REPORT *of the*

Royal Commission on

The Criminal Law Relating to Criminal Sexual Psychopaths

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ROYAL COMMISSION ON THE CRIMINAL LAW

RELATING TO CRIMINAL SEXUAL PSYCHOPATHS

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Chairman.

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TERMS OF REFERENCE AND APPOINTMENT OF PERSONNEL

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Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 25th March 1954.

The Committee of the Privy Council have had before them a report dated 12th March 1954, from the Minister of Justice, representing:

That section 1054A of the Criminal Code, as enacted by section 43 of Chapter 39 of the Statutes of 1948, provides procedure whereby persons who are charged with certain sexual offences may, after due inquiry, be found to be criminal sexual psychopaths and may be sentenced to indeterminate detention in a penitentiary;

That at the present session of Parliament a Joint Committee of both Houses of Parliament has been appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries, should be amended in any respect and, if so, in what manner and to what extent;

That Order in Council P.C. 1954-289 of 2nd March 1954, authorized the appointment, pursuant to Part I of the Inquiries Act of Commissioners to inquire into and report upon the question whether the criminal law of Canada relating to the defence of insanity should be amended in any respect and, if so, in what manner and to what extent; and

That, in the opinion of the Minister, the question whether the criminal law of Canada relating to criminal sexual psychopaths should be amended in any respect and, if so, in what manner and to what extent, is a subject of inquiry of equal importance with the subject matters of capital punishment, corporal punishment, lotteries and the legal defence of insanity.

The Committee, therefore, on the recommendation of the Minister of Justice, advise that,

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(1) A Commission do issue, pursuant to Part I of the Inquiries Act, appointing

The Honourable James Chalmers McRuer,
Chief Justice of the High Court of
Justice of Ontario,

Doctor Gustave Desrochers,
Assistant Superintendent of St. Michel
Hospital at the City of Quebec,

Her Honour Judge Helen Kinnear,
County Court Judge for the County of
Haldimand, Ontario.

as Commissioners to inquire into and report upon the question whether the criminal law of Canada relating to criminal sexual psychopaths should be amended in any respect and, if so, in what manner and to what extent;

(2) the said Commissioners be authorized to adopt such procedure and method as they may deem expedient for the conduct of the inquiry and to alter or change the same from time to time;

(3) the said Commissioners be authorized to engage the services of such counsel and of such technical advisers, experts, clerks, reporters and assistants as they may deem necessary and advisable; and

(4) the expenses of and incidental to the said inquiry be paid out of money appropriated by Parliament.

R. B. Bryce,
Clerk of the Privy Council.

REPORT

OTTAWA, March 21, 1958.

The Honourable EDMUND DAVIE FULTON, Q.C.,

Minister of Justice, Ottawa.

SIR, We have the honour to present you with the Report of the Royal Commission upon the question whether the criminal law of Canada relating to criminal sexual psychopaths should be amended in any respect and, if so, in what manner and to what extent.

INTRODUCTION

Under the terms of reference the only matter submitted to us is whether the criminal law of Canada relating to criminal sexual psychopaths should be amended in any respect and, if so, in what manner and to what extent. These terms of reference do not contemplate a study of the whole problem created by sexual offenders and their offences. Such studies have been made in other jurisdictions, viz., by the Department of Criminal Science, Faculty of Law, University of Cambridge,[1] by the State of California,[2] by the State of Michigan,[3] and by other public and private investigators. However, reports of such studies have been considered by us during our investigation.

Due notice of public sittings was given by advertisements in the press through which all persons interested in the subject under inquiry were invited to attend and make their submissions. In addition, specific individual invitations to attend were extended to persons and organizations who would appear to have relevant information to assist us in the inquiry. Eighteen public sittings were held, which included sittings in all the provincial capital cities in Canada as well as in Montreal, Ottawa and Vancouver. Fifty-two briefs were filed on

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1. Radzinowicz, Sexual Offences.
2. California Sexual Deviation Research, Final Report, March 1954.
3. Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951.

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behalf of organizations and individuals, many letters were received containing suggestions and recommendations, and more than one hundred witnesses gave viva voce evidence at the public hearings. Private sittings were also held to enable witnesses to make confidential submissions.

We gratefully acknowledge the ready co-operation we have received from so many witnesses of great experience in the fields of law, psychiatry, psychology, penology, social work and religious work who appeared before us to give evidence. A complete list of the witnesses is set out in Appendix I. The witnesses (some of whom are listed in more than one category) may be classified as follows:

Psychiatrists	35
Psychologists	5
Members of the legal profession	21
Medical doctors	41
Professors	21
Prison personnel	9
Representatives of the Department of Justice	3
Representatives of Attorneys General	7
Interested citizens	3
Representatives of various organizations	44
Representatives of Departments of Health	12
Police officers	6
Representatives of Departments of Reform Institutions	2

We wish to acknowledge our indebtedness to Mr. R. Noel Dickson, the Secretary of the Commission, to Mr. James Worrall, Q.C., and Mr. Edouard Martel, Counsel to the Commission, and to Mr. H. O. Taylor and associates, the official reporters, for the efficient performance of their respective duties.

In addition to the evidence given at the formal sittings, we had the benefit of exhaustive statistical studies made under the supervision of Professor F. R. Wake, B.A., ph.D., of Carleton University, by Mr. W. A. Magill and Mr. R. Wong of the Dominion Bureau of Statistics, with the close co-operation of the Royal Canadian Mounted Police who provided most helpful information from their records.

Two members of the Commission attended at the Diagnostic Center at Menlo Park in the State of New Jersey for the purpose of inquiring into the operation of the law of that State relating to sexual offenders. We wish to acknowledge the courtesies extended to us upon that occasion, and particularly the useful discussions with the following individuals:

Dr. Ralph Brancale, Director of the Diagnostic Center, Menlo Park, N. J.

Mr. Justice William J. Brennan, Jr., then Associate Justice of the Supreme Court of New Jersey, now a Justice of the Supreme Court of the United States.

Judge Edward Gaulkin of the Essex County Court.

Judge David Nimmo) Members of the Board of Managers
Dr. Sampson G. Smith) of the Diagnostic Center.

Dr. F. Lovell Bixby, Director of Correction and Parole for the State of New Jersey.

Mr. Eugene T. Urbaniak, Deputy Attorney General for Institutions and Agencies, Trenton, N.J.

Commissioner Trambert, Head of the Department of Institutions and Agencies, State of New Jersey.

CHAPTER I

PROVISIONS OF THE CRIMINAL CODE RELATING TO SEXUAL OFFENCES

The law relating to so-called psychopathic sexual offenders cannot be satisfactorily considered apart from the law governing all sexual crimes.

For convenience, we have set out in the following table all the offences provided for in the Criminal Code of Canada (to which we shall hereafter refer as "the Criminal Code", at times using the abbreviation "C.C.") that may be classed as sexual offences and the maximum penalties that are provided. No provision is made for minimum penalties, and offenders may, in proper cases, in the discretion of the court, be released on suspended sentence or probation.

TABLE 1

Table of Sexual Offences in Canada under the Criminal Code and the Punishment therefor

Offence	Section	Type of Offence	Punishment (Maximum)
Rape	135 & 136	Indictable	Imprisonment for life and whipping
Sexual intercourse with female under 14	138(1)	"	Life and whipping
Incest	142(2)	"	Female - 14 years Male - 14 years and whipping
Buggery or bestiality	147	"	14 years
Parent or guardian procuring defilement of female under 14	155	"	14 years
Attempted rape	137	"	10 years and whipping

TABLE 1 (continued)

Table of Sexual Offences in Canada
under the Criminal Code
and the Punishment therefor

Offence	Section	Type of Offence	Punishment (Maximum)
Assault by male on male with intent to commit buggery	148	"	10 years and whipping
Indecent assault by male on male	148	"	10 years and whipping
Abducting of female with intent	234	"	10 years
Procuring	184(1)	"	10 years
Indecent assault on female	141(1)	"	5 years and whipping
Sexual intercourse with female of previously chaste character 14 or more and under 16	138(2)	"	5 years
Sexual intercourse with feeble-minded, insane, idiot, imbecile	140	"	5 years
Gross acts of indecency	149	"	5 years
Parent or guardian procuring defilement of female 14 or more	155	"	5 years
Householder permitting defilement of female under 18	156	"	5 years

TABLE 1 (continued)

Table of Sexual Offences in Canada
under the Criminal Code
and the Punishment therefor

Offence	Section	Type of Offence	Punishment (Maximum)
Conspiracy to defile	408(1)(c)	Indictable	2 years
Seduction of female between 16 and 18	143	"	2 years
Seduction under promise of marriage of unmarried female under 21 of previously chaste character	144	"	2 years
Sexual intercourse with stepdaughter or female ward	145(1)	"	2 years
Sexual intercourse with female employee under 21 of previously chaste character	145(1)	"	2 years
Seduction of female passengers on vessels	146	"	2 years
Corrupting children	157	"	2 years
Indecent acts	158	Summary	6 months or fine of not more than $500.00 or both (s. 694)
Nudity	159(1)	"	6 months or fine of not more than $500.00 or both (s.694)
Prostitute or night walker	164(1)(c) 164(2)	"	"

TABLE 1 (continued)

Table of Sexual Offences in Canada
under the Criminal Code
and the Punishment therefor

Offence	Section	Type of Offence	Punishment (Maximum)
Sexual offenders loitering near schools, etc.	164(1)(e) 164(2)	Summary	6 months or fine of not more than $500.00 or both (s.694)

Preventive detention.

The concept of preventive detention was first introduced into the law of Canada in 1948. It applies to two classes of convicted persons - "habitual criminals" and "criminal sexual psychopaths". The following is the present form of the legislation applying to both groups:

"PART XXI

PREVENTIVE DETENTION

INTERPRETATION

659. In this Part,

(a) 'court' means

(i) a superior court of criminal jurisdiction, or

(ii) a court of criminal jurisdiction;

(b) 'criminal sexual psychopath' means a person who, by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person, and

(c) 'preventive detention' means detention in a penitentiary for an indeterminate period.

HABITUAL CRIMINALS

660. (1) Where an accused is convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in addition to any sentence that is imposed for the offence of which he is convicted if

(a) the accused is found to be an habitual criminal, and

(b) the court is of the opinion that because the accused is an habitual criminal, it is expedient for the protection of the public to sentence him to preventive detention.

(2) For the purposes of subsection (1), an accused is an habitual criminal if

(a) he has previously, since attaining the age of eighteen years, on at least three separate and independent occasions been convicted of an indictable offence for which he was liable to imprisonment for five years or more and is leading persistently a criminal life, or

(b) he has been previously sentenced to preventive detention.

CRIMINAL SEXUAL PSYCHOPATHS

661. (1) Where an accused is convicted of

(a) an offence under

(i) section 136,
(ii) section 138,
(iii) section 141,
(iv) section 147,
(v) section 148, or
(vi) section 149; or

(b) an attempt to commit an offence under a provision mentioned in paragraph (a),

the court may, upon application, before passing sentence hear evidence as to whether the accused is a criminal sexual psychopath.

(2) On the hearing of an application under subsection (1) the court may hear any evidence that it considers necessary, but shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney General.

(3) Where the court finds that the accused is a criminal sexual psychopath it shall, notwithstanding anything in this Act or any other Act of the Parliament of Canada, sentence the accused to a term of imprisonment of not less than two years in respect of the offence of which he was convicted and, in addition, impose a sentence of preventive detention.

GENERAL

662. (1) The following provisions apply with respect to applications under this Part, namely,

(a) an application under subsection (1) of section 660 shall not be heard unless

(i) the Attorney General of the province in which the accused is to be tried consents,

(ii) seven clear days' notice has been given to the accused by the prosecutor specifying the previous convictions and the other circumstances, if any, upon which it is intended to found the application, and

(iii) a copy of the notice has been filed with the clerk of the court or the magistrate, as the case may be; and

(b) an application under subsection (1) of section 661 shall not be heard unless seven clear days' notice thereof has been given to the accused by the prosecutor and a copy of the notice has been filed with the

clerk of the court or with the magistrate, where the magistrate is acting under Part XVI.

(2) An application under this Part shall be heard and determined before sentence is passed for the offence of which the accused is convicted and shall be heard by the court without a jury.

(3) For the purposes of section 660, where the accused admits the allegations contained in the notice referred to in paragraph (b) of subsection (1), no proof of those allegations is required.

663. Without prejudice to the right of the accused to tender evidence as to his character and repute, evidence of character and repute may, where the court thinks fit, be admitted on the question whether the accused is or is not persistently leading a criminal life or is or is not a criminal sexual psychopath, as the case may be.

664. A sentence of preventive detention shall commence immediately upon the determination of the sentence imposed upon the accused for the offence of which he was convicted, but the Governor in Council may, at any time, commute that sentence to a sentence of preventive detention.

665. (1) Notwithstanding anything in this Act or any other Act of the Parliament of Canada an accused who is sentenced to preventive detention shall serve in a penitentiary the sentence for the offence of which he was convicted as well as the sentence of preventive detention.

(2) An accused who is sentenced to preventive detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformative treatment as may be prescribed by law.

666. Where a person is in custody under a sentence of preventive detention, the Minister of Justice shall, at least once in every three years, review the condition, history and circumstances of that person for the purpose of determining whether he should be permitted to be at large on licence, and if so, on what conditions.

667. (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence.

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part.

(3) The provisions of Part XVIII with respect to procedure on appeals apply, mutatis mutandis, to appeals under this section.

The offences referred to in section 661 (1) (a) are:

s. 135, rape,
s. 138, carnal knowledge,
(1) of female under fourteen years of age,
(2) of female between fourteen and sixteen, of previously chaste character,
s. 141, indecent assault on female,
s. 147, buggery or bestiality,
s. 148, indecent assault on male,
s. 149, gross indecency,"

and, under section 661 (1) (b), an attempt to commit any such offence.

The statute as it was enacted in 1948 was revised in 1953 and extended to include persons convicted of buggery or bestiality, gross indecency or an attempt to commit any one of the enumerated offences.

The statute relating to criminal sexual psychopaths as originally enacted read:[1]

"1054A.

(1) When any person is convicted of an offence under sections two hundred and ninety-two,[2] two hundred and ninety-three,[3] two hundred and ninety-nine,[4] three hundred,[5] three hundred and one[6] or three hundred and two,[7]

1. 11-12 Geo. VI (1948), c. 39, s. 43.
2. Indecent assault on female.
3. Indecent assault on male.
4. Rape.
5. Attempted rape.
6. Carnally knowing (1) a female under fourteen years of age, (2) a female between fourteen and sixteen years of age of previously chaste character.
7. Attempted carnal knowledge of girl under fourteen years of age.

the court, before passing sentence, may hear evidence as to whether the offender is a criminal sexual psychopath.

(2) Such evidence shall be given by at least two psychiatrists who, in the opinion of the court, are duly qualified as such and one of whom has been nominated by the Minister of Justice.

(3) The court may hear such other evidence as it may deem necessary.

(4) Evidence as to whether the offender is a criminal sexual psychopath shall not be submitted unless seven days' notice has been given by the proper officer of the court to the offender that such evidence will be submitted.

(5) The court may find that the convicted person is a criminal sexual psychopath and in such case shall sentence him for the offence for which he has been convicted to a term of imprisonment in a penitentiary of not less than two years and for an indeterminate period thereafter.

(6) Any person found to be a criminal sexual psychopath and sentenced accordingly shall be subject to such disciplinary and reformative treatment as may be prescribed by penitentiary regulations.

