

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Deputy Director
Re: Use of the Term “Workhouse” in New Jersey Statutes
Date: December 07, 2020

MEMORANDUM

Executive Summary

The Commission previously undertook an examination of the criteria necessary to sentence a persistent offender to an extended term of imprisonment pursuant to N.J.S. 2C:44-3.¹ In the absence of a statutory definition for the term confinement, the Commission examined the types of institutions within the State of New Jersey in which a defendant may be imprisoned.²

That examination confirmed the prevalence of the term “workhouse” in New Jersey’s statutes. Amid a statewide, and national, move to reexamine statutory terms rooted in systemic racism, the presence this term in New Jersey’s body of statutes is of concern since it ties back to the oppressive ideals of its colonial-era origins, which supports a recommendation for its elimination from the statutes.³

Background

In May of 1668, the first general assembly of New Jersey met in Elizabethtown and enacted a criminal code.⁴ The code was reenacted in December of 1675 and served as the basis of East Jersey criminal procedure.⁵ Based on the Puritan conceptions of criminal justice, the punishments for various crimes set forth in the code were severe and included: death, mutilation, branding, the stocks, or whipping.⁶ Imprisonment was not a punishment meted out with any frequency in Colonial New Jersey, and would not be until the mid-1670s.⁷

By 1677, the Quaker proprietors of West Jersey drafted a constitution that contained the territory’s first provisions for the administration of justice.⁸ Unlike the East Jersey codes of 1668 and 1675, the West Jersey constitution set forth “mild and elastic” penalties for criminal offenses and permitted the courts to impose punishments that fit the circumstances of the transgression.⁹ In

¹ Revised Draft Tentative Report Clarify the Statute Relating to Confinement in New Jersey’s Code of Criminal Justice (N.J.S. 2C:44-3) from Arshiya Fyazi, Counsel, to the New Jersey Law Revision Commission 1 (Nov. 09, 2020) (on file with the Commission).

² *Id.*

³ See also Comments of Assemblywoman Verlina Reynolds-Jackson contained in the Press Release, Governor Phil Murphy, Governor Murphy Signs Legislation to Eliminate the Title “Freeholder” from Public Officer (Aug. 21, 2020) (on file with author).

⁴ Emil Frankel, Crime Treatment in New Jersey-- 1668-1934, 28 Am. Inst. Crim. L. & Criminology 90, 91 (1937-1938).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Frankel, Crime Treatment in New Jersey-- 1668-1934, 28 Am. Inst. Crim. L. & Criminology at 93.

⁹ *Id.*

addition, the “absolute freedom of opinion and worship was decreed... and the imprisonment of honest debtors was forbidden.”¹⁰

The 1682 criminal and civil codes of East Jersey reflected the Quaker influence prevalent in West Jersey.¹¹ The punishments in the East Jersey criminal code, during the 1680s have been characterized as a “milder and more enlightened system” of dealing with crime and its punishment based in part upon a growing Quaker influence.”¹² Although the code provided for confinement, this method of punishment was primarily utilized in the case of debtors.¹³ When the Puritans immigrated into West Jersey from East Jersey, New England, and England itself, however, their attitudes toward the appropriate punishment for criminal behavior began to appear in criminal legislation.¹⁴ By the close of the seventeenth century, the criminal code of West Jersey began to reflect the strict criminal procedure of the code of Puritan East Jersey.¹⁵

After the unification of East and West Jersey in 1702, there were no dramatic changes in the criminal code.¹⁶ The diametrically opposed criminal codes of East and West Jersey would “...gradually be assimilated through mutual interaction and interpenetration of the social forces which brought them into being and were carried over into the united province and perpetuated throughout the colonial period.¹⁷ As a result, the criminal codes addressed the transgressions of a developing society and sought to “...escape the expense connected [to] the [...] detention of debtors and petty offenders for whom imprisonment was not intended or adapted as a punishment.”¹⁸

