COMMISSION GENERAL

OVERHAUL URGED FOR PENAL CODE

State Panel Would Exclude Adultery From Crime Law and Redefine Murder

By JOHN SIBLEY
Special to The New York Times

ALBANY, March 16—A special state commission proposed today a new Penal Law that would exclude adultery as a crime and would redefine the terms under which murder would be punishable by death.

The changes are contained in a completely rewritten version of the law, a bewildering patchwork that has undergone repeated amendment but no overall revision in 83 years.

So broad is the scope of the recommended changes that at least two years of discussion by the bench, the bar and other interested groups is expected to precede any action by the Legislature.

The commission, headed by Assemblyman Richard J. Bartlett, Republican of Glens Falls, introduced its proposal in both houses of the Legislature today "for study purposes only."

Changes in Concept

The 265-page document embodies changes in concept, some of considerable social importance, as well as changes in form to tighten and clarify existing provisions.

In the proposed new law, crime and punishment are listed under categories rather than in alphabetical order as at present, a method by which related matters are often widely separated.

The commission weeded out of the Penal Law dozens of provisions that are not truly criminal in character, but administrative or civil.

Sections to Be Shifted

Those sections, which would be transferred to other bodies of law, deal with matters such as seizure and destruction of gambling equipment, pornographic material, dangerous weapons, licensing and civil aspects of gambling and prostitution.

Among the substantive changes are the commission's proposals relating to homicide. Chief of these is the abolition of the concepts of premeditation and deliberation, which now distinguish the two degrees of murder.

Murder is made a single crime, with intent to kill being the only mental state required.

Under present law, the commission said, "a defendant's life frequently hangs upon a jury's

Continued on Page 27, Column 1

OVERHAUL URGED FOR PENAL CODE

Continued From Page 1, Col. 7

decision concerning a highly technical issue which they do not really comprehend."

In the area of sexual behavior, the new law would not regard acts of sexual deviation between consenting adults as criminal. A similar change was recently incorporated into British law.

Adultery would no longer be a crime under the new law. The commission decided that enforcement of this provision in present law was virtually impossible, and that its inclusion would only weaken the new law.

"The consensus of the commission," Mr. Bartlett explained, "was that this is a matter of private morality, not of law."

Another commission member, Senator John H. Hughes, voiced sharp disagreement on elimination of the deviate sex and adultery provisions. He acknowledged that both were difficult to enforce, but said they should be retained in the Penal Law as an expression of society's disapproval of those acts.

The proposed law would also narrow the definition of kidnapping. Under the present statute, for example, a burglar may be guilty of kidnapping if he moves his victim from one room to the next. Or a parent fighting for custody of a child may technically be found a kidnapper.

In the proposed code, the crime of kidnapping would be limited to the commonly understood situation in which the victim was held for ransom. The other situations are covered by lesser offenses titled "false imprisonment" and "custodial interference."

The commission made two changes involving burglary. It eliminated "breaking" as an element of burglary, noting that the courts have declared "every opening of an unlocked door or window to be a 'breaking'."

Instead, the new law would make unlawful entry and intent to commit a crime the two essential elements of burglary. At the same time, the change would plug a loophole in the present law.

Since intent to commit a crime is frequently difficult to establish under New York case law, defendants frequently go free for want of the definition of a lesser offense on the books.

The proposed law creates a new offense of "criminal trespass" in three degrees, all below the fourth degree of burglary.

The concept of larceny is enlarged in the new law to include thefts predicated on false promises and fraudulent intent. Under present law, a confidence man is guilty of larceny only when his deception consists of a misrepresentation of facts.

The gambling statutes are revised to exclude players from criminal liability. Only the operator or promoter of a gambling enterprise would be guilty of a crime.

The proposed law provides sweeping changes in sentencing procedures. Generally, it would do away with mandatory sentences, on the theory that a judge at the time of sentencing cannot predict when a convict will be ready to return to society. Greater discretion would be given to parole boards.

Mr. Bartlett said the commission would eventually recommend elimination of the death penalty. However, he said the public needed time to become accustomed first to the procedure, written into law last year, in which the jury—after finding a defendant guilty of first degree murder—sets the sentence of life imprisonment or death.

The Bartlett commission, appointed in 1961, consists of 12 members. Four were named by Governor Rockefeller, four by Senate Majority Leader Walter J. Mahoney and four by Assembly Speaker Joseph F. Carlino.