

STATE OF NEW YORK

INTERIM REPORT

of the

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TEMPORARY COMMISSION on REVISION

of the PENAL LAW and CRIMINAL CODE

February 1, 1963



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LETTER OF TRANSMITTAL

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To: *Hon. Nelson A. Rockefeller, Governor of the State of New York:*

The Legislature of the State of New York:

Pursuant to the provisions of Chapter 346 of the Laws of 1961 as amended by Chapter 548 of the Laws of 1962, submitted herewith is a report of the activities of this Commission for the period of February 1, 1962 to January 31, 1963, together with legislative recommendations.

RICHARD J. BARTLETT,
Chairman.

TABLE OF CONTENTS

	PAGE
Introductory Comments	9
Progress of Commission's Work	11
I. Fundamental Areas of the Criminal Law	
A. Capital Punishment	13
B. The Insanity Defense	16
C. Sentencing Structure	27
D. Grand Jury Reports	31
II. Over-all Revision of the Penal Law	
A. Excision and Relocation	35
B. Internal Revision of Basic Material	38
C. Structural Regrouping	44
III. The Code of Criminal Procedure	45
Appendices:	
Appendix A—Act creating Temporary Commission on Revision of the Penal Law and Criminal Code	50
Appendix B—Proposed Act relating to Punishment for Murder in the First Degree and Kidnapping	53
Appendix C—Proposed Act relating to Defense of In- sanity	60
Appendix D—Proposed Act relating to Psychiatric Testi- mony on Defense of Insanity	61
Appendix E—Proposed Act relating to Notice of Defense of Insanity	62
Appendix F—Draft of Act relating to Grand Jury Re- ports	63
Appendix G—Table of Tentative Recommendations re- lating to Excision and Relocation of Penal Law Sections	64

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* Senator Erwin retired December 31, 1962 and was replaced by Senator Elisha T. Barrett.

INTRODUCTORY COMMENTS

The 1962 Interim Report of this Commission was largely devoted to: (1) analysis of the Penal Law and Code of Criminal Procedure, which are the main subjects of the Commission's revisory effort; (2) discussion of fundamental and controversial areas of both substantive and procedural criminal law which are in need of thorough re-examination and legislative attention; (3) general and specific criticisms of numerous phases of both codes from the standpoints of substance, form and structure; and (4) explanation of the approaches to be adopted by the Commission in its full-scale revisional attack upon both codes.

The primary purpose of the instant report is to summarize the progress in these directions which has been made over the past year.

In the realm of fundamental and controversial issues, the following subjects, hereinafter treated in some detail, have received the greatest attention: (1) capital punishment, (2) the defense of insanity, and (3) New York's over-all sentencing structure and the desirability of improvement thereon.

Though not truly of a fundamental character in the above sense, the subject of grand jury reports is included as a fourth issue in this group for present purposes because this matter was specifically referred to the Commission for study by the legislative leaders.

With respect to the more comprehensive tasks of general revision of the Penal Law and the Code, the Commission's plan is, as stated in the 1962 report, to devote the major portion of its early effort to the Penal Law. The approach to this task involves three basic steps or phases of work, which have been termed: (1) excision and relocation, (2) internal revision of basic material, and (3) structural regrouping. The progress thus far made in each of these categories is summarized in the body of this report.

While the work upon the Code of Criminal Procedure is at this point secondary to the revision of the Penal Law, the Code is not being ignored but is and has been the subject of considerable study, the substance of which is recounted below.

With respect to the Penal Law, it is the firm conviction of the Commission that the kind of revision contemplated cannot possibly be accomplished in piece-meal fashion; that is, by gradual or sporadic amendment of various portions, articles and sections of the Penal Law. The only intelligent approach to an over-all revision of the sort being undertaken is one which uproots, reorganizes, re-constructs, integrates and completes the project in its entirety as a unified operation. This means that the revised Penal Law will ultimately be submitted as a complete "package" for consideration by the Legislature.

The Commission is, nevertheless, submitting a few bills at the 1963 session of the Legislature. These bills, which are treated below, deal with certain fundamental and controversial problems which, in the Commission's opinion, merit special consideration by the Legislature prior to and apart from the main body of law to be submitted at a later date.

PROGRESS OF THE COMMISSION'S WORK

In an effort to launch this project on a sound basis, the Commission has held ten official meetings and conducted five public hearings in various parts of the State.

The Commission wishes to express its indebtedness to its legal staff, which has labored unstintingly and to good effect. It is also grateful to its *ex-officio* members and their representatives, who have been most faithful and helpful in their attendance of meetings. In addition, valuable assistance has been rendered by the Judicial Conference and other public agencies and officials.

As seen, the Commission's work over the past year may be roughly divided into three major categories: fundamental areas of the criminal law; over-all revision of the Penal Law; and the Code of Criminal Procedure. The progress made will be discussed under these headings.

I. FUNDAMENTAL AREAS OF THE CRIMINAL LAW

A. Capital Punishment

Perhaps the most controversial of all subjects attached to the criminal law is that of capital punishment. This issue has been vigorously debated in virtually all American jurisdictions with widely varying results. Some states have abolished the death penalty, apparently permanently. Others have at some point abolished it only to restore it later on. The vast majority of jurisdictions have retained capital punishment. However, in all American jurisdictions except New York, the death penalty for murder is optional rather than mandatory; that is, life imprisonment or some other prison sentence is an alternative; the determination of which penalty is to be imposed rests with the jury, the court or a combination thereof depending upon the procedural laws of the particular jurisdiction.

In New York, the death penalty for murder is, in some instances at least, still mandatory. While New York permits the optional or alternative sentence of life imprisonment for first degree murder convictions in two kinds of cases [felony murder and the wanton or depraved type of killing; Penal Law § 1044, subd. 2, and § 1045-a], conviction for premeditated or so-called common law murder (*id.*, §1044, subd. 1) still requires imposition of the death penalty.

For those who question New York's harsh stand, two prime issues naturally arise: (1) Should the death penalty be completely abolished?, and (2) If not, should New York be taken out of the *mandatory* class by permitting alternative imposition of life imprisonment in *all* types of first degree murder cases? The Commission has given extensive consideration and study to each of these questions.

Upon the primary question of whether capital punishment should be abolished altogether, a vast amount of material has been written and compiled by deeply interested persons and agencies throughout the world. A considerable portion of this material has been intensively studied by the Commission and its staff. Intra-office reports and memoranda have been compiled, reducing this material to its substance and marshaling the arguments, *pro* and *con*, for the purpose of assisting the members of the Commission to crystalize their thinking in this intricate area.

The next step taken was the soliciting of representative views of the community. To that end, three public hearings were held in widely separated sections of the State: one in Albany, on November 30, 1962; a second in New York City, on December 7, 1962; and the third in Rochester, on December 14, 1962. At these hearings, a total of fifty-seven persons appeared and testified, some offering their views as individuals but the majority appearing as representatives of associations, agencies or organizations, both public and private. Stenographic transcripts of all these proceedings are in the process of preparation but are not as yet complete.

investigation, the Commission's other steps.

forementioned hearings will be

persons who did not testify at the these hearings adduced a wealth of facts did not, of course, include the Commission is interested. There are a number of reasons for their peculiarly appropriate official or other representative to this subject, may well be of value in its attempt to resolve this subject.

atory and investigatory projects report will be compiled by the Commission. The report will include, *inter alia*, the subject of capital punishment; the supporting abolition, on the one hand, and the recommendation of the Commission, if any, should be taken; and the recommendation.

will, it is hoped, be completed in the near future and to the Governor for his consideration in the next legislative session.

l recommendation, and whatever recommendation or of the issue as a matter of whether capital punishment should now be answered. That being the case, the Commission's demand that the Commission issue posed above: namely, the ultimate question of abolition, should be considered in the next session of the Legislature and adherence to the mandatory death

unambiguously in the affirmative, and to achieve that purpose (see

now §§ 1045 and 1045-a, the death penalty for first degree murder of every variety (§ 1044, subd. 1). Upon a finding of first degree murder defined in the second sub-section of the statute (felony murder and the death penalty is *not* mandatory. Upon its verdict, either recommend or sentence of life imprisonment. In respect, as well as upon the main issue, and a failure to agree one way or the other upon the case as a whole and if the jurors are fully agreed with the recommendation of first degree murder. In case of a recommendation, the court must

impose the death penalty. In case of a verdict of guilty with a recommendation of life imprisonment, the court need *not* follow the recommendation but may, notwithstanding, sentence the defendant to death.

The proposed bill works two drastic changes in this pattern.

The first extends the jury's power of recommending life imprisonment to all cases of first degree murder—common law or premeditated murder included—and, further, renders the jury's determination binding on the court. It is this feature, of course, that eliminates the *mandatory* death penalty to which New York alone has clung.

The other fundamental change involves the procedure whereby the jury or court may decree life imprisonment rather than death as the punishment to be imposed. The steps in this procedure are as follows.

(1) At the conclusion of the trial proper, the jury renders a verdict only upon the issue of guilt or innocence, with no penalty or sentence questions involved. A verdict of guilty of first degree murder stands final and recorded, regardless of any further proceedings with respect to sentence.

(2) The basic sentence is life imprisonment. In fact, the court must automatically impose that sentence if the defendant was under eighteen years of age at the time of the crime. Regardless of age, moreover, the court may impose life imprisonment, if, in its opinion, the death sentence "is not warranted because of substantial mitigating circumstances."

(3) If neither of the factors in (2) is present, the court must conduct a second proceeding, with the jury still participating (ordinarily the same jury). In this, the customary exclusionary rules of evidence do not apply and a wide variety of information, similar to that ordinarily contained in a pre-sentence investigation report, is admissible. At the conclusion of the evidence, summations and court instructions, the jury deliberates and renders a special penalty verdict of either death or life imprisonment.

This two-stage procedure—also made applicable to kidnapping prosecutions, which likewise involve the death penalty and a jury power of recommendation (see Appendix B)—is generally modeled upon comparable provisions recently enacted in California and Pennsylvania, as well as upon those adopted by the American Law Institute in its Model Penal Code. The main purpose of the two-stage proceeding is to permit the jury to make the penalty determination upon the basis of comprehensive information pertinent to that issue. The one-stage or single-verdict system now prevailing in New York (Penal Law § 1045-a) and in the vast majority of other jurisdictions necessarily restricts the scope of the jury's information to matters legally relevant and admissible upon the issue of the defendant's guilt or innocence of the charge, and the jurors are, therefore, ordinarily compelled to make the penalty determination almost exclusively upon the facts of the case itself. The proposed expansion of the orbit of relevancy and admissibility for purposes of the penalty determination, to include background

er and more enlightened medium

system, as contrasted with the (Penal Law § 1045-a), is that the most difficult situation arising when a defendant is not able to agree upon the verdicts for each, the primary and recorded regardless of any reasons with respect to sentence.

The existing system inheres in the need to give separate and individual consideration to—(1) guilt and (2) punishment. It is difficult to decide both issues simultaneously without affecting a likelihood that considerations will be affected or obstructed.

