NOV 7 1955

Memorandum No. 1

Subject: Communication from Special Study Commission on Correctional Facilities and Services.

Attached are four letters which I believe are self-explanatory.

I will be in touch with Professor MacCormick prior to the meeting and will report orally what more, if anything, I am able to learn.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

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STATE OF CALIFORNIA
Department of Corrections

502 State Office Bldg. No. 1
Sacramento 14

October 20, 1955

Mr. Thomas E. Stanton, Jr.
Chairman, California Law Revision Commission
111 Sutter Street
San Francisco, California

Dear Mr. Stanton:

Governor Knight a few weeks ago named the membership of a Special Study Commission on Correctional Facilities and Services. I am enclosing a copy of the press announcement and the roster of Commission personnel. During the coming year the Commission will study many of the correctional programs of California. In the course of our review, we will examine the correctional agencies on both State and local levels. An attempt will be made to determine the effectiveness of current programs and to establish some base for future planning.

At our organizational meeting September 23rd, discussion turned to a number of agencies which we believe have direct concern with some of the problems the Commission will investigate. The California Law Revision Commission came to our attention as such an agency, with particular reference to that phase of our study which will be directed toward an analysis of laws which affect correctional programs and policies.

It is our understanding that your body cannot undertake studies until directed to do so by the Legislature. It may be appropriate, however, to suggest your placing this item on the agenda of one of your next meetings. If the Law Revision Commission confirms that attention to the Penal Code and other statutes is necessary, the matter might be proposed to the next session of the Legislature for their authorization.

Specifically, we believe it is pertinent at this time to review laws relating to offenders, probation, administration of county parole, operation of the three term-setting and parole granting boards of the State, and administration of the State correctional agencies. In the main these laws are in the Penal and Welfare and Institutions codes. It should be made clear at this point that ours is a new Commission, not now advocating sweeping changes in law or policy. It is necessary as part of our study, however, that analysis of the legal structure be made. It is in this connection that your agency can be of assistance to us and to the State. Your interest and cooperation are sought to insure that we can be of maximum usefulness in attending to this important problem.

Very sincerely yours,

Encls.
cc: Professor John McDonough
Exec.Sec'y., Calif.Law Rev.Comm.
Commission Members

AUSTIN H. MacCORMICK, Chairman
Special Study Commission on
Correctional Facilities and Services

State of California

COPY CALIFORNIA LAW REVISION COMMISSION COPY

October 24, 1955

Honorable Austin H. MacCormick, Chairman
Special Study Commission on Correctional
Facilities and Services
School of Criminology
University of California
Berkeley, California

Dear Professor MacCormick:

I received your letter requesting that the California Law Revision Commission consider the question as to whether the laws of California which affect correctional programs and policies require revision. Your letter will be placed before the Commission at its next meeting, which will be held on November 11th and 12th, and you will be advised of the action taken at this meeting.

You are doubtless aware that one of the principal functions of our Commission is to recommend to the Legislature, from time to time, such changes in the law as the Commission deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of California into harmony with modern conditions. It would be helpful, therefore, if you or the Project Director of your study could send us prior to our next meeting a statement of some of the instances in which the law affecting correctional programs and policies is antiquated and out of step with modern conditions.

Yours very truly,

THOMAS E. STANTON, JR.
Chairman

TES:bd
cc: Professor John R. McDonough, Jr.

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November 3, 1955

Professor Austin H. MacCormick
School of Criminology
University of California
Berkeley, California

Dear Professor MacCormick,

As Mr. Thomas E. Stanton, Jr., the Chairman of the Law Revision Commission, has written you, your letter to him of October 20 will be brought to the attention of the Commission at its meeting in Los Angeles on November 11 and 12. Mr. Stanton has asked me to write you to ascertain more precisely what you have in mind for the Law Revision Commission to do in connection with the work of your Commission. These possibilities have occurred to us:

(1) That the Law Revision Commission should undertake an independent study of all or some of the laws relating to offenders, probation, etc. referred to in your letter with a view to making recommendations to the Legislature for their revision both in substance and form.

(2) That the Law Revision Commission should undertake an independent study of all or some of such laws with a view to making recommendations to the Legislature for their revision in form only -- i.e., the elimination of superseded sections and of conflicts between sections, reorganization of the material, etc.

(3) That the Law Revision Commission should undertake an independent study of the kind described in either (1) or (2) above but should make its recommendations to your Commission rather than the Legislature.

(4) That the Law Revision Commission should not make an independent study but should undertake to make such studies and analyses as might be requested by your Commission and/or to draft statutes necessary to effectuate policy decisions made by your Commission.

It may be that none of these is what you have in mind. We would appreciate some clarification as to what role you do have in mind for the Law Revision Commission to perform in the work in which you are engaged in order that the Commission can decide whether it is feasible and appropriate for it to do so.

Very truly yours,

John R. McDonough, Jr.
Executive Secretary

JRM:fp
cc: Mr. Thomas E. Stanton, Jr.