The concept of imprisonment as an accepted method of punishment finds its origins in the European institution of the “workhouse.”^{19, 20} Both New Jersey and Pennsylvania “...shared the distinction of being the first [state governments to] definitely and consistently [...] employ the Quaker practice of utilizing the workhouse as the basis of the penal system.”²¹ Rather than physical torture, New Jersey employed hard labor as the primary method to protect its citizens from criminals, while effecting the punishment and reformation of those who violated the law.²² The New Jersey workhouse system was modeled after the European workhouses that were employed for “... the suppression of all pauperism and disorderly conduct, rather than as a basis of the penal system.”²³ Early workhouses in New Jersey were built to keep “...vagrants, debtors, and persons

¹⁰ *Id.*

¹¹ *Id.* at 92.

¹² See George W. Kirchwey, Report of the New Jersey Prison Inquiry Comm’n, 9 J. Am. Inst. Crim. L. & Criminology 207 (May 1918 to Feb. 1919).

¹³ Frankel, Crime Treatment in New Jersey-- 1668-1934, 28 Am. Inst. Crim. L. & Criminology at 92-93.

¹⁴ *Id.* at 93.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 94.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

awaiting trial or execution” in custody.²⁴ In time, the workhouses would be utilized “...for the punishment of ‘fellons’ and other malefactors.”²⁵

By act of December 16, 1748, the County of Middlesex authorized the construction of the first workhouse in New Jersey.²⁶ The act provided:

Whereas, Divers of the Inhabitants of the County of Middlesex have humbly certified to the General Assembly by their petition that the numbers of poor people have of late years very much increased within the said county, and that, for the better regulation and government of the said county, it is highly necessary that a poorhouse shall be erected within the same for the maintenance and employment of such poor persons as may become chargeable to the several cities and townships within the said county, and for the educating and bringing up of poor children in some honest and industrious way; as also a workhouse and House of Correction for setting to work and punishing all vagrants, vagabonds, and pilferers, and all idle and disorderly persons, servants, and slaves within the limits of the said county, and the depressing of vice and immorality.

New Jersey’s Prison Inquiry Commission observed that the workhouse would, in part, serve as an institution that would confine “...disorderly or insubordinate slaves or servants upon the application of their masters....”²⁷ Over the next half-century, additional counties would authorize the use of workhouses in their vicinages.

Just before the turn of the eighteenth century, several counties had, by act, established workhouses.²⁸ Pursuant to this act, a justice of the peace could “... commit to the said work-house, to hard labour, any stubborn, disobedient rude or intemperate slave or male servant, on complaint of his or her master or mistress, and also after due investigation [...] to order such person to be punished by such confinement and labour, as the said justice shall think reasonable.”²⁹ This sentiment, regarding the nature and purpose of New Jersey’s workhouse would eventually be shared by the judiciary.

The acts of the county government regarding workhouses provides “... considerable light upon the cotemporary opinion as to the nature and purpose of the workhouse system.”³⁰ An examination of the case law regarding workhouses provides the judicial perspective on this subject at the time. In 1857, the New Jersey Judiciary noted, in *State v. Ellis*, that “[w]orkhouses and jails, being both used for the purpose of penal confinement, are not unfrequently regarded as

²⁴ Kirchwey, Report of the New Jersey Prison Inquiry Comm’n, 9 J. Am. Inst. Crim. L. & Criminology at 218.

²⁵ *Id.* at 218.

²⁶ *Id.* at 218. See also Emil Frankel, Crime Treatment in New Jersey-- 1668-1934, 28 Am. Inst. Crim. L. & Criminology at 94.

²⁷ Kirchwey, Report of the New Jersey Prison Inquiry Comm’n, 9 J. Am. Inst. Crim. L. & Criminology at 218.

²⁸ A76 "An Act for the establishment of Work-houses in the several counties of this state," Feb.20,1799, §§ 5 & 6, Acts 23rd G.A. 2nd sitting, ch. DCCLXXVII, p. 499, 500-501, Pat.378,379, Penn. 443,444.

