



POLICE DEPARTMENT  
COUNTY OF NASSAU  
STATE OF NEW YORK

FRANCIS B. LOONEY  
COMMISSIONER OF POLICE

1490 FRANKLIN AVENUE  
MINEOLA, NEW YORK

September 22, 1970

Honorable Richard J. Bartlett  
Chairman  
Crime Control Council  
State of New York  
100 State Street  
Albany, New York 12207

Dear Chairman Bartlett:

Enclosed please find a copy of the recommendations concerning the new Criminal Procedure Law which I presented in behalf of the New York State Association of Chiefs of Police to the Assembly Codes Committee on September 21, 1970.

I thought that you would be interested in same and might see fit to actively support the enactment of the necessary legislative amendments.

Very truly yours,

Francis B. Looney  
Commissioner of Police

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Enc.

Statement by

Francis B. Looney

Commissioner of Police

Nassau County Police Department

and

President of the New York State Association of Chiefs of Police

before the

New York State Assembly Codes Committee

on the

Criminal Procedure Law

September 21, 1970

As the President of the New York State Association of Chiefs of Police, I appreciate this opportunity to present the views of law enforcement. It is always heartening when our legislative leaders solicit the thoughts of the police practitioners on matters that relate to their functions. In fact, our Association is committed to establishing a representative voice for our State's police officers on all issues that affect the law enforcement function. It is our conviction that local law enforcement officers should be represented on governmental Committees, Boards and Agencies which are established to deal with matters that so strongly affect their lives and work. I personally feel that the expertise of law enforcement people is essential and the possibility of success is enhanced by their direct participation in any undertaking relating to the enforcement function.

First, before relating any criticisms or making any recommendations, I want to thank this Committee and the members on it who actively supported and voted for the "State-wide Arrest Powers" amendment. This was the first and is the only amendment, to date, of the new Criminal Procedure Law. I am sure I don't have to reiterate the justifications for the amendment, but I do want to convey the appreciation of our Association and the police officers of this State for your confidence and support. The granting of "State-wide Arrest Powers" to all police officers is in the interest of good law enforcement and you are to be commended for your action.

With respect to the new Criminal Procedure Law which became effective September 1, 1970, I wish to make certain specific recommendations some of which were previously presented to the Revision Committee, and not acted upon.

First, it is proposed that an effective Preventive Detention Law be incorporated in our new Procedure Law. I am sure this Committee is aware of the recognition that has been given to the need for such measures in many jurisdictions throughout the United States. In that respect New York State is no different than the other parts of our nation - we have violent compulsive criminal types who are a real and constant threat to the life and well being of the individual law-abiding citizen. These are the types of predators that make "preventive detention" a must.

A legal process whereby the defendant who is a confirmed criminal repeater and pathological offender can be held until he can be properly and thoroughly processed by the courts is essential. I don't believe it is necessary for me to cite statistics to substantiate the fact that far too many serious criminal violators who are released on bail after arrest immediately resume their criminal pursuits. However, I think good reason for concern is indicated by a recent study completed by the F.B.I. which revealed that of those individuals arrested in 1966 and 1967 for the violent offenses of murder, forcible rape, felonious

assault and robbery, 4 percent, 14 percent, 26 percent and 33 percent respectively had a prior record of an arrest for these same crimes. In the important area of conviction, it was found that 75 percent of those arrested in 1966 and 1967 for violent crimes (murder, rape, felonious assault and robbery) had been convicted of some prior charge. It is interesting to note that 49 percent of these individuals had not only been convicted but imprisoned on a prior charge for 90 days or more. When it is realized that arrested rapists, muggers, and armed robbers out on bail have repeated the same identical crimes or even more serious crimes and in some cases three times over before coming to trial on the charge for which they were originally bailed, I don't feel we can afford to close our eyes to this type of danger in our midst. Legislation is necessary to mandate custody of the dangerous, vicious, unrepentant criminal in order to protect the innocent public and I strongly recommend to this Committee that they sponsor and support laws that will provide for judicial implementation of preventive detention in such cases. However, those cases where preventive detention is imposed should be brought to trial within a prescribed time period such as sixty (60) days.

Our Association still strongly recommends the corroboration requirement be eliminated in connection with accomplice testimony and that of victims of sex offenses. It is our conviction that the primary purpose of a criminal trial is to ascertain the truth and all relevant evidence should be presented to the jury for their consideration. Determining the credibility and weight of testimonial evidence is properly a function of the jury and the testimony of an accomplice or a sex victim is no more suspect than that of many other witnesses. I have confidence in our jury system and I am certain that they

are sufficiently sophisticated and capable to carry out their function without legislative preemption.

