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A CRITICAL REVIEW OF A RECOMMENDATION IN THE PROPOSED NEW YORK PENAL LAW AND THE DANGER OF ITS LIMITING THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE CITY OF NEW YORK.

by

JOHN J. QUINN, Chairman

SOURCE OF REFERENCE:

Proposed New York Penal Law

Drafted and Recommended

By The

Temporary State Commission On Revision

Of The

Penal Law and Criminal Code

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SPECIFIC SUBJECT MATTER AFFECTING THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE CITY OF NEW YORK:

a) Proposed Section 30.40, Subd. 2 concerning the proposed new definite sentence parole statute on Page 38.

The Commission Staff Notes on Pages 303 and 304 pertaining to same.

Survey of 1963 on Pages A-22 to A-24 concerning the City Reformatory and Article 7 A of the State Correction Law.

b) Proposed Article 35 concerning Reformatory Sentence of Imprisonment for Young Adults on Page 41 and Pages 304 to 309 of the Commission Staff Notes pertaining to same.

FOREWORD

Paroles have been granted by the New York City Parole Commission since its creation by the State Legislature in 1915. Our purpose is the protection of the citizens of New York City through the rehabilitation and authoritative supervision and surveillance of criminal offenders committed to our jurisdiction by the Judges of the Citywide Criminal Courts and the Supreme Court Criminal Terms in the City of New York.

Our reading of the Proposed New York Penal Law alerted us to the following proposed new statute on Page 38 and to the following Temporary State Commission Staff Notes pertaining to same on Pages 303 and 304:

"Section 30.40, 2. Definite sentence. A person who is serving one or more than one definite sentence of imprisonment with a term or aggregate term of sixty days or more may be conditionally released from the institution in which he is confined at any time after service of thirty days of that term. Such release shall interrupt service of the sentence or sentences. The conditional release shall be subject to such conditions as may be imposed by the institution's conditional release board, and every person so released shall be under the supervision of the institution's conditional release board, in accordance with the provisions of the correction law for a period of two years from the date of release. Compliance with the conditions of release during the two year period shall satisfy the remaining portion of the term or aggregate term."

The Temporary State Commission Staff Notes pertaining to: - "Subdivision 2. Definite sentence."

"Subdivision two provides authority for definite sentence parole. There is no comparable provision of statewide application under existing law.

The provisions for the formation of "conditional release boards" and the various procedural aspects will be set forth in the Commission's forthcoming recommendations with respect to the Correction Law. The present intention is that the composition of the board would be the same as it is under a similar California law (Cal. Penal Code, Para. 3075-3084). In California, each county has a parole commission consisting of three members: (1) the sheriff; (2) the probation officer; and (3) a public member, who is not a public official, selected by the presiding or senior judge for a term of one year. The public member is compensated on a per diem basis. In New York this type of board could be used for county jails, variations could be used in the case of regional institutions, and the present Parole Commission could be retained in the City of New York (see Correction Law, Article 7A).

Under the proposed law the Board would be authorized to conditionally release any county correctional institution prisoner who has a sentence or aggregate sentence of sixty days or more after the prisoner has served thirty days of the term. Release would interrupt the sentence and the maximum period of supervision would be two years. Successful completion of the parole period

satisfies the remaining portion of the sentence. In the event the conditions are violated, the offender may be returned to the institution to serve out the balance of his sentence calculated from the date of release. However, the prisoner may be reparoled at any time.

The aforesaid provisions are the same as the California provisions with two exceptions. California law does not require that the prisoner serve thirty days of the sentence, and the California board has authority to release prisoners who have terms of less than sixty days. The thirty day minimum requirement in the proposed law is to assure that the purpose of the court's sentence will be fulfilled. If the court did not believe that some period of imprisonment were needed, it would not have imposed a sentence of imprisonment. The sixty day provision was placed in the proposed law in order to draw a practical line of distinction between prisoners subject to parole and prisoners not subject to parole. If the board were obligated to deal with all prisoners committed to the institution it would not be able to function effectively with any. Use of the sixty-day provision cuts down the case load and enables the board to plan and supervise a more effective parole program.

