

MAR 5 1956

Memorandum No. 5

Subject: Study No. 10: Penal Code Section 19a

This study will be on the agenda of the meeting of March 12. Enclosed herewith are the following items relevant to it:

1. The research consultant's report as revised;
2. A proposed Report and Recommendation of the commission to the Legislature; and
3. The minutes of the meeting of the Southern Committee on February 10, which report the discussions and the recommendations of the committee concerning this study.

You will note that the proposed Report and Recommendation is incomplete. The research consultant will furnish the information necessary to fill in the blanks on page 2 and to complete footnotes 4 and 5. We have thought it best not to draft the Proposed Revisions until the commission has decided whether to adopt the proposed Report and Recommendation.

You will recall that the commission has determined not to decide finally upon Recommendation No. 3 (page 5) until the matter has been discussed with the Director of Corrections and other interested parties. This will be done if and when the commission has approved this Recommendation in principle.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

1) Discuss points marked  
in minutes and in R/C report

2) Does <sup>copies</sup> copy R/S report + R/C Comm  
discussed reflect all committee changes?

3) Tell Cochran to send bill?

MAR 5 1956

MINUTES OF MEETING

OF

SOUTHERN COMMITTEE

February 10, 1956  
Los Angeles

PRESENT

Members

Mr. Stanford C. Shaw, Chairman  
Mr. John D. Babbage  
Mr. Joseph A. Ball (morning session)

Research Consultant

Professor James D. Sumner, Jr.

Staff

Mr. John R. McDonough, Jr.  
Mrs. Virginia B. Nordby

STUDY NO. 10 - PENAL CODE SECTION 19a.

The committee considered a revised draft of the research consultant's study which had been prepared by the staff pursuant to the direction of the commission at its meeting of January 6 and 7, 1956, and distributed to the members of the committee prior to the meeting. The Executive Secretary pointed out that the research consultant's study had been changed in the following respects:

1. A new introduction had been written;
2. The discussion of the cases which have interpreted and applied Section 19a had been reorganized and considerably shortened by setting out in the text only the leading cases and referring in the footnotes to other supporting cases which the research consultant had discussed in the text; and

3. The lengthy discussion and quotation of specific code provisions and recommendations of the research consultant at the end of the report had been translated into a series of tables.

✓ The committee approved these basic changes in the report and, after making several language changes in it, decided to recommend to the commission that the report as thus revised be accepted for publication. Mr. Ball stated that he was sure that the research consultant would approve the changes made in the report and he offered to take a copy of the revised report to the research consultant and discuss the changes with him.

The Executive Secretary pointed out that in the course of consolidating the material at the end of the research consultant's report into a series of tables two problems had become apparent:

discuss

1. Although in many instances the research consultant had indicated the date of enactment of sections inconsistent with Penal Code Section 19a, in many other instances he either had not designated any date or had designated the date of codification but not the date of original enactment. Moreover, in many instances he had not stated whether the section had been amended since its original enactment. It is important to know both the date of original enactment and also the date of subsequent amendments affecting the penal provisions in order to determine which sections were impliedly repealed by the enactment of Section 19a in 1933 and which sections superseded Section 19a by virtue of their later enactment or later amendment of the penal provision. The committee decided that Mr. Ball should request Mr. Cochran to furnish the commission the dates of original enactment of all sections inconsistent with Penal Code Section 19a and also the dates of subsequent amendments of any of

these sections which had been amended since their original enactment.

*discuss*

2. The research consultant had recommended in many instances that the maximum fine, as well as the maximum period of county jail confinement, should be reduced in order to provide a balance between the fine and the imprisonment. (His recommendations on this point were summarized in Table VII, pp. 16-18, of the revised draft.) It was suggested that the research consultant might wish to consider changing his recommendation with regard to Penal Code Sections 33 and 337f (a)(b)(c) because in these sections, which provide for imprisonment either in the state prison or in the county jail, the fine may be imposed in lieu of either state prison confinement or county jail confinement. Although reducing the fine in these cases would provide balance between the provisions for fine and county jail imprisonment, it would seem also to make the fine disproportionately low in comparison with the provision for imprisonment in the state prison. It was also suggested that, for the same reasons, it might be best to eliminate from Table VII all code sections which provide for confinement in the state prison as well as in the county jail. Mr. Ball agreed to obtain the views of the research consultant on this matter.

*shall we do this?*

The committee considered a draft of a Report and Recommendation of the Law Revision Commission to the Legislature which had been drafted by the staff on the basis of the decisions reached by the committee at its meeting of December 22, 1955. The committee made several changes in the draft and decided that, as thus amended, it be recommended for adoption by the commission.

