(1)

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: (a) those that are essentially administrative in nature, and ~~which, therefore, should be relocated~~ which, therefore, belong in a more appropriate body of law dealing with the same or cognate subject matter; and (b) those that should be repealed because they have no further utility due to changed economic and social conditions, or that have been held unconstitutional, or that duplicate sections in other chapters of the Consolidated Laws. Staff reports summarized the scope of sections thus identified, cited relevant statutes and background material, and recommended specific dispositions. These reports were circularized for comment to the respective government departments and agencies concerned, to bar associations, and to numerous interested organizations and individuals. The replies

~~has~~ received have furnished valuable assistance to the Commission. ~~in this task.~~ This project has now been substantially completed and the Commission intends to submit its recommendations to the Legislature, in bill form, concurrently with the submission of the revised penal law and code of criminal procedure. A tabular summary of these recommendations appears in Appendix A of this report. Staff memoranda ~~[illegible]~~ supporting these recommendations are available to persons interested in particular proposals.

TP The first phase of this initial project involved the identification of Penal Law sections of a civil and administrative character, i.e., provisions that could be more suitably housed in other bodies of law dealing with the same or similar subject matter. As was pointed out in the last report, many civil chapters of the Consolidated Laws provide criminal sanctions for violations of some or all of their sections. ~~Although violations~~ These provisions, although rarely the basis for prosecution, ~~are rarely prosecuted they~~ are, nevertheless, part and parcel of the penal laws of this state. ~~[illegible]~~ ~~[illegible] Penal Law offenses overlap and are even inconsistent with sections in the Penal Law proper.~~

start new page

TP The Commission staff estimates that outside the Penal Law there are about 2000 misdemeanor and about 20 felony provisions scattered throughout the various chapters of the Consolidated and Unconsolidated Laws. For example: Banking Law § 563, Education Law § 224 (felony), Executive Law § 8, Highway Law § 323, Indian Law § 57 (felony), Judiciary Law § 813, Mental Hygiene Law § 227, Navigation Law § 62 (felony), Personal Property Law § 46-f, Public Authorities Law § 1371,

Approximately one-half of the sections in the General Business Law contain misdemeanor conditions.

Village Law § 333, and Unconsolidated Laws § 9903. Several ~~of these~~ other chapters in the Consolidated Laws have a "dragnet" provision ~~section providing that a~~ provision clause stating that a violation of any section in the chapter, or of a particular article therein, constitutes a misdemeanor, e.g., Agriculture and Markets Law § 41, Banking Law § 71, Multiple Dwelling Law § 304, and Public Service Law § 56. Some sections in the Penal Law expressly state that a violation of a ~~specific~~ a specific section or article, or ~~[illegible]~~ any section, ~~provision~~ in some other chapter of the Consolidated Laws constitutes a misdemeanor, e.g., ~~sections 446, 783, 1231, 1275, 1500, 1744, 1763, and 1878.~~ sections 446 (General Business Law), 783 (Election Law), 1231 (Judiciary Law), 1275 (Labor Law), 1500 (Navigation Law), 1744 (Education Law), 1763 (Public Health Law), and 1878 (Public Officers Law). ~~and 9903 (General Business Law)~~

(9)

¶ Although the Banking Law contains numerous penal sanctions, there are, nevertheless, ~~fifteen sections~~ in Penal Law Article 26, "Banking", fifteen sections relating to such technical matters as investment of bank funds in securities, the issuance of certificates of deposit, loans, insolvency, etc. ~~Examples could be cited in such other areas as~~ Insurance, labor and public health are illustrative of some of the other areas in which the Penal Law contains only a fractional part of the law relating to the subject. Compounding the difficulty is the absence of a workable index to the presence or content of these hundreds of criminal sanctions outside of the Penal Law. This structuring of the New York criminal laws is a hindrance rather than an aid to the researching of penal sanctions of law in any specialized field, for at least two bodies must be combatted.

¶ This structural dichotomy is due historically to shifting concepts of the appropriate location of penal provisions in New York's general laws. The Revised Statutes of 1828, for the first time, codified, into a single chapter "Crimes and their Punishment". ~~This chapter contained only the traditional areas of criminality~~. Other penal sanctions, e.g., those relating to banking, were placed in the Revised Statutes among the several subjects to which they were related. A regulatory provision was not isolated merely because it carried a criminal penalty. Compilers

the traditional areas of criminality

(9A)

of subsequent editions of the Revised Statutes followed this scheme and inserted new legislation "in those titles and articles <u>where the same or similar subjects are contained</u>." Preface to Revised Statutes, 3rd Ed. (1846).

