

Statement by

S. Dale Furst, Jr., President
American Social Health Association

Presented at a public hearing held by the
New York State Temporary Commission on
Revision of the Penal Law and Criminal Code

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Mr. Chairman:

I am S. Dale Furst, President of the American Social Health Association, and am here to present the views and recommendations of the Board of Directors of the Association on the provisions of Section 235 of the proposed new Penal Law. This section deals with prostitution and related offenses.

May I express to you and your Commission the appreciation of our Board for this opportunity to appear before you.

The American Social Health Association is a national voluntary health agency - not a "reform" agency. It is vitally interested in the proposed provisions of the new Penal Law because of the close relationship between venereal disease, drug addiction, and prostitution. For the past fifty years - since its incorporation in New York State in 1912 - its efforts have been directed at the control of the venereal diseases and the reduction of the practice of commercialized prostitution throughout the United States. In 1961, drug addiction was added to this national program. The headquarters offices of the Association are at 1790 Broadway, New York City.

The Association's program in past years included promotion of the enactment of legislation by states which would give authority for effective law enforcement against prostitution and related offenses. As a health agency, our concern was with the spread of the venereal diseases through prostitution. Largely as the result of the pioneering efforts of the Association and citizen groups throughout the country, proper laws were enacted in most of the states, including New York.

The enforcement of these laws has resulted in the almost complete elimination of red light districts and brothels in American communities. At the present time openly conducted commercialized prostitution exists in only a relatively few communities and, in these, only because of official tolerance or ineffective law enforcement. The Association continues to make on-the-spot surveys in 100 or more American communities each year to determine the volume and kind of prostitution existing and to work with local officials and citizen groups in bringing about effective law enforcement.

It is from this background of policy and experience that the Association, by action of its Board of Directors, proposes the following amendment to Article 235 - Prostitution and Related Offenses - as contained in the proposed new Penal Law recommended by the Commission:

"Patronizing Prostitutes. A person commits a violation if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity."

The reason for the amendment is that the provisions in the proposed new Penal Law would preclude the patron of a prostitute from being considered as committing any violation of the law. The enactment of legislation with this omission would represent a serious backward step in New York State. For example, under current New York law (Title VI-Proceedings Respecting Vagrants-Section 887) controversy has long existed concerning the customer of the prostitute. The provisions of this section appeared to include the customer of the prostitute. However, an opinion by a New York City Magistrate in a test case to the effect that "a man cannot commit an act of prostitution" has established precedent in New York State and has since discouraged attempts to prosecute the prostitutes' customer. This interpretation is unpopular with a number of judges and prosecuting attorneys, and could be challenged in a new

test case. However, if a new penal code is passed without these provisions, it would freeze into the law the impossibility of those judges who are against this interpretation being able to do anything about it.

The omission of the proposed amendment would mean that the customer of a prostitute would be absolved of all responsibility for his actions, and it would put it beyond the power of the court to take any steps whatever by interpretation of the law or decisions, or otherwise, to put pressure on the patron.

However, the amendment herein proposed would eliminate any confusion about interpretation or intent of the law. This provision was included in a new penal code adopted by the State of Illinois in 1961.

The language of the above proposed provision is taken from the Model Penal Code prepared by the American Law Institute and recommended for adoption as model state legislation. A review of the sections on "Prostitution and Related Offenses" as recommended by the New York State Temporary Commission and as contained in the model code of the American Law Institute shows that the Temporary Commission has followed the American Law Institute's provisions closely except for the omission of any provision related to the commission of an offense by the customer of a prostitute.

I should like to quote here excerpts from the Minutes of the Committee of the American Law Institute covering the discussion on the inclusion of the above provision on Patronizing Prostitutes in the Institute's Model Penal Code:

"Now, the theory of the section is this. First of all, the patron is soliciting the commission of a crime....

"I think the point of the original provision for making the man guilty of some offense was a recognition that this was an act that involved culpability on the part of both sexes and not one, and that the culpability of this arrangement was one that led to other criminal

activities, and the original old rule that the man was completely innocent of everything was very definitely based upon a very peculiar-- I hope--standard of conduct with regard to both sexes.

"I think it is offensive to leave the men out of this when the only reason that we are making the women guilty of a crime-- and we recognized this on the floor, that we were dealing with a very profound social problem--that the reason we were making it a crime was because this social problem was one that was exploited by criminals who were not otherwise involved in the social implications of it, and I think that the Institute very definitely should stamp a stigma also on those males who participate in this form of activity, which provides a fertile ground for other criminals."

The Association agrees with these comments and would note further that the patron of a prostitute is a voluntary participant in an illegal act and would therefore seem necessarily to be guilty of a violation. If the patron or customer knows that hiring a prostitute to engage in sexual intercourse is illegal, and that he runs the risk of public exposure as well as of a fine or jail sentence, the number of customers will be greatly reduced.

May we note also for the consideration of the Commission that the re-classification of the act of prostitution from its present status as a misdemeanor under current New York Laws to the less serious status of a violation would not appear to permit the court to commit habitual offenders over legal age for extended custodial or rehabilitative care which in certain individual instances might be desirable alternatives to a fine or to a maximum jail sentence of 15 days. Neither does there appear to be any provision, other than that contained in the regulatory powers of the State Department of Public Health for the purpose of controlling communicable diseases, which

could require that either the prostitute or the customer be examined to determine whether they have a venereal disease in an infectious state and to require appropriate treatment.

In considering our proposed amendment, the Commission should be fully aware of the fact that the "prostitute" may be male or female, and that "engaging in sexual activity" covers homosexual as well as heterosexual relations. The customer, as well as the prostitute, may be either male or female. The proposed amendment would affect the customer, whether the customer be male or female. In the context of the law, as you know, the term "he" includes "he" or "she" as well as the plural.

Mr. Chairman, may I respectfully present this statement for the record, and may I submit also resolutions in support of our proposed amendment signed by the following:

Council of Community Services of Chemung County, Inc.,
by William R. Harvey, President

Council of Community Services of Plattsburg & Clinton County,
by Mrs. Kenneth E. Channell, Executive Director

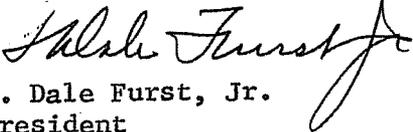
Salvation Army, by Brigadier Dorothy Berry, Consultant,
Correctional Services

Jeweldean Jones, Associate Director, National Urban League,
New York City

Julia R. Mercandino, Probation Officer, Kew Gardens, New York

In closing, I should like to express the appreciation of the American Social Health Association as well as my own personal thanks for this opportunity to present our recommendations to your Commission.

Respectfully submitted,


S. Dale Furst, Jr.
President
American Social Health Association

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