

STATEMENT OF COMMISSIONER JOHN J. QUINN, CHAIRMAN  
OF THE NEW YORK CITY PAROLE COMMISSION, AT THE PUBLIC  
HEARINGS OF THE TEMPORARY STATE COMMISSION ON THE REV-  
ISION OF THE NEW YORK STATE PENAL LAW AND THE CRIMINAL  
CODE, HELD AT THE NEW YORK COUNTY LAWYERS ASSOCIATION,  
14 VESEY STREET, NEW YORK CITY, NOVEMBER 25th, 1964.

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MR. CHAIRMAN AND MEMBERS OF THIS STATE COMMISSION:

My colleague, Commissioner Fitzgerald Phillips, and I appear here today to express our professional views as Parole Commissioners of the City of New York concerning this Temporary State Commission's recommendation to repeal Article 7A of the State Correction Law. We shall also endeavor to answer pertinent questions in this regard put to us by Members of this State Commission.

As you know, Article 7A, originally known as the Parole Commission Law, was enacted in 1915 by the State Legislature upon the request of the City of New York. It is the legal authority for all Criminal Court Judges (both the Supreme Court and Citywide Criminal Court) in the City of New York and/or other first class cities in the State to impose indeterminate commitments on convicted misdemeanants and first felony offenders to the City's Reformatory, Penitentiary, and Workhouse. The Maximum Jurisdiction of the City Parole Commission over Penitentiary and Reformatory commitments is three years less statutory credit for jail detention time prior to disposition. Workhouse commitments do not exceed two years less jail time.

Administrative Officials of the City of New York are still studying this important matter and other proposed Penal Law statutes. No official City policy has yet been determined. I wish to make it quite clear that our position is not necessarily that of the City at the present time.

We appreciate the opportunity which the Temporary State Commission has afforded us and the permission which Mr. Paul Bragdon, the Legislative Assistant to Mayor Wagner, has granted us to provide practical information that will hopefully be of use in your ultimate determinations.

Commissioner Phillips and I sincerely believe that the repeal of Article 7A would be a disservice to the City of New York and be adverse to the safety and welfare of its citizens. Such action would comfort the criminal element of our City due to the curtailment of the Parole Commission's authoritative period of jurisdiction over convicted criminal offenders. Yet we generally support, with certain reservations, the proposed Definite Sentence Parole Statute inasmuch as it would further the concept of misdemeanor parole throughout all of the State. It is an established fact that we, the full-time Members of the Parole Commission of the City of New York, were among the first to thoroughly examine the Proposed Penal Law and give written evidence of our reaction in the August, 1964 "Critical Review". It also conclusively demonstrated our dedication of purpose even though we respectfully disagree with this State Commission as to Article 7A.

In order to provide you with some factual background leading up to our appearance before you today, I submit the following chronological sequence of events. These stated facts are not intended to embarrass ourselves nor to offend anyone else. The only intended purpose is to aid this State Commission to evaluate whether the old or the new legislation, or both operating together, can best protect the people of our State and City through the effective supervision and rehabilitation of released criminal offenders.

Our first official contact with the author of this proposal, your esteemed Associate Counsel, Mr. Peter Preiser, occurred in the early months of 1963. Several conferences were held among us. He attended an Executive Session of the City's Parole Commission on April 10, 1963 and on April 25, 1963 he accompanied both your distinguished Chairman, Hon. Richard Bartlett, and Counsel, Richard Denzer, to another of our weekly Executive Sessions. The present Director of the New York State Division For Youth, Hon. Lawrence Pierce, was also in attendance at this latter Session. Mr. Pierce was then a Deputy Police Commissioner and by Law, was the duly authorized representative of Police Commissioner Michael Murphy. His presence, together with Commissioner Phillips and myself, constituted the quorum legally required to conduct our determinations and other official business of the Parole Commission.

During the following continuing period of time, the main and only issue between Mr. Preiser and the Parole Commission's enforcement of Article 7A appeared to have been, and apparently still is, that we have the power by Law to possibly hold, in the City's Penitentiary, a convicted misdemeanor offender beyond the maximum of one year imprisonment prescribed under the Penal Law. This we understood and appreciated, -- and for the record, still do! -- except in the area of serious convicted misdemeanants who were originally indicted for felonies. There was also the constant and repeated referrals to this existing dichotomy as being contrary to the plan of uniform penal laws for the entire State. There were further occasional contacts between us from time to time but no further study of any substantial nature was ever made into the practical aspects of the Parole Commission's daily operations and records.