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as Commissioners and charged with the task of

TP In 1857, David Dudley Field and two others were appointed by the Legislature to that task of codifying the laws of the state. By statute, they ~~commissioners and~~ were directed to "divide their work into three portions; one containing the political code, another the civil code, and a third the penal code. The ... penal code must define all the crimes for which persons can be punished, and the punishment for the same." Laws 1857, ch. 266. In 1864 when ~~they submitted their~~ the draft of a Penal Code, "In compiling the system of Penal Law embodied in this Code, the following have been the leading objects of the Commissioners: 1. To bring within the compass of a single volume the whole body of the law of crimes and punishments in force within this state.... The value of the Penal Code must ultimately depend, in great measure, upon its containing provisions which embrace every species of act or omission

(was submitted, the plan followed was briefly outlined;)

11

14:23::x:60

23x = 840

23 | 840 (36)
69x
150
158

which is the subject of criminal punishment." Draft of a Penal Code for the State of New York, iii-iv, (1864). ~~The Penal Code was finally adopted by Laws 1881 ch. 676.~~ Just prior ~~its~~ to the adoption of the Field Penal Code in 1881, the chapter of the Revised Statutes relating to crimes contained about 400 sections. The Penal Code, on the other hand, ~~of 1881~~ contained about 700 sections. ~~Very few criminal penalties remained in other parts of the general statutes~~ Revised Statutes as a result of ~~the~~ Field's ~~system of gathering into one book all criminal provisions~~ reorganization.

¶ The next reclassification occurred when the present Penal Law was adopted in 1909, replacing the Penal Code of 1881. The Penal Law of 1909, drafted by the Board of Statutory Consolidation, was simply a rearrangement of the old Penal Code without any change of substance. The consolidators incorporated about sixty penal statutes not included in the former Code. 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 ~~at the turn of the century~~, 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. ~~By 1930, fifty two of the eighty eight chapters of the Consolidated Laws contained penal provisions.~~

(4)

Similarly, Penal Law Article 154, "Pawnbrokers", belongs in General Business Law Article 5, "Pawnbrokers".

Penal Law section 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 sections 188-a and 943, relating to auctions, can properly be relocated in General Business Law Article 3, "Auctions and Auctioneers". Article 26 of the Penal Law, "Banking", should be transferred to the Banking Law. Sections in Penal Law Article 74, "Elective Franchise", Article 112, "Insurance", Article 144, "Navigation", find a more natural home in the Election Law, Insurance Law, and Navigation Law, respectively.

Penal Law section 440 requires the filing of certificates by persons conducting a business under an assumed name or as partners ~~in the office of the clerk of the county in which the business is conducted~~. Penal Law section 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.

in the office of the clerk of the county

(1)

TP This reorganization, coupled with the compilation of a comprehensive index addressed to the totality of New York's criminal laws, will facilitate the finding of law applicable to a specialized field. Excising Penal Law provisions ~~sections~~ relating to baby chicks, pocket billiard rooms, budget planning, ferries, passage tickets, and ~~platinum stamping~~ the like will lend stature and dignity to the ~~offenses~~ formulations contained in the revised penal ~~code~~ law. ~~As noted above, the only task remaining~~ All that remains to be done on the excision and relocation project is the pro forma task of putting the ~~common~~ recommendations in bill form, ~~which, as stated before, will be done when the final revised penal law and code of criminal procedure are submitted to the Legislature.~~

These bills, as noted above, will be submitted to the Legislature simultaneously with the revised penal law and code of criminal procedure.

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¶ What criterion should determine which provisions belong in the Penal Law and which belong in some other body of law? The Commission has adopted the view that a proper penal code should not cover the entire field of criminality, but instead, should comprise the more fundamental and familiar offenses. ~~Penal Law provisions~~ Sections in the Penal Law that are essentially administrative in scope should be relocated, without substantive or style changes in other bodies of law dealing more fully with the activity regulated or with cognate subject matter.

¶ The following Penal Law sections illustrate the kind of provisions that are being recommended for relocation in some other body of law.