Statement of Nassau County Director of Probation,
Louis J. Milone, before the Senate Committee on Codes,
Senator Edward J. Speno, Chairman, June 27, 1969.

I am appearing before this Committee today, as Director of the Nassau County Probation Department, to express our views with respect to the proposed revision of the Criminal Procedure Law in the areas of "Preventive Detention" and "Peace Officers."

1. Preventive Detention

In January 1969 an official of the Justice Department publicly stated, "It seemed to us that we were confronted with a crisis emergency situation." The crisis was that murders, muggings and other crimes were accelerating in the District of Columbia. Because of the high rate of local crime, the new administration decided to propose a new law for preventive detention and on January 31st, President Nixon called for legislation for Washington "whereby dangerous, hard-core recidivists could be held in temporary pre-trial detention when they have been charged with crimes and when their continued pre-trial release presents a clear danger to the community."

All of us here today are also aware of the fact that in the 1968 Study Bill -- proposed New York Criminal Procedure Law -- Section 275.30 sets forth the rules of law and criteria controlling the determination of the application for recognizance or bail; and Subdivision 2 (b) thereof is specifically concerned with the situation where there is a likelihood that the defendant would be a danger to society or himself if at liberty during the pendency of the action or proceeding.

At this point, I would like to call the Committee's attention to the fact that we in Probation in Nassau County recognized and stressed the need for and the importance of preventive detention long before Washington, D.C. evidenced its concern. During our participation in the National Conference On Bail and Criminal Justice held in Washington, D.C. from May 27-29, 1964, we stated among other things, that "Consideration should be given to the providing of immediate trial for recidivists, violators of probation and those individuals deemed prone to commit new crimes while out on bail."

Again at a later date and in a similar vein, we stated in our Annual Report for 1968 that "...While no individual known to be dangerous to the community or to himself should be permitted to walk the streets, the use of incarceration should be reserved for such individuals and for those who need a structured setting as part of their rehabilitative treatment..."

The same Annual Report refers to the fact that nearly 51.6% of the pre-sentence investigations conducted by the Nassau County Probation Department and disposed of, included persons with prior records. These are the persons most likely to commit new crimes while on bail; and our concern with these individuals should not be focused exclusively on the means to insure their appearance in Court. Of equal importance should be our concern with the prevention of the commission of new crimes.

It is our firm conviction that the New York Criminal Procedure Law as finally adopted, should provide that where a defendant has been released on bail pending disposition of a felony charge and is arrested again for the commission of a new crime, he should not be released on bail again pending disposition of the new charge. This practice of permitting an individual to be at liberty with two and in some instances three criminal charges against him is quite prevalent. In fact, it is so prevalent that it is precisely in this area, that the Courts have been subject to considerable public criticism for so-called "criminal coddling"--- criticism without justification, since the Judiciary is circumscribed by the dictates of the "bail system."

We agree wholeheartedly with the comments that have been made by the staff of the Temporary Commission On Revision of the Penal Law and Criminal Code in connection with Sect. 390.20 of the Proposed Criminal Procedure Law, the forerunner of the present Section 275.30. It was conceded that it is a traditional and accepted doctrine that the only purpose of fixing bail with respect to a defendant in a criminal action or proceeding is to guarantee his future appearance therein. In the light of that principle, predicating possible danger to society (or to the defendant himself) as a valid reason for fixing high bail or

rejecting the application, becomes most controversial. Though neither legislatively nor judicially recognized, this factor, actually if not expressly, underlies many refusals of bail applications by defendants whose release might imperil the community. "So called 'preventive detention' has been the subject of considerable comment, much of it recommending candid recognition thereof..." Upon the premise that in many instances preventive detention is in fact necessary for public protection and will inevitably be practiced even though not specifically authorized, the proposed new Section 275.30, Subdivision 2 (b) supra, realistically and explicitly recognizes danger to the community as a valid consideration in the determination of any bail application:

IN RECAPITULATION:

The New York Criminal Procedure Law as finally adopted should recognize the absolute need and importance of "Preventive Detention" and should provide the rules of law and criteria for strong, effective implementation.

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2. PEACE OFFICERS

A. Judging by the number of grievances and comments made to the Temporary Commission on Revision of the Penal Law and Criminal Code, both at public hearings and otherwise, the most controversial subject in the entire proposed Criminal Procedure Law involves the question of what persons are to be designated or classified as "police officers."