In July of this year, I received the Edward Thompson Company publication of the Proposed Penal Law. In the light of prior discussions, I was shocked and amazed upon reading the statement in the Commission Staff Notes on Page 304: "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...". Thereafter, I made a closer study of the proposed statute on page 38 noting its use of the words "institution's conditional release board"; the Commission Staff Notes pertaining thereto on pages 303 and 304; the "Acknowledgements" in the front of the book to those who assisted in the study of sentencing; and to Mr. Preiser's "Survey As Of 1963" pertaining to the City Reformatory on Pages A-22 to A-24.

We had logically expected a proposal to modify Penitentiary misdemeanor commitments under Article 7A. We had anticipated that such Penitentiary Indeterminate Commitments might be subject to a recommendation that they be re-drafted to conform with the terms of sentences under the Penal Law for misdemeanants. Never did we, or could we, anticipate a recommendation that surprisingly "mushroomed" to:

- 1) Prevent the City's Criminal Court Judges (both in the Supreme Court's Criminal Term and Citywide Criminal Courts) from imposing future "Reformatory Type" commitments to New York City's Reformatory for young adults.
- 2) Abolish a prescribed law so necessary to this City, namely, the Workhouse Indeterminate Statute for persistent offenders, particularly among whom are professional pickpockets.

My reaction was quick and our opposition was soon objectively stated in writing. As lawyers ourselves, Commissioner Phillips and I praise highly Mr. Preiser's thorough legal research. His "Survey" is a brilliant legal presentation and well deserving of the special commendation accorded him among your "Acknowledgements". As Parole Commissioners, however, it is our firm conviction that similar practical considerations, so necessary to applying statutory law, have not been as thoroughly examined. As a result, this has tended to negate the elements of protection that Article 7A provides for the safety of our citizens and the rehabilitative efforts afforded to thousands of released criminal offenders for almost the last half-century.

Fortunately, I am aware that Mr. Preiser and I have great mutual respect for each other. This has resulted in several informal and unofficial discussions in recent weeks. I am certain we both realize that our respective positions in this matter stem from the frame of reference pertaining to the area of parole methods and operation, not at all affecting our common belief that misdemeanor parole benefits both Society and the rehabilitation of criminal offenders.

Consequently, I shall leave with this State Commission certain exhibits together with our attached position paper in the hope that they will help provide both a legal and practical solution in making possible the coexistence of each system.

Before I proceed further to orally implement these exhibits, my colleague, Commissioner Phillips, desires to address this State Commission. As a former Deputy Commissioner of the City's Department of Correction, his views on "institution's conditional release boards" are based on vast experience and personal knowledge in the field of correction.

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(NOTE: Following my oral implementation, copies of the Charts are left with the State Commission along with a copy of the letter received from California by Commissioner Edward R. Cass, Vice-Chairman of the New York State Commission of Correction.)

PAROLE COMMISSION  
of the  
CITY OF NEW YORK

Summary of reasons opposing the repeal of Article 7A,  
State Correction Law, as recommended by the Temporary  
State Commission on Revision of the Penal Law and  
Criminal Code. Such repeal was recommended in order  
to give Statewide application to the proposed Definite  
Sentence Parole Statute set forth in Section 30.40 (2).

1. Article 7A, originally known as the Parole Commission Law, was enacted in 1915 by the State Legislature upon the request of the City of New York. It is the legal authority for all Criminal Court Judges (both the Supreme Court and Citywide Criminal Court) in the City of New York and/or other first class cities in the State to impose indeterminate commitments on convicted misdemeanants and first felony offenders to the City's Reformatory, Penitentiary, and Workhouse. The Maximum Jurisdiction of the City Parole Commission over Penitentiary and Reformatory commitments is three years less statutory credit for jail detention time prior to disposition. Workhouse commitments do not exceed two years less jail time.

2. Article 7A has fostered the practice of misdemeanor parole in the City of New York for almost the past fifty years. It has proved to be beneficial legislation inasmuch as it combines the elements of protection to the community and rehabilitation of convicted criminal offenders through authoritative supervision.

