REPORT OF FRANCIS R. MORAN,
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COUNTY, NEW YORK, OF "TITLE P" OF
THE PROPOSED NEW YORK PENAL LAW.

TITLE P, entitled "Offenses against Public Safety," is divided into two articles: Article 270, entitled "Firearms and Other Dangerous Weapons" and consisting of eight sections, and Article 275, entitled "Other Offenses Relating to Public Safety" and comprised of four sections.

Much of Article 270 has its genesis in Sections 1896 through 1904 of the Penal Law, which sections are the product of four years of study of the Joint Legislative Committee on Firearms and Ammunition. In view of the fact that the work of this Committee is continuing, we share with the New York State Temporary Commission on Revision of the Penal Law and criminal Code reluctance to make any sweeping recommendations. However, it is my opinion that certain of the changes in the proposed law, while characterized by the Temporary Commission as "technical changes," are unnecessary and in some instances more than technical. With these superimposed limitations, we make the following suggestions:

1. As now written, Section 1896, entitled "Definitions," is made up of ten numbered paragraphs. We suggest that proposed Section 270.00, which is identical with Section 1896, also have numbered paragraphs.

We further suggest that the third paragraph of Section 270.00 have added the word "gun" between the words "any" and "pistol."

2. Proposed Section 270.05, which is derived from Section 1897, be amended in par.1 to read, "a Class C Felony." We feel that the nature of this crime demands greater lattitude in the sentencing of the Court. We further suggest that in par. 3, the words "slung shot" be added after "sand club." We also suggest that in par. 5, the words "dangerous or" be added between the words "any deadly" to make the proposed law conform with the existing statute. It is to be noted that

the Commission has made par.5 applicable to the first three subdivisions of the section rather than the first two, as is now the case. We think this change is for the better. We suggest that par.6 be amended to "a Class C Felony" in view of the serious nature of the crime.

3. Subdivisions 1 through 6 of proposed Section 270.10, which is derived from Section 1898, and Subdivision 7 which is derived from Section 1902(3), should have Subdivisions 1, 2, 3, 4 and 6 amended to provide punishment as a Class C Felony, and that Paragraphs 1 and 2 be amended to include a slung shot.

4. Proposed Section 270.15, which is derived from Section 1899, should be amended in par.3 to include "slung shot."

5. Section 270.20 is derived from Section 1900 and should be amended in Subdivision 1(a) to eliminate the word "Sheriffs" in view of the enactment of Section 154-a of the Code of Criminal Procedure. Subdivision 1(d) has eliminated the words "or to a member of the force or department" between the words "department" and "designated" in order to make this section conform to the existing law. The eliminated words should be re-inserted. Subdivision 4 should be eliminated even though it is now a part of the existing law, since it is our opinion that such an exception provides an unnecessary loophole.

6. Section 270.25, which is derived from Section 1902(4) is satisfactory.

7. Section 270.30, which is derived from Section 1902(5), now requires the District Attorney to make the report to the United States Government. In view of the fact that in many instances where a defendant is charged with a misdemeanor relating to public safety, he enters a plea of guilty in a police justice court or in a court of special sessions under the jurisdiction of a justice of the peace, and under these circumstances the District Attorney is not represented in these courts unless there is a trial, the section should be amended by the addition of the words "after notification by the Court" between the words "county" and "in which."

8. Section 270.35, which is derived from Section 1904 except for the omission of paragraphs 5 and 6, is satisfactory. However, in the interest of brevity, Subdivision 3 might be amended to provide the penalty for firing at an aircraft without regard to whether it is in motion in the air, or in motion or stationary on the ground.

Article 275, which is composed of four sections, is derived from Sections 726, 1424-a, 1894-a, 1920 and 1923. Section 275.00 is derived from Section 1894-a. The only recommendation we have is in Subdivision 3, that the words "under this act" be amended to read "under this title."

9. Section 275.05 is substantially changed from Section 726, from which it is derived; in view of the fact that possession and presumptive evidence of intent to use the noxious material, it is suggested that the exception for peace officers and public officers be returned to the section to avoid obvious difficulties.

10. Section 275.10, which is derived from Section 1920, now provides that the container must have a capacity more than 1-1/2 cu.ft. We suggest that the proposed section be amended to specify the container to have a capacity of 1-1/2 cu.ft. or more.

Subdivision 2 of this section, which is derived from Section 1923, is satisfactory.

11. Section 275.15 is derived from Section 1424-a. The substantial change in the proposed section is the elimination of the person who falsely secures the line by stating that he needs to make an emergency call is a good change and it is our suggestion that this elimination be supported.