(7) The Minister of Justice shall once at least in every three years during which a person is detained in custody for an indeterminate period review the condition, history and circumstances of that person with a view to determining whether he should be placed out on licence and, if so, on what condition.

(8) In this section 'criminal sexual psychopath' means a person who by a course of misconduct in sexual matters has evidenced a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, loss, pain or other evil on any person."

CHAPTER II

CRITICISM OF THE SUBSTANTIVE LAW

The fundamental criticism of the Canadian law is that it has not proved to be effective, in view of the fact that in seven years (from 1948 to 1955) only twenty-three persons were sentenced as criminal sexual psychopaths. It was contended that because of the high standard of proof required and because of procedural difficulties many sexual offenders who ought to be confined for indeterminate terms are either at large or confined for definite terms, from which they will ultimately be released. Witnesses approached the legislation from two distinct points of view. On the one hand it was submitted that it should be extended to include wilful sexual offenders who failed to control their sexual impulses and who were likely to attack or otherwise inflict injury, pain or other evil on any person. In the view of these witnesses, such offenders were as great a danger to the public as those who showed "a lack of power to control" their sexual impulses. On the other hand, many witnesses, particularly certain members of the legal profession, objected to the scope of the legislation and recommended that greater safeguards should be provided for the liberty of the subject.

The whole definition of a "criminal sexual psychopath", viz., "a person who, by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person", was the subject of considerable criticism.

The term "criminal sexual psychopath".

The weight of the evidence of psychiatrists was against the use of the word "psychopath" in defining the person who should be subject to preventive detention. The objection was based on the opinion that "psychopath" is a term of no precise clinical meaning to the psychiatrist, but members of the legal profession and laymen are inclined to regard the term as one capable of clinical definition. The confusion that the use of the term creates is best demonstrated by quoting some relevant extracts from the evidence of professional witnesses.

Dr. B. H. McNeel, of the Ontario Department of Helath, said:[1]

> "I once heard a psychopath defined by a psychiatrist in the same way as, he said, someone defined a hippopotamus: he could not define it but he knew one when he saw it."

1. Evidence, (Ont.) p. 1164.

Dr. L. P. Gendreau, the Deputy Commissioner of Penitentiaries, quoted Louis Lurie's statement that the term embraces at least seven conditions:[1]

"1. Criminalism;

2. Emotional instability;

3. Inadequate personality;

4. Paranoid personality;

5. Pathological lying;

6. Nomadism;

7. Sexual psychopathy."

The doctor said:[2]

"The antisocial behaviour of the psychopath differs from that of the ordinary criminal in that (1) it is not purposive; (2) its ends are not intelligible to the average individual; (3) it is primarily harmful to the delinquent; (4) it rarely involves the individual in very serious crimes such as murder. In other words, the real criminal is carrying out a more simple and better organized revolt against society than is the psychopath."

Dr. D. G. McKerracher, Director of Psychiatric Services in Saskatchewan, said:[3]

". . . there is no such thing as a sexual psychopath. . . There are psychopaths who commit sexual offences; there are mentally ill people who commit sex offences; there are mental defectives who do so, and there are people who, from a psychiatric standpoint, could be considered normal in that particular definition, and they do not fall in any of those other groups. I think the machinery should identify what particular group that particular person falls in and he would be dealt with accordingly. Those in the so-called normal group should be dealt with by the law as it formerly stood."

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1. Evidence, (Ont.) p. 21
2. Ibid., p. 21.
3. Evidence, (Sask.) p. 444.

There were other witnesses who agreed with him.[1]

Dr. T. A. Pincock, Provincial Psychiatrist in Manitoba, gave as his definition of a psychopath:[2]

> "I would say he was a person who has, for one thing, very little regard for the consequences of his acts. He profits very little by past experience to correct his behaviour. He has a total disregard often for the effect of his conduct on other people. He is lacking in a sense of responsibility, reliability and morals. He is frequently in trouble with the law through criminal acts - vagrancy, vagabondage - and shows a lack of concern for his conduct and keeps repeating it. It is part of his make-up, it has become part of the pattern of his life to repeat these anti-social acts irrespective of the consequences to himself or others. . . . They lack judgment morally; they are what the British law used to refer to as moral imbeciles."

Dr. J. D. Lucy, of the Department of Health, Saskatchewan, in presenting the brief of the Canadian Mental Health Association, Saskatchewan Division, said:[3]

> "In legal circles, the psychopath is sometimes referred to as the 'non-sane, non-insane criminal' . . . . Very roughly speaking, psychopaths are persons who seem to have peculiar difficulty in adapting themselves to the ordinary customs and codes of the society in which they find themselves.
>
> Generally speaking, they tend to batten on others. They have little or no affection for their fellows and are very frequently deficient in foresight and tend to give in to every passing desire and impulse.
>
> Ordinary penological measures seldom have any deterrent effect on psychopaths, and incidence of recidivism among them is abnormally high. At the same time, they generally fail to respond to any form of medical or psychological treatment. A certain amount is known about psychopaths from the psychiatric point of view, but a great deal more is still very obscure.

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1. Regina Council of Women, Exhibit 20, p. 532; Canadian Mental Health Association, Exhibit 21, p. 551 and p. 554; Dr. Louis Bourgoin, Exhibit 37, pp. 817-18.

2. Evidence, (Man.) pp. 405-06.

3. Exhibit 21, pp. 550-51.

> As these people have very little self-control, they are particularly prone to commit offences of a criminal nature, and this will naturally include a high proportion of sex crimes. However, there seems to be no point in regarding 'sexual psychopath' as a person belonging to a separate category, although there are a few psychopaths who are particularly prone to being guilty of repetitive sexual offences. The problem of disposal of this type of psychopath is that of the disposal of the psychopaths in general."

In the brief of the Saskatchewan Psychiatric Association it was made clear that psychopaths cannot be classified as mentally ill (insane) or mentally defective according to any existing legal definition. In the brief it is stated:[1]

> "These are people characterized by a compulsive repetitiveness of antisocial behaviour and a marked inability to acquire the ethical standards of their society. This, however, does not comprise a clearly circumscribed group of individuals. Two sub-groups need to be considered:
>
> a) those more passive individuals whose sexual conduct repeatedly offends good taste and morals (such as some homosexuals, exhibitionists, 'peepers' and other minor lewd offenders). Insofar as these may be helped by psychiatric treatment, they can be most suitably treated at Out-patient Clinics.
>
> b) those more aggressive individuals whose sexual acts are generally destructive (such as aggressive rapists, sadists, sex slayers and attackers of young children). These, though a much smaller sub-group, constitute a distinct danger to society."

Dr. Louis Bourgoin of the "Service de Réadaptation de Québec", after considering in his brief the characteristics generally of a psychopath, said:[2]

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1. Exhibit 22, pp. 557-58.

2. Exhibit 37, p. 818.

"Strictly speaking the expression 'sexual psychopath' should be exclusively applied to an individual who, under the influence of a specific psychopathological mechanism, commits one or many sexual offences. In this sense only do we find any real justification for the association of the two words 'sexual' and 'psychopath'.

In the sense specified above the sexual psychopath is not a mere sexual delinquent but a truly sick individual whose essential disorder consists precisely in committing sexual offences."

Dr. Alastair MacLeod of the Department of Psychiatry at McGill University described psychopaths in this way:[1]

"They are emotionally immature, impulsive and strikingly unable to control their desire for immediate satisfaction even when a gratification of this desire leads obviously and inevitably to complete destruction of their own long term interests. They are at heart destroyers of themselves as well as of the happiness and peace of mind of others."

The doctor considered them to be diseased people.[2]

The psychiatrists giving evidence generally agreed with Dr. D. E. Cameron of the Department of Psychiatry at McGill University, that[3]

"He (the psychopath) is somebody who is incapable of learning by experience."

Dr. W. A. Cardwell, Superintendent of the Ontario Hospital at Penetanguishene, held out little hope of successful medical treatment for the true psychopath. He said:[4]

". . . the psychopathic personality or psychopathic individual is resistive to all forms of therapy; the psychopath never learns by experience - he does not want to learn. He likely does not want to change. He does not think there is anything the matter with him."

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1. Exhibit 45, p. 1534.
2. Evidence, (P.Q.) p. 1079.
3. Ibid., p. 834.
4. Evidence, (Ont.) p. 1453.

The Honourable Dr. MacKinnon Phillips, Minister of Health for Ontario, quoted the latest medical definition of a psychopath taken from Gould's Medical Dictionary:[1]

> "A psychopath is a morally irresponsible person who continually comes in conflict with accepted behaviour and the law."

There is no doubt that from a purely legal point of view it makes no difference what term is used to denote the sexual offender who is to be subject to preventive detention, because if the person is proved to come within the legal definition of the term a discussion of psychopathy is irrelevant. Nevertheless, much weight must be given to the evidence that calls in question the use of the term "sexual psychopath", as it introduces into the courtroom in examination and cross-examination a discussion of a mental condition which many assume to be mental disease capable of exact clinical definition. Many psychiatrists are of the opinion that the word "psychopath" should be dropped from medical terminology.

In our opinion the use of the term "psychopath" is objectionable and a more appropriate term should be devised if possible. The following alternative terms were put forward by witnesses: "criminal sexual offender",[2] "habitual sex offender",[3] "persistent sex offender",[4] "sexually abnormal person" or "abnormal sexual offender"[5] and "sexual offender". Notwithstanding the fact that the definition in the section is the governing factor which establishes the type of offenders who are intended to come within it, we think a more suitable term should be used to be the subject of definition. We recommend the term "dangerous sexual offender". Any of the other terms suggested might import into the section a concept that is not relevant to those matters that arise out of the definition.

"Course of misconduct".

The use of the words "course of misconduct" has given rise to much discussion, both in the courts and in the evidence we have heard. It has been held by the Court of Appeal for Ontario that a course

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1. Evidence, (Ont.), p. 1156
2. Evidence, (N.B.) p. 141.
3. Ibid., p. 121.
4. Evidence, (Sask.) p. 468.
5. Evidence, (P.Q.) p. 797; Exhibit 37, p. 823.

of misconduct lasting only one day was sufficient in the particular circumstances to support a finding that the accused was a "criminal sexual psychopath" as the term is used in the Criminal Code.[1] The main criticism of the use of the words "course of misconduct" in the definition is based on two grounds: (a) a single offence may demonstrate that the prisoner is so dangerous that he should not be at large until it can be established that he is no longer "likely to attack or otherwise inflict injury, pain or other evil on any person", and (b) a course of misconduct must be established before a sexual offender who "has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person" may be detained for treatment. We think that the criticism based on the first ground is met by the decision in R. v. Tilley (supra). Our view is that the ordinary provisions of the criminal law sufficiently safeguard society unless it is proved that the conduct of the prisoner in relation to the particular offence of which he is convicted or his antecedent conduct shows that he is likely to be a danger to others. On the other hand, if the law as laid down in R. v. Tilley (supra), which is a decision of a provincial court of appeal, should ultimately be overruled, the criticism of the section would have great weight. The second ground of criticism of this phrase is an approach based on the interest of the prisoner. It is contended that the prisoner should be confined for treatment before he has established a course of misconduct. We do not think it has been demonstrated that the imposition of an indeterminate sentence on a sexual offender is justified on the basis that treatment for the prisoner might be provided in prison. We shall discuss later the whole question of treatment.

"A lack of power to control his sexual impulses".

The use of these words in the definition contributes in large measure to the practical difficulties in the application of the law. If proof beyond a reasonable doubt is the correct standard of proof, there is much weight in the contention that it is in rare cases only that the prosecution can establish beyond a reasonable doubt that an accused person "lacks the power to control his sexual impulses" as distinct from having an unwillingness to control those impulses. Psychiatrists find it difficult to distinguish between an uncontrollable and an uncontrolled impulse.

In R. v. Neil[2] four of the members of the Supreme Court of Canada held that it was proved that the accused had shown a lack of power to control his sexual impulses. Locke J., with whom Taschereau J. agreed, said, at page 693:

1. R. v. Tilley, 106 Can. C.C. 42; 15 Crim. Rep. of Canada 234.

2. 1957 S.C.R. 685.

> "The decision as to whether Neil had shown by the long continued course of misconduct in sexual matters, proven at the trial and on the application, a lack of power to control his sexual impulses was, of course, for the judge alone,"

and held that there was evidence to warrant a finding that the prisoner was "likely to attack or otherwise inflict injury, pain or other evil" on others in the future. Cartwright J. based his judgment on the ground that it was not proved that the accused was "likely to attack or otherwise inflict injury, pain or other evil on any person". Kerwin C. J. and Abbott J. agreed that the appeal brought by the Attorney General of Alberta should be dismissed on this ground.

Dr. R. R. Prosser said in evidence before us that one cannot determine lack of power to control.[1] Dr. R. L. Whitman, a lecturer in psychiatry at the University of British Columbia, who is also engaged in private practice in Vancouver, said that he has never tried to distinguish between uncontrolled and uncontrollable impulse.[2] Dr. J. N. Senn, Superintendent of the Ontario Hospital at Hamilton, said that he did not believe in irresistible impulse, he believed impulses were just uncontrolled.[3]

Notwithstanding that the underlying principle of the law is to deal with a class of persons who suffer from some deficiency in their free will, which, with the exception of the persistent sexual offender, is the only justification of the indeterminate sentence, we think it imperative that more appropriate phraseology should be adopted to replace the words "lack of power to control". Alternative terms suggested were "unable to control his sexual impulses in a socially

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1. Evidence, (N.B.) pp. 106-7.

2. Evidence, (B.C.) pp. 598-99.

3. Evidence, (Ont.) pp. 1244-45; Exhibit 54, pp. 1609-10.

accepted manner"[1] and "a failure to control" or "lack of control".[2] If the fundamental basis for the indeterminate sentence is a total lack of power to control sexual impulses, it is inconsistent with the punitive nature of the sentence. This we shall discuss later.

"Is likely to attack or otherwise inflict injury, pain or other evil on any person".

It was on these words that the appeal in R. v. Neil (supra turned. Kerwin C. J., with whom Abbott J. agreed, came to the conclusion (at page 688) on the evidence that

> ". . . the respondent is not likely to repeat the acts with young boys of which he has been found guilty, or similar acts, and, therefore, he is not likely to inflict evil on any person in the future."

Cartwright J. held (at page 699) that one who persuades a youth to participate in acts of gross indecency

> ". . . is causing him (the youth) to do evil rather than inflicting evil upon him. The primary meanings of the word 'inflict', given in the Shorter Oxford Dictionary, are 'to lay on as a stroke, blow or wound; to impose; to cause to be borne'. In my opinion, neither of the

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1. Evidence, (Sask.) p. 468.