3. Though the philosophical objective of the proposed definite sentence parole statute is good, certain reservations are retained to its practical application and resulting constitutionality. These reservations are directed to:

- 1) Its possible lack of total implementation throughout the whole state due to the high cost of such a statewide operation.
- 2) Its true effectiveness due to varying periods of sentences within the provided eligible parole period of sixty days to one year and the resulting decrease of parole authority in the overlapping two year supervision period.
- 3) The question of its constitutionality. When a person is selectively paroled under authoritative supervision, said person is permitted to do the balance of time on the street which he owes under the original sentence. The parole period is concurrent with the unfinished term. He can thereby serve and complete his sentence in the community provided he does not violate the conditions of his parole. The proposed statute stipulates an aggregate maximum of a one year less jail time incarceration period which is not concurrent with its provided two year parole supervision period. In contrast, Article 7A authorizes concurrent jurisdiction. It has been tested in the courts up to and including the State Court of Appeals. Article 7A has been declared constitutional and proper law.

4. As indicated in the Temporary State Commission Staff Notes on Pages 303 and 304 in the Edward Thompson Company publication, the proposed definite sentence parole statute is based on a comparable California law (California Penal Code, Sections 3075-3084). Since the writing of the Parole Commission's "Critical Review" in August 1964, pertaining to the forementioned recommendation, written information has been received concerning the inadequacies of this California Statute. A direct quote from the letter received from California reads as follows: "As indicated in the memorandum, Section 3057 of the California Penal Code establishes county parole boards. This system has not been implemented in many of the counties, and in those where it is in action it is used rather sparingly. One of its most popular uses is in the parole of paternity and non-support cases. This, of course, is not parole in the sense we usually think of it but tends more to become a collection agency".

(continued on Page 2).

From the foregoing, one can conclude that to repeal Article 7A for the reason of effecting Statewide application of an untried, experimental new definite sentence parole concept in New York would be an illogical act. It would be particularly dangerous in the City of New York to substitute this for the city's present parole system. By contrast, Article 7A possesses the qualities of a long established, experienced, effective, and authoritative parole system provided to large urban areas of New York State. Used now by the City of New York, it can also be used by the cities of Rochester and Syracuse if so desired under this existing New York Law.

5. The planned and stated effective date of the revised and proposed New York Penal Law is July 1st, 1966. After that date, the following additional adverse results would occur to the Administration of Criminal Justice in the City of New York if Article 7A were repealed. (Detailed in pages 2 to 6 inclusive in the "Critical Review"): -----

a- There could be no more "Reformatory Type" commitments to the New York City Reformatory.

b- There would be a curtailment of a Supreme Court Judge's sentencing power, coupled with the question of concurrence by New York City's District Attorneys, in the acceptance of a lesser plea to a misdemeanor reduced from a felony indictment. Such restriction would also apply to verdicts reduced after trial by a jury.

(As to the foregoing it should be noted that in 1963, a total of 1,019 lesser pleas from felony indictments were committed to the jurisdiction of the N.Y.C. Parole Commission under Article 7A. This, coupled with the number of lesser pleas sentenced on definite sentences to the City's Penitentiary, probably amounts to more or equal to the combined total amount of lesser pleas accepted or reduced after trial by Jury in the County Courts of all the other 57 counties of the State).

c- All convicted first felony offenders over the age of thirty years in the City of New York would have to be sentenced by Supreme Court Judges to State's Prison instead of possibly being committed to the City Penitentiary as provided by Article 7A. Significant past success has been achieved in the rehabilitation of this type of criminal offender.

d- Citywide Criminal Court Judges would be deprived of the legal rights to properly sentence multiple offenders who are professional pick-pockets, confidence men and the like to a two year maximum in the City Workhouse as provided in Article 7A.

e- There would be an increase in the financial cost of the administration of criminal justice in the City of New York.

f- Overall efforts to combat the current rise in crime would be seriously impaired due to the curtailment of the authoritative supervision period as now provided in Article 7A.

g- In 1963, there were 71 persons returned to their native domiciles from New York City. This was accomplished under the Interstate Parole Compact. The proposed statute does not generally permit enough time to accomplish such transfers.