

# Byrne deals for liberal penal code

NJ - Penal Code

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The price Gov. Brendan T. Byrne hopes to extract from the New Jersey Legislature in return for his signature on a death penalty law is the enactment of what may be the most modern and — in legal terms — liberal penal code in the nation.

Some of the more far reaching objectives of that code, which is scheduled for its first test vote in the Assembly next Monday or Tuesday, include:

- Eliminating many "victimless" crimes, including social gambling and sexual acts between consenting adults.
- Abolishing the "insanity defense" in trials. The ability of a defendant who claims insanity to stand trial would be determined in a pre-trial hearing. His sanity would be determined in a post-trial hearing.
- Setting specific sentences for varying degrees of a crime. In some instances, that would mean shorter sentences than those now provided.
- Allowing a defendant to claim ignorance of the law as a defense, if he could also demonstrate some reason for the ignorance.
- Strengthening the grounds under which an accused person can declare innocence on the ground that he or she was "entrapped" into a criminal act by a law enforcement officer.
- Consolidating 116 existing statutes on theft into one theft law so that a crime like shoplifting could be tried under the same law as other offenses involving non-violent stealing.
- Reducing the age of consent on

statutory rape cases from 16 to 12 years, providing the male is not more than four years older than the female.

• Banning plea bargaining for defendants charged with crimes involving weapons. All cases involving the use of guns would be referred from municipal to county courts.

Gov. Byrne has said repeatedly that he will not sign the law to reinstate capital punishment unless it is accompanied by penal code reform.

Republican leaders in the Assembly are preparing to attack the penal code by charging it would benefit criminals more than it would law enforcement officers.

Some critics are arguing that lifting the laws against "victimless crimes" could permit incest. State officials say if there is any way the code could be interpreted to permit incest, the code will be amended.

The Attorney General's office has been working behind the scenes to keep the penal code alive despite legislative foot dragging.

ADVOCATES OF THE NEW criminal code say that by establishing specific penalties for specific crimes, the law would limit judges' discretionary sentencing powers. That would mean a judge in one part of the state could not give light sentences for a particular offense while judges elsewhere imposed more severe penalties.

Defending the reduction in the maximum sentence for some crimes, an attorney general's spokesman said, "What some people see as a

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# Byrne's penal code overhaul

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lessening of criminal penalties is actually an approach to reality."

The sentences proposed in the new law reflect sentences that are now imposed and actually served, rather than the sentences stipulated under current law, which often are reduced by parole or suspension of the sentence, he said.

The code would divide all criminal offenses into six categories: First, second, third and fourth degrees, disorderly persons and petty disorderly persons.

Within those categories, the following maximum prison sentences and fines are proscribed: First degree, 8 to 20 years, \$15,000 fine. Second degree, 5 to 8 years, \$15,000 fine. Third degree, 3 to 5 years, \$15,000 fine. Fourth degree, 18 months, \$7,500 fine. Disorderly persons, six months, \$1,000 fine. Petty disorderly persons, 30 days, \$300 fine.

UNDER EXISTING state law, most crimes are divided into high misdemeanors — 1 carrying penalties of up to 12 years imprisonment — misdemeanors — up to 7 years — and disorderly persons, up to six months. Violent crimes, including murder, aggravated rape and kidnaping, are now subject to 30 years or life imprisonment.

The degree of the crime in the new code would be determined by the severity of the offense and the intent of the offender.

The spokesman for the attorney general conceded there is considerable opposition to passing legislation that would lift some of the legal restrictions on public morals.

"Priorities have to be set for criminal prosecution," the spokesman said. "The fact is that very few prosecutions are being made now

against consenting adults on morals charges."

The penal code is the product of a special New Jersey Law Revision Commission report that took more than a year to complete. It was published in 1971 and has been waiting for legislative action for five years.

Brian T. Kennedy, a Sea Girt attorney and former FBI member, will lead the floor fight against the bill for Assembly Republicans.

Kennedy says the panel code would open the door for new appeals by convicted criminals and would make it possible for a person convicted of murder to escape prison through a post-trial finding of insanity.

THE ATTORNEY GENERAL'S office admits there will be appeals by prisoners who believe they can get their sentences lowered in accordance with the new code.

Abolishing the insanity defense is a trade-off that the attorney general's spokesman says is an improvement over the way the courts now deal with the issue.

Defendants currently can claim in a jury trial they are innocent because they were insane when the crime was committed. In effect, the jurors become umpires in a battle between rival psychiatrists.

Under the new code, a defendant who claimed insanity would be subject to a pre-trial hearing to decide whether he was fit to stand trial.

If the pre-trial hearing ends in an order to stand trial the issue of insanity could not be presented to the jury. If the defendant were found unfit to stand trial, he would be committed to a mental institution.

If a trial produced a guilty verdict, the defendant would then be entitled to a sanity hearing to decide whether

he should be imprisoned or committed to a mental facility. Under the proposed panel code, judgement of sanity is made by judge, not a jury, and would be based on medical testimony.

State officials admit convicted person could escape prison, be sent to a mental institution and eventually be freed as cured.

But, those officials point out, that situation is not much different from the current one, in which someone who now successfully pleads insanity can be committed rather than imprisoned and later released as cured.

New Jersey has no penal code now. Its criminal laws consist of the laws enacted since its state Constitution was formalized in 1796 and the common laws that are left over from English rule of the colonies.

The penal code would wipe out the common laws that have not been specifically enacted. One result of that would be that it would no longer be possible to charge someone with being a "common scold."