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SEX OFFENSES IN THE NEW PENAL LAW

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ON July 20, 1965, the Governor signed a bill bearing the title *Revised Penal Law of 1965* which takes effect on September 1, 1967. This article deals with the sex offenses provided by this law and the legislation passed to supplement it. We shall analyze in the main the provisions of Article 130 as well as some other relevant provisions.

Age of Consent

One of the major changes in this statute is the reduction of the age of consent from 18 to 17 years.[1] The problem of the age at which a girl may consent to an act of sexual intercourse so as to bar a rape charge, is a crucial one in the formulation of the crime of rape. Most so-called statutory rape cases involve situations in which a male has had sexual intercourse with a consenting young female. Obviously, higher age limits in rape cases makes it possible to punish many more men for the crime of rape.

At common law, the age above which a female could consent to an act of sexual intercourse was either 10 or 12, depending upon which authority one relied. Modern statutes in the various states have raised age limits to 14, 16, 18 and to 21 in Tennessee. New York's present Penal Law fixes the age of consent at 18.[2] This is now reduced to 17 years by the new Penal Law, and it is rape in the third degree (Class E felony, punishable by imprisonment of 4 years) [3] for a male over 21 years of age to have sexual intercourse with a girl under 17 years.

We would have preferred an even lower limit for the new age of consent to wit: 16 or 15 years of age. In our opinion, a girl at puberty fully understands what she is doing when she engages in an act of sexual intercourse and the fiction of

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[1] New Penal Law § 130.05.
[2] Old Penal Law § 2010.
[3] New Penal Law §130.25.

non-consent, which the law sets up, does not correspond to the facts.

The new law has rightfully taken the view that the younger the girl with whom intercourse is had, the more serious the offense. Thus, intercourse with a girl under 14 is made a Class D felony by the new statute, punishable by a maximum of 7 years imprisonment, and intercourse with a girl under 11 is rape in the first degree, a Class B felony, punishable by a maximum of 25 years imprisonment.[4] Although this kind of conduct was rape at common law, it was punishable by death.

Corroboration in Sex Cases

The new Penal Law retains the requirement that conviction for a sex offense can be had only on the corroborated testimony of the alleged victim.[5] This requirement extends to all the offenses covered by article 130 except sexual abuse in the third degree.[6] Heretofore, section 2013 of the present Penal Law, with respect to rape, stating that "no conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence," stood much in splendid isolation. However, since there is no rational basis for not requiring corroboration for all sex offenses, we cannot understand why the new Penal Law exempts from the requirement of corroboration the offense of sexual abuse in the third degree, which involves sexual contact with another without the latter's consent.[7]

Deviate Sexual Intercourse of Married Persons

The new law makes it perfectly clear that married couples may not be charged with or be guilty of "deviate sexual intercourse" if they follow the recommendations of current marriage manuals and employ unusual methods of obtaining sexual satisfaction.[8] One of the places which should be free from scrutiny by law enforcement officials is the marriage bed. However, under our present law, if married individuals engage in the kinds of behavior proscribed by section 690 of our present Penal Law, they are subject to the same penalties as single individuals. It certainly would be no defense to a violation of section 690 of the Penal Law that the defendant-

[4] New Penal Law § 130.35.
[5] New Penal Law § 130.15.
[6] Id.
[7] New Penal Law §§ 130.15, 130.55.
[8] New Penal Law § 130.00.

husband and/or wife read about the particular behavior in a manual and decided to try it out in order to enhance sexual pleasure in marriage. The new Penal Law eliminates this nonsense from our law. Its definition of "deviate sexual intercourse" is "sexual conduct between persons not married to each other. . . ." Since sodomy is defined in the new law as "deviate sexual intercourse,"[9] under the new law, if a man or woman want sex legitimately through deviate means, he or she must marry someone with similar tastes.

Lack of Consent in Sex Cases

The new Penal Law has made lack of consent an element of all sex crimes except consensual sodomy.[10] However, it appears to the writer that the formulation of the situations involving lack of consent is overlapping, confusing and will probably lead to considerable difficulty in judicial application.