2. A failure to control: Mr. Harry W. Hickman, senior counsel in the Attorney General's Dept. in New Brunswick, evidence, (N.B.) p. 141; Dr. J. C. Theriault, Dept. of Health and Welfare, P.E.I., evidence, p. 211; Dr. Samuel Hirsch, psychiatrist in private practice, evidence, (N.S.) p. 250; Dr. T. A. Pincock, Provincial Psychiatrist, evidence, (Man.) p. 402 and p. 423; Dr. G. F. Nelson, penitentiary physician, evidence, (Sask.) p. 484; Dr. T. C. Michie, Medical Superintendent, Provincial Mental Hospital at Ponoka, evidence, (Alta.) p. 515; Dr. B. H. McNeel of the Dept. of Health, Ontario, evidence, p. 1165; Dr. C. S. Tennant, Forensic Psychiatrist, evidence (Ont.) p. 1231; John J. Robinette, Q.C., evidence, (Ont.) p. 1334; Dr. G. F. Boyer, psychiatrist, evidence, (Ont.) p. 1300; and Sr. Magistrate T. E. Elmore, Q.C., memorandum, (Ont.) p. 1482.
   Lack of control: The Psychiatric Section, Manitoba Division Canadian Medical Association, Exhibit 16, p. 517-A; Hon. Dr. Mackinnon Phillips, Minister of Health for Ontario, evidence, p. 1162; Ontario Department of Health, Exhibit 49, pp. 1585-86; Dr. Kenneth G. Gray, evidence, (Ont.) p. 1203; Exhibit 51-A, p. 1602; Dr. W. A. Cardwell, Superintendent, Ontario Hospital, Penetanguishene, evidence, (Ont.) p. 1452; The Ontario Psychiatric Association, Exhibit 69, p. 1686.

> verbs 'to attack' or 'to inflict' is apt to describe conduct, however evil in its ultimate purpose, which contains no element of force, violence or coercion but consists solely of temptation and persuasion.
>
> I have reached this conclusion on the construction of the words of the definition, but it appears to me to be strengthened by a consideration of the evil which the enactment of the sections dealing with criminal sexual psychopaths was intended to remedy. The purpose of the enactment appears, from the related sections read as a whole, to be to protect persons from becoming the victims of those whose lack of power to control their sexual impulses renders them a source of danger; and the danger evisaged is, I think, that of coercive conduct resulting in the active infliction of pain, injury or other evil on the victim, not merely the persuading or seducing of another to participate in sexual misconduct."

Kerwin C. J. and Abbott J. did not agree with this construction of the section. The Chief Justice said, at page 688:

> "Parliament has distinguished 'attack' which indicates force from inflicting injury, pain or other evil. One may inflict, that is, cause another to suffer or incur, something that is inherently evil by persuading him without the use of force to commit the act, the effect of which may remain with him for many years. I am unable to restrict the meaning of the words Parliament has chosen to carry out its intention to those cases where coercion is used."

As there was no evidence of force in the case, it would appear that Locke J. and Taschereau J. agreed with this construction of the section.

In view of the difference of opinion expressed by the learned judges of the Supreme Court of Canada on the construction of the part of the section under consideration, we think it should be clarified.

We think that the law would be clarified if the words "and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person" were changed to read "and who is likely to cause injury, pain or other evil to any person". It could not then be said that an adult who induced a child or youth to participate in perverted sexual acts did not come within the scope of the section.

Offences covered by the definition.

We again set out the list of offences included in section 661 of the Criminal Code:

(a) s. 135, rape,
s. 138, carnal knowledge

(1) of female under 14 years of age,

(2) of female between 14 and 16 years of age of previously chaste character,

s. 141, indecent assault on female,
s. 147, buggery or bestiality,
s. 148, indecent assault on male, and
s. 149, gross indecency;

(b) an attempt to commit any such offence.

Witnesses suggested that the offences of incest,[1] seduction of a female between the ages of sixteen and eighteen years of

1. Incest of every type: Dr. R. R. Prosser, Department of Health, New Brunswick, evidence, p. 108; Mr. L. M. McDonald, Director Criminal Division, Department of Attorney General, Nova Scotia, evidence, p. 228; Dr. R. W. Murray MacKay, Superintendent Nova Scotia Hospital, evidence, p. 266; Dr. D. G. McKerracher, Director of Psychiatric Services, Saskatchewan, evidence, p. 453; Dr. F. C. Heal, Senior Internist, Moose Jaw Clinic, evidence, (Sask.) p. 483; Mr. T. G. Norris, Q.C., evidence, (B.C.) p. 661; Dr. Louis Bourgoin, evidence, (P.Q.) p. 801; Dr. D. Ewen Cameron, Professor of Psychiatry, McGill University, evidence, (P.Q.) p. 847; Society for the Protection of Women and Children, Inc., Montreal, brief, Exhibit 41, p. 1513; Mr. E. G. Potter, Executive Secretary, Society for the Protection of Women and Children, Inc., Montreal, evidence, (P.Q.) p. 951; Corrections Branch, Department of Social Welfare, Saskatchewan, Exhibit 24, p. 564; John Howard Society of British Columbia, Exhibit 31, p. 751; The British Columbia Probation and Corrections Association, Exhibit 33, p. 775.
Any case of incest in which a child is a victim: Dr. T. A. Pincock, Provincial Psychiatrist, evidence, (Man.) p. 409; Inspector O. Pelletier, Detective-Inspector in charge of the Preventive Bureau of the City of Montreal, evidence, (P.Q.) p. 888; Department of Attorney General, Ontario, Exhibit 48, p. 1557; The Honourable Kelso Roberts, Q.C., Attorney General for Ontario, evidence, p. 1104; Dr. J. D. Atcheson, Director, Toronto Juvenile Court Clinic, evidence, (Ont.) p. 1371.

age,[1] sexual intercourse with a step-daughter or female employee,[2] procuring a female to have sexual intercourse with another person,[3] and sexual intercourse with a female who is feeble-minded, insane or is an idiot or imbecile,[4] should be included with the offences set out in section 661 C.C.

There were no specific cases brought to our attention in which a person had been convicted of any of the suggested offences and the punitive provisions of the criminal law were not sufficient to protect society. There is some merit in the suggestion that the commission of the crime of incest or that of sexual intercourse with a feeble-minded female is some indication of sexual abnormality in the male, but practical experience does not appear to warrant an extension of the section to include any of the suggested offences. Where a prisoner has been convicted of incest the sentence of the court is usually sufficient to terminate the family relationship that has given rise to the conviction. No evidence has been put before us that indicates that the type of person who commits incest is a person who is likely to inflict injury beyond the family circle. Appendix II is a summary of the case histories of the twenty-three prisoners who are serving sentences of preventive detention as criminal sexual psychopaths. Only one of these prisoners is recorded as having been previously convicted of incest.

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1. The Society for the Protection of Women and Children, Inc., Montreal, Exhibit 41, (P.Q.) p. 1513; John Howard Society of British Columbia, Exhibit 31, p. 751; British Columbia Probation and Correction Association, Exhibit 33, pp. 775-76.

2. Society for the Protection of Women and Children, Inc., Montreal, Exhibit 41, (P.Q.) p. 1513; Corrections Branch, Department of Social Welfare, Saskatchewan, Exhibit 24, p. 564; John Howard Society of British Columbia, Exhibit 31, p. 751; The British Columbia Probation and Correction Association, Exhibit 33, pp. 775-76.

3. John Howard Society of British Columbia, Exhibit 31, p. 751; British Columbia Probation and Correction Association, Exhibit 33, pp. 775-76.

4. Corrections Branch, Department of Social Welfare, Saskatchewan, Exhibit 24, p. 564; John Howard Society of British Columbia, Exhibit 31, p. 751; British Columbia Probation and Correction Association, Exhibit 33, pp. 775-76.

Homosexuals.

The extent to which the law under discussion should apply to homosexuals was a matter of wide difference of opinion. In the view of some, homosexual intercourse should not be a crime at all unless there is a wide disparity in the ages of the participants.[1] The weight of opinion expressed before us was against this view. It is arguable that, if two adult males mutually wish to seek their sexual gratification by contact with one another, logically such an act is no more criminal in nature than is heterosexual intercourse between two consenting adults. The argument is that a homosexual act between adult males is an offence only against sensibilities and customs. We are not called upon to decide whether a homosexual act between adults should be a criminal offence or not; but, with respect, we think there are profound problems raised by homosexuality. John Chisholm, Chief Constable of Metropolitan Toronto, in evidence said:[2]

> "Homosexuality is a constant problem for the Police in large centres, and if the Police adopt a laissez-faire attitude toward such individuals, City parks, intended for the relaxation of women and children and youth recreation purposes, will become rendezvous for homosexuals. In addition to his immoral conduct, the homosexual requires further Police attention, as he is often the victim of gang beatings, or robbery with violence, and is easy prey for the extortionist and blackmailer. Homosexuals have been stabbed and wounded and in a few cases have even been murdered. The saddest feature of all, however, is that homosexuals corrupt others and are constantly recruiting youths of previous good character into their fraternity.
>
> Some people go so far as to almost morally justify the misconduct of the homosexual, the inference being in some quarters that because men of intellect and culture have been homosexuals, such behaviour is to be excused, condoned, and even accepted in the community. Surely this is a dangerous trend and an insult to the intelligence of the masses."

Some witnesses suggested to us that all those convicted of homosexual offences should be liable to be sentenced to indeterminate sentences, while others thought that the application of section 661 C.C. to homosexual offenders should be limited to those homosexuals who commit public acts and those who participate with young boys. We do not think that mere conviction for a homosexual act warrants an

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1. This was the conclusion of the majority of the Committee on Homosexual Offences and Prostitution in Great Britain.
2. Exhibit 65, pp. 1672-3.

indeterminate sentence. A study of those cases where section 661 has been invoked against homosexuals shows that it has been applied only where the offences have involved juveniles. We think it may well be left to the courts to decide in what cases the convicted homosexual comes within the definition contained in section 659 (b) C.C.

Summary offences.

Not all offences that may be classed as sexual in their nature are indictable. Several are treated as minor offences punishable on summary conviction for which the maximum sentence provided is six months' imprisonment or a fine of $500 or both imprisonment and fine. These offences are classified with many others in the Criminal Code as "disorderly conduct". They include indecent acts in a public place, nudity, indecent exhibitions, prostitution and vagrancy (anyone who, having at any time been convicted of an offence included in section 661 C.C., is found loitering or wandering in or near a school ground, playground, public park or bathing area).

The greatest conflict of opinion arose over whether persons who were guilty of indecent exposure (exhibitionism) should be subject to the provisions of section 661 C.C. On the one hand it was contended that the exhibitionist is a passive individual who does not show aggressive tendencies, while on the other hand it was argued with considerable force that where children were the victims of such sexual abnormalities the evil inflicted on their minds was so serious as to warrant making the offender subject to the provisions of the section in question. While no doubt exhibitionism may well have some corrupting influence on children, we think that, until Parliament has seen fit to treat the offence as one deserving greater punishment than is now provided, it would be inconsistent to expose the offender to an indeterminate sentence of imprisonment. We believe, however, that the experimental treatment now being given at the Guelph Reformatory in Ontario should be followed with interest in other penal institutions.

Convictions under the Juvenile Delinquents Act.

A basic principle of the Juvenile Delinquents Act is that, in the interest of the child involved, all proceedings should be informal and in camera. In so far as juvenile offenders are concerned, the provisions of the Act giving effect to this principle give rise to no difficulty, but when the offender is an adult different considerations arise. Section 33(1) of the Juvenile Delinquents Act reads:[1]

> "33. (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,
>
> (a) aids, causes, abets or connives at the commission by a child of a delinquency, or

1. R.S.C. 1952, c. 160.

(b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,

is liable on summary conviction before a Juvenile Court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment."

Not infrequently when offences coming within section 661 C.C. are committed by adults against children the offender is proceeded against under this section of the Juvenile Delinquents Act because it is considered that it is in the interest of the child that the informal procedure provided by the Act should be followed. When this practice is invoked it may in some measure protect the child involved but it gravely limits the punishment to which the offender may be subjected and likewise limits the protection to which other children are entitled. An examination of the twenty-three cases digested in Appendix II shows that in nineteen cases the offence giving rise to the charge against the prisoner was an offence against a juvenile. Had these offenders been proceeded against under the Juvenile Delinquents Act the provisions of section 661 C.C. could not have been invoked against them. This gives strong support to the contention that in certain cases the offenders convicted under the Juvenile Delinquents Act should be subject to preventive detention. We, however, have come to the conclusion that this is not the proper approach to the difficulty. The concept of the function of the Juvenile Court is inconsistent with power in the Juvenile Court judge to impose an indeterminate sentence. Nevertheless, it is desirable that some procedure should be devised to bring certain offenders who come under section 33 of the Juvenile Delinquents Act within the provisions of section 661 C.C. We think that the most reasonable course would be to amend the Juvenile Delinquents Act to exclude from the operation of section 33 the offences included in section 661 C.C. We believe that when an adult has committed against a child any of the offences enumerated in section 661 C.C. the procedure should be in the ordinary courts, where the offender may be subject to the penalties provided by the Criminal Code as distinct from those provided by the Juvenile Delinquents Act. The power vested in the court under sections 428 and 451 (j) C.C. to exclude persons from the courtroom would, in our opinion, be sufficient to protect the interests of the child, while the law would not be circumscribed as it now is in the protection of the interests of other children and society as a whole.

CHAPTER III

CRITICISM OF THE PROCEDURE

The court.

The court is defined in section 659 (a) C.C. as (1) a superior court of criminal jurisdiction or (2) a court of criminal jurisdiction. The latter includes a County Court judge sitting without a jury and a magistrate trying an accused with his consent. All cases in superior courts of criminal jurisdiction and the several courts of general and quarter sessions of the peace (inferior courts of criminal jurisdiction) are tried by a judge with a jury. Section 662 (2) C.C. makes provision that any application to have a prisoner declared to be a criminal sexual psychopath shall be heard and determined before sentence is passed for the offence of which the prisoner is convicted and shall be heard by the court without a jury.

The reason for this provision is that the issue on the hearing following the conviction for the principal offence mainly relates to sentence, which is traditionally dealt with by the judge presiding over the court. The only support for the proposal for a trial by a jury of the issue as to whether the prisoner is a criminal sexual psychopath came in a resolution of the Canadian Bar Association,[1] from individual members of the legal profession[2] and from the John Howard Society of Ontario,[3] which stated in its brief:[4]

> "We draw this question of the desirability of jury trial to your attention since we have observed that among men sentenced to preventive detention and even among other inmates and ex-inmates there is a feeling of injustice about this matter. Many of the men feel that they have been trapped in some way by a legal mechanism and that for such potentially long sentences the right to elect trial by jury should have been maintained in the Criminal Code."

On the other hand, many very experienced members of the legal profession supported this aspect of the law as it now is.[5]

1. Exhibit 68, p. 1684.
2. Evidence (P.Q.) p. 918.
3. Exhibit 73, p. 1743.
4. Ibid., p. 1729.
5. Evidence, (Ont.) p. 1259 and pp. 1137-38.

We are convinced that it would be a retrograde step to revert to trial by jury of an issue that is essentially designed to determine the proper sentence to be imposed on the prisoner, having in mind the interests of both society and the prisoner. Nowhere in the Canadian criminal law is there any provision for the participation of the jury in the matter of sentence. Presenting an issue of this character to a jury would involve many practical difficulties in Canada that would further minimize the effectiveness of the law, which large sections of the public believe now does little to accomplish its intended purpose. The accused may be tried on the principal offence with his consent before a magistrate or a county court judge, or in the Province of Alberta before a superior court judge without the intervention of a jury. If he were found guilty and entitled to a trial of the issue by a jury, a whole new procedure would have to be set up, involving committing or remanding the accused to be tried on the issue by a jury, in which case the witnesses would have to be recalled to relate the facts shown in the principal trial; in many cases the trial would have to be presided over by a different judicial officer, with the obvious difficulties. To permit the accused the right to elect to be tried for the principal offence before one tribunal and the right to be tried before another on the question involving sentence would, we think, create not only some procedural abuses but much confusion.