It is worthy of comment, namely the present of the court and the prosecutor with a sentence of life imprisonment for murder are presently precluded from accepting guilty pleas "where the punishment is death" (Code Crim. § 1045-a). Those provisions are to be out-pleaded into the electric chair, is a *fortiori* non-existent where a sentence of life imprisonment. Accordingly the regular pleading system, as it is, should not be applied in this

The theory and principal features of the mandatory death penalty and the approval of the District Attorneys' which has, in the past, submitted proposals for its abolition. It is also significant that, in hearings, some of the staunchest advocates of capital punishment indicated that, in their view, elimination of the mandatory death penalty is a worthy goal.

Insanity Defense

The subject of a fundamental nature is the standard to be predicated for the insanity defense in American jurisdictions, the familiar principal known as the M'Naghten rule. The validity of this standard has frequently been questioned. The Commission has given consideration to that rule and of the entire area of insanity defense.

The subject was held by the Commission to be of such importance as to elicit the opinions and positions

of individuals and organizations. Previously, the problems posed by the present standard were explored by a Study Committee of the Governor's Conference on the Defense of Insanity designated by former Governor Harriman and continued by Governor Rockefeller. The members of the Committee were Richard V. Foster, M.D., David Abrahamsen, M.D., Christopher F. Terrence, M.D., Rev. S. Oley Cutler, S. J., Hon. Edward S. Silver, Francis E. Shaw, M.D., Hon. John Van Voorhis and Professor Herbert Wechsler. The Committee issued a report in 1958, known as the Foster Report, in which all the members concurred in making certain recommendations. That report reads, in part, as follows:

"1. The Statutory Criterion of Criminal Responsibility.

The criterion of criminal responsibility as affected by mental disease, disorder or defect is defined in New York by statute.

Section 1120 of the Penal Law provides as follows:

An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime. . . .

A person is not excused from criminal liability as an idiot, imbecile, lunatic or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:

1. Not to know the nature and quality of the act he was doing; or
2. Not to know that the act was wrong.

Section 34 of the Penal Law further provides:

A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

These statutory provisions bind the New York courts to the criterion of criminal responsibility declared by *McNaghten's* case in 1843, without the possibility of adaption in the light of modern scientific knowledge of the nature and effects of mental disease or defect. 'Whatever the views of alienists and jurists may be, the test in this state is prescribed by statute and there can be no other.' (Cardozo, J. in *People v. Schmidt*, 216 N. Y. 324, 339). As the Court of Appeals has repeatedly said, if there is reason for dissatisfaction with the law, the argument must be addressed to the legislature, not the courts. See *e.g. People v. Horton*, 308 N. Y. 1, 13.

Dissatisfaction with the *McNaghten* rule as the sole test of criminal responsibility when insanity is interposed as a defense has been widespread for many years in both England and in the United States. In some seventeen states, in our federal law and in our military law it has long been supplemented by other criteria, making some allowance for the case where the actor knows the nature and the wrongfulness of his behavior

on of disease of the capacity for states the problem is receiving s state, speaking ex-judicially, rs ago of our statute (*Law and*

s that the present definition of n to the truths of mental life. se, when a killing has occurred e killer of the nature of the act. ase of Mary Lamb, the sister of her mother in delirium. There knowledge that the act is wrong, p her child as a sacrifice to God. re instances of the workings of a lude many instances of the com- the compulsion of disease, the ample, of crimes by paranoiacs xed idea. . . . If insanity is not y so frankly and even brutally, ves with a definition that palter s method is neither good morals nor . . .

view that there are compelling us reasons for maintaining the time has come to frame a defini- h reality. We believe, moreover, ast a formulation which, without ifficulty, will sufficiently improve standards of good morals, good

statement of the defects of the form in which the statute fastens ed that an amendment should be ng objections:

ulty that inheres in the ordinary " as applied to persons suffering The fact that the defendant is nswer to a question, to respond, stealing is wrong, or the fact that as by concealment or by flight, is ence that he knew the nature and ior. Yet one of the most striking of many psychotics is that their fferent from that of the ordinary , their knowledge is usually di- is to say that it is like the know- sitions they can state but cannot and is divorced from comprehen- akes it very difficult to put this gh it often is the crucial point

involved. See *e.g.* the extracts from the record in *People v. Roche*, 309 N. Y. 678, quoted in Morris, *Criminal Insanity: The Abyss Between Law and Psychiatry*, 12 THE RECORD 471 at 483-84; *People v. Horton*, 308 N. Y. 1. The great student of the English criminal law, Sir James Fitzjames Stephen thought that properly construed *McNaghten* did not force this limited conception of the nature of the requisite knowledge. See *History of English Criminal Law*, Vol. II, p. 171. Other students have embraced his view. See *e.g.* Jerome Hall, *Principles of Criminal Law*, p. 518. The point had not, however, received explicit recognition by the New York courts and should, in our view, be met by an amendment of the statute. The knowledge that should be deemed material in testing responsibility is more than merely surface intellection; it is the appreciation sane men have of what it is that they are doing and of its legal and its moral quality.

(2) The *McNaghten* rule improperly confines the inquiry to the effect of mental disease or defect upon the actor's cognitive capacity; the finding must be that he did not know the nature or wrongfulness of the act. The limitation is, as Judge Cardozo pointed out, faithful neither to the facts of mental life nor to the demands of legal, ethical or social policy.

Mental disease, even in its extreme forms, may not destroy the minimal awareness called for by *McNaghten*, while destroying power to employ such knowledge in determining behavior, the capacity that rational human beings have to guide their conduct in the light of knowledge. The point is a related one to that which we have made respecting the impairment of capacity to know. Capacity to know the nature and wrongfulness of conduct may not have been discernibly destroyed and yet the transformations in ability to cope with the external world, worked by severe psychosis, may have otherwise destroyed the individual's capacity for self-control. In cases such as this *McNaghten* decrees legal responsibility. But since it is precisely the destruction of capacity for self-control, in consequence of mental disease or defect, which from the point of view of morals and of legal policy warrants the special treatment of the irresponsible, the statute forces a discrimination which is neither logical nor just. We think that the discrimination should be rectified by an amendment of the statute.

(3) A final difficulty which we think demands attention turns on the degree of the impairment of capacity to know or to control that ought to be demanded before irresponsibility may be acknowledged. Taken on its face, the present statute calls for an impairment that is total; the actor must not know. This extreme conception poses what some have thought the largest problem in the just administration of the test.

Even in the most extreme psychoses, there is often some residual capacity to know or to control; and, judging after the event, the psychiatric expert hardly can declare on oath that at the time of the disputed action the actor was totally bereft

is a dilemma that it certainly pose. In other situations, where t to any absolute appraisal, the size that it must tolerate distinct- at such recognition is required , on whom the threats of penal e and who are within the range r correction, differ from the ect that theirs is an appreciable w and to control. We think the e recognize that this is so and to y for those psychotics who may y, however grossly it has been

the defects of *McNaghten* is American Law Institute in the of its *Model Penal Code*. See tentative Draft No. 4, (1955) pp. propose also is adapted from the the tentative approval of the Section 1120 of the Penal Law ly as follows:

convicted of a crime for conduct le.

responsible for criminal conduct if as a result of mental disease or capacity:

appreciate the wrongfulness of his

conduct to the requirements of law.

formulation would effect may be

reference to a person who is an "insane" would be superseded by defect, the modern terms which the most serious kind and un-

tion which now is material under statute, the inquiry would be not ed *knowledge* of the nature and avior but also whether he was *ate* its wrongfulness. By adding tion to that of knowledge, we ent some leeway to an explication ere verbalization and a deeper ve discussed above. Moreover, in capacity to know or to appre- of his action, as those terms are ily incapable of an appreciation

of its wrongfulness, we have thought it unnecessary to deal with the former possibility explicitly in statement of the principle, as the present statute does.

3. Instead of asking whether the defendant did not know, we think the legal inquiry should be addressed to his *capacity* to know or to appreciate. The reason is that any testimony by the psychiatric expert, addressed to the actor's mental state at a time in the past, will necessarily involve an inference upon his part from his judgment as to the actor's powers or capacity. We think the statute gains in clarity by making this explicit.

4. The inquiry is not confined to the impairment of capacity to know or to appreciate the wrongfulness of the defendant's conduct. For reasons stated earlier, it extends also to the capacity of the actor to conform his conduct to the requirements of law.

5. Finally, both in dealing with capacity to know or to appreciate and with capacity to conform, the question posed is not whether the actor wholly lacked the requisite capacity but whether he lacked *substantial* capacity—meaning, thereby, the quantum of capacity that represents a fair appraisal of the wide range that in our culture excludes a diagnosis of severe mental disease or defect. The scope of that range is essentially a problem for the psychiatric sciences, to be reflected in the testimony of the expert witness, but sifted and evaluated by the court and jury in the light of common sense.

We also recommend in this connection the repeal of Section 34 of the Penal Law (*supra*. p. 2). In substitution for this formulation we propose a further paragraph for Section 1120, as follows:

(3) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

The purpose of this paragraph is to exclude from the concept of 'mental disease or defect' and thus from the standard of irresponsibility so-called psychopathic or sociopathic personalities. These terms are employed by some psychiatrists to categorize persons who are insensitive to moral and social norms, as evidenced by their persistent and repeated conduct. Those psychiatrists who would regard such persons as the victims of disease proceed upon the theory that capacity for law-abiding living in society is a constituent of mental health, with the conclusion that its absence is disease; or else on the hypothesis that psychical disorder underlies all maladjustment of this kind, although the present state of knowledge may not serve to explicate the nature of the psychical disorder except in terms of its results.

It seems quite clear, however, that *McNaghten* cannot safely be relaxed, as we propose to recommend, unless a stricter view

the principle to be applied. For
 ing, as many psychiatrists agree,
 ease solely by reference to the
 product of disease for irresponsibility
 whether the matter is viewed in
 , even more clearly, in terms of
 st make clear that diagnoses of
 to lay the basis for a claim of
 ent state of knowledge we are
 pe from treating persons of this
 and a problem for the organs of

framing our recommendation we
 principle formulated in the *Durham*
 onsibility solely to whether the
 et of mental disease or defect.
 ne of this concept as opposed to
 efulness in freeing psychiatric
 limits now imposed, no member
 ould prefer its adoption to the
 e think, indeed, that our more
 ng as it does the type of causal
 nd act that is required to negate
 more readily to fair administra-
 that it will prove to be far more
 aymen as a basis for amendment

Psychiatric Expert Testimony Is Drawn in Issue.

irresponsibility by reason of in-
 rm, the law needs to be aided in
 iatric expert testimony. The
 rist in the performance of this
 en acutely felt for many years.
 the legal criterion determining
 echnical vocabulary of psychiatry
 e to terms of common speech, the
 a puts upon all expert witnesses,
 hypothetical questions, the his-
 ompany a trial for crime—these
 te to creation of the difficulty.
 ame a panacea for these ills. Nor
 e on all the palliatives that have
 int, however, as to which we have
 some distance towards alleviating
 s. We think it plain that if the
 atric expert testimony, as it ob-
 st be given reasonable leeway in

presenting his conclusions in his own scientific terms. Obvious
 as this is, we do not hesitate to say that there is ample evidence
 that it is far from universal practice to conduct proceedings
 in this way.