²⁹ *Id.*

³⁰ Emil Frankel, Crime Treatment in New Jersey-- 1668-1934, 28 Am. Inst. Crim. L. & Criminology at 94.

identical.”³¹ The two institutions, however, are “entirely distinct in their origin, object and government...”³² County jails were designed for the confinement of criminals and persons charged with offenses against the law.³³ By contrast, New Jersey’s workhouses were “... authorized to be built by the board of chosen freeholders ... [and serve] as a place for the confinement [of] disorderly persons, and for disobedient or intemperate slaves or servants.”³⁴ For the next 121 years, from 1748 until 1869, the primary purpose of New Jersey’s “workhouses” would remain unchanged.³⁵

In 1869, the completion of the Hudson County Workhouse ushered in a new era and focus for New Jersey’s “workhouses.”³⁶ The penal function of the mid-nineteenth-century workhouse, or penitentiary, would be the focus of this Hudson County institution.³⁷ In the almost fifty years that followed, Essex, Mercer, Camden, and Middlesex would each authorize the construction of workhouses of their own - Essex County in 1873, Mercer County in 1872, the City of Camden in 1913-1914, and in 1916 bonds were issued by Middlesex County for the construction of a county workhouse.³⁸

By 1918, there were three workhouses in actual operation in New Jersey.³⁹ Among these three facilities there was a population of nearly 700 inmates.⁴⁰ Of the 700 members of the “delinquent population” approximately 100 were women and girls, and over half of who [were] persons eligible for commitment to the State Prison.”⁴¹ According to the New Jersey’s Prison Inquiry Commission, “[t]he workhouses thus established and authorized came into existence partly to relieve the overcrowding of the jails and partly to satisfy the terms of sentences to imprisonment at hard labor, which the county jails notoriously failed to supply.”⁴²

Almost 318 years after the unification of East and West Jersey, references to imprisonment at hard labor and workhouses can still be found in New Jersey’s current statutes.

Statutory Overview

Originally enacted in 1877, N.J.S. 30:8-33 authorizes the imprisonment of certain inmates at hard labor.⁴³ In New Jersey, “... [e]very person sentenced to imprisonment at hard labor for not

³¹ *State v. Ellis*, 26 N.J.L. 219, 220 (Sup. Ct. 1857).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ N.J. STAT. ANN. § 30:8-33 (West 2020), amended by L.1953, c. 29, § 54, eff. Mar. 19, 1953. *See also* Rev.1877, p. 1251, § 3 [C.S. p. 2953, § 35]. *See* SCR 145, 219th Leg., 1st Sess. (N.J. 2020) (seeking to amend the New Jersey Constitution to prohibit slavery and involuntary servitude as punishment for a crime noting that prisoners in New Jersey are required to engage in labor, for a minimal pay, while incarcerated).

more than six months shall be delivered by the sheriff ... to the master of the workhouse....”⁴⁴ For the next 100 years, county workhouses remained under the “direction, superintendence and government of the board of chosen freeholders...”⁴⁵ The county government could designate a “workhouse master” to manage the day-to-day operation of this institution.⁴⁶ In the mid-1970s, the authority of the freeholders to control county workhouses would cease.

In 1976, all functions, powers and duties of the Commissioner of Institutions and Agencies with respect to all county workhouses were transferred to the Department of Corrections.⁴⁷ The Commissioner of the Department of Corrections was given the authority to promulgate rules and regulations were necessary to establish minimum standards for the care, treatment, government and discipline of inmates.⁴⁸

Although the concept of a workhouse dates back to colonial New Jersey, the term is not defined in New Jersey’s body of statutes. Despite the lack of a statutory definition, the word is found in fifty-three statutes that span twelve titles.⁴⁹ The statutes relating to isolated confinement⁵⁰ and the transfer of inmates⁵¹ each define “county correctional facility” to include a workhouse, suggesting that the term may be easily be replaced with a less offensive term.⁵²

Conclusion

Staff seeks authorization to conduct additional research and outreach to ascertain whether it would be appropriate to update the statutes by removing the term workhouse.