Fundamentally the issue is not whether the prisoner is guilty of any crime,[1] but whether, the prisoner having been found guilty of a crime included in section 661 C.C., he should be sentenced to a determinate or an indeterminate sentence. All judges and all magistrates acting within their jurisdiction have power to sentence prisoners to prison for life for certain offences. We do not think society would be better served by taking from the judge or magistrate who has presided over the trial the power now vested in him under section 661 C.C. and vesting it in a jury. We likewise believe that in a matter of this sort, where the result does not mainly depend on the credibility of witnesses, the civil rights of the prisoner are amply protected by the absolute right of appeal to the provincial courts of appeal and the right, with leave, to appeal to the Supreme Court of Canada.

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1. In R. v. Hunter (1921) 1 K.B. 555, a case dealing with a finding that the prisoner was an habitual criminal, the Earl of Reading, C.J., said: "There is nothing in the Act which would justify us in saying that the charge of being an habitual criminal is a charge of a crime or offence." See also R. v. Brusch, 1953 (1) S.C.R. 373.

Notice to the prisoner.

Three questions arise under the law as it now is and has been interpreted: (1) whether the notice should set out in writing the grounds on which the prosecution contends that the indeterminate sentence should be imposed on the prisoner; (2) whether the consent of the Attorney General should be obtained before the notice is served, as required by section 662 (1) (a) (i) C.C.; and (3) when the notice should be served.

Content of the notice.

The contention that some provision should be made to require the prosecutor to set out in reasonable detail the nature of the evidence that will be put before the court on the trial of the issue deserves serious consideration. It is not unreasonable that the prisoner should be informed in some way of the grounds on which the prosecution is proceeding. We seriously question the advisability of laying down any statutory procedure the rigidity of which would afford technical grounds on which dangerous persons would ultimately be returned to society. No case was brought to our attention where any prisoner was taken by surprise in the evidence adduced. Where the trial of the issue is by the court without a jury, if the prisoner is taken by surprise the discretion vested in the presiding judge or magistrate to adjourn the hearing is sufficient to meet the exigencies of any case. If this discretion is unfairly exercised so as to do apparent injustice to the prisoner, it is inconceivable that the Court of Appeal would not direct a new hearing. We believe that an amendment to the section to provide that the grounds on which the prosecution is proceeding should be set out would add another and unnecessary technical difficulty. The possibility of such injustice has not been shown to have occurred in the past, and we think it will not likely occur in the future.

Consent of the Attorney General.

Whatever may be the justification for requiring the consent of the Attorney General before proceeding to have a prisoner declared to be an habitual criminal, we do not think it wise to encumber the present law respecting sexual offenders with that requirement. As long as the Attorney General is required to appoint one of the psychiatrists appearing at the hearing, he is in control of the proceedings, and, while they might be instituted without his consent, they could not be carried through to a conclusion unless he was a consenting party. When the matter comes before the Attorney General for the appointment of a psychiatrist he can always direct that the proceedings be discontinued if he does not approve of the course taken by his officer.

Service of the notice.

Three suggestions were put before us relative to the service of the notice: (1) to allow notice to be given in advance of the trial of the substantive offence; (2) provision should be made for service of the notice after the sentence for the substantive offence has been passed and before the prisoner has been released; and (3) where a prisoner has pleaded guilty and a notice is served under section 662 C.C. he should be allowed to withdraw his plea of guilty.

There is nothing specific in section 662 preventing the prosecutor from serving the notice before the prisoner has been convicted of the substantive offence. If the section should be interpreted to mean that no notice may be served thereunder until after the conviction for the substantive offence, we think the statute should be amended to permit the notice to be served either before or after conviction but before sentence. Notwithstanding the representations that were made to us from very responsible sources that the law should be such that proceedings might be taken under sections 661 and 662 against a prisoner sentenced to imprisonment for any of the offences included in section 661 before he is released from prison, we think it would not be humane to adopt this suggestion. If it should be adopted every prisoner convicted of any of the named offences and sentenced to imprisonment, however long the term, would have hanging over him throughout the term of his imprisonment the liability to be proceeded against, with the possible result that at the conclusion of his specific term he might be imprisoned for an indeterminate period. The object of this suggested amendment is to cover cases where the dangerous propensities of prisoners become evident after incarceration. If such cases arise we think they should be dealt with, if possible, by some procedure apart from the administration of the criminal law. We believe that, in the interests of both the prisoner and society, it is of great importance that his ultimate disposition under the criminal law should be determined promptly after his conviction.

Withdrawal of plea of guilty.

The submission that the prisoner should be allowed to withdraw a plea of guilty where the plea is followed by service of the notice is founded on the contention that the prisoner would not have pleaded guilty if he had known that further proceedings against him were intended. This submission is supported from two points of view: (1) it is unfair to take against a prisoner proceedings which he could not anticipate would flow from his plea of guilty, and (2) prisoners who might otherwise plead guilty might not do so because of the danger of the subsequent proceedings. We do not think either of these submissions warrants a change in the law. A plea of guilty is an acknowledgment of guilt. Once the plea is entered, to allow it to be withdrawn because further proceedings are taken to safeguard society would be not

dissimilar to allowing a prisoner to withdraw a plea of guilty because he is sentenced to a longer term than he expected to receive. No one knows the prisoner's past record and the character of his actions better than he does. What flows from the plea of guilty flows from an admission of guilt which the prisoner has elected to make. We think, too, that the second ground for the suggested amendment is a frail one and one not supported by any evidence.

Initiation of proceedings.

There were differences of opinion among witnesses about the method of initiating proceedings for the trial of the issue. Under the present law this responsibility rests on the "prosecutor", which means counsel appearing for the Crown, who is responsible to the Attorney General of the province. Some witnesses made the submission that an inquiry of the nature contemplated by section 661 C.C. should be mandatory in all cases where the prisoner has been convicted of an offence listed in that section. Others submitted that where there was a disparity in the ages of the prisoner and the victim, or where the offence was repetitious or accompanied by violence or obscenity, an issue should be tried under section 661. Still others submitted that, while it should be permissive to try the issue where the conviction is for a first offence, it should be obligatory when the conviction is for a second offence. The amendment suggested in the brief submitted by the Canadian Bar Association[1] would render a hearing unnecessary and make it imperative that the prisoner be sentenced to preventive detention when convicted twice or more for any offence listed in section 661. If the submission in the brief presented by the British Columbia Section of the Canadian Bar Association[2] were adopted it would raise a rebuttable presumption in law that a person who is convicted of an offence under section 661 C.C. is a person liable to be sentenced to preventive detention. Senior Magistrate T. S. Elmore, Q.C., of Toronto, submitted that the court should have power on its own initiative to direct that the issue should be tried.[3]

Any provision of the criminal law making mandatory the imposition of an indeterminate sentence on an offender who has been convicted of any of the offences named in section 661 C.C. would necessarily impose much hardship in many cases. We are also of opinion that an amendment to the law of evidence creating a rebuttable presumption against a prisoner when convicted of any one of those offences would be an extreme measure.

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1. Exhibit 29, p. 729.
2. Ibid., p. 728.
3. Memorandum, p. 1482.

We think many of the submissions overlook the constitutional authority of the Attorneys General in the provinces. They are responsible for the administration of justice, except criminal procedure, in their respective provinces. It would be a departure from this principle for the Parliament of Canada to legislate as to the circumstances in which the Attorney General of a province must take certain criminal proceedings. We think that the chief law enforcement officer in the province is the one in whom the final authority to take the initiative in the administration of this branch of the law should rest. Likewise, we do not agree that this responsibility should in any measure be shifted to the court.

CHAPTER IV

CRITICISM OF THE APPLICABLE LAW OF EVIDENCE

Section 661 (2) C.C.

This subsection reads:

> "On the hearing of an application under subsection (1) the court may hear any evidence that it considers necessary, but shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney General."

The use of the word "may" with respect to evidence other than that of psychiatrists and the use of the word "shall" with respect to the evidence of psychiatrists creates confusion. Some witnesses submitted that the use of the word "may" vested a discretion in the court to decide to hear only what evidence it thought was "necessary" as distinct from an obligation to hear all relevant evidence. This view is founded on section 35 of the Interpretation Act,[1] which reads, in part:

> "In every Act, unless the context otherwise requires, . . .
>
> (28) 'shall' is to be construed as imperative, and 'may' as permissive."

We were not referred to any instance where relevant evidence was rejected on the trial of the issue because the court did not "consider" it "necessary". We think it was never intended by the subsection to vest in the court an arbitrary power to reject admissible evidence. Notwithstanding that the courts appear to have interpreted the word "may" as "shall", we think the language of the section should be clarified.

Mr. W. B. Common, Q.C., Deputy Attorney General for Ontario, raised a point that may be of more cogent importance. He drew our attention to the fact that nowhere in the sections of the Criminal Code relating to the trial of the issue is it provided that the court when trying the issue shall consider all the evidence given on the

1. R.S.C. 1952, c. 158.

substantive charge on which the prisoner was convicted. Since Mr. Common gave evidence the Supreme Court of Canada has held[1] that the evidence given on the substantive charge must be examined and considered on the trial of the issue.

Previous record of convictions.

We think that it is not necessary to make any amendment to the law, as has been suggested, to provide that the record of the previous convictions of the prisoner shall be relevant. This evidence has consistently been admitted and considered by the courts, not only on the trial of the issue but on appeals. We think that the provisions of section 633 C.C. making evidence of character and repute admissible to enable the court to decide whether the accused is or is not a criminal sexual psychopath are wide enough to admit evidence of previous convictions.

Standard of proof.

The standard of proof was the subject of much discussion before us. Some witnesses submitted that it should be expressly set out in the Criminal Code that proof should be beyond a reasonable doubt. In two cases that have come to our attention the standard of proof has received judicial consideration. It was held by Ferguson J. in R. v. Leshley[2] that the standard of proof was beyond a reasonable doubt. In R. v. Neil[3] Rand J. said, at page 690:

> "In each case the distinctive features pertinent to that issue (lack of power to control) must be given the fullest enquiry and the conclusion reached beyond a reasonable doubt."

None of the other members of the Court discussed the standard of proof. If the law is as interpreted by Rand J. and Ferguson J. an amendment may or may not be necessary according to the concept of the legislative purpose of the law. It is argued with great force that to require proof beyond a reasonable doubt in the trial of the issue tends to render the law ineffective. As we have indicated, the considerations that arise in deciding whether in the circumstances an indeterminate sentence is the proper one to be imposed on the prisoner are not the same considerations that arise in proof of the guilt of crime. If our recommendations with respect to the elimination of the determinate sentence and judicial review of the indeterminate sentence, which we shall later discuss, are adopted, we think a standard of proof no higher than preponderance of probability would afford greater protection to society and impose no injustice on the prisoner.

1. R. v. Neil, 1957 S.C.R. 685.
2. (Unreported), infra, p. 45.
3. R. v. Neil, 1957 S.C.R. 685.

Psychiatric evidence.

The form of the nomination of the psychiatrist nominated by the Attorney General has given rise to some technical argument. In R. v. Hoyt[1] counsel for the prisoner refused to admit the signature of the Attorney General on the document nominating a psychiatrist. Counsel was exercising a legal right to refuse to make any admission, but the genuineness of the signature of the Attorney General was beyond question, and it was ultimately proved with considerable inconvenience. In view of the great areas throughout which justice is administered in Canada, we think that a document nominating a psychiatrist under the provisions of section 661 C.C. which purports to be signed by the Attorney General should be prima facie evidence that it was signed by the Attorney General. The purpose of the law ought not to be restricted by technicalities that have no substance.

It was suggested to us that the court should have power to decide the issue without psychiatric evidence. We cannot concur in this view. We think the whole concept of the law is that the prisoner has in some manner demonstrated that he is sexually abnormal; that being true, it is of first importance that the court should hear psychiatric evidence.

We also think that the provision that at least one of the psychiatrists should be nominated by the Attorney General of the province is a sound one.

Some witnesses submitted that the statute should expressly set out the minimum standard of qualification of the psychiatrists who might give evidence on the trial of the issue. We think it would not be wise to incorporate in the statute any provision with respect to qualification of psychiatrists. In both civil and criminal cases the courts are frequently called upon to pass on the qualification of "expert" witnesses without any statutory direction, and there would not appear to be any reason to make an exception in this case.

In R. v. Neil[2] all members of the Court agreed that it is improper for counsel to ask psychiatrists if in their opinion the prisoner is a criminal sexual psychopath. That is a question for the judge to decide on the facts as found by him and his interpretation of the law.

Onus of proof.

The Honourable Kelso Roberts, Q.C., Attorney General for Ontario, made a submission that would make not only a drastic change in the standard of proof on the trial of the issue but a change in

1. 1953 O.R. 861; 107 Can. C.C. 59.
2. 1957 S.C.R. 685.

the onus of proof. He suggested that the Criminal Code should be amended to provide that where a person is convicted of an offence named in section 661 the following statutory procedure should apply:[1]

> 1. Every person shall prima facie be deemed to be a criminal sexual psychopath upon the prescribed certificates of 2 psychiatrists (one of whom shall be nominated by the Attorney-General) which certificate when filed with the Clerk of the Court shall be admitted as evidence.
>
> 2. Certificate shall state and show clearly that the psychiatrist signing it personally examined the accused separately from any other psychiatrist and after due inquiry into all necessary facts relating to the case of the accused found him to be a criminal sexual psychopath.
>
> 3. Each psychiatrist shall state the facts in the certificate upon which he has based his opinion.
>
> 4. The notice to the accused under Section 662 (1) (b) shall inform the accused that the Prosecution intends to rely inter alia upon the certificate, a copy of which would be set out in the notice. The psychiatrists who signed the certificate shall give evidence upon the hearing and be available for cross-examination.

There is no doubt that the amendment suggested by the Attorney General would overcome many of the inherent difficulties experienced in the administration of the present law and in the administration of similar laws in other countries. The fundamental weakness of the proposed amendment is that it confers on two psychiatrists the right to make a prima facie decision on facts affecting the liberty of the subject and raising against the prisoner a legal presumption, putting on him the onus of rebutting it. This is such a drastic departure from the traditions of the administration of the criminal law that we do not think it would be acceptable to the Canadian public. That the proposal has the merit of simplifying the present procedure cannot be questioned; nevertheless, we believe that other means should be found to make the law more efficient in accomplishing its purpose.

Unsworn evidence of children of tender years.

The statutory provisions relevant to the discussion of this subject are as follows:

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1. Exhibit 48, pp. 1563-67; evidence, (Ont.) pp. 1119-24.

> "No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused.[1]
>
> (1) In any legal proceeding where a child of tender years is offered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.
>
> (2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.[2] "

These provisions have given rise to considerable discussion by those seeking a more effective administration of the criminal law. We have not been able to find any judicial interpretation of the word "case" as used in subsection (2) of section 16 of the Canada Evidence Act. If we assume that the determination of the issue under section 661 C.C. is a "case" to be decided, the extent to which corroboration of the unsworn evidence of children of tender years is necessary may become very perplexing. The Honourable Mr. Roberts made a suggestion that would make a definite change in the whole criminal law with respect to the unsworn evidence of children of tender years when given at the trial of specified cases of sexual assault.[3] He submitted that the Evidence Act should be amended to permit the court to convict on the unsworn evidence of children of tender years on much the same basis as a court is permitted to convict of certain sexual offences. In such cases the jury is instructed that it is unsafe to convict on the uncorroborated evidence of the complainant, but that if they are satisfied beyond a reasonable doubt that the evidence is true they may convict. The same law guides a judge or magistrate trying a case without a jury. Much argument can be advanced in favour of the Attorney General's submission, in view of the fact that children are often the victims of the most dangerous sexual offenders. However, we think the danger of convicting innocent persons, or even the danger of making accusations against innocent persons, on the strength of the

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1. C.C. of Canada, s. 566.
2. R.S.C. 1952, c. 307, s. 16.
3. Evidence, (Ont.) pp. 1124-29; Exhibit 48, pp. 1567-71.

evidence of a child who does not understand the nature of an oath, outweighs the advantages envisioned by the suggested amendment. In the case of an adult complainant the truth of the evidence given may be adequately tested by cross-examination, but a child of tender years cannot be satisfactorily cross-examined.