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State of California
Department of Corrections
502 State Office Bldg.,No. 1

November 4, 1955

Mr. Thomas E. Stanton, Jr.
Chairman, California Law Revision Commission
111 Sutter Street
San Francisco, California

Dear Mr. Stanton:

Mr. MacCormick has asked that I reply to your letter of October 24th, which was a response to his letter requesting the California Law Revision Commission to consider laws affecting correctional programs and policies.

You indicated your Commission will meet November 11th and 12th, and asked for examples to demonstrate the inadequacy or obsolescence of laws pertaining to the correctional field. An exhaustive survey of the legal structure for correctional facilities and services has not yet been made. This will be part of the continuing purpose of the Special Study Commission. As our examination leads into areas of law which we believe to be inconsistent with sound practice or modern conditions, we would be grateful for the opportunity to make periodic referral of such instances to your Commission.

In line with your current request, the following examples are called to your attention for consideration at your next meeting:

1) Laws controlling the application of factors which aggravate minimum prison terms and which determine minimum eligible parole dates in prison cases.

Penal Code Sections 969a and 969c govern respectively the charging of a prior felony conviction and the possession of a weapon by defendant. Penal Code Section 3024 governs the determination of minimum sentences for such defendants. Penal Code Section 3049 governs the determination of minimum eligible parole dates in most cases. The Adult Authority (and in the case of women felons the Board of Trustees, California Institution for Women) is thus regulated in its term setting and paroling powers. The charging sections being mandatory, take no cognizance of individual variations in the cases of the defendants concerned. The philosophy inherent in the structure of the indeterminate sentence law is that the Adult Authority, in analyzing each case will take into account individual differences as well as community safety factors in making its decisions. Generally, the indeterminate sentences provide the Adult Authority with the flexibility consistent with this philosophy of individual case judgment. However, there are many instances in which the charging and proving of prior felony convictions and/or weapons result in an extraordinarily lengthy mandatory minimum term. The experience of hearing thousands of cases has led the Adult Authority members to observe that the consistent application of equitable term-setting

effect upon the effective use of investigative and case analysis methods. The competent probation officer, in making a complete report and recommendation to the court, often must use material which under other circumstances would always be considered highly confidential. The distinction made that the data upon which the report is based can remain confidential, is not useful. Interviews with the defendant, relatives, friends, employers, social agency representatives all may produce confidential information which should legitimately be part of the study and recommendation. The probation report serves a significant purpose at time of sentence, to be reviewed thoroughly and to be used by the court officers involved in recommending disposition of the case. After that time it would appear to serve no useful purpose to consider the document available for public inspection and in fact this provision mitigates against the best use of an important function.

4) Definition of felony offenders.

Section 17 of the Penal Code, defining felony crimes, was amended in 1947 to include a provision for defendants committed by superior courts to the Youth Authority. Under present law a Youth Authority commitment from superior court constitutes a felony conviction unless the youth after discharge makes application to the commiting court, which may then make an order determining the crime to be a misdemeanor. This latter procedure can occur (a) only if the crime was punishable by sentence either to state prison or jail or by fine and (b) if the Youth Authority did not place the inmate in a state prison during the period of its control over him. In practical effect, this has resulted in a felony classification for virtually every youth committed by superior courts to the Youth Authority. It would appear, therefore, that the original purpose for which the legislation was intended perhaps has been defeated. A revision of the section may be indicated. For the information of your Commission, an act to amend Section 17 of the Penal Code was introduced by Assemblyman Fleury during the 1955 session of the Legislature. This was A.B. 533, which was referred to the Assembly Judiciary Committee and no further action was taken.

5) Operation of county parole boards.

Section 3075 of the Penal Code defines the composition of county parole boards and the following sections, through Section 3083, define the rules, duties and procedures, etc. The essence of the problem here is that the three member board consists of the sheriff, the district attorney, and the chief of police of the county seat. In accordance with modern correctional concepts, this type of member-

ship, representing law enforcement and no other functions, is obsolete. Current theory in penology indicates that paroling decisions should be based upon case analysis procedures and an evaluation of community factors. The Penal Code provisions concerning state term-setting and paroling agencies provide for members "...to have a varied and sympathetic interest in corrections work including persons widely experienced in the fields of corrections, sociology, law, law enforcement and education." (Section 5075.5, Penal Code.) Similar criteria should be applied in the framing of law relating to operation of county parole.

6) Operation of county industrial farms.

Penal Code Section 4117 specifies that transfers of inmates to industrial farms or camps are under the jurisdiction of a county classification committee (the composition of which is provided for in Penal Code Section 4114). The law in this division defines the operation of a county facility based upon custodial classifications in accordance with current thinking in the field of corrections. Penal Code Section 19b on the other hand continues to provide that the county sheriff may transfer prisoners among various jail facilities, notwithstanding any other provisions of law. If, as is maintained, the more recent statutes are in accordance with modern conditions, consideration possibly should be given to the repeal of Section 19b.

As stated in the second paragraph of this letter, the above examples do not reflect a complete survey of law in the correctional field. Such a survey will be part of our study and we shall be grateful for the opportunity to continue the procedure of referring questions involving possible law revision to your Commission.

Very sincerely yours,

Milton Burdman
Project Director
Corrections Study Commission

cc: Professor John McDonough
Mr. Austin H. MacCormick