

DEC 30 1955

Memorandum No. 6

Subject: Study No. 10 - Penal Code
§ 19a.

The minutes of the meeting of the Southern Committee of December 22, 1955 are sent to you in the package in which this item is enclosed. The minutes include a report of the Committee's discussion with Mr. Thomas Cochran, Research Consultant on this study, of his report to the Commission. They also report a number of recommendations relating to this study made by the Committee to the Commission.

Copies of Mr. Cochran's report will be sent next week to members of the Commission who have not yet received them.

If time permits, it would be desirable to discuss at the January meeting ¹ Mr. Cochran's report and the committee's report, ² to take action on the committee's recommendations, ³ and to determine generally what shall be said in the Commission's Report and Recommendation to the Legislature on this matter.

One problem for discussion when Mr. Cochran's study is considered by the Commission is whether it should be published in its present form. Two questions are involved: (1) should the Commission undertake to edit Research Consultants' reports generally in the interest of brevity and better expression and to conform to a form to be established by the Commission? (2) should the Commission follow the practice of the New York Law Revision Commission of asking Research Consultants to eliminate from their reports recommendations inconsistent with the recommendations of the Commission? The latter problem will arise if the Commission accepts several of the Committee's recommendations. My own answer to the first question would be "no" and to the second "yes".

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

Discussion of Study No. 10 -- Penal Code
Section 19a)

The committee discussed with Mr. Thomas Cochran, research consultant, his report on this study. At the outset the Executive Secretary reported on the letter sent to judges, sheriffs, probation officers and others inquiring as to the desirability of limiting county jail sentences to one year: 304 letters were sent; 92 replies have been received; of these 80 favor such limitation, 7 are opposed and 5 are equivocal. The ground given by those favoring is that in most counties there is no adequate provision for rehabilitation and that more than a year's "dead time" in a county jail serves no useful purpose and is, indeed, harmful to the prisoner. Mr. Cochran reported that he had discussed the matter with a substantial number of persons in Los Angeles County and that they were unanimously of the same view. He also reported that the Los Angeles County Grand Jury had just filed a report which contained a recommendation for reduction of county jail sentences.

The committee first discussed whether the Commission should favor the principle of Penal Code § 19a. Mr. Babbage pointed out that § 19a covers county penal farms, road-camps, work camps and other adult detention facilities and that the views expressed might not be applicable to such situations. Mr. Shaw pointed out that there is, however, great lack of uniformity from county to county among such facilities as to opportunity for rehabilitation. After the matter was discussed, the committee voted to recommend that the Commission recommend to the Legislature that the principle of Penal Code § 19a be reaffirmed and that all code sections in conflict with § 19a be revised to conform with it.

The committee next noted that Mr. Cochran had reported that the courts have held that in several situations P. C. § 19a does not preclude county jail sentences in excess of one year: (1) when consecutive sentences for separate offenses are imposed; (2) in civil cases when a person found guilty of contempt is imprisoned until he purges himself thereof; (3) when a county jail sentence in excess of one year is imposed as a condition of probation on a felony; and (4) when a prisoner convicted of a felony is fined with provision for imprisonment in the county jail at a rate of _____ dollars per day in default of payment. The committee decided that the principle of P.C. § 19a ought to apply in such cases and recommended that the Commission consider recommending to the Legislature enactment of a statute along the following lines:

P.C. § 19b: Whenever a person is sentenced to more than one year in a county jail, whether on consecutive sentences for separate offenses, or as a condition of probation on conviction of a felony, or in a civil contempt case, or in default of payment of a fine imposed upon conviction of a felony, or otherwise, he shall be delivered to the Adult Authority for imprisonment in a facility operated by the Authority for the period of such sentence or sentences. When such sentence or sentences are imposed upon conviction of a misdemeanor such imprisonment shall not have the effect of making the person sentenced guilty of a felony. The county shall pay to the state a sum equal to what it would have cost the county had the person been imprisoned in the county jail.

The committee recommended that this recommendation be discussed with the Department of Corrections before it is made to the Legislature.

The committee noted that some of the code sections in conflict with P.C. § 19a were enacted after 1933 when § 19a was enacted and that the Executive Secretary is of the view, in which Mr. Kleps concurs, that these prevail over § 19a on a theory of implied repeal of the latter pro tanto. The committee recommended that the Commission's report to the Legislature take note of this view, dividing the statutes reported as in conflict with P.C. § 19a into (a) those enacted prior to 1933 and (b) those enacted thereafter.

The committee noted that Mr. Cochran had, in a number of instances, recommended that the maximum fine provisions of code sections be reduced when their maximum imprisonment provisions are reduced -- e.g., reducing \$5000 to \$1000 when reducing 5 years to 1 year. Mr. Cochran explained that the purpose of this was to achieve balance between the fine and imprisonment provisions. The committee recognized the intrinsic merit of this view but thought that the Commission's study should be limited to problems directly related to P.C. § 19a. It recommends that the Commission report the situation to the Legislature but make no recommendation for reduction of fine provisions.

The committee noted that Mr. Cochran had recommended in several instances that code sections which provide for either fine or imprisonment but do not add "or both" be amended to do so. Mr. Cochran explained that this is the way criminal statutes are nearly always drafted today and that he thought it might as well be done in cases where revision of a code section is otherwise necessary. The committee recognized the intrinsic merit of this

suggestion but thought that it should not be done because it is not directly related to the problem of P.C. § 19a. The committee recommends that the Commission report the matter to the Legislature but that it not recommend such revisions.

The committee recommends that the proposed revision of certain Fish & Game Code sections recommended by Mr. Cochran be referred to the Legislative Counsel and that they be made as a part of the Commission's revision of that code.

The committee considered whether in all or some cases the Commission should recommend that the code sections to be revised to conform to P.C. § 19a should make the offenses alternative felonies with maximum prison sentences equal to their present maximum county jail sentences. After this matter was discussed, the committee decided to recommend that the Commission not so recommend in any case but that it report to the Legislature that this might be done in all or some cases and list the code sections as to which the Commission believes it would be most appropriate.

The committee thanked Mr. Cochran for his excellent report.