Whether the unsworn evidence of children of tender years should be accepted on the trial of the issue without corroboration presents an entirely different problem. There is nothing to prevent the court, even in the most serious criminal cases, from hearing, before imposing sentence, unsworn evidence with respect to the history of the accused. In fact, the whole principle underlying pre-sentence reports, which for many years have been received in English courts and are now received in ours, is that all sources of information bearing on the matter of sentence should be available without technical restriction, so that the court might have in mind the interests of the prisoner as well as those of society. We feel that the issue under discussion is really not a matter of guilt but a matter of appropriate sentence, and the interests of society would be best served by permitting the unsworn evidence of children of tender years to be given to show incidents which bear on the character and repute of the prisoner. If the courts hold that neither the provisions of section 16 of the Canada Evidence Act nor section 566 C.C. apply to proceedings under section 661 C.C., we believe that the law should be clarified by amendment to make them apply.

Examination by psychiatrists before sentence.

Some witnesses submitted that all persons convicted of any sexual offence named in section 661 C.C. should undergo a psychiatric examination before sentence and that the examination should take place while the prisoner is under observation in a properly staffed hospital where all clinical aids and techniques known to modern psychiatry are available. There is no doubt that such a procedure might be feasible in metropolitan districts, but it would present great difficulties in other areas where clinical psychiatric facilities are not available.

In the densely populated State of New Jersey a law similar to the one suggested is in effect. In that State, whenever a person is convicted of the offence of rape, carnal abuse, sodomy, open lewdness, indecent exposure or impairing the morals of a minor or of an attempt to commit any of the afore-mentioned offences, the judge shall order the commitment of such person to the Diagnostic Center for a period not to exceed sixty days. While in the Diagnostic Center such person shall be given a complete physical and mental examination. A written report of the results of the examination is sent to the court within sixty days after the order of commitment. Where it appears from the report that it has been determined through clinical findings that the offender's conduct was characterized by

"(a) a pattern of repetitive, compulsive behavior; and

(b) either violence; or

(c) an age disparity from which it shall appear that the victim was under the age of fifteen years and the offender is an adult aggressor; it shall be the duty of the court, upon recommendation of the Diagnostic Center, to submit the offender to a program of specialized treatment for his mental and physical aberrations. . . .

the disposition to be made by the court of such person . . . shall include one or more of the following measures;

(a) The court may place such person on probation with the requirement, as a condition of said probation, that he receive out-patient psychiatric treatment in the manner to be prescribed in each individual case.

(b) Such person may be committed to an institution to be designated by the Commissioner of Institutions and Agencies for treatment and upon release shall be subject to parole supervision."

An order of commitment made under this law does not specify a minimum period of detention, but in no event shall the person be confined for a longer period than provided by law for the crime of which he was convicted. It is to be emphasized that it is a result of clinical findings which involve findings of fact which imposes on the court the obligation to make an order within the terms of the statute.

For the purpose of administering the criminal law in Canada, we doubt the wisdom, and in fact the constitutional power, of placing on a clinical board the duty of finding facts and making reports that supersede the authority of the courts.

We think that if statutory authority were given to the court to refer prisoners convicted of any offence included in section 661 C.C. for psychiatric examination it would meet all the objections raised as to the inadequacy of this aspect of the present law. If the court, acting on its own initiative or on the submissions of Crown counsel or defence counsel, cannot reach the conclusion that there is good reason to believe the prisoner is one who should submit to psychiatric examination, compulsory procedure of this sort would, in our view, become a cumbersome formality.

Appeals.

Section 667 C.C. reads as follows:

"667. (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence.

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part.

(3) The provisions of Part XVIII with respect to procedure on appeals apply, mutatis mutandis, to appeals under this section."

This section in its present form is unsatisfactory whether applied to the law as it now is or as it would be if our recommendations are adopted.

As the law now is, where a person appeals against the finding that he is a criminal sexual psychopath the court of appeal may set aside the finding and the sentence of preventive detention but it has no power to vary the determinate sentence unless an appeal has been taken against it. Hence a prisoner sentenced to two years determinate plus an indeterminate sentence who has been successful in his appeal against the indeterminate sentence will be released at the end of two years where no appeal has been taken against the determinate sentence.

Where an appeal is taken by the Attorney General against the dismissal of an application for a finding that the prisoner is a criminal sexual psychopath, the court of appeal is not given power to find that the prisoner is a criminal sexual psychopath and impose an indeterminate sentence. Although subsection 3 adopts the procedure provided by Part XVIII of the Criminal Code it does not confer on the court of appeal any of the substantive powers given to it by that Part.

We think that on any appeal taken under this section the court of appeal should have all the powers that the trial judge has with respect to the imposition of sentence, whether it be determinate or indeterminate.

CHAPTER V

THE INSUFFICIENCY OF THE LAW

We are convinced that the law in Canada dealing with the "criminal sexual psychopath" is not accomplishing its purpose. This failure may be due to any one or more of three things -- (1) the phraseology of the law, (2) the lack of proper enforcement of the law, and (3) the reluctance of the courts to commit a person to imprisonment for an indeterminate term, especially where there are no arrangements made for custody and treatment of the prisoner apart from those provided for prisoners serving determinate sentences. We have had no evidence on which to found a conclusion that law enforcement agencies have not sought to take advantage of the provisions of the Criminal Code in cases where they thought them applicable.

Three cases illustrate the ineffectiveness of the law as it is. One was tried by a superior court judge who refused to find the prisoner to be a "criminal sexual psychopath", one by a magistrate who found the prisoner to be a "criminal sexual psychopath" but whose finding was reversed by the Court of Appeal, and one by a superior court judge whose finding that the accused was a "criminal sexual psychopath" was set aside by the Court of Appeal. An appeal was taken in this instance by the Attorney General of the province to the Supreme Court of Canada, where the judgment of the Court of Appeal was sustained with two members of the Court dissenting.

1. Regina v. Lionel Leshley, unreported.

This prisoner was born in 1918. He was tried on an indictment inc uding three counts charging attempt to commit rape and one count charging indecent assault. The facts, as outlined at the trial, relating to the respective counts were as follows:

On a Sunday morning the accused invited an eleven-year-old girl who was returning from mass to get into the automobile driven by him and to show him the way to Bloor Street in the city of Toronto, which was about a block away from where she was picked up. At first she refused. He then told her to get into the car, which she did, and he then drove past Bloor Street. He got into conversation with the child, and asked her if she had a boy friend. She said No. He asked her if she wished to be his girl friend, and she said No. He drove the child to an industrial area where there was a vacant lot, and asked her to lie down on the seat of the automobile. This she refused to do. He then told her that he had already strangled a girl for not lying down

with him. He pushed her toward the steering wheel, telling her to lie down, and, forcing her to the seat, he put his head between her legs and licked her private parts, after which he masturbated himself. He then drove from the lot, and as they passed a police officer ordered the child to get down in the car so she could not be seen. He drove toward the child's home and into a lane where he ran into some rubbish and the car stopped. At this point the child jumped out and ran home.

About a month later an eleven-year-old girl who lived in the east end of the city, on returning from a meeting of a Brownie pack at about eight-fifteen in the evening, was accosted by the prisoner, who was driving an automobile. He asked her to direct him to Caroline Street. The child gave him the direction, and he commenced to drive away. However, he stopped and said that it was Carlaw Avenue he wanted, and the child gave him the direction to Carlaw Avenue. He then invited her to get into the car. She got in and gave directions to the prisoner, which he followed. When he got to Carlaw Avenue, instead of stopping he kept on driving, and eventually came to a parking lot along some railway sidings, where he started kissing the child and asked her if she had a boy friend. She said she had not, and he said he knew she was the one for him. The child asked him if he had a gun, and he said no, but he carried a knife. He then told her to move to the middle of the seat of the automobile, and he put her legs up so he could take off her pants. She was afraid to do anything but comply, and when he took off her pants he put his head down and licked her private parts. He took out his penis and made the child take it in her mouth. He then got on top of her and put his penis between her legs and tried to have intercourse, which caused her some pain. He then drove the child to the vicinity of her home and let her out.

About three weeks later another child eleven years old returning from mailing a letter was accosted by the prisoner, who was driving an automobile. He asked her if she could tell him where Dundas Street was. She said that she could not, but that her aunt, who was at home around the corner, could tell him. He invited her to get into the car. At first she declined, and then she said she would get in and he could drive her around the corner to her home. When he came to the proper street instead of stopping he kept on driving. He finally stopped on a side street, saying that there was something wrong with the car. He got near to the girl and tried to kiss her, whereupon she started to scream. He put his hand over her mouth, told her to be quiet, and said he had strangled a little girl in Montreal. She was very much afraid. He told her to lie down on the seat and to take down her pants. She complied with this order. He undid his trousers and took out his penis and lay on top of her. He tried to have intercourse with her. He then drove her to within a few doors of her home, warning her not to tell her parents.

About three weeks later a nine-year-old girl walking along Yonge Street at about six o'clock in the evening was accosted by the prisoner, who asked her where Balliol Street was. She got into some discussion with him about the name of the street, and, having settled the pronunciation of it, she told him where it was. He told her to get into the car and show him where it was. This she did. Instead of going to Balliol Street the prisoner drove to a park, where he stopped his car. He asked the child her name, and asked her if she would like him for a boy friend. She said No. He took a drink out of a pocket flask, telling her it was coffee. He then told her to lie down. She refused and started to cry. He reached over and locked the door. When she started to cry more loudly he said he had strangled a little girl, and did not want to have to strangle her. He pulled her pants down, put his head between her legs and licked her private parts. He then got on top of her and attempted to have intercourse with her. He then drove her to the vicinity of her home, and she jumped out and ran home.

The jury found the prisoner guilty on all counts, and an application was made in due course to have him declared a criminal sexual psychopath. Ferguson J. declined to find the accused a criminal sexual psychopath. He said in his judgment:

> "I have not changed my opinion, expressed in argument, that if the acts are deliberate acts, it is illogical to say that the accused had lost the control of his impulses, because if an act is deliberate it surely must be the free manifestation of will. To my mind, it is a manifestation of the exercise of some will power if the act is deliberate. If he has lost his control when he does these acts, then surely that is an indication that the act is not a manifestation of his free will; it is an indication that the acts are not deliberate, an indication of a lack of deliberation."

And, later:

> "Every right-thinking person abhors the very thought of the acts which the accused performed on these young girls, and every right-thinking person is concerned that women and girls be protected from these acts, but in my opinion this section was never passed to take care of persons who were performing these acts in a planned, intelligent, deliberate way as I think the accused did. In my opinion this man has control of his sexual impulses, that he was deliberate, that he is a filthy person, that he is a smart-alec, that he started on a course of conduct last December which he, to use the vernacular, got away with once or twice, and having got away with it, he

continued on that course until his luck ran out on the 2nd March when the police officers were clever enough to catch him.

I think his acts are deliberate in the sense that they are not due to loss of the power to control his sexual impulses, and therefore I am going to deal with him as an ordinary man convicted of the offences for which the jury convicted him."

The accused was sentenced to five years' imprisonment concurrent on each count charging attempt to commit rape and to two years' imprisonment consecutive on the count charging indecent assault.

2. Regina v. John W. Trussell, unreported

This prisoner was born about the year 1903. He was tried by a magistrate and found guilty of indecent assault on a female. The evidence on which the conviction was based showed that at about four o'clock p.m. a three-year-old child playing in a small yard about twenty feet square was taken by the prisoner into some bushes in a corner of the yard, where she was indecently assaulted. The prisoner was discovered by the mother of the child, who answered to the child's cries. The medical evidence showed that there was dirt inside the crotch of the child's underpants and on her privates, while the outer side of the clothing was clean except for a few smudges. The skin on the upper part of the victim's thigh and buttocks was very dirty, the buttocks having the appearance of having been rubbed in dirt. There were a few small scratches on the vulva, and it was soiled with dirt. A small tube of vaseline which had been purchased by the prisoner a short time previously was found at the scene of the attack. There was some evidence that the prisoner had been drinking. Following his arrest the prisoner cut one of his wrists. He was remanded to a mental hospital for examination, where he was detained for nearly three weeks, during which time he was examined by one of the psychiatrists who gave evidence at the trial of the issue. After the examination the prisoner was returned upon a finding that he was fit to stand his trial. The medical report was that he was not mentally ill but was " a psychopathic personality with amoral and asocial trends".

Following the conviction for indecent assault the proper proceedings were taken to have the prisoner declared to be a criminal sexual psychopath. In addition to the evidence given at the main trial, it was shown at the trial of the issue that the prisoner had on two occasions been admitted to mental hospitals after having been charged with offences, one of which was buggery. He stated to one of the examining psychiatrists that he had "put on a bug act". The prisoner's record was as follows:

1920	Theft	6 mos. def and 18 mos. indef.
1921	Shopbreaking with intent	12 mos. def. and 24 mos. less 1 day indef.
1923	Break, enter and theft	2 years less 1 day def. and 2 years less 1 day indef.
1924	Escaped	
1925	Escape	2 years
1927	Returned to Ind. Farm, Burwash, to serve unexpired portion of sentence dated Dec. 17, 1923.	
1928	Paroled by Ont. Board of Parole	
1930	Drunk	$10.00 and costs or 5 days
1931	Grand larceny, 2nd degree	15 years to life (N.Y. State)
1941	Deported to Canada	
1942	Vagrancy	14 days
1943	Vagrancy, Sec. 238 (f) C.C.	Fined $10 and costs i/d 2 weeks (comm.)
1944	Illegally riding freight train, Sec. 443(c) Railway Act.	Fined $10 and costs, $5.50 i/d 30 days H.L.
1945	(Buffalo, N.Y.) Illegal entry	6 months, sentence suspended and returned to Canada
1946	(1) Theft, Sec. 386 C.C.	3 months def. and 2 months indef.
	(2) Theft, Sec. 386 C.C.	3 months def. and 2 months indef., consec.

1948	Vagrancy, Sec. 238(a) C.C.	1 year suspended sentence
1949	Vagrancy, Sec. 238(a) C.C.	60 days Ont. Hospital for observation
1949	Vagrancy, Sec. 238 C.C.	30 days
1949	Theft, Sec. 386 C.C. (Value under $25.00)	20 days
1950	Breach of Liquor Control Act, Sec. 96-2	$13.00 i/d 3 days
1950	(1) Carrying concealed weapon	Adjourned sine die
	(2) Theft under $25.00	Suspended sentence, goods returned to owner
1950	Att. suicide, Sec. 270 reduced to breach of the Liquor Control Act, sec. 95-2	5 days
1950	Drunkenness	$10. and $2. or 3 days to date from Oct. 21, 1950
1950	Theft, sec. 386 C. C.	30 days
1952	Att. to commit suicide, sec. 270 C.C.	3 months def. and 3 months indef.
1953	Intoxicated	$10.00 and costs or 10 days
1953	Vagrancy, sec. 238(a) C.C.	Suspended sentence
1953	(1) Wilful damage, Sec. 539 C.C.	$45.50 or 2 months
	(2) Causing disturbance, sec. 222(b) C.C.	$55.50 or 1 month consec.