Lack of consent under section 130.05 includes forcible compulsion, which is defined and which is easy to understand as well as "incapacity to consent." A person is deemed incapable of consent if he is: (a) less than 17 years old; (b) mentally defective, which means that "a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct"; (c) mentally incapacitated which means that "a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating circumstance administered to him without his consent or to any other act committed upon him without his consent"; or (d) physically helpless which means that "a person is incapable or for any other reason, is physically unable to communicate unwillingness to an act."[11]

In addition to these somewhat unclear categories of so-called lack of consent, which are applicable to all the offenses listed under article 130, lack of consent in the crime of sexual abuse[12] includes any circumstances in addition to forcible compulsion or incapacity to consent, in which "the victim does not expressly or impliedly acquiesce in the actor's conduct."[13] One wonders whether such a definition would include the not unusual cases, where the female says no, no, no in a necking party, yet vigorously participates in the sexual activity therein.

[9] New Penal Law § 130.38.
[10] New Penal Law § 130.05.
[11] Id.; New Penal Law § 130.00.
[12] New Penal Law §§ 130.55, 130.60, 130.65.
[13] New Penal Law § 130.05.

We submit that the formulation of "lack of consent" in the the fashion above stated, merely adds to the confusion in determining when there is and when there is not a real consent.

Crimes Against Nature

The euphemism "crime against nature" is dropped from the law. The new statute provides for three degrees of sodomy,[14] which is defined as "sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva." Sexual misbehavior with an animal or a dead body, which was formerly included within the so-called crimes against nature, is now made a part of a new crime entitled sexual misconduct.[15] The latter is a Class A misdemeanor, punishable by a maximum of one year imprisonment, as compared with the 20 years imprisonment under present law.

Section 690 of the present law proscribes carnal knowledge of an animal or bird, as a crime against nature. Since birds are not mentioned in the new Penal Law, the question may well arise as to whether a bird is "an animal" within the meaning of the new statute punishing sexual misconduct. Instead of resorting to law books, dictionaries and zoological guides for an answer to this momentous question, it might be desirable to try to resurrect the spirit of Leda and try to get an answer from her.

One offense which is part of section 690 of the present law is treated more rationally in the new statute. A person who attempts sexual intercourse with a dead body is guilty, under the present law, of sodomy in the first degree and punishable by a maximum of 20 years imprisonment. Any person who engages in this type of behavior (necrophilia) is obviously very sick psychologically and needs the psychiatrist much more than he does the jailer. As stated under the new law, this aberration is treated as sexual misconduct and is punishable only as a misdemeanor.

Sodomy

Sodomy, under the new statute, is classified in three categories:

(1) Class B felonies, punishable by a maximum of 25 years imprisonment.

[14] New Penal Law §§ 130.40, 130.45, 130.50.
[15] New Penal Law § 130.20(3).

(2) Class D felonies, punishable by a maximum of 7 years imprisonment.
(3) Class E felonies, punishable by a maximum of 4 years imprisonment.

Because of the wide disparity in degrees of punishment, the formulation of the proscribed behavior within these three categories is of great importance.

As is to be expected, the most severe penalty is reserved for those who use forcible compulsion to compel a deviate sexual act, but sodomy in the first degree also includes having a deviate sex act with one who is "incapable of consent by reason of being physically helpless."[16] The term "physically helpless" in the new law means, as we have seen, that "a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act." One may question the wisdom of subjecting to a 25 year maximum penalty a person who engages in an act of deviate sexual intercourse with another who is incapable of consent because "physically helpless" as above defined. If two homosexuals drink together and one passes out while drunk and the other sodomizes him, can the one sodomized claim that he was "physically helpless" and therefore was unable to consent to the act of sodomy performed on him, making his companion liable to a 25 year sentence of imprisonment?

Section 690 of the present law designates as sodomy in the first degree the following offenses:

> a person who carnally knows any male or female person by the anus or with the mouth against the will and without the consent of such other person; or (1) When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, such other person is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, such other person does not offer resistance; or, . . . (4) When such other person's resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anaesthetic agent; or, when such other person is known by the defendant to be in such state of stupor or weakness of mind from any cause; or, (5) When such other person is, at the time, unconscious of the nature of the act, and this is known to the defendant. . . .

This offense is punishable by a maximum of 20 years imprisonment under our present law.

[16] New Penal Law § 130.50.