Misdemeanant parole will have a salutary effect in the many cases where some form of pressure is necessary to guide the offender after his release from the institution. It is more effective as a form of correctional treatment than county jail or penitentiary imprisonment, and the cost of administering the program on a per-capita basis is far less than the per-capita cost of imprisonment (approximately $1.00 per day for parole as against $7.00 per day for imprisonment).

It should be noted that the proposed sentencing structure has statewide application. This would mean repeal of the special sentence set forth in Article 7A of the Correction Law (see APP., pp. A22-24)."

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A DETAILED REVIEW OF THE EFFECT OF THE FOREGOING PROPOSED PENAL LAW STATUTE ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE CITY OF NEW YORK APPEARS ON THE FOLLOWING PAGES.

This critical review deals with: 1) the use of the words "institution's conditional release board" in the proposed statute, and more particularly 2) the statement in the Temporary State Commission's Staff Notes "It should be noted that the proposed sentencing structure has statewide application. This would mean repeal of the special sentence set forth in Article 7A of the Correction Law.....".

Modern penological thinking separates the authority of custody and the authority to release. The words in the proposed statute are inconsistent with the Commission's Staff Notes as to how county, regional, and city parole agencies would be established. Moreover, when the Parole Commission Law was first enacted in 1915, the Honorable Kathryn Davis was then the Commissioner of New York City's Department of Correction. She was designated the head of the Parole Board. By her own action, she advocated a change to make the Commission a separate entity, as it currently exists.

It was separated from the New York City Department of Correction on the theory, as stated, that the authority of custody and the authority to release should be two distinct agencies. So it is with the New York State Department of Correction and the New York State Division of Parole. Therefore, the phrase "institution's conditional release board" should be deleted as retrogressive rather than progressive. In its place, the language could read "the authorized conditional release board".

The Parole Commission of the City of New York is opposed to the recommended repeal of Article 7A in order to provide statewide application for the proposed definite parole statute. Article 7A is the legal authority granted to the City's Criminal Court Judges to commit criminal offenders for an indeterminate term to New York City's Reformatory, Penitentiary and Workhouse.

Article 7A has proved to be beneficial legislation for almost fifty years. It has enhanced the administration of criminal justice in the City of New York especially in fostering the practice of misdemeanant parole in the City of New York. This special sentence structure was first enacted in 1915 upon the request of the City of New York. It has provided the discretionary power to our Criminal Court Judges to: a) be personally certain that every means is available to protect society and b) utilize authoritative supervision by the Parole Commission for thousands of criminal offenders after their release from prison in an overall successful effort for their rehabilitation. The repeal of Article 7A would totally limit the power of the City's Judges in this regard.

Though supporting with reservation the new definite sentence parole concept, the Parole Commission points out that this concept is only new as to areas in the State outside of New York City. Article 7A, originally known as the Parole Commission Law, preceded the New York State Division of Parole by 15 years and existed long before the referred to California misdemeanant parole system. Article 7A is not only available to New York City but

also can be used by the larger cities in the State such as Rochester and Syracuse. When Article 7A was enacted, the Legislature impliedly recognized the vast problems existing in large urban communities as contrasted to smaller regions. The proposed repeal of Article 7A for the reason given would imply that New York City's problems are no greater than that of the smallest community in the State. History has its own way of repeating itself, for the immigration problems existing in New York City in 1915 were certainly no less serious than the migration problems existing now.

In effect, this recommendation is comparable to killing the mother in order to give birth to a child when such drastic action is neither necessary nor practical. Both Article 7A and the proposed definite parole statute can co-exist in a legal, constitutional manner. They can together further benefit, rather than impair, the elements of rehabilitation of criminal offenders and protection to the citizens of New York City as well as to the entire State.

THE ADDITIONAL FOLLOWING ADVERSE RESULTS TO THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE CITY OF NEW YORK WOULD TAKE PLACE AFTER JULY 1st, 1966, IF ARTICLE 7A WERE REPEALED:

a) <u>THERE COULD BE NO MORE CITY REFORMATORY COMMITMENTS</u>.