The two psychiatrists who gave evidence at the trial of the issue were agreed that the prisoner was a criminal sexual psychopath within the definition of the Criminal Code. The magistrate based his judgment on the previous history of the prisoner and the evidence of the doctors, and took into consideration the circumstances of the offence committed against a small child. The prisoner was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. On appeal to the Court of Appeal the conviction for indecent assault was confirmed, but the finding that the prisoner was a criminal sexual psychopath was set aside, no oral or written reasons for judgment being given. The sentence for the substantive offence was altered to a sentence of six months' imprisonment in the Ontario Reformatory, to be followed by an indeterminate period limited to two years less a day.

3. Regina v. Sidney Keith Neil[1]

This prisoner was convicted on two charges of gross indecency involving acts committed with two boys aged respectively fourteen and fifteen years. The prisoner was a school-teacher engaged in teaching pre-high-school-age children. Evidence was given which showed that he engaged in homosexual practices with five youths who were pupils of his. The course followed was to invite the boys to come to his apartment for special tutorial instruction. In some cases he would give some instruction in class subjects; in all cases he purported to give instruction in calisthenics. The boys were required to strip, and after having exercises the prisoner purported to massage their bodies, and eventually carried on mutual masturbation. These practices extended over a period of at least two years.

Following the conviction an application was made to have the prisoner declared a criminal sexual psychopath, and on this application evidence was given of homosexual practices carried on fifteen years previously with boys who were pupils of his. The evidence of one psychiatrist was that in his opinion the prisoner was a criminal sexual psychopath as that term is defined in the Criminal Code. However, in cross-examination the following took place:

> "Q. I notice in your evidence, Dr. Michie, that you said, I think you used the term 'sex impulses', I think that was the term you used, 'are either uncontrollable or uncontrolled'?
>
> A. That is what I said, uncontrollable or uncontrolled.

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1. 1957 S.C.R. 685; supra p. 21

Q. Uncontrollable or uncontrolled. May I draw the inference from that that Neil could control his sexual impulses?

A. I have always had the feeling that the prisoner, that the person who is not mentally disturbed can control his impulses. All do not agree with that.

Q. That is your opinion?

A. Yes."

The doctor made this relevant observation:

> "Actually, my lord, there is not too much known regarding the treatment of homosexuality, and that is an unfortunate situation."

And the following took place during the cross-examination of the other psychiatrist:

"Q. Do you agree with Dr. Michie that a man, and here I do not misrepresent what Dr. Michie said, that a man who has possession of his mental faculties can control criminal sexual impulses?

A. A man in possession of his mental faculties can control them?

Q. Yes?

A. To a great extent, he probably can.

Q. Do you have any reason to believe that the accused, Sidney Keith Neil, does not have possession of his mental faculties?

A. He is mentally sane.

Q. Does he have possession of his mental faculties?

A. Yes.

Q. In your opinion, could a public trial and conviction and all of the publicity and humiliation that goes with it, bearing in mind the circumstances of this case, could that have a therapeutic effect on this accused?

A. It is quite possible it could. It could definitely act as a deterrent.

Q. It could make sufficient impression on him that he would no longer indulge in those practices?

A. It is possible."

The prisoner was found to be a criminal sexual psychopath and sentenced to a term of two years' imprisonment and an indeterminate period thereafter. On appeal to the Court of Appeal the finding of the learned trial judge that the prisoner was a criminal sexual psychopath was set aside without written reasons. The oral reasons were stated to be:

> "The Court feels, with our Brother Mr. Justice Johnson in doubt, that the appeal should be allowed and the conviction quashed, on the grounds that the Crown has failed to bring the evidence of the Psychiatrists within the definition of Criminal Sexual Psychopath."

An appeal was taken to the Supreme Court of Canada. The judgment of the Court of Appeal was affirmed, with two members of the Court dissenting. We have already discussed the legal aspects of this case.

CHAPTER VI

DISPOSITION OF THE PRISONER

The mandatory minimum sentence of two years' imprisonment, to be followed by an indeterminate period of preventive detention, as required by section 661 C.C., not only eliminates any opportunity of treatment of the prisoner as an out-patient while on suspended sentence, but makes it obligatory that both the determinate and indeterminate sentences be served in a penitentiary. The only qualification is that the prisoner may be confined to a part of a penitentiary set apart for prisoners serving indeterminate sentences of preventive detention. In the Criminal Code no distinction in regard to custody and treatment is made between prisoners sentenced to preventive detention as habitual criminals and those similarly sentenced as criminal sexual psychopaths. We think the provisions of the law with respect to custody of sexual psychopaths are quite inconsistent with the theory of the law and the definition of a "criminal sexual psychopath", In theory the sexual offender who comes within this branch of the criminal law is one who at least suffers from some abnormality affecting his sexual impulses. If he does not suffer from any abnormality he does not come within the scheme of the law, and should be dealt with as any other convicted person. However, notwithstanding that the law as it now is recognizes that a sexual offender who comes within it is one who ought to be detained for an indeterminate period and contemplates some effort to treat the prisoner, it is mandatory that he first must undergo a punitive sentence. In the cases digested in Appendix II the sentences to preventive detention in fourteen cases included the minimum sentence of two years, in three cases three years, in one case three and a half years, in three cases five years and in one case seven years. There is no doubt that a sentence to a penitentiary is punitive in any case. It is difficult to understand on what theory a prisoner can logically be sentenced to preventive detention and punitive detention at the same time.

The custody of habitual criminals was discussed in the report of the Royal Commission investigating the penal system of Canada, presided over by the Honourable Mr. Justice Archambault.[1] The recommendations of that Commission are in some measure reflected in section 660 C.C., but the Commission made two recommendations of fundamental importance which have not been adopted, i.e., (1) the sentence of preventive detention should become effective at once and not on the expiration of any other sentence

1. p. 218.

imposed for any offence on which the prisoner may have been tried, and (2) segregation in an institution away from other offenders. The Commission said:[1]

> "The treatment to be accorded the prisoners in an institution for habitual offenders is a matter for careful study by the prison authorities. The purpose of the prison is neither punitive nor reformative but primarily segregation from society. In Great Britain and Belgium, and in a measure in Germany, it has been the practice to treat prisoners undergoing preventive detention with greater leniency than prisoners undergoing penal servitude."

All that is said in the Archambault report applies with greater force to the treatment of one who is undergoing preventive detention as a "criminal sexual psychopath", except that segregation should be accompanied by all possible treatment. We recognize that the purpose of the minimum determinate sentence is to bring the sentence within the provision of section 46 of the Penitentiary Act, which reads:[2]

> "Every one who is sentenced to imprisonment for life, or for a term of years, not less than two, shall be sentenced to imprisonment in the penitentiary for the province in which the conviction takes place."

We think, however, that this is a difficulty which can be overcome by proper amendments to the governing statutes. We are in agreement that consistency demands that not only the mandatory minimum term of two years should be eliminated, but that the necessary statutory amendments should be made to provide that on the court finding the prisoner to come within section 661 C.C. no other sentence should be imposed on him than a sentence to preventive detention for an indeterminate period.

Some witnesses urged that the court should have power to release prisoners found to be "criminal sexual psychopaths" on suspended sentence, particularly on condition that the prisoner in question undergo psychiatric treatment. This question involves the whole question of the efficacy of treatment, which we shall discuss later. A fundamental principle of the law is that if the prisoner is a person who is "likely to attack or otherwise inflict injury, pain or other evil on any person" he should be detained in custody as a protection to others. While we recognize the force of the argument that many sexual

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1. Report, p. 223.
2. R.S.C. 1952, c. 206.

offenders may be successfully dealt with on suspended sentence or probation, we hesitate to recommend that one who comes within the definition as it now is, or will be if our recommendations are adopted, should be at large until he has undergone considerable examination and study and it is decided that it is considered safe for him to be returned to society.

CHAPTER VII

THE PROBLEM OF THE SEXUAL OFFENDER

Although sexual offenders cannot be precisely classified, they may be divided into two general groups - those who are a danger to the public and those who are not dangerous but are distinct nuisances. In this inquiry we are primarily concerned with the first class. The legislation we are considering has special application to those who, by reason of some limitation on their power to control their sexual impulses, are likely to be dangerous to society. The principle of preventive detention underlying the law is twofold -- segregation to prevent injury to others, and treatment if possible so that the prisoner may ultimately be safely released.

It appears to us that there is no reason why a convicted sexual offender who suffers from no mental disorder impairing his free will and ability to restrain his sexual impulses should not be treated as any other criminal. There always have been and probably always will be in society individuals who seek to fulfil their selfish desires and accomplish their selfish ends through trespass on the legal rights of others. The purpose of the ordinary criminal law is to protect society from such persons. It is no part of our duty to embark on a discussion of the broad subjects of penology, criminology and the treatment of all sexual offenders; what we are concerned with is the protection of society from a certain class of sexual offender through segregation, treatment, or both.

In the view of many witnesses who gave evidence, the so-called "psychopathic sexual offender" is really not at all different from any other psychopathic criminal offender, except that he manifests his criminality by sexual offences. This conclusion is shared by others.[1]

An examination of the records of the twenty-three persons who have been found to be "criminal sexual psychopaths" as the term is used in the Criminal Code[2] shows that in eight cases the prisoners' previous convictions were for sexual offences only, in eight cases for sexual offences and non-sexual offences, in four cases for non-sexual offences only, and in three cases there appeared to be no previous criminal record.

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1. Toronto Star Citizens' Forum on Sex Offenders (Exhibit 105), p. 37.
2. Appendix II.

There is, however, a distinction between sexual crimes and other crimes. Non-sexual crimes are in large measure crimes against property (62 per cent. in 1955), and where they are crimes against the person the element of personal violence is usually small (in 1955, 10 per cent. of all non-sexual criminal offences involved personal violence), except in extreme cases of assault and offences causing death. In theory, the punishment provided by the Criminal Code for this class of offence is in large measure sufficient to meet the requirements of society. There is a wide area for disagreement with this theory, but, as we have said, a general discussion of treatment of criminal offenders is not within our terms of reference. The sexual crimes included in section 661 C.C. are all crimes affecting the person and are either of a violent or corrupting nature which may have devastating effects on the victims, particularly if committed against children.

We wish to say at the outset that we have viewed with caution discussions on the subject of the sexual offender in countries other than Canada, because the legislation governing so-called sexual crimes varies widely between countries; e.g., in the United States of America the age of consent in minors varies from eight (in Delaware) to twenty-one (in Tennessee), and in many of the States adultery is a crime.

It is to be emphasized that the scientific identification of a potential sexual offender is difficult, if not impossible. In the brief presented on behalf of the Psychiatric Services Branch, Department of Public Health, of the Province of Saskatchewan, it is stated:[1]

> "The present demand for drastic legislative change is based in part on public misunderstanding about the advance of psychiatric knowledge. It is commonly believed that psychiatrists can identify a person likely to commit a sexual offence; that therapy is available for the potential and actual sex offenders; and finally that psychiatrists can accurately predict when a treated sex offender can be safely discharged. These three beliefs are without foundation. They are the unfortunate result of over-selling psychiatry."

In a brief read to the Commission by John Chisholm, Chief Constable of Metropolitan Toronto, it is stated:[2]

> "Sex offenders are not necessarily zoot-suiters, pool-room frequenters or corner boys. A great majority of them have all the outward appearance of ordinary

1. Exhibit 19, p. 527.

2. Exhibit 65, pp. 1668-70.

> citizens, many with no previous criminal record or contact with the Police, nor are there any indications that would lead one to believe that they are likely to commit serious sex offences. The sex offender may be regularly employed and in other respects honest and industrious. Where are they found? They are present in all age groups, races, professions and institutions, sometimes where least expected. . . .
>
> Sex offenders are not confined to any particular age group. They range from the pugnacious, youthful rapist to the senile old gentleman and, while there are exceptions to all rules, the modus operandi of sex offenders is fairly standard and there is no evidence in our possession to indicate that they gravitate from one group to another. We encounter men with convictions for one sex offence - repeaters with several convictions for sex offences - others who have records of other criminal offences interspersed with convictions for sex crimes.
>
> . . . Marital status of suspects is no guide to the Police in sex investigations, as both married and single men are found in the ranks of homosexuals and other sex offenders."

The evidence of Chief Constable Chisholm was supported by that of other witnesses, and particularly by the brief submitted by Dr. Lucy on behalf of the Canadian Mental Health Association, Saskatchewan Division.[1]

Extensive statistical research has been undertaken for the purpose of gathering as much information as possible about sexual crime in Canada as related to those offences named in section 661 C.C. and its relation to other crime, the incidence of recidivism as related to other crimes committed by the same person, the age factor in sexual crimes, and the proportion of convictions to acquittals. In large measure we have had to rely on the records of the Royal Canadian Mounted Police, because the reports of the Dominion Bureau of Statistics do not set out in detail all the information required for as complete an analysis as we wished to make. It appears that a comparatively small percentage of the sexual offences committed in Canada are reported by the local police authorities to the Identification Bureau of the Royal Canadian Mounted Police. We shall make some recommendations in this regard with respect to the future administration of the criminal law. The result of the failure to report all convictions to the Royal Canadian Mounted Police is that the same person may be convicted several times of a sexual offence in different

1. Exhibit 21, pp. 546-7.

parts of Canada, yet to a court appear to be a first offender. Between 1913 and 1955 there were (as reported to the Dominion Bureau of Statistics) 22,468 convictions, for those sexual offences mentioned in section 661 C.C., involving persons over sixteen years of age. The reports to the Royal Canadian Mounted Police show 3,110 persons convicted of 3,714 sexual offences. We consider, however, that these 3,714 convictions, which involve 3,110 persons, afford a useful basis for study and conclusions, although they must be taken with some reservation and acknowledged exceptions.

Age groups.

The age groups of offenders have a definite relation to the question of public safety, and in fact to the whole question of custody and treatment of offenders. The largest age group of all sexual offenders at the time of the commission of the most serious sexual offence is 20 to 24 years of age. 689 of the total of 3,110 came within this age group, and of the 689, 534 were convicted of either rape, attempted rape, carnal knowledge and attempt or indecent assault on a female and attempt. 93.5 per cent. of those who were first convicted of rape or attempted rape were between the ages of 16 and 39, approximately 77 per cent. were under the age of 30, and 1 per cent. were over the age of 50.

PERSONS TABLE 2

The Age Factor as Related to Convictions for Sexual Offences

	Most Serious Sexual Conviction						
Age in years	Total	Rape & attempt	Carnal Knowledge & attempt	Buggery or Bestiality & attempt	Indecent assault on male and attempt	Indecent assault on female & attempt	Gross indecency & attempt
Total	3,110	463	473	194	219	1,140	621
16 - 19	404	78	81	17	9	170	49
20 - 24	689	170	114	31	31	250	93
25 - 29	533	109	75	30	40	191	88
30 - 34	405	49	58	31	28	150	89
35 - 39	305	27	38	27	33	99	81
40 - 44	234	16	20	22	22	94	60
45 - 49	180	7	27	9	19	64	54
50 - 54	123	5	27	12	10	37	32
55 - 59	91	1	11	6	10	31	32
60 - 64	70	-	11	4	9	27	19
65 - 69	39	-	5	2	2	16	14
70 plus	35	-	6	3	6	11	9
Not stated ..	2	1	-	-	-	-	1

Recidivism.