The new statute reduces most of the crimes proscribed by section 690 of the present law, to sodomy in the third degree which is defined as "deviate sexual intercourse with a person who is incapable of consent by reason of some factor other than being less than seventeen years old."[17] These factors, as listed in the new statute, are being mentally defective or mentally incapacitated. If such cases are only third degree sodomy, then one may question the enormous disparity between a 25 year sentence available to punish an individual who sodomizes a person "physically helpless" and a maximum of four years for persons who commit somewhat similar offenses and who are presently punishable by 20 years imprisonment under our present law. One may even find that some of the acts proscribed by section 690 as sodomy in the first degree, have been reduced by the new law to the misdemeanor of adult consensual sodomy. This further points up the great disparity between the offenses committed on individuals "physically helpless" and sodomistic acts committed on others who may not be in a position to consent to an act of sodomy. This disparity in sentences will unquestionably raise serious problems in the interpretation and the administration of the new statute.

Rape

The crime of rape is defined in the new statute in much the same way as the crime of sodomy; both are classified in three degrees with similar punishments. As a result, most of the criticisms heretofore made in connection with sodomy are also applicable to the crime of rape in the new law.

Under section 2010 of the present Penal Law, a person over 21 years of age who has sexual intercourse with the consent of a girl under the age of 18, is guilty of rape in the second degree and is punishable by a maximum of 10 years imprisonment. If the boy is under 21, the crime is reduced to rape in the third degree which is punishable as a misdemeanor.

The new law does things differently. A male is guilty of rape in the first degree when he has intercourse with a female who is less than 11 years of age and is punishable by a 25 year maximum penalty.[18] If the male is over 18 years of age and the girl is under 14 years of age, this is rape in the second degree punishable by a maximum of 7 years imprisonment.[19]

[17] New Penal Law § 130.40.
[18] New Penal Law § 130.35.
[19] New Penal Law § 130.30.

If the male is 21 years of age or over and the girl is under 17, it is rape in the third degree, punishable by a maximum of 4 years imprisonment. Thus, sexual intercourse between a boy of the age of 18-21 and a girl between 14-17 would only be the new misdemeanor introduced by the new statute of "sexual misconduct," since a girl under 17 years of age is, under the new law, deemed incapable of consenting to a sexual act.

Sexual Misconduct

As we have seen, the new Penal Law has created a crime labeled "sexual misconduct" which is designated as a Class A misdemeanor,[20] punishable by a maximum of one year imprisonment. A person is guilty of sexual misconduct under the new statute if (1) being a male he engages in sexual intercourse with a female without her consent; or (2) he engages in deviate sexual intercourse with another person without the latter's consent. The aforementioned sections must be read in connection with the definitions of lack of consent contained in 130.05 of the statute, which run the gamut of forcible compulsion, incapacity to consent, being less than 17 years old, mentally defective, mentally incapable or physically helpless. Sexual misconduct would then include all offenses covered by the three degrees of sodomy as well as the three degrees of rape in the new Penal Law. This raises a dilemma as to when the sodomy and rape provisions should be used and when the sexual misconduct provision of the Penal Law should be used in a particular case. The wide disparities in penalties between sodomy and rape on the one hand and sexual misconduct on the other make this problem one of great importance. For example, sexual misconduct[21] includes the case of a male who engages in sexual intercourse with a female without her consent. If an act of sexual intercourse is committed and is truly without the consent of the female, this is first degree rape under our present law and is common law rape. Is the 25 year penalty for first degree rape applicable or only the misdemeanor penalty for sexual misconduct (one year imprisonment)? The inclusion of sexual misconduct, as an offense in its present form in the new statute, appears to be a device to make the prosecution of sex offenses easier. The prosecutor can seek an indictment for felonies of sodomy or rape and then reduce the charge to sexual misconduct upon the defendant pleading guilty thereto. Thus the

[20] New Penal Law § 130.20.
[21] New Penal Law § 135.20.

severe penalties provided for rape and sodomy will probable have little application in practice.

Carnal Abuse of Children

The crimes of carnal abuse of children have been reformulated in the new Penal Law.

Section 483(a) of the present law makes it a felony punishable by a 10 year maximum for any person over the age of 18 years to carnally abuse the body, or indulge in any indecent or immoral practices with the sexual parts or organs, of a child of the age of 10 years or under. Section 483(b) makes similar acts by any person with a child over 10 or under 16 years of age a misdemeanor. But where such person has been previously convicted of specific sex offenses, the offense committed is a felony.