The authority existing since January 1st, 1905 which enables the City's Criminal Court Judges to commit youthful criminal offenders between the ages of 16 and 30 to the City Reformatory would be abolished. Henceforth, all youths 16 to 21 years of age must be sentenced to the Elmira Reception Center for a term with a maximum period of four years. The present State maximum of three years for youthful misdemeanants and five years for youthful felony offenders is to be abolished and all could henceforth serve up to four years. This, in our mind, is infamous punishment particularly where a short period of incarceration and a long period of authoritative supervision would be more conducive to the rehabilitation of many youthful offenders. It is specially infamous when both youthful misdemeanant and felony offenders are grouped together and originally treated alike despite the justification set forth in the paragraphs on page 305. Admittedly, there are those more serious youthful criminal offenders who should be committed to Elmira but there are also many who should be given the benefits available in the City Reformatory.

The City of New York has spent over twenty-five million ($25,000,000.) dollars during the last ten years to provide a Reformatory second to none. The repeal of Article 7A would mean that the rehabilitative features of the New York City Reformatory including its magnificent physical plant; its special schools

conducted by the New York City Board of Education; its special training programs financed in part by the Federal Government and many other beneficial ventures would be wasted and "go down the drain". Equally as important is the inability of parents and other interested family members and friends to visit such young adults at State Institutions such as Elmira, Coxsackie, Napanoch, etc. This is due to the problems of distance from New York City and the family's own indigent circumstances.

During the last four years from 1960 to 1963 inclusive, the City's Criminal Judges committed 1,958 persons to the New York City Reformatory. It is highly improbable that facilities at the State Institutions receiving transfers from Elmira following classification, could handle about 500 more commitments each year.

The New York City Parole Commission is justly proud of its accomplishments in the rehabilitation of young adult offenders through its special adolescent (CSAS) and narcotics projects which supervise them up to three years less jail time. These young persons are given an opportunity on parole following an average incarceration of seven months. Both of these programs would be abandoned if there were no City Reformatory. As to youths between 21 and 30 years of age who are first offenders, Judges of the Criminal Courts in New York City (both the Supreme Courts and Citywide Courts) could only impose definite sentence parole for misdemeanors. For felons in this age group, the Judges could only sentence them to State's Prison, there to be classified by the New York State Department of Correction.

b) This would also result in the curtailment of a Supreme Court Judge's sentencing power, coupled with the question of concurrence by the City's District Attorneys, in the acceptance of a lesser plea to a misdemeanor reduced from a felony indictment.

If Article 7A were repealed, the sentencing court could sentence only the convicted misdemeanant defendant under the provisions of the proposed definite parole statute.

The growth of crime is relative to the size of a community's population and its resulting problems. We become aware of this when we compare the population of New York City's 7,781,984 people with that of Buffalo, the next largest city in the State, with its population of 532,759 people. New York City has problems unmatched anywhere in the State of New York. It is logical, therefore, that the City have and retain its present two standard system in administering criminal justice particularly where, for almost a half century, this system is justified (see page A-23, line 16).

Over the last four years, 2,568 persons were committed from the Supreme Courts, Criminal Terms (formerly the County Courts) for misdemeanors reduced from felony indictments or after trial by jury.

Admittedly, critics state that there are too many such pleas permitted. Yet considering the volume of cases indicted and subject to disposition, there is no question that practical as well as legal reasons must be considered lest there be a terrific backlog in our Criminal Terms of the Supreme Court. In any event, on such reductions by plea, the office of the District Attorney must first concur and have stated on the record that the ends of justice will be served in the acceptance of a plea to a lesser charge. The question now arises, "Would the ends of justice be so accomplished under the proposed definite parole statute if Article 7A were repealed?". That is up to the City's District Attorneys to answer for at the present time they know a Supreme Court Judge can commit a convicted Misdemeanant to an indeterminate sentence of up to three years less jail time and goodtime or a definite sentence of not more than a year less jail time and good time. The first sentence guarantees authoritative parole supervision, the second sentence provides no parole supervision.

Our records show that the average jail time of persons committed from the Criminal Terms of the Supreme Court is 3½ months. One of the many typical cases in our files is the following commitment from the Supreme Court, Criminal Term of Kings County. We illustrate Article 7A as it exists compared with the definite parole sentence in the sentencing process.