If illustration is required it is readily at hand. In *People v.
 Horton*, 308 N. Y. 1, the dissenting opinion of Judge Van
 Voorhis, a member of our Committee, summarizes a part of the
 record as follows (308, N. Y. at 20-21):

“ . . . The testimony offered by Dr. Brancale was to the
 effect that appellant's act was the product of persecution
 by his father and that being actuated by such a delusion,
 appellant did not understand that his act was wrong. He
 testified that, although apparently aware that he was
 killing his father, only 'seemingly' did appellant even
 know what he was doing. This answer was stricken out
 by the trial court. The next question was: 'Q. Doctor,
 did he know what he was doing when he committed those
 acts? A. The answer is no. He was psychotic at the time
 and did not know the nature and quality of his acts.' This
 answer also was stricken out. In response to a similar
 question, the answer was: 'A. No, he was in a schizo-
 phrenic state.' All but 'no' was stricken out. This doctor
 then said: 'I wish to qualify my responses.' In answer to
 the next question of similar import, the doctor said he was
 still responding to his delusional idea. This answer was
 also stricken out by the court. Finally, the doctor was
 compelled to answer categorically 'No'. He added, how-
 ever: 'Your Honor, I think I should be permitted to
 qualify my answers on this in all fairness.

'The Court: You should answer the question.' Defendant's
 attorney took an exception to holding the witness to a
 'yes' or 'no' answer. A little later the District Attorney
 stated: 'You concede, then, Doctor, that this series of
 connected activities seemed to be rational? A. Seemed to
 be rational just as the case of a paranoid praecox. They
 are a whole series of connected activities, yet they are a
 most serious and most malignant form of schizophrenia.
 Just the ability to rationalize doesn't make it rational.'
 This answer was stricken out and the jury instructed to
 disregard it.”

As Judge Van Voorhis pointed out, the trial court in the
Horton case felt obliged to rule as he did by section 34 and
 1120 of the Penal Law. The problem posed by such obstruction
 of the explanations of the witness will, therefore, be lessened
 if our recommendation for the relaxation of *McNaghten* is
 enacted into law. Enlargement of the psychiatric inquiry that
 is material for legal purposes will necessarily enlarge the
 freedom of the witness to present the facts that in his scien-
 tific view describe the mental state of the accused. We agree,
 however, with the American Law Institute that there is need

C. Sentencing Structure

In April, 1962, the Commission commenced a detailed survey of the existing sentencing structure in New York. This survey, which has now been completed, involved a study of the statutes relating to sentences and sentencing in the Penal Law, the Code of Criminal Procedure, and the Correction Law. Subjects such as parole, probation, fines, and commitment of mental defectives and insane persons also were covered.

The Commission found the present structure to be anything but a cohesive, well organized unit, permeated as it is with inconsistencies, ambiguities, inequities and archaisms. Instead of a modern set of guidelines to help effectuate the deterrence of crime and the segregation and reformation of criminals, the State of New York has a few modern procedures engrafted by amendment upon a structure designed for a retributive system.

The following will serve to illustrate the need for a complete overhaul of the structure.

In colonial New York and during the early years of our statehood, sentences usually called for corporal punishment or posting of a bond to keep the peace, or both, and it was not the custom to impose sentences of imprisonment, as such. Imprisonment was relied upon primarily where the offender was unable to post a bond and county jails were the only institutions for the confinement of persons convicted of crime. The reform act of 1796 abolished corporal punishment, reduced the number of capital felonies, and established the state prison system. Since at that time prison was thought of mainly as a more merciful alternative to corporal or capital punishment, it is not surprising to find that, as prison sentences evolved, separate punishments were prescribed for each crime based upon an evaluation of the amount of retribution society should exact for the offense. This basic method has been retained through the years and today—although the criteria for evaluating the punishment to be prescribed may have changed—the procedure of fixing a separate and distinct punishment for each crime is still followed.

A statutory structure with separate sentences for individual crimes contains a tremendous amount of repetition and also lends itself to unjustifiable distinctions in the treatment of various crimes. Moreover, it makes periodic review and reappraisal of punishment a very difficult task because of the separate evaluation of many different provisions and the necessity of amending numerous sections.

To illustrate the repetition involved, there are approximately forty-five separate provisions in the Penal Law prescribing maximum sentences of five years, and almost as many separate provisions setting a maximum sentence of ten years. About seventeen separate provisions are used to authorize a three year maximum and approximately eleven to authorize a maximum sentence of fifteen years.

As for the distinctions in the treatment of various crimes, the Penal Law contains thirteen different maximum prison sentences

years, 5 years, 7 years, 10 years, 15 years, 20 years, 30 years, 40 years, 50 years and life imprisonment. Many different sentences are prescribed. Whatever may have been the time these distinctions were made would be difficult, if not impossible. In other words, while it is quite true that there are distinctions in sentences between crimes that require imprisonment and crimes that require probation or medium-term imprisonment, it is not at all for making minor distinctions

between individual crimes is an inevitable one, one would expect that the distinction between an offense would be reflected in the sentence. Yet an inspection of the Penal Code shows that the relationship between the sentences for different offenses can be punished more or less. As another example, it might be noted that a section covering obscene prints provides that a third offense punishable by imprisonment for more than six months nor more than one year, such a sentence cannot be served in county jails, but in state institutions (*i.e.*, county jails, which are not for indeterminate terms, but for definite terms, authorized, cannot be for more than one year. Sentences to state prison cannot be served in county jails (Penal Law § 2182, subd. 2, § 2183). The only alternative used is to make the sentence for a third offense more than three years (or some lesser term) if the crime involved is defined as a felony. The sentence prescribed for the third offense (more than one year) raises the

distinction between sentences of imprisonment and probation. A review of the Penal Law reveals that, in many instances, the distinctions are as and enigmatic as those in the books so long ago that inflated the effect and made them totally ineffective in recent years; some fines for misdemeanors; and some fines for felonies. For example, a person is punishable by a maximum fine of \$1000 or imprisonment for more than one year if the property subject to lease or sale is punishable by imprisonment for not more than one year (Penal Law § 2160), also is punishable by a fine of \$1000 if a false proof of loss in support of a claim is a felony, punishable by a maximum fine of \$1000 or imprisonment for more than one year (Penal Law § 2162). However, the misdemeanor

committed by failure to pay wages of employees in accordance with the provisions of the Labor Law (Penal Law § 1272) is punishable by imprisonment for not more than one year and a fine of not more than \$10,000.

High mandatory minimum sentences tie the hands of the courts and probation officers in determining a sentence tailored to the circumstances of the offense and the character of the individual defendant. The crime of burglary in the first degree, for example, is punishable by a minimum term of ten years imprisonment (actually this would mean parole eligibility after six years, eight months if the prisoner receives maximum credit for good behavior). However, the court might be of the opinion that, although the offender should be institutionalized for some period, such a term is more than the time required in the circumstances to reform him and may, in fact, serve to destroy him and his family. Yet the court if it incarcerates the offender at all, must pronounce the ten year minimum. The alternatives include a suspended sentence or a plea to a lesser or different crime.

The multiple offender provisions also present a problem with respect to mandatory minimum sentences. These rules make it difficult for the court to exercise discretion in individual cases and may cause the court to suspend sentence rather than impose the minimum. (Second and third offenders receive a minimum which is not less than one-half the maximum prescribed by statute; fourth offenders must receive a sentence with a minimum equal to the maximum that could be imposed for a first offense, but in no case less than fifteen years and cannot receive a suspended sentence.)

In addition to this, the multiple offender laws are blind to the circumstances of the previous felony. Thus, a young man may be convicted of grand larceny for an auto theft when he is twenty years old, avoid brushes with the law for the next thirty years and then be convicted of a second felony. Upon this conviction, the court—if it feels the offender should be institutionalized for any period—must sentence the offender to prison for a term with a minimum of not less than one-half the maximum prescribed by statute for the new crime. Of course, the court can give limited recognition to the circumstances of the first felony by not imposing a longer term.

Although a court generally has discretionary power to determine whether its sentence shall be served concurrently or consecutively with another sentence imposed by it or another court of this State, there are two situations where consecutive sentences are mandatory, one of which serves as an interesting illustration.

Where a defendant is convicted of two or more offenses before a sentence is pronounced upon him for either, and the offenses were not charged in the same indictment or separate indictments consolidated for trial, then the defendant, if he is sentenced on both offenses, must receive consecutive sentences (Penal Law § 2190, subd. 1). This seems to make an important issue depend upon when the trials are had or the pleas taken. If the defendant pleads, or is found guilty in one court and before he is sentenced or pleads or

ne sentences must be consecutive. the second trial or plea until he rge, he can receive a concurrent

parole and consecutive sentences 1945 provides that a person sensible for parole in the same man- minate term with a minimum of n sentenced to an indeterminate thirty years is eligible for parole to an indeterminate term with a). But there is no provision to esecutive sentences and, hence, i e terms with an aggregate mini- e must be held in prison longer risonment.

of "jail time" seems to call for entitled to credit for time spent rge prior to sentencing but there confinement after sentence and l in the commitment. Also, the mbiguous as to the manner of entences.

ar 1963 one can open the Code of and find a provision that author- ly persons. However, § 910 pro- des that: "The binding out or , has the same effect as the in- is own consent and that of his bound out or contracted, to the the county court of the county, ice."

n has lost its utility is Penal Law discretionary authority to commit e convicted of crimes amounting e ages of twelve and sixteen con- raining schools rather than im- penitentiary.

methods for revamping and im- ructure. This phase of the work he Commission already has had with the Chairman of the State r of Correction and a committee e County Judges' Association. nted at the annual state confer- as been conferring with the cor- ity of New York.

onstruction is to design a system ee of each crime is classified and a sentence category. In this way could be used to set forth the

statutory guidelines for all terms of imprisonment. As a part of this step the Commission must formulate sentences for the various categories and, in this connection, it is working on the problem of striking a balance among legislative, judicial and executive controls. The Legislature, of course, defines and must define the limits, but in so doing it deals with principles and not individuals. The courts have an opportunity to take individuals and particular details into account and thus can tailor sentences to fit needs. But the courts in most cases lose control of the offender after he has been sentenced, and the executive must deal with him from that point on. Too much discretion in the courts can result in unjustifiable sentencing disparity and too little can result in injustice in individual cases. Either situation may lead to unwarranted hampering of correction authorities. As noted above, the Commission is conferring with members of the judiciary and parole and correction authorities on the problem.

In addition to structural changes and changes involving the elimination of outdated and inconsistent provisions, the Commission is devoting attention to procedural innovations. Thus, the Commission is considering certain procedures now being used by the Federal Government and sister states, as well as suggestions contained in the Model Penal Code of the American Law Institute.