Extreme caution must be exercised in making precise comparison with statistical information from other countries, because the basis on which the information has been compiled may vary. But the result of studies in other countries appears to confirm our conclusions. Guttmacher says:[1]

> "In the table on recidivism in the Uniform Crime Reports, rape was twenty-fourth and 'other sex offenses' twenty-fifth in order of recidivism among the 26 offenses listed."

Leaving the exhibitionist and the homosexual out of consideration, Karpman quotes eight authorities for the thesis that the incidence of recidivism is low among sexual offenders.[2] Taylor, quoted by Karpman, raises the question, "Is not prison a strong deterrent?"

Of the 3,110 persons convicted of sexual offences whose records were available to us for study, 422 (13.6 per cent.) were known to have repeated convictions for sexual offences prior to the date of the study. This is a low rate as compared with other criminal offenders. Of the recidivists, the greatest number (102) were convicted for the first time of a sexual offence between the ages of 20 and 24 years. 55 per cent. of the sexual recidivists were not convicted of any other sexual crimes after 34 years of age.

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1. Guttmacher, Sex Offenses, p. 113.

2. Karpman, The Sexual Offender and his Offenses, pp. 276 et seq. See also Radzinowicz, Sexual Offences, p. 154.

TABLE 3

PERSONS

The Age Factor in Recidivism

Age in years at time of last sexual conviction*	Age in years at time of 1st sexual conviction												
	Total	16-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70 plus
Total	422	61	102	70	66	44	34	15	18	7	2	2	1
16 - 19	7	7	-	-	-	-	-	-	-	-	-	-	-
20 - 24	44	22	22	-	-	-	-	-	-	-	-	-	-
25 - 29	72	14	43	15	-	-	-	-	-	-	-	-	-
30 - 34	69	7	18	27	17	-	-	-	-	-	-	-	-
35 - 39	54	5	5	11	25	8	-	-	-	-	-	-	-
40 - 44	44	4	7	6	9	12	6	-	-	-	-	-	-
45 - 49	49	-	2	4	9	13	15	6	-	-	-	-	-
50 - 54	29	-	4	3	3	7	6	2	4	-	-	-	-
55 - 59	21	2	1	1	1	2	3	4	5	2	-	-	-
60 - 64	21	-	-	2	2	1	4	2	5	3	2	-	-
65 - 69	6	-	-	1	-	-	-	-	2	2	-	1	-
70 plus	6	-	-	-	-	1	-	1	2	-	-	1	1

* Sexual convictions referred to in this table are for offences named in section 661 C.C.

Of the 3,110 sexual offenders, 2,021 had no previous convictions for any non-sexual indictable offence when first convicted of a sexual offence (Table 4). 631 were convicted of a non-sexual offence after the conviction for the first sexual offence (Table 5) and 181 were convicted more than once of sexual offences.

TABLE 4

PERSONS

Comparison between Prior Convictions
for Sexual and Non-Sexual Offences

Number of prior non-sexual convictions	Total	Number of subsequent sexual convictions: 0 conviction	1 conviction	2 convictions	3 convictions	4 convictions	5 convictions	6 convictions	Over 6 convictions
Total	3,110	2,671	321	75	24	11	2	3	3
0 conviction	2,021	1,763	178	51	16	8	-	3	2
1 conviction	495	417	63	9	4	2	-	-	-
2 convictions	222	192	27	2	1	-	-	-	-
3 convictions	123	103	14	5	1	-	-	-	-
4 convictions	68	53	12	2	-	-	1	-	-
5 convictions	49	40	7	1	-	-	1	-	-
6 convictions	35	27	4	4	-	-	-	-	-
7 convictions	87	71	12	1	1	1	-	-	1
11 convictions	4	1	2	-	1	-	-	-	-
12 convictions	3	1	2	-	-	-	-	-	-
13 convictions	2	2	-	-	-	-	-	-	-
36 convictions	1	1	-	-	-	-	-	-	-

TABLE 5

PERSONS

Subsequent Sexual Convictions
by Subsequent Non-Sexual Convictions

Number of Subsequent Non-Sexual Convictions	Number of Subsequent Sexual Convictions							
	Total	0	1	2	3	4	5	More than 5
Total	3,110	2,671	321	75	24	11	2	6
0	2,479	2,232	187	37	14	5	-	4
1	347	261	60	15	6	2	1	2
2	122	89	24	8	1	-	-	-
3	58	31	19	7	-	1	-	-
4	28	17	9	1	1	-	-	-
5	17	11	5	-	-	1	-	-
6	13	9	3	-	-	1	-	-
7	4	3	1	-	-	-	-	-
8	8	3	4	1	-	-	-	-
9	8	4	1	-	1	1	1	-
10	7	2	3	2	-	-	-	-
More than 10	19	9	5	4	1	-	-	-

Although only 13.6 per cent. of the 3,110 sexual offenders whose records were studied were recidivists in sexual crime, 50 per cent. were convicted of other crimes before or after their first conviction for a sexual crime. This tends to show that an unusually high percentage of sexual offenders are recidivists in crime.

TABLE 6

PERSONS

Subsequent Convictions for Sexual Offences
Related to Convictions
for Non-Sexual Offences

Number of prior and subsequent non-sexual convictions	Number of subsequent sexual convictions									
	Total	0	1	2	3	4	5	6	7	8
Total	3,110	2,666	289	86	40	11	10	2	1	5
0	1,549	1,549	-	-	-	-	-	-	-	-
1	617	483	91	21	18	1	-	2	1	-
2	276	217	48	8	2	1	-	-	-	-
3	187	123	41	20	-	3	-	-	-	-
4	128	82	24	9	13	-	-	-	-	-
5	84	56	22	1	-	-	5	-	-	-
6	53	37	11	1	-	4	-	-	-	-
7	38	27	7	3	-	1	-	-	-	-
8	35	10	15	5	-	-	-	-	-	5
9	25	17	7	-	-	1	-	-	-	-
10	14	7	6	1	-	-	-	-	-	-
11	18	11	5	-	2	-	-	-	-	-
12	17	10	1	6	-	-	-	-	-	-
13	10	8	2	-	-	-	-	-	-	-
14	13	4	1	3	-	-	5	-	-	-
15	4	3	1	-	-	-	-	-	-	-
16	2	2	-	-	-	-	-	-	-	-
17	10	3	2	5	-	-	-	-	-	-
18	4	1	2	-	1	-	-	-	-	-
19	4	2	2	-	-	-	-	-	-	-
19 plus	22	14	1	3	4	-	-	-	-	-

Not only the greatest number of persons convicted for the first time of a sexual offence, but the greatest number of persons convicted of sexual and non-sexual offences, comes from the age group between 20 and 24.

TABLE 7

PERSONS

Age at First Sex Conviction by Type of Offender

Age in Years	*Type of Offender									
	Total	%	Type 1	%	Type 2	%	Type 3	%	Type 4	%
Total	3,110	100	1,550	100	261	100	161	100	1,141	100
16 - 19	428	14	217	14	36	14	28	17	147	13
20 - 24	708	23	361	23	66	25	41	25	240	21
25 - 29	533	17	250	16	47	18	25	16	211	18
30 - 34	388	12	167	11	39	15	21	13	161	14
35 - 39	302	10	145	9	27	10	16	10	114	10
40 - 44	231	7	110	7	22	8	10	6	89	8
45 - 49	172	5	95	6	9	3	6	4	62	5
50 - 54	123	4	57	4	8	3	10	6	48	4
55 - 59	86	3	51	3	4	1	3	2	28	2
60 - 64	66	2	47	3	2	1	1	-	16	-
65 - 69	38		24		-		-		14	
70 plus	33		24		1		-		8	
Not stated ..	2		2		-		-		-	

* Type 1 - One who has been convicted of one sexual offence.

Type 2 - One who has been convicted of two or more sexual offences, two of which are similar.

Type 3 - One who has been convicted of two or more sexual offences, none of which are similar.

Type 4 - One who has been convicted of one sexual offence and any number of non-sexual offences.

Of those convicted of at least two sexual offences and who had no non-sexual convictions between the first and second conviction occasions, more than one quarter were convicted of the second less than a year after release from custody; more than one third were convicted of the second sexual offence within two years from the time of release for the first offence. It would therefore appear that, in considering the rehabilitation of the prisoner, the first two years following release from imprisonment are of great importance.

*TABLE 8

PERSONS

Time Interval between Release and Subsequent Conviction

Time Interval	Total	First Sexual Conviction					
		Rape & attempt	Carnal knowledge and attempt	Buggery or bestiality & attempt	Indecent assault on male and attempt	Indecent assault on female & attempt	Gross indecency and attempt
Total	291	24	27	21	30	111	78
Under 1 month.	3	-	-	-	1	2	-
1 month but under 12 months	77	9	9	5	8	32	14
1 year but under 2 years .	42	4	4	1	6	15	12
2 years but under 3 years .	28	3	1	1	2	13	8
3 years but under 4 years .	22	1	1	1	2	6	11
4 years but under 5 years .	19	3	1	1	1	10	3
5 years but under 10 years .	63	4	5	6	5	18	25
10 years but under 15 years.	17	-	2	2	3	7	3
15 years but under 20 years.	10	-	1	1	1	6	1
20 years but under 25 years.	2	-	2	-	-	-	-
25 years but under 30 years.	5	-	-	2	1	2	-
30 years but under 40 years.	3	-	1	1	-	-	1

* This table refers to persons who, between the time of release from incarceration upon first sexual conviction and time of sentence upon second sexual conviction, had not been convicted of any non-sexual offence resulting in incarceration.

An analysis of the statistical material available shows little pattern of behaviour of those convicted of more than two sexual offences, except that more than one quarter were convicted of a third sexual offence within one year from the time of release from custody due to the second sexual offence. Approximately 4 per cent. of those whose offences were reported to the Royal Canadian Mounted Police were convicted of more than two sexual offences each, while approximately 1 per cent. were convicted of more than three sexual offences each.

The following observations may be made as a result of our studies:

1. 86 per cent. of those persons who have been convicted on one occasion for one or more sexual offences were not convicted on a second occasion of a sexual offence.

2. Only 4 per cent of those persons convicted on two or more occasions for sexual offences were convicted of further sexual offences.

3. 80 per cent. of those persons convicted on one occasion of at least one sexual offence were not convicted subsequently of a non-sexual offence.

4. Only 9 per cent. of those persons convicted on one occasion of a sexual offence were convicted subsequently of more than one non-sexual offence.

5. 72 per cent. of those persons convicted on one occasion of at least one sexual offence were not convicted subsequently of any criminal offence.

6. Recidivism is not prevalent among the sexual offenders generally.

We find no evidence that the sexual offender generally tends to progress from a less violent to a more violent crime. Of 143 sexual recidivists whose first conviction was for indecent assault on female, 27 were convicted of rape or attempted rape on their second conviction occasion. The recidivist sexual offender to some extent follows a consistent course of sexual criminality. The homosexual recidivist

tends to continue to commit homosexual offences, and the heterosexual recidivist tends to repeat heterosexual offences of a similar character.[1]

1. Dr. Guttmacher and Dr. Karpman have come to similar conclusions. Guttmacher, Sex Offenses, The Problem, Causes and Prevention. Karpman, The Sexual Offender and His Offenses.

TABLE 9

Comparison of First Sexual Offence with the Second Sexual Offence

Second Sexual Offence	First Sexual Offence												
	Total	Rape	Carnal Knowledge	Buggery or Bestiality	Att. Rape	Att. Carnal Knowledge	Indecent Assault on Male	Att. Buggery or Bestiality	Indecent Assault on Female	Gross Indecency	Att. Indecent Assault on Male	Att. Indecent Assault on Female	Attempted Gross Indecency
Total.....	330	15	25	12	12	8	23	8	143	75	1	5	3
Rape.....	35	6	1	1	2	1	1	-	11	1	-	-	1
Carnal Knowledge.....	21	1	5	-	-	1	1	-	11	2	-	-	-
Buggery or Bestiality.....	19	2	1	1	-	-	3	1	4	7	-	-	-
Attempted Rape.....	12	2	-	-	1	-	-	-	9	-	-	-	-
Attempted Carnal Knowledge.....	8	-	3	1	-	2	-	-	2	-	-	-	-
Indecent Assault on Male.....	31	1	2	3	1	-	3	1	8	12	-	-	-
Attempted Buggery or Bestiality...	2	-	-	-	-	-	-	1	-	1	-	-	-
Indecent Assault on Female.....	119	3	10	2	7	3	3	1	84	2	-	3	1
Gross Indecency.....	88	-	3	4	1	1	12	4	12	48	1	1	1
Attempted Indecent Assault on Male	-	-	-	-	-	-	-	-	-	-	-	-	-
Attempted " " " Female	3	-	-	-	-	-	-	-	1	1	-	1	-
Attempted Gross Indecency.....	2	-	-	-	-	-	-	-	1	1	-	-	-

Victims 13 years of age or under.

The information available shows that in 3,053 cases of persons convicted of sexual offences against humans, 43 per cent. (1,320) of the victims were thirteen years of age or under. In 13 per cent. of the cases of rape and attempted rape the victims were in this age category, and in respect of other offences the corresponding figures were: indecent assault on a female and attempt thereof, 46 per cent.; indecent assault on a male and attempt thereof, 66 per cent.; and gross indecency and attempt thereof, 34 per cent.

TABLE 10

PERSONS

Age Categories of Victims
Related to Persons Convicted

Age in years and Sex of Victim		Most Serious Sexual Conviction						
		Total	Rape & attempt	Carnal know-ledge & attempt	Buggery or besti-ality & attempt	Indecent assault on male and attempt	Indecent assault on fe-male & attempt	Gross inde-cency and attempt
Total ...		3,110	463	473	194	219	1,140	621
1 - 13	M..	414	-	-	58	145	-	211
	F..	906	61	315	6	-	524	-
14 and over	M.	552	-	-	68	74	-	410
	F.	1,181	402	158	5	-	616	-
Not applicable. (animals)		57	-	-	57	-	-	-

Out of 3,653 convictions for sexual offences involving human victims, as distinguished from the number of persons convicted as sexual offenders, 1,626 were for offences against children of thirteen years of age or less, 558 offences being against males and 1,068 against females. A pattern of percentage distribution between the age categories of victims is almost identical with the pattern for persons convicted (as distinct from convictions) as shown in Table 10.

TABLE 11

CONVICTIONS

Age Categories of Victims
Related to Total Convictions

Age in Years and Sex of Victim		Total	Rape & attempt	Carnal knowledge & attempt	Buggery or bestiality & attempt	Indecent assault on male and attempt	Indecent assault on female & attempt	Gross indecency and attempt
All sexual convictions								
Total ...		3,714	485	498	208	263	1,434	826
1 - 13	M.	558	-	-	65	175	-	318
	F.	1,068	65	328	8	-	667	-
14 and over	M.	664	-	-	68	88	-	508
	F.	1,363	420	170	6	-	767	-
Not applicable. (animals)		61	-	-	61	-	-	-

All authorities agree that convictions reflect only a proportion of all sexual offences committed, and any comparison of convictions for sexual offences committed against children with those against adults must take into account that when a child rather than an adult is the victim a case may more likely be reported to the police. This is particularly applicable to cases of indecent assault, which make up a high percentage of all sexual offences.

Acquaintanceship with victim.

From the records available it appears that the victim is known to the offender in a very high proportion of the cases where the offender has been detected. In each of 192 out of 451 reported cases of rape and attempted rape (where the acquaintanceship had been ascertained) the victim was known to the offender. Likewise, in each of 498 out of 1,296 cases of indecent assault and attempted indecent assault on a female (where the acquaintanceship had been ascertained) the victim was known to the offender. With respect to gross indecency and attempt, more often than not the offender knew the victim.