"John Doe was arrested following an assault and attempted rape of a woman on a Brooklyn street about 11:45 PM. Doe threatened the woman with a knife and following the attempted rape, grabbed her purse and fled. He was arrested about five blocks away, after the police responded to the woman's screams. Doe was indicted for Assault with Intent to Commit Rape, Grand Larceny 1st degree and Viol. of Sec. 1897 of the Penal Law. Doe had a previous criminal record including a prior sentence to State's Prison for Felonious Assault. The Probation Report showed that the female complainant was an uncooperative witness. Doe was permitted to plead guilty to Assault in the 3rd degree. He had 135 days (4½ months) jail time prior to disposition."

	ARTICLE 7 A	PROPOSED DEFINITE SENTENCE PAROLE
Maximum Jurisdiction-	3 years less jail time (31½ months)	1 year less jail time (7½ months)
Parole Eligibility -	Any time after commitment up to a maximum of 31½ months less credit for good time at the rate of 10 days a month.	After 30 days up to maximum of 7½ months less credit for good time at rate of 5 days a month.
If Paroled After Mental & Preparole Reports -	Supervision period runs concurrently with maximum jurisdiction of 31½ months.	Two year supervision period. The remaining time between release on parole to a maximum of 6½ months is abated, if he completes parole.
If Doe Violates Parole -	Can be held for maximum from time of delinquency to expiration of maximum remaining up to 31½ months.	Can be held for maximum from time of delinquency to expiration of maximum remaining up to 6½ months.

c) <u>It would affect first felony offenders over the age of thirty years.</u>

Of the utmost consideration is the statement on line 13 of the last paragraph on page A-24 dealing with the review of the Article 7A sentence:

"If the felony offender is more than 30 yea rs of age, Article 7A furnishes authority for a reformatory-type sentence where there would otherwise be none."

Of interest to all concerned in the administration of criminal justice should be the fact that we have had noteworthy rehabilitative success with first felony offenders who are over 30 years of age. The crimes for which they have been committed included Manslaughter, Felonious Assault, Grand Larceny, etc. Yet these persons have proved themselves rehabitable under authoritative parole supervision. It would be a travesty of Justice to limit the Justices of the Supreme Court's Criminal Terms to a sentence for this class of offender to the crime alone rather than to the criminal offender himself or herself. Such would be the result if Article 7A were repealed. A further consideration is that in 1963, we were able to return 71 commitments to their native, out-of-state domiciles under the Interstate Parole Compact. Time for such procedures necessary to transfer such persons would not be available under the proposed definite parole sentence statute.

d) <u>The repeal of Article 7A also deprives the Citywide Criminal Court Judges of the legal right to properly sentence multiple offenders who are professional pickpockets, confidence men and the like.</u>

Commissioner Edward R. Cass, presently a Vice-Chairman of the State Commission of Correction and a leading authority in the field of Correction, and his colleagues who were the driving force behind the enactment of Article 7A in 1915, displayed remarkable foresight. They were fifty years ahead of their times in fostering their concept of rehabilitation measures for adolescent and adult criminal offenders. Yet they never lost their practical approach to treating professional criminals particularly evident in Workhouse commitments under Article 7A, Sec. 203, subd. (c). They remained ever aware of the constant war carried out by our Police Department and District Attorneys against such professional criminals. The proposed definite sentence parole statute could not be practically applied in such cases and consequently, the citizens of New York City would be ever subject to their nefarious activities carried on in heavily populated urban areas.

e) The repeal of Article 7A would increase the financial burden on the City Administration for the administration of criminal justice in the City of New York.

Other than the reference in the foregoing Temporary State Commission's Staff Notes as to the comparable cost of maintaining a person in prison as against selected parole supervision, there is no other reference to the cost of the new proposed definite parole statute. The City of New York maintains the total cost of the New York City Parole Commission. However, the City is presently reimbursed by the State for the housing of felons and other persons committed for indeterminate sentences in excess of four months as provided in Sec. 203-a of Article 7A, State Correction Law. If Article 7A were repealed, the City would lose this State financial aid unless other financial provisions were made in the statewide application of the proposed definite parole statute.

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As we approach the end of this critique, the following points are emphasized:

1. In New York City, young adult arrests in the 16 to 20 year age category increased by 27.1 percent and the felonies in this group rose by 13.6 percent. The FBI confirms that last year the crime rate went up again. J. Edgar Hoover pointed out that in the past five years crime has increased four times as fast as the population of the country. This year's report shows the increase up 10 percent for the country as a whole and 4.7 percent for the City of New York. New York ranks 35th among large cities in the number of crimes committed per 10,000 of population.

