various phases of the book: Stokely James Boast spent several hours looking for compilations in cases on LEXIS and helped number the bibliographic entries, Charles Boast helped compile the cross-references, and Saul Thomas Boast was a diligent proofreader. Tom and Ian Robertson kept the Boast household afloat through the whole adventure, and Bruce and Debbie Wissore helped Lynn Foster survive her first semester of law school so that she could proofread the manuscript.

Thank you all for your support of our work.

March 1980

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I

RESEARCH GUIDE

INTRODUCTION

1

THE RESEARCH PROBLEM

“What are the state laws on _____?” is a question frequently asked in public libraries, college and university libraries, state libraries, legislative libraries, and all types of law libraries. It is reasonable for individuals living in a democracy to expect to be able to answer this question, and on the surface it appears to be a straightforward and brief legal research problem. In fact, finding an answer is often a very difficult and time-consuming task.¹ Anyone who has tried to determine the law on a given topic in one state can well appreciate the effort required. Part I of this book, the “Research Guide,” is intended to provide valuable information to librarians and other researchers who are not familiar with U.S. legal materials as well as to those who have legal research experience but who are seldom faced with doing or locating a compilation. Part II of this book is a subject arranged annotated bibliography of 1,242 compilations that were published between 1960 and the summer of 1979.

Laws, Statutes, and Compilations

The first step in solving any reference problem is to clarify the question. The term “law” in the query “What are the laws on _____?” usually refers to the statutes passed by legislatures. This is the most common usage among both lawyers and laypeople. However, it should be noted that “law” is often used in a more general sense to refer to all forms of state and federal law in the United States: cases decided in courts, statutes passed by legislatures, and administrative rules and decisions made by governmental agencies. Thus, at the outset, it is necessary to clarify what kind of “law” is being sought and to be conscious that not all U.S. law is contained in state statutes (and that indeed many areas are not governed by state statutes at all).² This book focuses on statutes enacted by state legislatures and the terms “law” and “statute” are used interchangeably.

More specifically, this book focuses on statutes enacted by state legislatures for the purpose of governing matters of general public interest (as opposed to the private statutes passed for the relief or benefit of particular individuals) and on doing or locating a compilation of state statutes on a narrow topic. Unfortunately, locating the relevant statutes is not always the whole solution. The interplay of statutes, cases, and regulations just mentioned in the discussion of “laws” must be kept in mind.

Yet another complication is brought out in Felix Frankfurter’s definition, “A statute is an instrument of government partaking of its practical purposes but also of its infirmities and limitations, of its awkward and groping efforts.”³ Statutes are not always clear and must be interpreted by the courts,⁴ and sometimes research must be done to determine the intent of the legislature in passing a particular statute.⁵ Both these types of research are beyond the scope of this book.

Finally, the term “compilation” needs clarification. In this book it is used *only to refer to a collection* of the full text, summaries, and/or citations of all the statutes of all or a number of the states on a particular subject. Some confusion is possible in that a type of publication discussed in this book—a subject arrangement of all the statutes of one state—is sometimes called a “statutory compilation.” However, in this book such a publication is called a “state code.”

A Comprehensive Index to the Statutes of All the States

A single index to the statutes of all the states is not presently available. Some attempts at this enormous task have been made in the past; the resulting indexes are described in Chapter 2. That such an index does not exist now is quite surprising to anyone familiar with the sophisticated research systems available for moving quickly from state to state in search of cases on the same subject. And in light of present-day computer information storage and retrieval capabilities, the size and nature of the body of state statutory materials appear to be quite manageable.

Some electronic data bases of state statutes have been developed. At one time the Aspen Systems Corporation published a computerized index to state statutes (see Chapter 2 for a description) and today has systems designed to assist state legislatures in drafting bills and in publishing their statutes by photocomposition. Aspen does not now have all the statutes of all the states in its data base but does have machine-readable files of all state laws on quality of health care and health manpower licensing laws.

