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MEMORANDUM

RE: Letter of Hon. John S. Conable (December 7, 1964) Commenting on the proposed Penal Law.

In September, 1964, Judge Conable and other Judges in his District conferred on the proposed Penal Law. Following this conference Judge Conable forwarded to Chairman Bartlett numerous comments and suggestions respecting various provisions in the study bill. Subsequently, the Commission held a series of executive meetings resulting in changes to the study bill. A revised bill is about to be introduced in the Legislature. This new bill incorporates a number of changes suggested to the Commission during the past year by many interested persons and groups. This memorandum will comment briefly on the suggestions and observations contained in Judge Conable's letter.

(1) Section 10.00, subd. 1, defines a "person" to include a government to make clear that the State or any political ~~division~~ subdivision thereof could be the victim of a crime e.g., criminal mischief or larceny.

(2) Section 30.30, subd. 5, provides that when a sentence of imprisonment is vacated and a new sentence is imposed on such person for the same offense, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time credited against the vacated sentence shall be credited against the new sentence. Hence, if a defendant is admitted to bail following reversal and before the new trial, he would be granted credit only for the time actually served under the vacated sentence when a new sentence is imposed in its stead. This provision is in accordance with existing law (see Penal Law §2193, subd. 4).

(3) Section 35.00, subd. 3(b) provides that a court shall not impose a reformatory sentence where the court sentences the young adult for more than one crime and imposes a term of imprisonment for any one of the crimes. Hence, where a youth is convicted of burglary and petit larceny the court may sentence such defendant to the reformatory upon the burglary conviction and to a sentence of conditional or absolute discharge upon the misdemeanor conviction.

(4) Section 20.00, subd. 4 (d) authorizes a court to impose a sentence of both imprisonment and a fine.

(5) Section 60.05 deals with the "insanity" defense. The Commission, at its recent meeting, decided to substitute the following formulation:

> A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to know or appreciate either:
>
> (a) The nature and consequence of such conduct, or
>
> (b) That such conduct was wrong.

(6) Section 75.10 sets forth the defense of double jeopardy. The Commission decided that this area more properly belongs in the Code of Criminal Procedure. Hence, it will be treated in the revised Code, which is now in preparation.

(7) Section 110.00 defines attempt. The Commission, upon reconsideration, has substituted the following formulation:
"A person is guilty of anattempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime."

(8) Section 125.05 classifies assault in the second degree as a class D felony. If this crime were classified as a class E felony, assaultive conduct constituting only an attempt (which may be rather serious and which under existing law is felonious assault) would be classified as a class A misdemeanor (§110.05, subd. 5).

(9) Section 125.30 is relevant only where the suicide attempt is unsuccessful. Section 130.15, subd. 3, is directed to a situation where the other person does in fact commit suicide.

(10) The language of subdivisions 8 and 9 of Section 140.50 is included because of the impossibility of comprehensively defining coercive conduct by a list of more specific threats.

(11) Sections 170.65, 170.70, 170.75 are not included in the new bill. Defacing identification numbers on a motor vehicle ~~are~~ is adequately covered in Vehicle and Traffic Law §§421, 422.

(12) Section 195.30 requires that the concealment or destruction of a will or codicil be accompanied by an intent to defraud. This is in accord with present law which requires that the proscribed conduct be done "for any fraudulent purpose" (Penal Law §2052).

(13) Section 250.35 (cruelty to animals) has been completely revised. The new provisions read as follows: (revised section numbers)

§245.10 Cruelty to animals; definitions of terms.

The following definitions are applicable to this article:

1. "Animal" means every living creature except a human being.
2. "Mistreat an animal" means unjustifiably to cause or create a substantial risk of causing an animal to suffer or die. The kinds of conduct which, if unjustifiable, constitute mistreatment of an animal include, but are not limited to (a) physical acts committed upon an animal's body which cause it extreme pain, material impairment of health or of some bodily function, or the loss, destruction or mutilation of some organ or other part of the body; or (b) the administering of a poisonous or noxious substance to an animal, or the exposing of any such substance under circumstances which render it not unlikely that material physical injury to an animal will result; or (c) causing an animal to engage in labor or other physical activity of a character or duration that materially impairs or endangers its health; or (d) holding, promoting, witnessing or in any way being party to or encouraging the operation or presentation of an exhibition or other entertainment in which an animal engages in combat, either with another animal or with a person;

or (e) abandonment of an animal by a person responsible for its care by virtue of ownership, custody, possession, control or any other factor; or (f) failure by such a person to supply an animal with sufficient food, water, shelter or other items or conditions essential to its sustenance or welfare.

§245.15 Cruelty to animals.
A person is guilty of cruelty to animals when he intentionally or recklessly mistreats an animal.

Cruelty to animals is a class A misdemeanor.

(14) Section 265.10 (endangering the welfare of a child)proscribes conduct which is "likely to be injurious to the physical, mental or moral welfare of a child less than sixteen years old." It is believed that this language is clearer that the provisions of Penal Law §483.

(15) Section 265.15(4) omits the provision of Penal Law §484(3) making it a crime to give alcoholic beverages to a child. Subdivision 4 has been revised to read as follows: "He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a child less than eighteen years old; except that this subdivision does not apply to the parent or guardian of such child."

(16) Article 270 and all other provisions relating to firearms have been restated verbatim in the revision since these provisions were the recent product of four years of study by the Joint Legislative Committee on Firearms and Ammunition.

(17) Article 400 has been omitted from the new bill. The subject of disposition of contraband and evidence generally will be dealt with in the revised Penal Law.

(18) Section 430.30 has been omitted from the new bill. Its obsolescence is obvious.

PJM
2/26/65