Proposals in this field will not be offered separately but will be woven into the fabric of the revision of the Penal Law, Code of Criminal Procedure and related statutory material.

D. Grand Jury Reports

For about three centuries, grand juries in this State, after an investigation which did not result in an indictment, have from time to time issued reports critical of the conduct of public affairs in their jurisdiction. The long-existing uncertainty concerning the legality of such reports (sometimes referred to as "presentments") was finally settled by the Court of Appeals in 1961, in *Wood v. Hughes*, 9 N. Y. 2d 144. It here held—in a 4 to 3 decision—that no statutory authority existed for the issuance of reports dealing with misconduct in office by public officials which did not amount to an indictable offense.

Aside from the question of their legality, these reports had also engendered sharply divergent views concerning their over-all propriety. Far from settling this ideological controversy, *Wood v. Hughes* only intensified disagreement on the subject. Proponents of grand jury reports, on the theory that the decision deprived the public of a valuable practice that had long served it well, have striven arduously for the enactment of legislation to permit the restoration of reports. Their opponents, hailing the pronouncements of the majority in *Wood v. Hughes*, have been equally adamant in insisting that the now-outlawed practice should not be permitted to return.

The 1962 session of the Legislature saw the introduction of a number of bills seeking to undo the effects of the Court of Appeals'

ur, the Senate Codes Committee
 ne principal proposals discussed
 n bill (Senate Print. 2486, Intro-
 . 4532) and the Brook bill (As-
 However, no action was taken at
 nent dated March 30, 1962, the
 ne Senate and Assembly referred
 This statement reads, in part,

rt of Appeals ruled that grand
 and up presentments, the Legis-
 ssfire of controversy.

private citizens have called on us
 practice to grand juries, although
 agreement on what restrictions,
 procedure.

ate Bar Association and civil
 at presentments often point an
 al without giving him any legal

his session to resolve this thorny
 e agreed to defer action this year
 on over to the Temporary State
 e Penal Law and Code of Crimi-

dertook an intensive study of the
 jury reports and, on November
 reon in Albany. In the course of
 witnesses, representing interested
 ed well-reasoned statements of
 Commission members and coun-
 t answers.

entered on a proposed bill, pre-
 tion of New York County, pro-
 ports. This proposal was based
 of 1962. One troublesome aspect
 s of witnesses and the members
 problem of how a public official
 ould be afforded a proper forum
 Therefore, in the testimony—*pro*
 ury Association's proposed bill,
 feature therein which provided
 e, the court must conduct a hear-
 of persons criticized the right to
 Such hearing was to be held in
 discretion.

ged this procedure as providing
 onns criticized or named in the
 this point, however, its funda-
 at all or part of the report might

well be made public in the course of the hearing, thus defeating its
 main objective. Discussion of appeal provisions of the bill—which
 were substantially the same as those contained in the Mitchell-
 Bonom and Brook bills—pointed up the same weakness. In an ap-
 peal situation, inevitably, the record on appeal would make public
 the very information the appellate court was being called upon to
 suppress or not to suppress.

As the hearing progressed, a broad spectrum of opinion was
 elicited concerning the grand jury function. There were those who,
 expressing great confidence in the good judgment of grand jurors,
 favored giving the grand jury broad powers to report, unfettered
 by statutory safeguards; in other words, a return to the practice
 before *Wood v. Hughes*. Then, at the opposite pole, there were
 those who felt that any statutory power to report given to the grand
 jury, no matter how much it was ringed by so-called safeguards,
 was undesirable because the accused public official lacked a proper
 forum, had not opportunity to cross-examine or to be represented
 by counsel. Some, such as the sponsors and endorsers of the Grand
 Jury Association's proposal, adopted the middle ground, namely,
 to give the grand jury only limited authority to report and sur-
 round even that authority with safeguards. In sum, the hearing
 was fruitful, materially aiding the Commission in its evaluation of
 the problem.

Following this public hearing the Commission held a series of
 meetings at which it explored and debated the philosophic, legal
 and practical issues involved. It then voted on the question:
 "Shall the Commission recommend a change in the present law
 respecting grand jury reports?" The vote was 5 to 4 in favor of
 maintaining the status quo.*

Therefore, this Commission respectfully recommends to the
 Legislature that no change be made in the present law.

It is the Commission's opinion that adequate official agencies and
 machinery for investigation and report are already on the scene
 and new ones are added periodically as need for them arises. Such
 agencies, in the Commission's view, are well equipped for critical
 evaluation of non-criminal behavior.

Although it recommends that the law not be changed, the Com-
 mission realizes—as, indeed, its own vote on the subject indicates—
 that considerable sentiment exists for restoring at least some form
 of grand jury reports. In the event, therefore, that the Legislature
 is disposed to enact such an enabling statute, the Commission has
 prepared, as its recommended alternative, a bill to accomplish this
 result. A copy of this bill is included in this report as Appendix F.

Briefly, the Commission's proposed bill authorizes grand jury
 reports for two purposes only: (1) those which criticize public
 officers or employees whose acts or failures to act, though reprehens-
 ible, fall short of constituting indictable offenses; and, comple-

* Chairman Bartlett and Commissioners Conway, Halpern and Jones dis-
 sented and voted for restoration of the power of grand juries to make reports,
 subject to appropriate limitations and safeguards.

II. OVER-ALL REVISION OF THE PENAL LAW

A. Excision and Relocation

In accordance with the plan stated in the 1962 report, the Commission staff systematically reviewed the approximately 1200 sections in the Penal Law in order to identify two types of provisions: (1) those essentially administrative in nature, which, therefore, belong in a more appropriate body of law dealing with the same or cognate subject matter; and (2) those which should be repealed because they have no further utility due to changed economic and social conditions, or because they duplicate sections in other chapters of the Consolidated Laws, or because they have been held unconstitutional. Staff memoranda summarized the scope of sections thus identified, cited relevant statutes and background material, and recommended specific dispositions. These explanatory memoranda were circulated for comment to the respective governmental departments and agencies concerned, to bar associations, and to numerous interested organizations and individuals. The replies received have furnished valuable assistance to the Commission. This study, now substantially completed on the staff level, will again be reviewed by the Commission before formal recommendations are made. Ultimately, these decisions, cast in bill form, will be presented to the Legislature concurrently with the submission of the revised Penal Law and Code of Criminal Procedure. A tabular summary of the tentative proposals relating to excision and relocation appears in Appendix G of this report.

The first phase of this initial project involved the identification of Penal Law sections which are essentially of a regulatory or administrative character, *i.e.*, provisions that could be more suitably housed in other bodies of law dealing with the same or similar subject matter.

The following Penal Law sections illustrate the kind of provision that is being recommended for relocation elsewhere. Penal Law § 185-a regulates the sale of baby chicks. The suitable place for this provision is Agriculture and Markets Law Article 15-A, "Sales of Baby Chicks." Penal Law §§ 188-a and 943, relating to auctions, can properly be placed in General Business Law Article 3, "Auctions and Auctioneers." Article 26 of the Penal Law, "Banking," should be transferred to the Banking Law. Penal Law § 440 requires the filing of certificates in the office of the county clerk by persons conducting a business under an assumed name or as partners. Penal Law § 964 authorizes an injunction to restrain an actual or threatened use of a corporate or trade name with intent to deceive. Both sections are of such a regulatory and civil nature that they properly belong in the General Business Law.

As was pointed out in the last report, many chapters of the Consolidated Laws, other than the Penal Law, provide criminal sanctions for violations of some or all of their sections. These provisions, though rarely the basis for prosecution are, nevertheless,

of this State. The Commission
 ong these chapters outside the
 misdemeanor and about twenty
 s in the Consolidated Laws have
 violation of any section in the
 e therein, constitutes a misde-
 rkets Law § 41, Banking Law
 , and Public Service Law § 56].
 ons in the General Business Law
 ome sections in the Penal Law
 a specific section or article, or
 of the Consolidated Laws consti-
 83, 1878].

tains numerous penal sanctions,
 w Article 26, "Banking," fifteen
 matters as investment of bank
 of certificates of deposit, loans,
 and public health are illustrative
 Penal Law contains only a frac-
 tating to the subject. Compound-
 a workable index to the presence
 criminal sanctions outside the
 ne New York criminal laws is a
 e researching of penal sanctions
 ast two bodies of law must be

historically to shifting concepts
 enal provisions in New York's
 tes of 1828, for the first time,
 riminality into a single chapter,
 Other penal sanctions, *e.g.*, those
 the Revised Statutes among the
 related. A regulatory provision
 carried a criminal penalty. Com-
 e Revised Statutes followed this
 on "in those titles and articles
 ts are contained." [Preface to

nd two others were appointed by
 and charged with the task of
 By statute, they were directed to
 ee portions; one containing the
 de, and a third the penal code.
 the crimes for which persons can
 t for the same." [Laws 1857,
 of a Penal Code was submitted,
 ed:

of Penal Law embodied in this
 the leading objects of the Com-
 n the compass of a single volume
 crimes and punishments in force

within this state. . . . The value of the Penal Code must ulti-
 mately depend, in great measure, upon its containing provi-
 sions which embrace every species of act or omission which is
 the subject of criminal punishment." *Draft of a Penal Code*
for the State of New York, iii-iv, (1864).

After the enactment of the Penal Code in 1881, the next reclassi-
 fication occurred when the present Penal Law was adopted in 1909.
 This law, drafted by the Board of Statutory Consolidation, was
 simply a rearrangement of the old Penal Code without any change
 of substance. However, many other chapters of the Consolidated
 Laws, adopted simultaneously with the Penal Law, contained
 criminal penalties. Field's concept of a "single volume of crimes"
 was recognized as unworkable by the consolidators because at about
 this time the area of conduct regulated by penal sanctions was
 expanding. Much of this regulation, as noted before, is done by
 penal statutes not incorporated in the Penal Law proper.

What criteria should determine which provisions belong in the
 Penal Law and which belong in some other body of law? This
 Commission has adopted the view that a sound penal code should
 not cover the entire field of criminality, but instead, should com-
 prise the more fundamental and familiar offenses. Sections in the
 Penal Law that are essentially regulatory or administrative in scope
 should be relocated in other bodies of law dealing more fully with
 the activity regulated or with cognate subject matter. That, gen-
 erally, has been the approach taken in Illinois and Wisconsin which
 have recently revised their penal codes.

The following Penal Law sections are offered as illustrations of
 the type of anachronistic provision being recommended for repeal.
 Section 443 prohibits the transfer of tickets issued by the People's
 Institute entitling a person to a reduced fee for admission to any
 dramatic performance; this institute ceased operating twenty-five
 years ago. Section 1194 relates to the premiums charged by a
 marine insurance corporation for insurance of property transported
 upon the canals of this State. Inquiry by the Commission reveals
 that the situation which this section was designed to correct no
 longer exists. Sections 1960-1964, relating to the quarantine of
 "vessels arriving in the port of New York," have no utility today
 because the Federal Government has assumed and now exercises
 quarantine jurisdiction over vessels entering the port of New York.
 Additionally, under Section 556-4.0 of the Administrative Code of
 the City of New York, the City Department of Health is vested
 with broad authority to inspect and quarantine vessels entering the
 port of New York.