Change for the purpose of change at this time, which would weaken the administration of criminal justice, is retrogressive rather than progressive. The repeal of Article 7A would be a disservice to the City of New York. Such action by the Legislature would set the City back fifty years in its overall efforts to combat the rise in crime. The New York City Police Department needs the support of the District Attorneys and the Courts. Likewise, the District Attorneys and the Criminal Court Judges of New York City need the retention of strong laws to administer criminal justice.

2. If enacted, the proposed definite sentence parole statute should be applied mainly to those crimes which originate as misdemeanors. The Justices of the Supreme Court's Criminal Terms in New York City should retain their present discretionary powers. Even if the definite parole statute should be enacted, these Justices would then have the choice in sentencing misdemeanants who were originally indicted for felonies, either to the special

sentence provided by Article 7A or to definite sentence parole. Such sentences would then give proper consideration to both the protection of the public and the treatment of the offender instead of being based only on a conviction for a misdemeanor.

3. Article 7A is constitutional law and has been upheld as such for almost the past half century, despite attacks by critics on the constitutionality of imprisonment for more than one year for offenses less than a felony without indictment or trial by jury (see page A-23, line 13)

As a consequence of the foregoing false legalistic logic of these critics, commitment of young adult offenders to the Elmira Reception Center by Judges of the Citywide Criminal Court would also be illegal or unconstitutional, since these offenders are similarly sentenced without indictment or trial by jury.

As heretofore stated, the Parole Commission generally supports the concept of definite sentence parole as against the present policy of imposing definite sentences without any form of post-institutional authoritative supervision. However, the Parole Commission is opposed to the repeal of Article 7A merely on the grounds that this concept could then be applied on a statewide basis. The purpose of Article 7A is to provide adequate protection to the citizens of New York City as well as to supply maximum, experienced rehabilitative treatment for offenders. These same goals may be achieved throughout the State without such repeal.

In line with this thinking, the Parole Commission has the following constructive recommendation to offer:

a. Article 7A should be retained insofar as it pertains to commitments to the City Reformatory and Workhouse.

b. Article 7A can be amended in reference to indeterminate, "reformatory-type" sentences to the Penitentiary. That is, such sentences could be limited only to misdemeanor convictions resulting from original felony indictments.

There would then be no conflict between the proposed definite sentence statute (either legally or pragmatically) and the proper administration of criminal justice in a large urban area such as New York City.

4. The Honorable Richard Bartlett, Chairman of the Temporary State Commission of the Revision of the Penal Law and Code of Criminal Procedure, was quoted in the press on July 23, 1964, to the effect that the Temporary Commission will press for complete revision of the Penal Law in the 1965 Legislature. This plan apparently was made prior to the recent Federal Court decision ordering State Reapportionment by April, 1965. The Court also ordered successive yearly elections of State Legislators in 1964, 1965 and 1966. Consequently, in the light of the concomitant

preoccupation of the Legislature with these matters, it is respectfully suggested that for the benefit of all concerned the planned timetable for the enactment of this proposed legislation be revised.

In conclusion, I extend my personal appreciation together with that of my colleague, Commissioner Fitzgerald Phillips, and our dedicated professional parole and clerical staff, to the readers of this review. Due to the limited time available prior to public hearings scheduled on this proposed legislation in New York City during October, 1964, it was necessary for me to prepare, collate and publish this material for distribution as quickly as possible. Consequently, this critique does not necessarily reflect the opinion or thinking of either or both of the ex-officio Members of the New York City Parole Commission. The appropriate use of the words "Parole Commission" and "our" in the foregoing pages expressed the thinking of each of the full-time Members of the Parole Commission and its staff, particularly Secretary-Administrator Aaron H. Goldstein, Chief Parole Officer Lily C. Fine, and Supervising Parole Officers Benjamin Malcolm and Jerome Feldman.

Possibly your favorable reaction to this presentation will motivate your positive action supporting our position in this vital matter at the scheduled public hearings. In the meantime, if you have any comments and recommendations to offer, we shall welcome them.