Another amendment to the new Criminal Procedure Law that we wish to endorse is the proposal which would require the District Attorney in connection with certain serious felonies to first notify the victim in writing before recommending the acceptance of a plea to a lesser offense. This would be a realistic procedure and is in the interest of justice to all parties, particularly the too often forgotten man - the victim.

The incorporation of the Appearance Ticket procedure in the new statute is a worthwhile innovation. For approximately four years, our Department has successfully employed a similar procedure in connection with all Misdemeanors and lesser Offenses except those which are non-bailable. Our experience has been most favorable in that only 20 defendants out of 3,597 cited failed to appear. While the concept of the Appearance Ticket is quite acceptable, I do believe that the mechanics of the procedure can be further refined to help insure its success.

As proposed by the revisors, the Appearance Ticket may be utilized in lieu of arrest in all non-felony arrest situations and the discretion to issue the ticket is bestowed upon the arresting officer.

The proposed procedure also provides for the employment of the Appearance Ticket as a method of station house release without bail as well as in conjunction with a deposit of bail. In analyzing the entire procedure, it would seem that it would be much more practical, if possible, to limit the use of the Appearance Ticket to station house releases, particularly in Misdemeanor cases. This would provide the same desired advantages to the accused, the police, and the public, but more importantly, it would permit a more discriminate appraisal of the situation by a superior officer, thereby insuring its judicious use, and would enable the immediate fingerprinting and photographing of the misdemeanant as required under the provisions of Section 160.10, which will further serve to determine if the accused qualified for immediate release via the Appearance Ticket. In fact, the necessity of accomplishing the identification process in order to ascertain if the accused is wanted for more serious crimes and to determine the existence of a criminal record with respect to making a judgment as to the need for bail completely eliminates the use of the Appearance Ticket as an on-the-street release vehicle in misdemeanor situation, and properly so. Therefore, it is proposed that Section 150.20 be amended to limit the use of Appearance Tickets in misdemeanor cases to station house releases, except possibly in those situations where a Police Headquarters, station house or substation is not readily accessible. This would provide for a much more practical and realistic release procedure and will eliminate the possible indiscriminate use of the Appearance

Ticket, provide time for identification processing, and at the same time make it readily available in appropriate cases.

Also, our Association is dismayed to find that a geographical limitation has been placed on the police officers' Stop and Frisk powers. The Stop and Frisk Law was enacted in 1964 by our legislators and set forth in Section 180-a of the Code of Criminal Procedure. Section 180-a which does not contain any geographical restrictions, was upheld as constitutional by the Supreme Court of the United States. It has served law enforcement well; it has implemented crime prevention efforts and furthered the apprehension of criminal perpetrators by our police officers. Now we find that the Revision Commission has placed a geographical restriction on the Stop and Frisk Law while in the process of transposing it from the present Code to the new Criminal Procedure Law where it is now set forth in Section 140.50. I submit that for the very same reasons that geographical restrictions on arrest powers were unjustified and unrealistic, they are also uncalled for in connection with the Stop and Frisk Law. Our police officers have not abused this most important enforcement tool and have used it to protect our citizens from the would-be law breaker and apprehend the criminal. There is no conceivable reason why a police officer should not be able to legally inquire into suspicious criminal-type conduct any place in the State. It is most impractical to tell our police officers that they have no right to

confront a possible criminal perpetrator if they are outside of their area of employment and that they must ignore suspicious criminal activity and turn their back on possible criminal offenders. This is asking too much of the dedicated police officer and I am sure it is not the intent or desire of the legislators to so confine the police after bestowing upon them "state-wide arrest authority." It is particularly disturbing to find a statutory restriction placed on the right of our police to Stop and Frisk after the Supreme Court of the United States recognized the implied and inherent power of all police officers to stop and frisk on suspicion (Terry v. Ohio - 1968) and our own Court of Appeals on three occasions gave recognition to the unrestricted, implied and inherent police stop and frisk power (People v. Rivera - 1964, People v. Peters - 1967, and People v. Rosemond - 1969). Therefore, in the interest of good law enforcement, I strongly urge this Committee to initiate the necessary legislative action to eliminate this unwarranted infringement on our existing Stop and Frisk powers.

Gentlemen, in closing, I want to thank you for your indulgence and assure you that the proposals and recommendations I have offered are submitted with the conviction that they are essential to and will facilitate both the law enforcement function and the criminal justice system in our State.