

STATE PENAL LAW FOUND CLUTTERED

Study Cites Obsolete Items
and Non-Crime Statutes

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ALBANY, Feb. 1—A commission created to study the penal law has concluded that the state's criminal statutes are suffering from "overweight."

Intelligent excision, the commission said in its first report to the Legislature today, would reduce the code by half and still leave a residue of basic material in need of revision.

The commission, which came into being last July with the assignment to revise and update both the penal law and the code of criminal procedure, has found its task so formidable that it has been unable, with one exception, to come up with any recommendations for legislative action this year.

Its report appraises the job the commission faces in modernizing a hodge-podge of laws that have accumulated over 180 years. The last overhaul of the penal law was eighty years ago.

The commission reported that aside from the desirability for revision of the usual sort, there was an urgent need for "reappraisal of certain fundamental concepts and philosophies lying at the very root of our penal system."

Both codes, the report said, suffer from a plethora of structural, format and substantive deficiencies as well.

Archaic Aspects Cited

Scrutiny of the penal law discloses many archaic aspects, reflecting nineteenth century philosophy, the commission said. As an example, it said sentencing procedure showed little change from that presented in the penal code adopted in 1881.

"Perceptive thinking has led many to the conclusion that the subject [sentencing] treatment is an extremely complex one inextricably interwoven with considerations of correction, education, medical and psychiatric treatment and rehabilitation," the commission said.

Yet the commission found that with the exception of a provision for indeterminate sentences and the Baumes Law, mandating life terms for repeated convictions, there had been no substantial change in sentencing.

One of the problems the commission faces is a huge category of statutes only superficially criminal in nature. The penal law is not just a compilation of such common law crimes as homicide, arson, robbery, larceny, rape and the like, but a collection of highly specialized and seldom prosecuted offenses.

Among some offenses still on the books are ones making it a crime to sell chicks or ducklings under two months of age in quantities of less than six, to post an incorrect schedule of ferry rates, and for an Indian on the Onondaga Reservation to chop down a tree without the written consent of a majority of the tribal chiefs.

"Multiplied by the numbers," said the commission, "these have diluted the basic material of the penal law and destroyed any semblance of orderly arrangement."

Despite legalization of boxing in 1920, the penal law still retains a provision marking criminal "all prize-fighting and various facets thereof." This, said the commission, "was doubtless appropriate in the colorful days when Sullivan and Corbett jostled illegally on barges beyond the arm of the law."