MAR 5 1956

REPORT AND RECOMMENDATION OF LAW REVISION  
COMMISSION TO LEGISLATURE RELATING TO PENAL  
CODE SECTION 19a WHICH LIMITS COMMITMENT TO  
A COUNTY JAIL TO ONE YEAR IN MISDEMEANOR CASES

By Resolution Chapter 207 of the Statutes of 1955 the Law Revision Commission was authorized and directed to make a study of the conflict between Penal Code Section 19a, which limits commitment to a county jail <sup>1</sup> to one year in misdemeanor cases, <sup>2</sup> and other code provisions which provide for commitment to a county jail for longer than one year in certain cases.

The commission engaged Mr. Thomas W. Cochran, Deputy District Attorney of Los Angeles County, as a research consultant to make a study and report on this subject covering: (1) the present area of operation of Penal Code Section 19a; (2) whether code sections in conflict with Section 19a should be revised to eliminate the conflict; (3) whether Section 19a should be extended to some or all cases of county jail confinement which it does not now cover and (4) what revisions of existing law would be necessary to effectuate various policy decisions which might be taken by the Legislature relating to Section 19a. The research consultant's report is printed as Appendix \_\_\_\_\_ to this report.<sup>3</sup>

The commission wrote to all district attorneys, probation officers and sheriffs in the State and to a representative group of superior court and municipal court judges asking for an expression of their views concerning Penal Code Section 19a. ~~A total of 304 such letters were mailed and 96 replies were received~~

*change*  
On the basis of its consideration of the research consultant's study and the letters received in response to its inquiry and of its own deliberations the commission has reached the conclusions and determined upon the recommendations set forth below:

## CONCLUSIONS OF COMMISSION

The basic principle of Penal Code Section 19a, that confinement in a county jail should be limited to one year, is sound. This was the conclusion of the research consultant and of the judges, probation officers, lawyers, law enforcement officers and others in Los Angeles County with whom he discussed the matter. This view was also expressed by 83 of the 96 judges, district attorneys, sheriffs, and probation officers who replied to the commission's letter. The reason universally given for this opinion was that in most counties there is no adequate provision for rehabilitation of prisoners in the county jail and that incarceration without a rehabilitation program for more than one year not only does not benefit the prisoner but is actually harmful to him. The commission has concluded, therefore, that no prisoner should be kept in a county jail for more than one year in any case. The reason for this conclusion is not that penalties as such should be reduced but that when confinement for more than a year is deemed necessary, such confinement should not be in a county jail which does not have adequate facilities for rehabilitation ~~and treatment.~~

There are \_\_\_ sections in the California codes which were originally enacted prior to 1933 and which provide for commitment to a county jail for more than one year. <sup>4</sup> The enactment of Penal Code Section 19a in 1933 repealed these provisions by implication insofar as they conflict with it. Revision of these code sections to limit commitment to a county jail to one year would, therefore, merely give expression to the existing legal situation and would involve no substantive change in the law.

There are \_\_\_ sections in the California codes which were originally enacted after 1933 and which provide for commitment to a county jail for

more than one year.<sup>5</sup> These sections prevail over Penal Code Section 19a under the principle of repeal by implication. Their revision to limit commitment to a county jail to one year would, therefore, involve a substantive change in the law.

The principle underlying Penal Code Section 19a is, of course, essentially one of penology: That extended incarceration without adequate provision for rehabilitation is of no benefit to the prisoner. The Legislature may accept this principle and yet believe that in particular cases the nature of the offense is such that imprisonment for one year is not an adequate punishment, at least in the case of some offenders. If this is the judgment of the Legislature as to the offenses defined in some or all of the code sections which conflict with Penal Code Section 19a, it can be given effect either by making the offenses felonies or by making them alternative felonies. Of the 39 code sections which are inconsistent with Penal Code Section 19a, 22 now make the offenses alternative felonies. The other 17 which do not are listed in Table VI of the research consultant's report.<sup>6</sup>

The courts have held that Penal Code Section 19a does not preclude commitment to a county jail for more than one year in several situations: (1) when consecutive sentences for separate offenses are imposed; (2) in cases of commitment for civil contempt; (3) when a prisoner is convicted of a felony and committed to a county jail as a condition of probation; and (4) when a prisoner is convicted of a felony and fined with provision for commitment to a county jail for one day for each stated amount of the fine which is not paid (e.g., one day for each \$3 of fine). The commission believes that the basic principle underlying Penal Code Section 19a applies as fully to these cases as to any other and that the Penal Code should be revised to limit commitment

to a county jail to one year in all cases. The commission believes that the law of the State should provide that in any situation listed above, where a prisoner would otherwise be committed to a county jail for a period longer than one year, he should be ordered delivered instead into the custody of the Director of Corrections at the place he has designated for the reception of persons convicted of felonies, for imprisonment in a state institution. Such provision should also specify (1) that such imprisonment shall not have the legal effect, when a person was convicted of a misdemeanor, of making the offense a felony and (2) that the county shall reimburse the State in an amount equal to what it would have cost the county to keep the prisoner had he been imprisoned in the county jail.

