

NJ-Penal code

Proposed New Jersey Penal Code Heads for Likely OK

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TRENTON — A proposed penal code, which would be New Jersey's first comprehensive set of criminal laws, is nearing the end of the line in the Legislature, after a long, slow journey.

Senate amendments may further delay it and Assembly opponents may get another shot at it, but approval before summer recess appears a good possibility.

Restoration of capital punishment, which is viewed as a popular election year issue, is tied to its approval. Backers of the penal code see this as working in their favor, though not all of them want to reactivate the electric chair.

A death penalty bill sponsored by Sen. John F. Russo, D-Ocean, which was pushed through last month, awaits signing by Gov. Brendan T. Byrne. But Byrne has said he wants the penal code bill on his desk at the same time. He is using the one to hold the door open for the other.

Codification and modernization of the state's criminal laws, long the dream of reformers, was set in motion in 1968, when a commission to do the ground work was created.

THE STATE'S criminal laws were said to be a collection of "inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions" accumulated over two centuries.

The commission reported in 1971, in two volumes, one filled with commentary and the other with specifics.

"Enactment of a modern, rational penal code . . . is essential to adequate law enforcement," the commission said.

Though the commission's recommendations were influential, much of what went into the proposed code —

last year, and, on Nov. 22, after motions to send it back to committee were defeated, the Assembly voted 42 to 35 for the bill.

Republicans fought unsuccessfully to tone it down with 17 amendments.

Brian T. Kennedy, R-Monmouth, said the bill "goes too far." He said it could lead to successful appeals for early freedom by convicts doing time under the old criminal laws.

Some Democrats voiced similar misgivings.

"My concern is that the code might lead to having as many criminals on the street as in jail," said Assemblyman Richard Van Wagner, D-Monmouth.

The Senate Judiciary Committee, headed by Sen. James P. Dugan, has the 185-page bill now, and is in the process of a page-by-page review of its provisions. The committee was up to about page 50 when the current recess began.

DUGAN IS expected to summon committee members for some all-day work sessions in the coming month.

Dugan's committee is doing exactly what Hawkins feared.

"If the Senate amends the code, it's going to be bounced between both houses for God knows how long," Hawkins said.

The Senate judiciary group already has approved some key amendments, most dealing with the chapter on responsibility for criminal acts.

The proposed code arrived from the Assembly with a provision abolishing insanity as a separate defense in criminal trials, and with related provisos for separate sanity proceedings both before and after trial.

The thrust was more along medical than legal lines.

All 21 county prosecutors were on record as opposed to

favored by the American Law Institute, namely, an extension of the M'Naghten rule to allow an insanity defense based on a claim the defendant was moved by an "irresistible impulse."

The Senate judiciary unit also has deleted a provision, which was added before the bill left the Assembly, banning plea bargaining in cases where use of a firearm was involved.

This, too, was a change sought by the prosecutors.

BY OMISSION, the proposed code would legalize many so-called victimless crimes, such as social gambling and sexual acts between consenting adults.

"Victimless crimes that distract police and courts from serious offenses should be eliminated," said Dean John F.X. Irving of Seton Hall Law School, who has been supporting penal reform.

"What some people see as a lessening of criminal penalties is actually an approach to reality," an aid to Atty. Gen. Hyland said. "Priorities have to be set for criminal prosecution. The fact is that very few prosecutions are being made now

against consenting adults on morals charges."

The proposed code defines six categories of crimes, ranging from the most to least serious, and sets forth maximum penalties for each category.

There would be crimes of the first, second, third and fourth degrees, and two lesser categories, disorderly persons and petty disorderly crimes. Crimes now are classed as high misdemeanors, misdemeanors, and disorderly offenses.

Murder, rape, and kidnaping would be punishable by 30 years to life in prison, and

murder, by death if Russo's bill is signed. The maximum prison sentence for other first degree crimes would be 8 to 15 years.

The proposed code aims for statewide uniformity in sentences for similar type offenses.

"SENTENCES that clearly say what they mean and mean what they say are the cornerstone of the revised penal code," said Assemblyman William J. Bates, D-Passaic, co-sponsor of the bill.

The proposed code does not cover drug, juvenile, and

motor vehicle laws. A separate move by Hawkins toward decriminalized use of small amounts of marijuana was recently defeated in the Assembly.

The Senate Judiciary Committee presumably will release the bill for a vote by the full Senate sometime this spring. The next Senate ses-

ion is scheduled for April 18.

If the Senate approves an amended version of the proposed code, Assembly concurrence would be required.