Among the Penal Law sections that are duplicative of provisions
 in some other chapter of the Consolidated Laws are §§ 435-a, 435-b
 and 435-c, relating to the sale and labeling of Kosher food products;
 these three sections are similar to Agriculture and Markets Law
 §§ 201-a, 201-b and 201-c. Penal Law § 1276, forbidding the use
 of unsafe scaffolding and hoists, duplicates Labor Law § 200.
 Penal Law § 1743, relating to the sale of specified poisons, dupli-
 cates Education Law § 6813. Penal Law § 1980, proscribing certain

covered by Public Service Law
er in Penal Law Article 216,
ed in a much more comprehen-
Agriculture and Markets Law

held unconstitutional is § 436-d,
rom which the title page or other
oved or obliterated [*People v.*
he two sections in Penal Law
were declared unconstitutional
el Madden v. Dycker, 72 App.
le ex rel Appel v. Zimmerman,
905)]. In 1915 the Attorney-
opinion that these two sections
Vol. II, 379]. In the following
ourt upheld, against a challenge
ent, legislation prohibiting the
v. Washington, 240 U. S. 387
neral issued an opinion stating
uling "the cited decisions of the
conclusive as to the unconstitu-
he State Constitution." [1959

ative material in the Penal Law,
comprehensive index addressed
iminal laws, will facilitate the
alized field. Excising Penal Law
pocket billiard rooms, budget
nd the like will lend stature and
ed in the revised penal code.

of Basic Material

hus stripped of its dead wood,
branches, the basic crimes and
aised, condensed, regrouped and
articles, accompanied by exten-
randa, have been formulated by
ed by the Commission. Among
and sections dealing with homi-
schief, perjury, contempt, gam-
s disorderly conduct, vagrancy,
In the process of revision are
bribery, extortion, larceny and

ostance and form, most of these
stic changes from the existing
and one prominent feature per-
ne number of sections covering
ly reduced.

cle—virtually completed except

for two or three as yet unsettled controversial points—which not only presents an entirely new structure of crimes and penalties but numbers only seven sections in contrast to the twenty-three contained in the existing article (Art. 94; §§ 1040-1055). Since this proposal, along with others mentioned below, is soon to be circulated for study with a detailed explanatory memorandum, a complete description of the article and all its novel facets will not be attempted here.

One of its features is a single, degreeless murder statute, replacing the existing two-degree pattern. Containing three subdivisions, this section defines the three traditional, basic forms of murder: (1) intentional killing, (2) the wanton or depraved type, and (3) felony murder.

Eliminated here is the ephemeral and frequently unintelligible distinction between intentional killing which is deliberate and premeditated [presently first degree murder (§ 1044, subd. 1)] and that which is not deliberate and premeditated [presently second degree murder (§ 1046)]. Although the determination of whether premeditation occurred in any particular case often boils down to no more than an intellectual exercise in semantics, premeditation or the lack of it is nevertheless the yardstick under existing law which measures the defendant's crime as first degree murder, requiring the death penalty, or as second degree murder, entailing a prison sentence of from twenty years or more to life.

Incorporated in the revised article is the new penalty and sentencing pattern of the bill (previously described in the discussion of "Capital Punishment") being submitted by the Commission at the 1963 legislative session. In this scheme, the sentence for any form of "murder" is either death or a specified prison term. The determination, made by the jury or court, does not depend upon narrow factual issues of the case such as premeditation, but upon a variety of considerations some of which reach beyond the case itself and delve into the defendant's background and history.

Another important aspect of this revised homicide article is a complete overhauling of the field of manslaughter. The current manslaughter sections present two degrees (Penal Law §§ 1050, 1052). Each statute contains several subdivisions and subclauses, devoted to a variety of miscellaneous kinds of killings. There is little order or structure to either statute and, in both substance and form, the provisions are frequently unclear and sometimes illogical as well as prolix. The more familiar types of homicides found therein include so-called misdemeanor-manslaughter, killings in "the heat of passion" and those resulting from "culpable negligence" (§ 1050, subds. 1, 2; § 1052, subds. 2, 3).

While the existing manslaughter sections cover a host of offenses, many of which are superfluous and some downright purposeless, they actually fail to prescribe at least two basic common law forms of manslaughter which definitely belong in any homicide article.

One of these is a killing perpetrated by an act coldly committed with intent to inflict substantial physical injury upon the victim, though not with homicidal intent. This is not manslaughter, nor

the existing article. Only if the "heat of passion" do the manslaughter provisions (§ 1052, subd. 2).

Form of manslaughter, emanating from the law of most American states, is cognizance of an intentional "heat of passion" or under comparable theory of this crime is that a virtue of its intentional character to manslaughter by virtue of standard of mitigation prevails in fatal intent and "heat of passion" The Penal Law now depicts them and correlative ones. "Heat of passion" manslaughter, as under current law, is a mitigating factor which

re-described fundamental forms of homicide: (1) an act coldly and deliberately (2) an intentional killing committed under extenuating circumstances—both manslaughter sections misnamed. The first, inadvertently fail to cover certain current manslaughter offenses, subd. 2) proves persuasive that, in the Penal Law has so far as this gap in this area of homicide. This gap with two manslaughter crimes.

The handling of involuntary manslaughter. The Penal Law's second degree manslaughter committed by "culpable negligence" same subdivision then proceeds to specific kinds of acts, all of a negligent manslaughter when involving machinery, overloading passenger vessels, boiler, and the like.

Section (§ 1052) is followed by other homicides of the negligence type: "Criminal negligence in death" (§ 1053-a), "Criminal negligence resulting in the death of another" (§ 1053-e). These crimes carry a prison term of only five years in contrast to second degree manslaughter (§ 1053). The purpose, at least of § 1053-a) is concerned, is to make fatal automobile negligence manslaughter more than does "manslaughter" reluctant in this type of case to receive a severe penalty.

The proposed article considerably changes the pattern of this entire area. Eliminating all narrow or particularizing provisions, sections and crimes addressed to specific kinds of negligent acts (e.g., vehicle homicides, overloading steamboats, etc.), it prescribes and precisely defines two terms or standards which apply to and cover every form of involuntary manslaughter of the negligence genus. The two terms in question are "criminal negligence" and "recklessly." These definitions, and the whole theme of the proposed article in this respect, are substantially taken from the recent Model Penal Code of the American Law Institute (§§ 2.02, 210.3(1)(a), 210.4).

Without here analyzing those definitions, it may be said that the *reckless* brand of homicide is more culpable than the *criminally negligent* type; and, hence, that homicide committed "recklessly" is graded as a more serious crime than homicide committed by "criminal negligence." More specifically, one who "recklessly causes the death of another person" is guilty of manslaughter; and one who causes death through "criminal negligence" is guilty of the lesser crime of "criminally negligent homicide."

These two crimes or forms of homicide would replace not only the general "culpable negligence" provisions of the existing second degree manslaughter statute (Penal Law §1052, subd. 3) but the numerous particularized negligence offenses of the same statute and of the three previously mentioned ensuing sections (§§ 1053-a, 1053-c, 1053-e). Eliminated in this structure are all the Penal Law's special and little used negligent homicide provisions relating to use of machinery, mischievous animals, overloading passenger vessels, mismanagement of boilers and other apparatus of steamboats and railways, acts of intoxicated physicians, keeping of gunpowder and explosives (§ 1052, subd. 2), operation of vehicles (§ 1053-a), hunting accidents (§ 1053-c) and operation of ships (§ 1053-e). Just why these narrow provisions or offenses are necessary and why the proposed general standards of criminal negligence and recklessness cannot readily and adequately be applied to fatally remiss conduct in these particular fields, is not apparent. If a fatal act is committed with "criminal negligence" as here defined, the offender is guilty of "criminally negligent homicide" whether the act relates to a steamboat, an automobile, a building construction job or any other item, project or field of endeavor; and if the fault involved does not amount to "criminal negligence," no form of homicide is committed. If the faulty conduct, regardless of its specific nature, transcends "criminal negligence" and falls within the more culpable concept of *recklessness*, it constitutes manslaughter.

Also representing a drastic change from the existing Penal Law pattern is a tentative new "Gambling" article. Designed to replace two existing articles entitled "Gambling" (Art. 88) and "Lotteries" (Art. 130), it reduces the whole field to six sections in contrast to the fifty-four now found in the Penal Law. This is accomplished largely by analysis of the prolific existing provisions and by ascertainment of certain basic principles which most of them

present gambling crimes is that the gambling game, scheme or enterprise that anyone who directly or indirectly or in any way, other than as a gambling project, is guilty of a crime over and over again in a host of forms of gambling schemes and depredations, policy, lottery, bookmaking, slot machine, and other gambling use. Partly because of elementary terms, the tentacles of the denominator and crystallizes it into a single article titled "Promoting gambling activities in the form of gambling scheme and the existing pattern of the Penal Law, prescribing the only crime of the entrepreneur class and none in the class without exhaustive enumeration of gambling operations whether bookmaking or any other form of

question is also evidenced by reference to a vast area of largely minor offenses all over the Penal Law and the Code. Broadly speaking, the field of offenses resulting in public disorder, disturbance of public "loitering" and other conduct of a public character which harasses, disturbs, or is otherwise a nuisance rather than the public in general. This category are literally dozens of offenses in the Penal Law and the Code. Some contain multiple provisions and offenses in the hundreds. Among the crimes are disorderly conduct, vagrancy, public intoxication, nuisance, riot and other offenses and vagrancy statutes, Code Crim. Proc. § 887), contain offenses of which are of a dubious nature and phraseology.

arrived at by culling out the offenses of the above sort; analyzing the field in its entirety and useless offenses; classifying offenses not presently defined—arranging the resultant material into a relatively few sections.

technique, perhaps, appears in a single article. As pointed out at some length in the malicious mischief article (Penal Law § 2036) of unbridled itemization and multiple sections, some with numerous provisions, the article ramble on with interminable provisions. The article is devoted to completely

unnecessary enumeration of hundreds of different kinds of property subject to criminal destruction. Some of the provisions, on the other hand, prescribe crimes which are not of the malicious mischief genus at all but belong in other articles, such as larceny or public safety.

The proposed, tentative article substitutes for this whole structure three simple, concise sections defining three graded forms of malicious mischief. These three sections cover every genuine malicious mischief crime found in the present multiple-provisioned malicious mischief article and some which belong there but have been misplaced in other articles. Some of the offenses of the existing article, not being truly of the malicious mischief genus, have been deliberately excluded with a view to eventual inclusion in other new articles representing more natural repositories for them.

The revision work with respect to sections and articles dealing with some of the more familiar crimes, such as burglary, arson and perjury, does not ordinarily present as formidable a task from the standpoint of structural reorganization. However, numerous important changes of substance are proposed and these, in turn, require formal arrangements strikingly different from those of existing articles.