⁴⁴ *Id.*

⁴⁵ N.J. STAT. ANN. § 30:8-32 (West 2020).

⁴⁶ *Id.*

⁴⁷ N.J. STAT. ANN. § 30:1B-10 (West 2020).

⁴⁸ *Id.*

⁴⁹ N.J. STAT. ANN. § 2A:4A-23 (West 2020); N.J. STAT. ANN. § 2A:67-4 (West 2020); N.J. STAT. ANN. § 2C:43-10 (West 2020); N.J. STAT. ANN. § 2C:46-4 (West 2020); N.J. STAT. ANN. § 4:7-55 (West 2020); N.J. STAT. ANN. § 5:5-69 (West 2020); N.J. STAT. ANN. § 5:5-70 (West 2020); N.J. STAT. ANN. § 12:7-46 (West 2020); N.J. STAT. ANN. § 12:7-58 (West 2020); N.J. STAT. ANN. § 26:3-78 (West 2020); N.J. STAT. ANN. § 30:1-15 (West 2020); N.J. STAT. ANN. § 30:1B-10 (West 2020); N.J. ANN. § 30:4-82.7 (West 2020); N.J. STAT. ANN. § 30:4-85.1 (West 2020); N.J. STAT. ANN. § 30:4-91.3c (West 2020); N.J. STAT. ANN. § 30:4-123.46 (West 2020); N.J. STAT. ANN. § 30:4-123.49 (West 2020); N.J. STAT. ANN. § 30:4-123.50 (West 2020); N.J. STAT. ANN. § 30:4-123.51 (West 2020); N.J. STAT. ANN. § 30:8-16.1 (West 2020); N.J. STAT. ANN. § 30:8-16.2 (West 2020); N.J. STAT. ANN. § 30:8-16.7 (West 2020); N.J. STAT. ANN. § 30:8-29 (West 2020); N.J. STAT. ANN. § 30:8-30 (West 2020); N.J. STAT. ANN. § 30:8-31 (West 2020); N.J. STAT. ANN. § 30:8-32 (West 2020); N.J. STAT. ANN. § 30:8-33 (West 2020); N.J. STAT. ANN. § 30:8-34 (West 2020); N.J. STAT. ANN. § 30:8-37 (West 2020); N.J. STAT. ANN. § 30:8-38 (West 2020); N.J. STAT. ANN. § 30:8-39 (West 2020); N.J. STAT. ANN. § 30:8-40 (West 2020); N.J. STAT. ANN. § 30:8-42 (West 2020); N.J. STAT. ANN. § 30:8-44 (West 2020); N.J. STAT. ANN. § 30:8-48 (West 2020); N.J. STAT. ANN. § 30:8-48.1 (West 2020); N.J. STAT. ANN. § 30:8-49 (West 2020); N.J. STAT. ANN. § 30:8-57 (West 2020); N.J. STAT. ANN. § 30:8-58 (West 2020); N.J. STAT. ANN. § 30:8-59 (West 2020); N.J. STAT. ANN. § 39:4-50 (West 2020); N.J. STAT. ANN. § 39:4-51 (West 2020); N.J. STAT. ANN. § 39:5-30e (West 2020); N.J. STAT. ANN. § 39:5-36 (West 2020); N.J. STAT. ANN. § 40:23-31 (West 2020); N.J. STAT. ANN. § 40A:9-117.6 (West 2020); N.J. STAT. ANN. § 44:1-147 (West 2020); N.J. STAT. ANN. § 44:4-108 (West 2020); N.J. STAT. ANN. § 53:1-14 (West 2020); N.J. STAT. ANN. § 53:1-20.3 (West 2020).

⁵⁰ N.J. STAT. ANN. § 30:4-82.5 (West 2020).

⁵¹ N.J. STAT. ANN. § 30:4-91.3c at π 1 (West 2020).

⁵² N.J. STAT. ANN. §§ 30:4-82.7 and 30:4-91.3c (West 2020) (defining county correctional facility as a county jail, penitentiary, prison, or workhouse).