Another special subject statutory data base is being developed by the National Conference of State Legislatures. It hopes to make abstracts of state energy laws available by the middle of 1980 as part of an already existing automated Legislative Information System. Presently this system contains state legislative reports and is available only to the state legislatures.⁶

The most widely available computerized data base of state statutes is LEXIS, a legal research system owned by Mead Data Corporation. This system is designed primarily for case law research and in no way constitutes a comprehensive index to all state statutes. As of January 1979, LEXIS contained the full text of the statutes of only four states. No uniform indexing terms have been applied to these statutes, so a computer search is as hindered by the state by state variation in terminology as is a manual search. In addition, the statutory files on LEXIS are not very current. As of January 1980, the last updating was: Kansas, November 1976; Missouri, January 1976; New York, July 1979; and Ohio, June 1979.

West Publishing Company is the single publisher of the most state statutes (twenty out of fifty states) and is probably in the best position to create a comprehensive index. However, West has no immediate plans to do so.⁷ Thus, for the time being it is necessary to struggle with manual state-by-state searches without the benefit of a manual or computerized comprehensive index to the statutes of all the states. And the compilations resulting from this research remain precious.

OVERVIEW OF THE SOLUTION

Two approaches can be used to ascertain the statutes in all fifty states on a given subject. The results differ in accuracy, currentness, and completeness, while the research time required for the searches also varies greatly. Which approach to use depends on the purpose of the research and the time and resources available. Predictably, the most time-consuming search procedure results in the most accurate, up-to-date, and thorough compilation. Essentially it involves starting from scratch and compiling the statutes on a given subject state by state, using the primary sources and various research aids.

The other approach is to locate a compilation that someone else has done. In many situations such a compilation will suffice as is, or it can be revised quickly to meet the needs of the research problem. Also, locating an existing compilation can be a valuable first step in doing a more complete compilation.

Although most state statutory research is aimed at identifying the laws currently in force, some situations call for laws that are no longer in effect. Tools and techniques for doing and locating retrospective compilations are included in Chapters 2 and 3 along with the techniques and tools for current research.

Doing a Subject Compilation of State Laws

Searching the statutes of all the states is a difficult and time-consuming job. There is little uniformity in the legal terms used, and the statute books for each state are organized differently, utilizing various numbering schemes and formats. Thus, proficiency in using one state's statutes does not necessarily prove helpful in searching the other states. Also, updating procedures vary

slightly and usually involve consulting two or more additional sources for each state. Often the difficulties begin with identifying the proper statute books and updating tools for each state.

All in all, doing a subject compilation state by state is not a simple task. But this approach must be used in situations where the accuracy and currentness of the results are very important.

Locating a Subject Compilation of State Laws

Many subject compilations of state laws have been done. Some compilations are revised on a regular basis, but most are a one-time effort. They vary considerably in format and content and thus vary in usefulness. Compilations are included in a variety of publications: handbooks, looseleaf services, journal and newspaper articles, treatises, and government documents. There is no comprehensive index to compilations. Thus, to conduct a thorough search, it is necessary to check several different indexes. Adding to the difficulties is the fact that compilations are often supplementary material—a small section, a table, or an appendix in a larger work—and thus are not reflected in the indexes.

Other problems with compilations are described well in one of the major legal research treatises:

When such compilations are made for a specific subject, they are likely to suffer from two weaknesses: (1) the compilers have included the obvious laws but failed to include many which have an important peripheral effect and (2) the collections are not kept up to date.⁸

The author goes on to say that there is no easy answer and that the “safest procedure is to make a careful and laborious search” of all the state statutes.

However, if a relevant compilation, particularly one that includes citations to the statutes, can be located quickly, it can be very helpful in the state-by-state search. And in situations where the time, resources, and need for doing a state-by-state search do not exist, a compilation might suffice.

Which Approach to Use: A Survey

Which approach to use—whether to do a compilation or to locate one—is obvious in certain situations. For example, when the U.S. Supreme Court wants to know all the state laws on a subject, the librarians bring together the relevant code and session law volumes for a clerk to examine the full text state by state. Yet an undergraduate wanting to know the state drinking laws for a term paper finds a reasonably current compilation quite adequate. But what about a state legislator who wants an idea of what the other states have done in a certain area or a doctoral student who needs a compilation in order to