In dealing with burglary, for example, a significant substantive change appears in the elimination of a *breaking* as an element of that crime. Presently, burglary, a felony divided into three degrees, consists of *breaking* and *entering* premises with intent to commit a crime, the degree depending upon the presence or absence of certain specified circumstances (Penal Law §§ 402-404). Absent a *breaking* but with the same criminal intent still present, the crime is reduced to a misdemeanor, namely "Unlawfully entering building" (§ 405). If no intent to commit a crime in the invaded premises can be established, the intrusion ordinarily is not criminal at all even though it was perpetrated by a *breaking* (*cf.* § 2036).

The main defects in this structure are: (1) that the requirement of a *breaking* for the felony of burglary places too much emphasis and importance upon that technical factor, especially since the term "breaking" is judicially construed so broadly as to render many unlawful entries burglaries even though no force in a realistic sense is used; and (2) that the absence of any offense covering situations where intent to commit a crime in the premises entered cannot be established, leaves an appreciable gap in the criminal law, especially since such intent, even though realistically evident, is frequently difficult to prove by case law standards.

The revised article rectifies the latter deficiency by prescribing a crime of "Criminal trespass," containing three degrees, which is committed by unlawful entry into or upon premises regardless of whether intent to commit a crime therein can be established. It then prescribes the higher crime of burglary, in two degrees, which is committed by an unlawful entry with intent to commit a crime. As in several other jurisdictions, the occurrence or non-occurrence of a *breaking* is immaterial, and the word is nowhere mentioned in the proposed statutes.

substance, accompanied by approval made in other revised articles, on and perjury. With respect to predicates two degrees of perjury false testimony the element which (Penal Law §§ 1620-a, 1620-b). loose concept of materiality as an or degree purposes, the revised another kind of distinction bearing different types of false swearing. ent which is the subject of a per- l as defined in the Penal Law, g in almost any form, from mere court to trial testimony. In a al falsehood is usually more cul- affidavit, especially one prepared signature. The existing perjury of this distinction (see § 1620), with a new three-degree format, it *materiality* considerations as factors d, makes for a more equitable and

as a thorough description of the present time, but as an indication undertaken with respect to the main l Law. It is contemplated that, in rested new articles of the sort re- ory memoranda, will be compiled ar associations and other agencies, have a special interest in such ituted as to be capable of offering

1 Regrouping

an entirely new structure for the . brief, the present alphabetical tegory arrangement (*e.g.*, Crimes property, etc.). entation in the devising of cate- d to postpone this task until the aterial is almost complete. The hat no purpose is to be served by virtually all the components are ssembly.

III. THE CODE OF CRIMINAL PROCEDURE

While the Commission has in the first instance been addressing the major share of its effort to a full-scale study of the Penal Law, it has also been analyzing the existing provisions of the Criminal Code with a view toward providing a workable foundation for the Code's ultimate revision. When revision of the Penal Law has been substantially completed, the Commission will be in a position to devote its total time to the Criminal Code. It is envisaged, in light of the preliminary groundwork on the Code, that the general direction which the Code revision ought to assume will have become crystalized, thereby expediting the remaining task of the Commission.

The Criminal Code, adopted by the Legislature in 1881, was the product of a Report in 1850 by the then Commissioners of Practice and Pleading. It has never been the subject of general revision, although such an effort was made in the 1930's by the Commission on the Administration of Justice.

Some of the Code's weaknesses and deficiencies, and the nature and scope of some of the problem areas may be mentioned.

Structurally, the Code moves chronologically from provisions relating to arrest, through the subjects of grand jury, indictment, arraignment, pleas, trial, judgment, and appeals. Many provisions, however—seemingly the result of sporadic piece-meal amendatory legislation through the years—are scattered throughout the Code with little in the way of order and consistency. An unfortunate, albeit convenient, residuum for a varied assortment of material is Title 12 of Part IV, appropriately entitled "Miscellaneous Proceedings." In this Title (which follows the "Appeals" Title), in addition to detailed and unnecessarily strung-out provisions relating to "Bail" (§ § 550-606)—which ought to be located in an earlier portion of a Code—the gamut is run from provisions dealing with "Examination of Witnesses, Conditionally" (§ § 620-635), "Compromising Certain Crimes by Leave of the Court" (§ § 663-666), through "Disposal of Property, Stolen or Embezzled" (§ § 685-691), to "Reprieves, Commutations and Pardons" (§ § 692-697).

Similarly, although the main provisions relating to the grand jury are found in § § 223-272-a, other provisions appear toward the end of the Code, under Title 14 of Part VI, relating to "Grand Jury Stenographers" (§ § 952-p to 952-y). Section 952-t, which constitutes the statutory basis for the significant motion to inspect grand jury minutes is, misleadingly, entitled "Stenographers' duties." An obviously more appropriate location of the statutory authority for such motion would be in the main "grand jury" provisions (§ § 223-272-a), or under a new head such as "motions" generally. It is further noteworthy that another isolated provision, § 39, dealing with the jurisdiction of the County Courts, expressly provides that the County Court has jurisdiction, concurrently with the Supreme Court, "to determine any motion for an order of inspection of such grand jury minutes."

convict of any Degree, or of any Conviction of Assault upon Trial Hidden at the end of § 444 is the on upon a charge of assault is not n for manslaughter or murder, if he conviction." (2) Tacked on at "Stay, upon Appeal to Court of significant provision: "When the of appeals may order a new trial, was against the weight of evidence requires a new trial."

l of a sound and comprehensive y end of the Code under the head itions Applicable to this Code" efinitions" (§ § 958-961). Section 961 defines "county court." The ently redundant: § 960 defines e officers mentioned in section one efinies "magistrate" as "any one section one hundred and forty- § 146) defines magistrate as "an ararrant for the arrest of a person here are definitions interspersed he relevant subject matter, they this connection, it may be noted 24) are used to define the term , then, is a comprehensive scheme ability. Thus, consistency of lan- omy of expression throughout the course, terms peculiar to specific h precision under each head.

ch will be reduced to workable l be analyzed with a view toward e administration and enforcement problem areas, *inter alia*, which ny are: arrest, bail, right to and ent procedures generally, grand eedures, appeals, post-conviction ry matters.

subject headings will be under- govern the construction of the two fold: (1) related provisions ropriate heads; (2) at the same e, a chronological format will be : may often be competing and ition. An attempt will be made, strike a congenial balance.

ust be resolved during the course e ingredients of a sound "proce- o the content of a "substantive" adopted will be dispositive of the

troublesome problem of the location of such subject matter as "territorial jurisdiction" and "time limitations." At present, territorial jurisdiction provisions may be found in both bodies of law (see *e.g.*, § 133 of the Code of Criminal Procedure, and § § 735 and 1713 of the Penal Law). Virtually all the provisions dealing with time limitations are located in the Criminal Code (§ § 141-144-a). It may be noted that the American Law Institute has included such provisions in the general part of its Model Penal Code (see Model Penal Code, § § 1.03, 1.06). In any event, in the course of revision, a continuing effort will be made to mesh the Penal Law and Criminal Code in such a manner as will avoid duplication and inconsistency, and achieve a complementary and harmonious substantive-procedural penal scheme.

Although, as observed above, revision of the Code is in a preliminary stage, certain necessary amendments of the Code are being advocated at this time in order to complement the Commission's earlier-described proposals dealing with the two-stage sentencing procedure and with the insanity defense (see Appendices B, D, E). These Code provisions are § § 308, 332, 336, 373, 377, 398-b, 451, 485, and 538.

NDIX A

State Temporary Commission on
and Criminal Code.

ded by Laws 1962, Chapter 548.

The commission is hereby created to
a revision of the penal law and
shall consist of nine members to be
members shall be appointed by the
be appointed by the temporary
ee members shall be appointed by
y vacancy that occurs in the com-
ne manner in which the original
ernor shall designate a chairman
ision.

Employee of the commission shall be
ther public office or employment,
ee or employment by reason of his
standing the provisions of any
ance or city charter.

Make a study of existing provisions
inal procedure, the correction law
shall prepare, for submission to the
body of substantive laws relating
te, as well as a revised, simplified
ing to criminal and quasi-criminal
nnected with the courts, depart-
e, affecting the rights and remedies
the commission shall make such

accurately define substantive pro-
and offenses by adding or amend-
as to improve substantive content
ation;

ve provisions of law which are no

ically, substantive provisions of
and logical grouping of related

current knowledge and thinking,
lating to sentencing, the imposing
ishment relating to crime;

atment of all persons accused of
means;

t procedure so as to shorten the
and disposition in criminal cases
of arraignment, indictment, trial

g. establish greater uniformity of procedure in the various
criminal courts in the state;

h. improve existing trial procedures for the determination of
factual issues relating to guilt or innocence, sanity or insanity, or
any other defenses known to criminal law;

i. reduce costs of trials and appeals;

j. regulate existing procedures for commitment of persons to the
various state institutions;

k. improve the quality and efficiency of police and court per-
sonnel and the various services which they provide.

For the accomplishment of its purposes, the commission shall be
authorized and empowered to undertake any studies, inquiries,
surveys and analyses it may deem relevant through its own per-
sonnel, or in cooperation with public and private agencies including
bar associations, research organizations, universities, law schools,
foundations, educational and civic organizations.

§ 3. The commission may employ and at pleasure remove an
executive director, secretary, counsel, consultants and such other
personnel as it may deem necessary for the performance of its
functions and fix their compensation within the amounts made
available by appropriation therefor. The commission may meet
within and without the state; take testimony, subpoena witnesses
and require the production of books, records and papers; hold
public or private hearings and otherwise have all of the powers of
a legislative committee under the legislative law.

§ 4. The members of the commission shall receive no compensa-
tion for their services but shall be allowed their actual and neces-
sary expenses incurred in the performance of their duties here-
under.

§ 5. The commission may request and shall receive from any
court, department, division, board, bureau, commission or agency
of the state or any political subdivision thereof such assistance and
data as will enable it properly to carry out its powers and duties
hereunder.

§ 6. The commission is hereby authorized and empowered to
make and sign any agreements, and to do and perform any acts
that may be necessary, desirable or proper to carry out the purposes
and objectives of this act.

§ 7. The commission shall from time to time make a report or
reports to the governor and the legislature. It shall, not later than
February first, nineteen hundred sixty-two, and thereafter not
later than February first in each of the years nineteen hundred
sixty-three and nineteen hundred sixty-four, make an interim report
to the governor and the legislature, and not later than February
first, nineteen hundred sixty-five, a final report to the governor and
the legislature of its studies, together with its proposed revision of
the penal law and the code of criminal procedure.

continue in existence until March
 thirty-five.

One hundred fifty thousand dollars (\$150,000)
 necessary is hereby appropriated from
 in the general fund to the credit
 otherwise appropriated, and made
 temporary state commission for its
 vice and travel in and outside the
 provisions of this act. Such monies shall
 warrant of the comptroller on vouchers
 chairman of the commission or by an
 commission designated by the chairman.
 effective July first, nineteen hundred

APPENDIX B

AN ACT to amend the penal law and the code of criminal pro-
 cedure, in relation to punishment for murder in the first degree
 and kidnapping.