All of the code sections which provide for county jail sentences in excess of one year also provide for the imposition of a fine, either in addition to or as an alternative to imprisonment. Typically, the maximum fine provided for is on a scale commensurate with the maximum term of imprisonment as this relationship has been established generally in the law of the State: \$5,000 or five years, \$2,000 or two years, etc. The position may be taken that if the county jail sentence is reduced to one year in a case in which the offense is not also an alternative felony the maximum fine provision should be reduced concomitantly in the interest of maintaining balance between them - e.g., if maximum county jail imprisonment is reduced from five years to one year the maximum fine should be reduced from \$5,000 to \$1,000. On the other hand, the reason for reducing the term of imprisonment has no direct bearing on the maximum fine provision. It appears to the commission that this question is beyond the scope of the study which it has been authorized to make. However, the research consultant's report contains a table listing those code sections

which the Legislature may wish to revise to reduce the maximum fine provision if it determines to reduce the maximum county jail sentence to one year.<sup>7</sup>

The commission has noted that some of the code sections involved in this study provide that the offender must be both fined and imprisoned and that others provide that he may be either fined or imprisoned. Most modern criminal statutes provide for either fine or imprisonment or both. If these code sections are to be revised to limit the maximum county jail sentence to one year, the Legislature may wish to revise them at the same time to authorize either a fine or imprisonment or both. It appears to the commission that a recommendation on this question is beyond the scope of the study which it has been authorized to make. However, the research consultant's report contains tables showing the code sections which the Legislature may wish to revise.<sup>8</sup>

#### RECOMMENDATIONS OF COMMISSION

The Law Revision Commission respectfully recommends to the Legislature:

1. That all California code sections which authorize commitment to a county or city jail or other county detention facility for a period in excess of one year be revised to limit such confinement to a maximum of one year.

2. That the Legislature determine whether in the case of any of these code sections in which the offense defined is not now made an alternative felony, it should be made a felony or an alternative felony.

3. That the Penal Code be revised to provide:

(a) Confinement in a county or city jail or other county detention facility shall be limited to one year in all cases;

(b) ~~where,~~ in the case of consecutive sentences, ~~or otherwise.~~

~~commitment to a city or county jail or other county detention facility for a longer period would be required, the prisoner shall be delivered into the custody of the Director of Corrections at the place he has designated for the reception of persons convicted of felonies for imprisonment in a state institution;~~

~~(c) In such cases of commitment to a state institution after conviction of a misdemeanor or after a declaration by the judge at the time of sentence that the crime of which defendant was convicted is a misdemeanor, the offense shall not thereby be made a felony;~~

~~(d) In such cases of commitment in lieu of county jail confinement the county shall reimburse the state in an amount equal to what it would have cost the county to keep the prisoner.~~

4. That the Legislature determine whether, in the event that a code section not making the offense an alternative felony is revised to reduce the maximum county jail sentence to one year, the maximum fine provision should in some or all cases be reduced concomitantly.

5. That the Legislature determine whether, in the event that a code section which provides for both fine and imprisonment, or which provides for either fine or imprisonment but not both, is revised to conform to Penal Code Section 19a, it should also be revised to provide for either fine or imprisonment or both.

#### PROPOSED REVISIONS

The revisions of California Code sections necessary to achieve the changes recommended by the Law Revision Commission are as follows:

1. Proposed revision of Penal Code Section 17

[set out]

2. Proposed revision of Penal Code Section 19a

[set out]

3. Proposed revision of other code sections to conform to Penal Code Section 19a as revised

[set out]

## Footnotes to Report and Recommendation

1. Penal Code Section 19a limits commitment to one year in the case of any person sentenced to confinement in a "county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility." The term "county jail" is used in this report for convenience of expression and is intended to include all of the detention facilities embraced in Section 19a.
2. Penal Code Section 19a limits commitment to a county jail to one year "on conviction of misdemeanor, or as a condition of probation, or for any other reason." This language might be thought broad enough to embrace commitment after conviction of a felony, but Section 19a has been held to apply only in misdemeanor cases.
3. Pp. 00-00 infra.
4. These are the following: [list]. These code sections are included in Tables I through V in the research consultant's report, pp. 00-00 infra.
5. These are the following: [list]. These code sections are included in Tables I through V in the research consultant's report, pp. 00-00 infra.
6. See research consultant's report pp. 00-00 infra.
7. See Table VII, research consultant's report, pp. 00-00 infra.
8. See Tables VIII and IX, research consultant's report, pp. 00-00 infra.