The new Penal Law attempts to provide protections for children from sexual activity not amounting to rape or sodomy, in a somewhat different fashion. The new Penal Law makes guilty of the crime of sexual abuse in the first degree,[22] a person who subjects a child less than 11 years of age to sexual contact which is defined as "any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party."[23] May we also call attention to the fact that the touching of "other parts of the body" for the purpose of satisfying the sexual desires of either party creates a crime which will be extraordinarily difficult to prove. It dilutes what should also be the main purpose of this section, namely to protect children against either heterosexual or homosexual genital manipulation. Sexual abuse in the first degree is a Class D felony, punishable by a maximum of 10 years imprisonment. Sexual abuse in the second degree, punishable as a Class A misdemeanor is present where the child is less than 14 years of age. Any sexual contact under other circumstances without consent is a Class B misdemeanor. However, if the so-called victim is more than 14 years of age and the defendant is less than 5 years older, such fact is an affirmative defense to the crime of sexual abuse in the third degree.[24]

We do not see much advantage in the creation of the new crime of sexual abuse with respect to sexual misbehavior with children, over the old Penal Law provisions relating to carnal

[22] New Penal Law § 130.65.
[23] New Penal Law § 130.00.
[24] New Penal Law § 130.55.

abuse of a minor child. The new crime of sexual abuse extends to sexual misbehavior with adult victims as well as sexual misbehavior with children. It is formulated in the same confusing way that we have heretofore criticized with respect to sodomy and rape. It appears to ignore (except for offenses with children under 11 years of age) that the most dangerous types of sex offenders are likely to be found among individuals who misbehave sexually with children. It does not increase the misdemeanor of sexual abuse to a felony where the defendant has a prior history of sex crime, as is done under present law. Moreover, we do not understand why the new law puts the prosecutor under the necessity of proving that the sexual contact was "for the purpose of gratifying sexual desire of either party." Surely the actual touching of the sexual parts of a child can be provided for in ways which would not increase the burdens of criminal prosecution in cases involving the protection of children from sexual assaults. It would seem to us that the term used in our present law ("any indecent or immoral practices with the sexual parts or organs of a child") is preferable to the necessity of proving that the sexual touching was "for the purpose of gratifying sexual desire."

Indecent Exposure

Article 130 of the new Penal Law does not contain all prohibited sex crimes. The offense of indecent exposure (exhibitionism) which is presently found in section 1140 of the Penal Law, is not included as a sex offense under article 130 of the new statute. It will be found in article 245, "Offenses against Public Sensibilities." The "public lewdness" section of this article is as follows: "A person is guilty of public lewdness when, in a public place, he intentionally exposes the private or intimate parts of his body in a lewd manner or commits any other lewd act." [25] Public lewdness is a Class B misdemeanor punishable by a maximum jail term of three months. This may be compared with the one year maximum provided by the present Penal Law.

We recognize that the exhibitionist is a non dangerous nuisance type of sex offender who is driven by a compulsion to display his penis. However, one may question the limitation of penalty under the new statute to three months. Many of these offenders are persistent in their misbehavior; stiffer penalties may be necessary in particular cases, to help the

[25] New Penal Law § 245.00.

exhibitionist control his compulsion. It should also be noted that the new Penal Law makes no provision for psychiatric treatment of this type of offender even though this may be the only way of effectively treating the offender's compulsion.

One may also question other implications of the new formulation of public lewdness. Since "any other lewd act" in a public place is included in the definition, did the draftsman of the new Penal Law intend to subject to a three month penalty for public lewdness anyone who necks in a parked automobile on a dark street?

Homosexual Solicitation

The offense under which most homosexuals are [illegible] hended under our present law, is section 722(8) which labeled "disorderly conduct." The new Penal Law creates the crime of loitering[26] to deal with the problem of lingering in public places for the purpose of engaging or soliciting another person to engage in deviate sexual intercourse. The offense has the advantage of eliminating the breach of peace requirement of disorderly conduct, which is never proved in the section 722(8) cases. On the other hand, one may question the grading of this offense as a mere violation which is punishable by a maximum of 15 days imprisonment. We have serious doubts as to whether much loitering for the purposes of engaging or soliciting another in homosexual conduct will be discouraged by the threat of only 15 days in jail. We prefer the present law with its 6 month maximum penalty, and the possibility of psychiatric treatment for such offenders.