As a result of concerted action by the Council of New York State Probation Administrators, the New York State Probation and Parole Officers Association and other organizations in the field of Probation, Chapter 588 of the Laws of 1969 was enacted by the Legislature. This Chapter amends Sect. 154 of the existing Code of Criminal Procedure by adding "or probation officer of any judicial district of the state" to the list of enumerated "peace officers" contained in the aforesaid Section.

In this connection, I would like to quote some of the introductory comments appearing in the 1968 Study Bill. "The existing Criminal Code employs the term "peace officer"

which includes but is by no means limited to 'police' officers. Authorization to make arrests on reasonable cause, exemption from penal provisions against possession of firearms, and other powers and privileges are accorded to 'peace officers'. Measured by these extensive and important powers and privileges, one would gather that a peace officer is virtually the same as a police officer; and, indeed, a genuine police officer is granted very little more authority under the Code than a non-police peace officer.

The fact of the matter is, however, that many of the 'peace' officers enumerated in the Code (Sect. 154) bear little resemblance to 'police officers.' (Sect. 154-a).

An interminable and growing list of peace officers includes a variety of building and markets inspectors, court clerks and officers, humane society agents and other personnel who do not conform to the concept of a 'police' officer and who seemingly should not enjoy the gamut of police powers which the Code, realistically speaking, accords them through its authorizations and concessions to 'peace officers'.

The proposed Criminal Procedure Law's solution to this problem commences with the elimination of the term peace officer and the retention of the term police officer only. Police Officers are limited to persons having genuine police functions, such as members of city police forces, sheriffs and the like.

At this point I would like to indicate our concurrence with the following statement made to the Temporary Commission in New York City by Commissioner McGrath on February 15, 1968: "I am in complete agreement with the reasoning behind the Commission's plan to delimit the category of persons who now qualify for the status (i.e., peace officer), particularly its effect in separating those who are 'peace officers' solely for the purpose of obtaining immunity from the criminal sanctions against possession of firearms, from those 'peace officers' who, in addition to having the right to lawfully possess firearms perform police arrest functions."

We, too, are definitely opposed to the retention of the unnecessary "laundry list" presently contained in Sect. 154 of the Code of Criminal Procedure, but we are not seeking full and unlimited police powers accompanied by full and unlimited police responsibilities.

A probation officer is presently considered to be on duty 24 hours a day and the job is one that is always potentially dangerous. We are not merely concerned here with exemption from firearms laws. What we are concerned with is a status commensurate with the authority and responsibilities that are attached to the position of probation officer. Expanded powers are requisite to the discharge of expanded responsibilities. These additional powers are required not for the sake of being able to act as police officers during so-called "off hours", but for the specific purpose of being able to perform "on duty" functions effectively.

B. 1. In Nassau County, all probation officers are college graduates and must undergo a two-year training program as probation officer trainees before becoming full-fledged probation officers.

2. In order to carry firearms, they must take an orientation course on the use and handling of firearms at the Nassau County Police Academy and demonstrate their proficiency through qualifying periodically at the Police Range.

3. Also, by the very nature of the job and as a result of in-service training programs offered by the Probation Department and approved by the State Division of Probation and the Judicial Conference, probation officers are familiar with those provisions of the Penal Law and Criminal Code that affect Probation.

It is our feeling that an individual having the status of "peace officer" or "police officer" must have the educational background and training necessary to discharge his duties and fulfill his obligations in a manner befitting a responsible and intelligent member of society.

IN RECAPITULATION:

A. We sincerely hope that the Temporary Commission will carry out its expressed intent to preserve every right and power of a "peace officer" nature which each group of non-police peace officers presently listed in the Code needs to execute its duties.

We also endorse the Commission's plan to achieve this objective through the medium of special statutes addressed to the powers and duties of the particular agencies. Thus, for exemple, the Correction Law will contain provisions explicitly setting forth, among other matters, the arrest and weapon-carrying activity of state correction officers, and the Judiciary Law will do the same for court attendants and other court personnel. In this way, each group would enjoy all the necessary powers of such nature without resort to the unsound device of according it blanket "police officer" status.

We also respectfully request the Senate Committee on Codes to safeguard the status of a probation officer by preventing the provisions therefore from becoming lost in the shuffle, and to see that his rights and powers are clearly spelled out in whatever body of law should be deemed most appropriate.

B. Every individual with the status of "peace officer" or "police officer" should have the training and educational background that will enable him to conduct himself as an accountable and reasonable person. Training and education should also be a pre-requisite to the granting of the privilege of carrying a weapon - a responsibility demanding maturity and good judgment.