

MEMORANDUM on Proposed New York Penal Law
(Senate Intro. 3918, Assembly Intro. 5376,
1964 Legislature).

TO: Temporary State Commission on Revision of the
Penal Law and Criminal Code.

The County Judges of the Sixth Judicial District met at Binghamton, New York, on October 29, 1964, for a discussion of the proposed New York Penal Law. The following county judges were present: Hon. Walter L. Terry, Delaware County; Hon. Louis M. ^{Greenblatt} ~~Greenbelt~~, Broome County; Hon. Ross Patane, Madison County; Hon. Frederick W. Loomis, Otsego County; Hon. Lynn N. Peterson, Chenango County; Hon. Donald H. Monroe, Chemung County; Hon. Francis J. Clohessy, Tioga County and Hon. Liston F. Coon, Schuyler County.

While the length of time spent in discussion did not permit a fully comprehensive study of the provisions of the proposed law, several suggestions thought to be constructive were elicited and are hereinafter set forth.

In general the group approved of the format of the proposed law and found the category type of format preferable to the existing alphabetical listing of offenses. The relocation of the many regulatory provisions to other appropriate consolidated laws found further general approval.

However, it was specifically pointed out that such relocation further accentuates the need for a complete and meaningful indexing of all penal offenses to be found in our statutory law. It was noted that the Third Interim Report of the Commission (p. 29) indicates such to be the intent of the Commission.

The classification of offenses into listed misdemeanor and felony classes found approval among the judges as being helpful from the standpoint of sentencing and the new types of sentences (e.g. sentence of probation) were found to be an advance in the area of sentence structure.

From the specific sections of the proposed statute the group wishes to make the following comments for possible clarification and/or amendment:

a) Section 25.00 and 25.05 provides, as does the present law, that "the court may modify or enlarge the conditions". However some question has existed in the minds of the judges as to whether such modification or enlargement may be done "ex parte" or only "after a hearing". It is suggested that these sections contain clarification on this point since under the new statute the Court must specifically state the initial conditions of a probation sentence or a sentence of conditional discharge.

*Procedure: will be dealt with
Several alternatives are under consideration.*

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b) Section 40.00 provides for fines in felony cases where a "gain" to the defendant obtains. The term gain is felt to be vague and indefinite. Does gain, as here expressed, mean "immediate gain" or "ultimate gain"? e.g. Are recovered fruits of burglary gain to the defendant? Is stolen money for which restitution has been made, nevertheless a gain? Has a defendant gained the value of a stolen car, even though recovered or in the case of a car recovered in a damaged condition is the gain limited to the value of the damages or no gain at all?

Up
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c) Sections 125.00 (3) and 125.05(2) provide for assaults in the third and second degree by means of a deadly weapon. Should not assault by a dangerous weapon (as defined in Section 10.00 (7) be included as a means of effecting second or third degree assault?

Yes
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d) Section 220.50 (4) uses the terminology "refusal to be sworn as a witness". Since affirmations are permitted by those with scruples against "swearing". it is suggested that the above phrase be changed to read "refusal to take an oath as a witness".

No (this is not a problem)
(4 laws)

e) Section 265.00 - Abandonment of a Child. Past experience has shown that district attorneys often require, as a pre-requisite to prosecution, that U.S.D.L. procedures be first pursued unsuccessfully. It is believed that executive requisitions in extraditions have in cases been denied where USDL procedures have not been previously instituted. It is suggested that consideration be given to amending this section to reflect whether or not it be the legislative intent to require USDL proceedings in advance prosecution.

This not necessary; many crimes give alternative remedies e.g. not necessary under PL kidnapping; parent, not necessary to pursue contempt remedy

We agree problem:

f) Section 265.15 (4) omits the provision of Section 484 (3) of the present Penal Law making it a crime to give alcoholic beverages to a child. It was the consensus of the judges that section 265.15(4) should include the "giving" as well as the "sale".

Staff agrees!
draft this

g) Section 270.00 defining a licensing officer for firearms again raises the question of the role of the county judge in issuing pistol permits. Many county judges feel, some very strongly, that the licensing of firearms should not be ^ajudicial function. It is time-consuming and an administrative burden. Since all applications are recommended for approval by a Sheriff's Department or by a Police Department prior to submission to the Court it is recommended that licensing responsibility be placed in the respective Sheriff Departments and the Chiefs of Police in cities.

Weapons?

h) Section 270.05(4) provides that a person under sixteen possessed of an airgun "shall be adjudicated a juvenile delinquent." Section 712(a) of the Family Court Act defines a juvenile delinquent as a person between seven and sixteen who does an act which if done by an adult would constitute a crime. Since it is not a crime for an adult to possess an air-gun the provision of section 270.05(4) above referred to is meaningless and unenforceable.

I agree but weapons!

i) Section 430.45 places responsibility on town "overseers of the poor". It is submitted that such town officers no longer exist, at least not in the Sixth Judicial District, and that such reference should recite the proper welfare officials.

I agree.

It is hoped that some or all of the above suggestions and recommendations may be of assistance to the work of the Temporary Commission.

Respectfully submitted,



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