Adultery

The draft of the new Penal Law did not contain any prohibitions against adultery such as those contained in our present law.[27] For many years this has been a dead letter crime in New York, and we have had the spectacle of thousands of divorces granted on the ground of adultery, without a single prosecution for this crime. In our opinion the draft of the new Penal Law was correct when it proposed to eliminate this offense from the statute books. Such elimination not only had the approbation of the American Law Institute Model Penal Code behind it, but also the authority of a resolution passed in 1964 at the meeting of the Association Internationale De Droit

[26] New Penal Law § 240.35.
[27] Old Penal Law § 100.

Penal at its conference in the Hague in 1964. The legislature, however, rejected the recommendations of its own commission and restored the crime of adultery to the Penal Law[28] where it will continue to remain as a dead letter and as a monument to the inability of legislators to think rationally about sex crime.

Adult Consensual Homosexuality

Similar short-sighted action was taken by the legislature with respect to the crime of adult consensual homosexuality. Here again its commission, following the American Law Institute proposal and the Hague Conference resolution, recommended that adult consensual sodomy not be treated as a crime. Nevertheless, the legislature refused to accept the commission's recommendations and made consensual homosexuality a Class B misdemeanor,[29] punishable by a term not to exceed three months. This unquestionably was an ineffective moral gesture on the part of the legislature, which should have had more sophistication and sense. Homosexuality, from which sodomy generally stems, is a compulsion to which men and women are subjected to in varying degrees. A term not to exceed three months is one of the worst possible ways of dealing with compulsive behavior. A three month sentence offers little opportunity to treat the compulsion which drives individuals to this type of sexual activity.

Hundreds of thousands of consensual acts of sodomy are committed each year. Only a minute percentage of these acts ever comes to the attention of law enforcement authorities. The effect of law enforcement on the determent and prevention of homosexual acts is almost nil. The volume of homosexual acts in New York will not, in our opinion, be diminished in the slightest by the threat of a three month jail sentence. Moreover, making adult consensual sodomy an offense, albeit a minor one, continues the climate wherein homosexuals will be preyed upon by blackmailers and by dishonest law enforcement officials who are seeking to make a fast buck. It also furthers law enforcement practices, bordering on entrapment and enticement, which are no credit to the enforcement of the criminal law. Despite the short jail sentence provided, irreparable harm may be done to individuals who are arrested for this offense.

We hope that the legislature will reconsider its action on adult consensual homosexuality and strike the prohibition from

[28] New Penal Law § 255.17, added L. 1965, c. 1037.
[29] New Penal Law § 130.38, added L. 1965, c. 1038.

the statute books. It will thus follow the position recommended by its own commission, as well as other authoritative agencies which have dealt with this problem.

Prostitution

One of the extraordinary changes in the new Penal Law is the provision which would punish the customers of prostitutes. Under section 230.05, a person is guilty of patronizing a prostitute when he pays a fee to another for sexual conduct with him or solicits or requests another to engage in sexual conduct with him in return for a fee. The offense is a violation, punishable by a 15 day jail sentence. It is obvious that the legislature is seeking to fill our jails with short term prisoners who have committed no other offense than trying to get rid of their sexual urges by the time honored method of resorting to a prostitute. This is stupid penology. It is also self-defeating if one is interested in the determent or prevention of prostitution. The "John", as the customer of a prostitute is generally known, does not usually testify against the prostitute, even when he is only a witness under subpoena, under present police procedures. He is even less likely to testify when his testimony will subject him to 15 days in jail. The result will be more dismissals of cases against prostitutes.

Moreover, as the statute is presently phrased, a police officer on the vice squad is guilty of violating the statute when he offers a fee in return for sexual conduct. Since most prostitution cases result from direct solicitation by police officers or acquiescence in the solicitation of the woman and the agreement to pay a fee by the man, it is a little difficult to see how vice squads can effectively operate under this statute, unless courts are prepared to overlook illegal acts committed by police officers.

It is dangerous to succumb to female propaganda with respect to the equality of the sexes when drafting penal law provisions concerning prostitution. The result as seen above may be non enforcement of prostitution laws. Moreover, since our new Penal Law punishes acts of prostitution as a violation by a maximum of 15 days in jail, it could just as well have eliminated prostitution as an offense from the law. One cannot control prostitution with such illusory penalties.