*The People of the State of New York, represented in Senate and
 Assembly, do enact as follows:*

Section 1. Section ten hundred forty-five of the penal law, as
 amended by chapter sixty-seven of the laws of nineteen hundred
 thirty-seven, is hereby amended to read as follows:

§ 1045. Punishment for murder in first degree; *plea of guilty
 thereto; sentence of life imprisonment by court.*

1. Murder in the first degree is punishable by [death, unless
 the jury recommends life imprisonment] *life imprisonment unless
 the death sentence is imposed* as provided by section ten hundred
 forty-five-a.

2. *When the court and the district attorney consent, a defendant
 indicted for murder in the first degree may plead guilty to murder
 in the first degree with a sentence of life imprisonment, in which
 case the court shall sentence him accordingly.*

3. *When a defendant has been found guilty after trial of murder
 in the first degree, the court shall discharge the jury and shall
 sentence defendant to life imprisonment if it is satisfied that de-
 fendant was under eighteen years of age at the time of the com-
 mission of the crime, or that the sentence of death is not warranted
 because of substantial mitigating circumstances.*

§ 2. Section ten hundred forty-five-a of such law, as added by
 chapter sixty-seven of the laws of nineteen hundred thirty-seven,
 is hereby REPEALED and a new section, to be section ten hundred
 forty-five-a, is hereby inserted in such law in lieu thereof, to read
 as follows:

§ 1045-a. *Proceeding to determine sentence for murder in the
 first degree; appeal*

1. *When a defendant has been found guilty after trial of murder
 in the first degree, and such verdict has been recorded upon the
 minutes, it shall not thereafter be subject to jury reconsideration.*

2. *Unless the court sentences defendant to life imprisonment as
 provided in subdivision two or three of section ten hundred forty-
 five, it shall, as promptly as practicable, conduct a proceeding to
 determine whether defendant should be sentenced to life imprison-
 ment or to death. Such proceeding shall be conducted before the
 court sitting with the jury that found defendant guilty unless the
 court for good cause discharges that jury and impanels a new jury
 for that purpose.*

3. *In such proceeding, evidence may be presented on any matter
 relevant to sentence including, but not limited to, the nature and*

shall be received regardless of its
ary rules of evidence.

ducted in the same order as in the
d in section three hundred eighty-
cedure. The court shall charge the
e in the circumstances, including
release on parole of a person sen-
an indeterminate term.

to consider the penalty to be im-
mous agreement on the imposition
urt shall discharge the jury and
th. If the jury report unanimous
the penalty of imprisonment, the
d shall sentence the defendant to
ate term the minimum of which
s and the maximum of which shall
the lapse of such time as the court
t themselves unable to agree, the
nd shall, in its discretion, either
ine the sentence or sentence the
indeterminate term the minimum
wenty years and the maximum of

ndant where the judgment is of
finds substantial error only in the
aside the sentence of death and
rt, in which event the trial court
nprisonment for an indeterminate
be not less than twenty years and
r his natural life.

ght of the code of criminal pro-
ter three hundred thirty-three of
r-seven, is hereby amended to read

for arraignment without counsel
asel.

arraignment without counsel, he
id of counsel, and if he does the
a services are rendered by counsel
n a case where the offense charged
] may be punished by death or
n years of age at the time of the
d for such a crime which if com-
vishable by death or an appeal
an appeal as of right from a judg-
wing a recommendation of a jury
ce with section ten hundred forty-
the penal law, the court in which
il results in a disagreement of the
t is otherwise disposed of, or by

which such appeal is determined, or the court in which an action is suspended or discontinued or otherwise disposed of on the ground that the defendant has been heretofore or is hereafter declared incompetent by a duly appointed commission, may allow such counsel his personal and incidental expenses upon a verified statement thereof being filed with a clerk of such court, and also reasonable compensation for his services in such court, not exceeding the sum of fifteen hundred dollars in cases where one counsel has been assigned and not exceeding the sum of two thousand dollars in cases where two or more counsel have been assigned. In such a case where it shall appear to the satisfaction of the court that a daily copy of the testimony is necessary to be furnished by the stenographer to the counsel for the defendant upon an order duly signed by the presiding justice that the stenographer furnish the same, the same shall be furnished to the counsel for the defendant, and the cost of said daily copy shall be a charge upon the county. In any case in which experts may be employed as witnesses and in case it shall appear to the satisfaction of the court or a judge thereof that the defendant is not financially able to employ experts, the court to which the indictment is presented or sent or removed for trial or a judge or justice thereof may direct the employment of expert witnesses for the defendant in number not exceeding the number sworn or to be sworn for the prosecution or, where the affirmative presentation of evidence on the issue is incumbent on the defendant, and the prosecution has not indicated any number of experts to be employed, the court or judge may upon satisfactory proof of the necessity therefor, permit the employment of an expert or experts not to exceed two in number, at an expense in the aggregate of not exceeding the sum of ten hundred dollars. Allowances under this section shall be a charge upon the county in which the indictment in the action is found, to be paid out of the court fund, upon the certificate of the judge or justice presiding at the trial or otherwise disposing of the indictment, or upon the certificate of the appellate court, but no such allowance shall be made unless an affidavit is filed with the clerk of the court by or on behalf of the defendant, showing that he is wholly destitute of means.

§ 5. Section three hundred thirty-two of such code, as last amended by chapter four hundred twenty-seven of the laws of eighteen hundred ninety-seven, is hereby amended to read as follows:

§ 332. The different kinds of pleas

There are three kinds of pleas to an indictment:

1. A plea of guilty.
2. A plea of not guilty.
3. A plea of a former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty.

upon a plea of guilty where the
punishable by death [.] , *except as*
ten hundred forty-five and twelve

twenty-three of such code, as last
fifty-two of the laws of nineteen
amended to read as follows:

challenges

allowed to the following number:

be [punishable] *punished* with
; and three for each alternate

ment for life, or for a term of ten
regular jury; and two for each

regular jury, and one for each

ernate jurors shall be computed
on to the number of peremptory
t the maximum number of such
taken, in obtaining the regular

on three hundred seventy-seven
read as follows:

be [punishable] *punished* with
conscientious opinions as would
t guilty; in which case he shall
to serve as a juror.

ty-one of such code is hereby

is such as the court may receive,
it in full upon the minutes, and
uire of them whether it is their
e fact must be entered upon the
out; but if no disagreement be
and the jury must be discharged
otherwise provided in sections ten
forty-five-a and twelve hundred

on four hundred eighty-five of
section four hundred eighty-five
hapter two hundred eight of the
ur, are hereby amended to read

e trial; and, when the judgment
of the proceeding to determine

8. When the judgment is of death or of life imprisonment [fol-
lowing a recommendation of a jury pursuant to] *imposed in accord-*
ance with section ten hundred forty-five or ten hundred forty-five-a
of the penal law, the clerk of the court in which the conviction was
had shall, within thirty days after a notice of appeal shall be
served upon him, cause to be prepared and printed, as required by
the general rules of practice, the record and judgment-roll upon
which the appeal is to be heard as prescribed in this section and in
section four hundred and fifty-six of this act and, after being duly
certified by him, cause the same to be filed with the clerk of the
court of appeals or with the clerk of the appellate division of the
supreme court, as the case may be, and must cause to be forwarded
to the said clerk, the number of copies of the record and judgment-
roll which are required by the rules of the court of appeals or of
the appellate division of the supreme court, as the case may be,
which shall form the case and exceptions upon which the appeal
shall be heard, and three copies shall also be furnished to the
defendant's attorney and three to the district attorney and, where
the judgment is of death, one to the governor of the state, and the
remainder distributed according to the rules of the court of appeals
or of the appellate division of the supreme court, as the case may
be. In such cases of life imprisonment as hereinbefore specified,
where a further appeal is allowed to the court of appeals, said
appeal shall be heard by the court of appeals upon seven copies of
the record in the appellate division of the supreme court, said
copies to be furnished by the clerk of the court in which the con-
viction was had. The expense of preparing and printing the judg-
ment-roll in such case shall be a county charge, payable out of the
court fund upon the certificate of the county clerk, approved by the
county judge or a justice of the supreme court residing in the
county in which the conviction was had.

§ 10. Section five hundred thirty-eight of such code, as last
amended by chapter nine hundred forty-two of the laws of nineteen
hundred forty-six, is hereby amended to read as follows:

§ 538. Papers upon appeal, by whom furnished, and effect of
omission

When the appeal is called for argument, the appellant must
furnish the court with copies of the record upon which the appeal
is to be heard, except where the judgment is of death or of life
imprisonment [following a recommendation of a jury pursuant to]
imposed in accordance with section ten hundred forty-five or ten
hundred forty-five-a of the penal law. If he fail so to do, the appeal
must be dismissed, unless the court otherwise direct.

§ 11. This act shall take effect

Note—Section ten hundred forty-five-a of the penal law, proposed to be
repealed by this act, provides for a jury recommendation of life imprisonment
where a person is found guilty of murder in the first degree under subdivision
two of section ten hundred forty-four of the penal law.

DIX C

w, in relation to the defense of

York, represented in Senate and

and eleven hundred twenty of
 ALED and a new section, to be
 hereby inserted in such law, to

ect excluding responsibility.

responsible for conduct if at the
 of mental disease or defect he

the wrongfulness of his conduct;

the requirements of law.

terms "mental disease or defect"
 manifested only by repeated criminal

l law, proposed to be repealed by this
 commit prohibited acts is not a defense
 ven hundred and twenty of such law,
 rides that a person is not excused from
 at, at the time of the criminal act, he
 reason as not to know the nature and
 o know that the act was wrong.

APPENDIX D

AN ACT to amend the code of criminal procedure, in relation to
 the defense of insanity.

*The People of the State of New York, represented in Senate and
 Assembly, do enact as follows:*

Section 1. The Code of criminal procedure is hereby amended
 by inserting therein a new section, to be section three hundred
 ninety-eight-b, to read as follows:

§ 398-b. *Psychiatric testimony on the defense of insanity. When
 a psychiatrist who has examined the defendant testifies concerning
 the defendant's mental condition at the time of the conduct charged
 to constitute a crime, he shall be permitted to make a statement as
 to the nature of the examination, the diagnosis of the mental condi-
 tion of the defendant and his opinion as to the extent, if any, to
 which the capacity of the defendant to know or to appreciate the
 wrongfulness of his conduct or to conform his conduct to the re-
 quirements of law was impaired as a result of mental disease or
 defect at that time. The psychiatrist shall be permitted to make
 any explanation reasonably serving to clarify his diagnosis and
 opinion, and may be cross-examined as to any matter bearing on
 his competency or credibility or the validity of his diagnosis or
 opinion.*

§ 2. This act shall take effect

criminal procedure, in relation to

York, represented in Senate and

hundred thirty-six of the code of
REPEALED and a new section, to
x, is hereby inserted in such code,

ity. Evidence of mental disease
y is not admissible upon a trial
n the district attorney and files
his purpose to rely on the defense
ding responsibility. Such notice
enty days from the date of entry
h later time as the court, for good

six of the code of criminal procedure,
utes to the plea of insanity at the time
the plea of not guilty.