Psychopathic Sex Offenders

The new Penal Law has failed to come to grips with the problem presented by the dangerous psychopathic sex offender.

Under our present law, sentences of one day to life are permissible in cases of individuals who are guilty of sodomy in the first degree, rape in the first degree and carnal abuse of a child, as a felony. These sentencing provisions in our present law, resulted from a Sing Sing study of sex offenders made many years ago, which demonstrated that a small percentage of sex offenders would continue to be dangerous particularly to small children after they had served the sentence imposed upon them by law. The one day to life sentences were a means of keeping a long-term hold on such offenders. Other states try to do this (generally not successfully) through special provisions for psychopathic sex offenders. Such laws are not generally successful, because of their failure to distinguish between psychopathic sex offenders who are not dangerous, which is the great majority, and dangerous psychopathic sex offenders. Our New York law was an improvement over existing sex psychopath laws, since it attempted to pinpoint in better fashion the dangerous offenders for whom a long-term hold was necessary. There are no such provisions in the new law.

Unless dangerous sex offenders, under the new law, are convicted of first degree sodomy or rape, they are not likely to be held for long periods of imprisonment. We will, under the new law, again be faced with the problem of releasing sex offenders of known dangerousness, at the expiration of their sentences. In this area, the new law has made no progress over the old and the old provisions may well be preferable even though they may be abused by judges who may think that all sex offenders are equally dangerous.

Conclusions

Little has been accomplished by the new Penal Law in rationalizing our sex crime laws. In its favor are such things as the reduction in the age of consent, the extension of the requirement for corroboration, the elimination of bestiality (sexual contact with animals) and necrophilia as major offenses. Its provisions concerning sodomy, rape, sexual abuse and sexual misconduct, however, are not well formulated and will undoubtedly be the source of considerable confusion in the law. The penalty structure of the new law leaves much to be desired. The failure to come to grips with the problem of the dangerous psychopathic sex offender is tragic; the prohibitions against adult consensual homosexuality, adultery and solicitation of prostitutes are stupid.

It is obvious once again that change is not necessarily progress.

DRUG OFFENSES AND THE NEW PENAL LAW

BY HENRY M. DI SUVERO*

Introduction

THE Revision Commission [1] viewed its assignment as calling for a revision of the Penal Law "in thoroughgoing fashion."[2] It saw its task as "more than one of reorganization, clarification and minor substantive change, but [rather] as one calling for re-examination of many fundamental principles and concepts of the criminal law." [3] However, as the Commission Staff Notes candidly state, the revision of drug offenses contains "few changes in substance."[4] Because "[l]egislation in the field of narcotics, including its criminal aspects, is an extremely intricate subject" and because "[t]he Council on Drug Addiction is currently studying the operation"[5] of the Mental Hygiene Law provisions dealing with addiction, "the Commission [did] not consider itself the appropriate agency to make an 'in depth' reevaluation of existing narcotic laws, criminal or otherwise."[6]

The customary discrepancy between high purpose and slim result might ordinarily not be worthy of comment. But when law enforcement officials have been constantly reporting to an increasingly alarmed public that addiction and crime go hand in hand[7] and that criminal sanctions have "failed abysmally[8]

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The invaluable assistance of Palmer Wald is gratefully acknowledged.

[1] State Commission on Revision of the Penal Law and Criminal Code. Laws 1961, ch. 346, as amended by Laws 1962, ch. 548.

[2] Proposed Penal Law [1964 Study Bill] (Edward Thompson ed. 1964) Commission Foreward, p. v. The New Penal Law was signed by Governor Rockefeller on July 20, 1965, effective September 1, 1967.

[3] Id. at v.

[4] Id. at 380.

[5] Id. at 380.

[6] Id. at 380.

[7] See Governor Nelson A. Rockefeller's Special Message to the Legislature, February 23, 1966, p. 2. "The problem of addiction to narcotics is at the heart of the crime problem in New York State. Narcotic addicts are responsible for one-half of the crimes committed in New York City alone—and their evil contagion is spreading into the suburbs."

[8] Kuh, A Prosecutor's Thoughts Concerning Addiction, 42 J. Crim. L., C. & P.S. 321, 322 (1961).