APPENDIX F

AN ACT to amend the code of criminal procedure, in relation to
grand jury reports.

*The People of the State of New York, represented in Senate and
Assembly, do enact as follows:*

Section 1. The code of criminal procedure is hereby amended
by inserting therein a new section, to be section two hundred fifty-
three-a, to read as follows:

§ 253-a. Grand jury reports

1. The grand jury, upon concurrence of twelve or more of its
members, may submit to the court for which it was impanelled, a
report:

(a) Concerning misconduct, nonfeasance or neglect in office by
a public officer or employee as the basis for a recommendation of
removal or disciplinary action; or

(b) Stating that after investigation of a public officer or em-
ployee it finds no misconduct, nonfeasance or neglect in office by
him; provided that the public officer or employee involved has
requested the submission of such report.

2. The court to which such report is submitted shall examine it
and the minutes of the grand jury and, except as otherwise pro-
vided in subdivision four hereof, shall accept and file such report as
a public record only if the court is satisfied that it complies with
the provisions of subdivision one hereof and that:

(a) The report is based upon facts revealed in the course of an
investigation authorized by section two hundred forty-five or two
hundred fifty-three of this code; and

(b) When the report is submitted pursuant to paragraph (a)
of subdivision one hereof, it is supported by credible and legally
admissible evidence, and that each person named therein was
afforded an opportunity to testify before the grand jury prior to
the filing of such report.

3. Upon the filing of a report pursuant to paragraph (a) of
subdivision one hereof, the court shall direct the district attorney
to deliver a true copy of such report, for appropriate action, to
the public officer or body having removal or disciplinary authority
over each public officer or employee criticized therein.

4. Upon the filing of a report pursuant to subdivision one hereof,
if the court finds that the filing of such report as a public record
may prejudice fair consideration of a pending criminal matter, it
shall order such report sealed during the pendency thereof, and it
shall not be subject to subpoena or public inspection, except upon
order of the court.

§ 2. This act shall take effect

DIX G

Commission's tentative recommenda-
 al or relocation of various Penal

Penal Law Section

Article 36

Bucket Shops

390-395

Transfer to General Business Law.

Article 39

Budget Planning

410-412

Transfer to General Business Law.

Article 40

Business and Trade

420

Repeal (outmoded).

421-431

Transfer to General Business Law.

432

Repeal (outmoded).

433

Transfer to General Business Law.

434

Transfer to Agriculture and Markets
Law, Article 16.

435

Transfer subsd. 1, 2 and 3 to General
Business Law; repeal subd. 4 (dupli-
cates Agriculture and Markets Law
§§ 201-a-201-d).

435-a-435-c

Repeal (duplicates Agriculture and
Markets Law §§ 201-a-201-d).

435-d

Transfer to General Business Law.

436-436-a

Transfer to General Business Law.

436-b

Transfer to Navigation Law, Article 9.

436-c

Transfer to Agriculture and Markets
Law, Article 5.

436-d

Repeal (unconstitutional, *People v.*
Bunis, 9 N. Y. 2d 1).

437

Repeal (outmoded).

438

Transfer to Agriculture and Markets
Law, Article 4.

438-a

Transfer to General Business Law.

440-441-a

Transfer to General Business Law.

442-a-442-c

Transfer to Insurance Law, Article 6.

443

Repeal (outmoded).

444-452

Transfer to General Business Law.

Disposition

Transfer to Agriculture and Markets
 Article 15-A.

Transfer to Agriculture and Markets
 Article 5.

Transfer to General Business Law, Ar-

(duplicates Vehicle and Traffic
 Law § 1219).

(outmoded).

(outmoded).

Transfer to Agriculture and Markets
 Article 7.

(outmoded).

(unconstitutional, *People v.*
 15 Misc. 2d 823).

Transfer to Banking Law.

Transfer to Judiciary Law.

Transfer to General Business Law.

Transfer to General Business Law.

Penal Law §§ 368-369-f, added
 by Laws 1962, ch. 552, eff. Sept. 27,

<i>Disposition</i>	<i>Penal Law Section</i>	<i>Disposition</i>
(outmoded).	Article 86 <i>Frauds and Cheats</i> 940-a-940-b	Transfer to General Business Law. (Note: added to Penal Law by Laws 1962, ch. 552, eff. September 27, 1964).
(duplicates Code of Criminal Procedure § 444).	943	Transfer to General Business Law, Article 3.
(duplicates New York City Code § 161.05).	948	Transfer to General Business Law.
Transfer to Election Law.	951-957	Transfer to General Business Law.
(outmoded).	958	Transfer to Vehicle and Traffic Law.
Transfer to Navigation Law, Article 80 (duplicates Navigation Law Transportation Corporation Law)	962-962-a	Transfer to Labor Law, Article 6.
(outmoded).	964-964-a	Transfer to General Business Law.
(outmoded).	965	Transfer to Real Property Law, Article 7.
Transfer to General Business Law.	966	Transfer to General Business Law.
(outmoded).	Article 96 <i>Horse Racing</i> 1081-1082	Transfer to Laws 1926, ch. 440 as amended (McKinney's Unconsolidated Laws §§ 7901-8052).
Transfer to Agriculture and Markets Article 2.	Article 100 <i>Ice</i> 1100	Repeal (outmoded).
Transfer to Agriculture and Markets Article 5.	Article 108 <i>Indians</i> 1160	Repeal (duplicates Indian Law § 56).
Transfer to General Business Law.	1161	Repeal (duplicates Indian Law § 22).
(outmoded).	Article 112 <i>Insurance</i> 1190	Transfer to Insurance Law, Article 7.
Transfer to Agriculture and Markets Article 2.	1191	Repeal (duplicates Insurance Law §§ 5, 40, 188 and 209).
Transfer to Agriculture and Markets Article 5.	1192	Repeal (duplicates Insurance Law §§ 110, 111, 113, 114 and 119).
Transfer to General Business Law.	1194	Repeal (outmoded).
(unconstitutional, <i>People ex rel Van Dell</i> , 85 Misc. 92).	1195	Repeal (outmoded).

<i>Disposition</i>	<i>Penal Law Section</i>	<i>Disposition</i>
er to Insurance Law, Article 5.	Article 146	
er to Insurance Law, Article 5.	<i>Negotiable Instruments</i>	
(outmoded).	1520-1522	Transfer to General Business Law.
er to Insurance Law, Article 4.	Article 148	
(duplicates Insurance Law §§ 5,	<i>Nuisances</i>	
7).	1534	Transfer to General Business Law,
er to Insurance Law, Article 4.	Article 150	Article 10-B.
(duplicates Insurance Law §§ 5,	<i>Oysters</i>	
7).	1550-1551	Repeal (duplicates Conservation Law
er to Insurance Law, Article 4.	Article 152	§§ 302, 306-308, 312).
er to Insurance Law, Article 4.	<i>Passage Tickets</i>	
er to Insurance Law, Article 4.	1560-1574	Transfer to General Business Law.
(duplicates Labor Law §§ 31-	Article 154	
).	<i>Pawnbrokers</i>	
subdivisions 2, 3 and 4 (dupli-	1590-1593	Transfer to General Business Law,
labor Law §§ 163-165); transfer	Article 156	Article 5.
sion 1 to Labor Law § 220.	<i>Peddlers</i>	
er to Labor Law, Article 6.	1610	Repeal (outmoded).
er to Labor Law, Article 18,	Article 159	
9.	<i>Platinum Stamping</i>	
er to Labor Law, Article 7.	1635-1643	Transfer to General Business Law.
(duplicates Labor Law § 200).	Article 160	
er to Labor Law, Article 7.	<i>Poor Persons</i>	
er to General Business Law.	1650	Repeal (duplicates Social Welfare Law
	Article 164	§ 148).
er to Military Law.	<i>Prize-Fighting and</i>	
	<i>Sparring</i>	
er to Navigation Law.	1710-1716	Repeal (superseded by Laws 1920, ch.
er to Navigation Law.		912; McKinney's Unconsolidated Laws,
		Title 25, Chapter I, "Boxing and Wres-
		tling," §§ 8901-8933).

<i>Disposition</i>	<i>Penal Law Section</i>	<i>Disposition</i>
to Public Health Law, L.	Article 172 <i>Public Safety</i>	
to Public Health Law, 13.	1891-1893	Repeal (duplicates Labor Law § 204 and Industrial Code Rule No. 14).
duplicates Education Law	1902-1903	Transfer to General Business Law, Article 19.
duplicates Education Law	1904	Transfer to General Business Law, Article 16.
to Education Law, Article 137.	1907-1909	Repeal (outmoded).
to Education Law, Article 137.	1912	Repeal (outmoded).
(subdivisions 1 and 2 duplicate on Law § 6804, subd. 3 (k) and subdivision 3 is outmoded).	1916	Transfer to Vehicle and Traffic Law.
to Agriculture and Markets Article 17.	1917	Transfer to New York City Administra- tive Code.
to Public Health Law, 13.	1921	Transfer to General Business Law.
outmoded).	Article 176 <i>Quarantine</i>	
(duplicates Public Health Law -2163, and State Sanitary Code II).	1960-1964	Repeal (outmoded).
to Agriculture and Markets Article 14.	Article 178 <i>Railroads</i>	
to Public Health Law, 11.	1980	Repeal (duplicates Public Service Law § 15 and § 46).
to Public Health Law, 13.	1981	Repeal (duplicates Public Service Law § 15).
outmoded).	1982	Repeal (outmoded).
to Public Health Law, 11.	1983	Repeal (outmoded).
to Public Health Law, 13.	1985	Transfer to Railroad Law, Article 3.
outmoded).	1987	Repeal (outmoded).
to Public Health Law, 14.	1988	Repeal (subd. 1 is outmoded; subd. 2 duplicates Railroad Law § 80).
to Agriculture and Markets Article 5.	1989	Repeal (outmoded).
	Article 182 <i>Real Property</i>	
	2030	Repeal (duplicates Indian Law § 7-a).
	2039	Repeal (unconstitutional, <i>Keller v. Ja- maica Motor Service Corporation</i> , 125 Misc. 825).

Disposition

to Real Property Law,
7.

to Real Property Law,
7.

(outmoded).

to Public Health Law,
42.

(outmoded).

to General Business Law.

(outmoded).

to Tax Law, Article 1.

to General Business Law,
17, 17-A and 24.

(unconstitutional, *People ex rel*
v. Dycker, 72 App. Div. 308,
ex rel Appel v. Zimmerman, 102
v. 103; Ops. Atty. Gen., 1959,

to General Business Law,
25.

Penal Law Section

Article 216

Weights and Measures

2410-2416

Article 222

Wrecks

2480-2482

Disposition

Repeal (duplicates Agriculture and
Markets Law Articles 16 and 16-A).

Repeal (outmoded).