TABLE 12

Acquaintanceship with Victim by Offender

Offence	Total Convictions	Victim known	Victim unknown
Total	3,380	1,657	1,723
Rape and attempt	451	192	259
Carnal knowledge and attempt	479	328	151
Buggery or bestiality and attempt	139	90	49
Indecent assault on male and attempt	244	107	137
Indecent assault on female and attempt	1,296	498	798
Gross indecency and attempt	771	442	329

Convictions as reported to the Dominion Bureau of Statistics.

While there is a definite fluctuation in the number charged with sexual offences from year to year, we cannot find any foundation for the suggestion that has been made to us in evidence that sexual offences accompanied by violence are increasing at an alarming rate. Statistics showing total number of offences, but unrelated to the population of the country, and wide fluctuations in the number of reported offences, have to be treated with great reserve. As we have already pointed out, any special action against certain types of sexual crime in a particular locality where public opinion has been aroused will be reflected in the overall statistics. This cannot be more clearly demonstrated than by the report filed with the Commission by Mr. J. Fournier, Q.C., Crown Prosecutor at Montreal.[1]

For technical reasons, we are unable to obtain complete and accurate statistical information from the Dominion Bureau of Statistics Annual Report with reference to all sexual offences included in section 661 C.C. The fact that in reporting the crimes of sodomy, bestiality and indecent assault on a female other crimes are included in these classifications renders an accurate statistical study impossible. We have been able to compile useful information with regard to rape, attempted rape, carnal knowledge and attempted carnal knowledge.

1. Exhibit 43, p. 1517.

These tables reveal wide yearly fluctuations in the number of convictions for these crimes per 100,000 of population over a period of years, and no definite trend. For instance, there were fewer convictions per 100,000 for rape and attempted rape in 1954 than there were in 1931, while there were less than half as many convictions for the same offences in 1935 as there were in 1949.

TABLE 13

Conviction rates per 100,000 population 16 years of age and over, of all indictable offences and specified indictable sex offences reported* in Canada for the years, 1930 - 1954

Year	All indictable offences	Specified indictable sex offences	
		Rape and attempted rape	Carnal knowledge and attempt
1930	422.52	.44	1.47
1931	458.87	.53	1.80
1932	448.26	.51	1.21
1933	462.89	.31	1.43
1934	438.03	.47	1.27
1935	456.42	.30	1.47
1936	482.51	.28	1.71
1937	489.30	.27	1.86
1938	564.83	.48	1.40
1939	613.49	.36	1.48
1940	586.76	.50	1.48
1941	528.33	.43	1.13
1942	479.34	.38	1.01
1943	502.28	.41	1.48
1944	504.55	.35	.99
1945	493.08	.27	.98
1946	543.18	.50	.97
1947	501.55	.44	1.14
1948	466.83	.40	.96
1949	449.10	.67	.73
1950	453.00	.57	.82
1951	422.77	.59	.95
1952	425.78	.58	.83
1953	453.49	.54	1.01
1954	472.87	.47	.88

* Based on data published in "Statistics of Criminal and Other Offences", D.B.S.

Convictions and acquittals.

Although the percentage of acquittals to convictions may vary from year to year, there is no indication from the reports made to the Dominion Bureau of Statistics that there is any growing tendency to treat sexual offenders more leniently than non-sexual offenders. Over a 26-year period about 37 per cent. of those charged with sexual offences were acquitted, while during the 5-year period from 1951 to 1955 inclusive only 30 per cent. were acquitted. The number of convictions for sexual offences, or in fact for any other offences, tells only part of the story in view of the fact that acquittals for the major offences are often accompanied by convictions for lesser offences. In addition, the number of convictions may reflect an aroused public opinion, which fluctuates with human emotions, and the relation of convictions to acquittals may likewise reflect changes in public opinion. In the years 1949 to 1952 inclusive 49 per cent. of those charged with rape were acquitted, while in the year 1955 less than 30 per cent. were acquitted. We can find no definite pattern or trend in the record of convictions and acquittals for sexual offences.

TABLE 14

Disposition by Year

Total disposition of the sexual offences of rape and attempt, and carnal knowledge and attempt

Year	Total Charged	Convictions	Acquittals	Detention for Insanity	Disagreement of Jury*	Stay of Proceedings*	No Bill
	5,771(6)	3,563(6)	2,118	23	29	22	16
1930	250	129	119	2	-	-	-
1931	262	160	101	1	-	-	-
1932	231	121	108	2	-	-	-
1933	191(1)	123(1)	68	-	-	-	-
1934	216	126	89	1	-	-	-
1935	215	130	84	1	-	-	-
1936	229	149	78	2	-	-	-
1937	228	162	66	-	-	-	-
1938	230	145	85	-	-	-	-
1939	213	144	69	-	-	-	-
1940	232	158	74	-	-	-	-
1941	179	126	53	-	-	-	-
1942	166	114	52	-	-	-	-
1943	230(4)	153(4)	74	3	-	-	-
1944	197(1)	112(1)	84	1	-	-	-
1945	186	106	80	-	-	-	-
1946	203	127	76	-	-	-	-
1947	240	139	101	-	-	-	-
1948	224	122	100	2	-	-	-
1949	219	130	87	-	2	-	-
1950	273	131	125	-	12	-	5
1951	226	146	75	-	2	2	1
1952	244	138	86	5	7	6	2
1953	227	154	63	-	2	5	3
1954	199	137	49	3	-	7	3
1955	261	181	72	-	4	2	2

1. From 1930 to 1940 inclusive: Compiled on basis of fiscal year ended Sept. 30.
2. 1950: Compiled on basis of Oct. 1949 to Dec. 1950.
3. From 1951 to 1955 inclusive: Compiled on basis of calendar year.

4. All figures in brackets refer to: Offences by Female Offenders or Accomplices.

5. * From 1930 to 1948: Cases resulting in disagreement of jury, stay of proceedings, and no bill were not compiled in our source, "Statistics of Criminal and Other Offences".

TABLE 15

Disposition by Year

Disposition of Prisoners
for rape and attempted rape

Year	Total Charged	Convictions	Acquittals	Detention for Insanity	Disagreement of Jury*	Stay of Proceedings*	No Bill
	1,995	1,009	927	10	17	17	15
1930	75	30	45	-	-	-	-
1931	62	36	25	1	-	-	-
1932	66	36	30	-	-	-	-
1933	43	22	21	-	-	-	-
1934	55	34	21	-	-	-	-
1935	38	22	16	-	-	-	-
1936	36	21	15	-	-	-	-
1937	41	21	20	-	-	-	-
1938	71	37	34	-	-	-	-
1939	60	28	32	-	-	-	-
1940	67	40	27	-	-	-	-
1941	60	35	25	-	-	-	-
1942	54	31	23	-	-	-	-
1943	70	34	33	3	-	-	-
1944	81	30	50	1	-	-	-
1945	53	23	30	-	-	-	-
1946	76	43	33	-	-	-	-
1947	102	39	63	-	-	-	-
1948	99	36	63	-	-	-	-
1949	116	62	52	-	2	-	-
1950	113	54	52	-	2	-	5
1951	109	56	49	-	2	2	-
1952	134	57	59	3	7	6	2
1953	99	54	38	-	-	4	3
1954	87	48	31	2	-	3	3
1955	128	80	40	-	4	2	2

1. From 1930 to 1940 inclusive: Compiled on basis of fiscal year ended Sept. 30.

2. 1950: Compiled on basis of Oct. 1949 to Dec. 1950.

3. From 1951 to 1955 inclusive: Compiled on basis of calendar year.

4. * From 1930 to 1948: Cases resulting in disagreement of jury, stay of proceedings, and no bill were not compiled in our source, "Statistics of Criminal and Other Offences".

TABLE 16

Disposition by Year

Disposition of Prisoners
for carnal knowledge and attempt

Year	Total Charged	Con-victions	Acquit-tals	Detention for Insanity	Dis-agreement of Jury*	Stay of Proceed-ings*	No Bill
	3,776(6)	2,554(6)	1,191	13	12	5	1
1930	175	99	74	2	-	-	-
1931	200	124	76	-	-	-	-
1932	165	85	78	2	-	-	-
1933	148(1)	101(1)	47	-	-	-	-
1934	161	92	68	1	-	-	-
1935	177	108	68	1	-	-	-
1936	193	128	63	2	-	-	-
1937	187	141	46	-	-	-	-
1938	159	108	51	-	-	-	-
1939	153	116	37	-	-	-	-
1940	165	118	47	-	-	-	-
1941	119	91	28	-	-	-	-
1942	112	83	29	-	-	-	-
1943	160(4)	119(4)	41	-	-	-	-
1944	116(1)	82(1)	34	-	-	-	-
1945	133	83	50	-	-	-	-
1946	127	84	43	-	-	-	-
1947	138	100	38	-	-	-	-
1948	125	86	37	2	-	-	-
1949	103	68	35	-	-	-	-
1950	160	77	73	-	10	-	-
1951	117	90	26	-	-	-	1
1952	110	81	27	2	-	-	-
1953	128	100	25	-	2	1	-
1954	112	89	18	1	-	4	-
1955	133	101	32	-	-	-	-

1. From 1930 to 1949 inclusive: Compiled on basis of fiscal year ended Sept. 30.

2. 1950: Compiled on basis of Oct. 1949 to Dec. 1950.

3. From 1951 to 1955 inclusive: Compiled on basis of calendar year.

4. All figures in brackets refer to: Offences by Female Offenders or Accomplices.

5. * From 1930 to 1948: Cases resulting in disagreement of jury, stay of proceedings, and no bill were not compiled in our source, "Statistics of Criminal and Other Offences".

CHAPTER VIII

TREATMENT OF SEXUAL OFFENDERS

Good penology contemplates three main objectives, i.e., the protection of society by confinement of the prisoner, the reformation of the prisoner, and the deterrent effect of the sentence on the prisoner and others. The modern tendency is to put increasing emphasis on the second of these objectives, because experience has shown that confinement unaccompanied by reformation often does not deter the prisoner from committing further crimes and affords no protection to society from his unlawful behaviour except during the period of his confinement. Reformation as applied to convicted persons encompasses many things, and involves to a large extent the personality of the offender. Wise institutional treatment takes into consideration the education and the physical and mental health of the prisoner. Where there are deficiencies, efforts should be made to correct them if possible. As we have indicated, normal prison methods appear to be more successful with sexual offenders than with other offenders.

Although the rate of recidivism among sexual offenders, and particularly among violent sexual offenders, is low, the sexual offender who shows perverted instincts nevertheless remains a menace to the public. For want of a better term, he has been referred to in the evidence we have heard and in much of the available literature as a "sexual psychopath". Many of the witnesses who appeared before us assumed that a "sexual psychopath" or a "sexual pervert" suffered from a condition that could be "cured". We have heard no medical evidence to warrant this assumption nor have we been referred to any medical authority who would appear to give it substantial support. On the other hand, as we shall later point out, many of the medical witnesses who were in a position to speak with great authority took a pessimistic view of the prospects of obtaining satisfactory results from any known form of treatment. These witnesses emphasized that the public should understand that in the present state of medical knowledge it is not possible to speak with assurance about "curing" the class of offenders we are considering.

Where the offender is of borderline intelligence or lower, there is little hope that any treatment may even be helpful although a substantial body of the evidence indicates that many other sexual offenders can be helped by psychiatric therapy. It appears that the efficacy of psychiatric therapy largely depends on the age and attitude of the offender.

Recognizing all the difficulties surrounding treatment of sexual offenders, we believe the procedure followed in Canada is definitely wrong and in large measure defeats the purpose of the law. Once a person has been sentenced to preventive detention by reason of the manifestation of sexual abnormalities he should be exposed to the best clinical treatment known rather than included in the ordinary prison population. It may well be, as witnesses stated, that many prisoners with sexual abnormalities do not want any treatment and that enforced treatment in such cases is worthless. Nevertheless we think the concept of the law is that all known medical treatment should be provided so that the period of preventive detention may be safely terminated as soon as possible.

Medical witnesses were in complete agreement that no satisfactory form of treatment can be given in an ordinary penal institution. At the same time, medical authorities engaged in mental health institutions are definitely opposed to using mental hospitals for the treatment of sexual offenders. We agree that there is good ground for both these attitudes. We do not believe that mentally ill persons should be compelled to associate with the type of offender who comes within the scope of the law we are discussing. Offenders of this type in mental hospitals would be a disturbing influence and would impede recovery of other patients.

It is useful to consider the manner in which these offenders are treated in other countries. In many countries the "psychopathic sexual offender" is dealt with in the same manner as any "psychopathic offender".

Sweden.

In Sweden offenders who are considered dangerous to the personal safety of others may be sentenced to preventive detention or internment. The Swedish law is founded on principles different from those of the Canadian law. Preventive detention is intended for offenders whose mental condition is abnormal but who are not insane, and internment for recidivists or those who have served sentences of preventive detention for a period of four years. When the court passes a sentence of preventive detention or internment it does not specify any fixed term, but only a minimum term. The legal minimum term for preventive detention is one year and the maximum twelve years, while for internment the minimum term is five years and the maximum fifteen years. Internment is seldom used. From 1947 to 1951 the average annual number of offenders sentenced to internment was 2, while the average annual number sentenced to preventive detention for the same period was 100. Sentences of preventive detention or internment are not frequently imposed on sexual offenders. Of 430

men serving sentences of preventive detention on April 1, 1953, about five per cent. were sexual offenders.[1]

Norway.[2]

In Norway a protective procedure has been adopted which is in some respects similar to that in Sweden but which involves treatment both in custody and at large under supervision. As applied to sexual offenders, where a person is shown to be lacking in self-control in his sexual life and likely to commit new sexual offences, the law provides for protective measures of a non-punitive character. The law has been interpreted to include sexual offenders who have shown pronounced sexual abnormality (but who in other respects appear to be mentally normal), and when a real danger exists that the offender will commit further offences the court may in its sentence apply protective measures. The period of protective measures is usually fixed at five years, but may be prolonged by order of the court. The protective measures may be ordered in addition to imprisonment or in lieu of imprisonment, or the Ministry of Justice may decide to waive the imprisonment and apply the protective measures only. The court in passing sentence places at the disposal of the administrative authorities a wide choice of protective measures, ranging from supervision at large to detention in a mental hospital, in a specialized institution or in a prison. The scheme of the law is to give the administrative authorities a wide discretion so that in each case the best form of treatment may be found, with a minimum of restriction on liberty consistent with the demands of public security. Out of about 500 persons who were in 1949 undergoing sentences (for all offences, including sexual offences) imposing protective measures, 100 were detained in institutions, 10 of whom were in prison. In sentencing persons to protective measures the court always has a report from two psychiatrists on the prisoner's state of mind as well as on the danger of the commission of further offences. Protective measures are more frequently applied to sexual offenders than to any other group of offenders. Although sexual offenders constitute only five per cent. of those convicted of all crimes, about thirty per cent. of the total number of persons sentenced to protective measures are sexual offenders.

In addition to provision for sentences imposing protective measures, the Norwegian law provides for sentences of preventive de-

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1 Radzinowicz, Sexual Offences, p. 461

2 Ibid., pp. 472 et seq.

tention. The principle on which the sentence of preventive detention is based is that it should be non-punitive. A sentence of preventive detention can be imposed on recidivists only, and is so rarely imposed that it has become almost obsolete. Where it is imposed the court fixes the term at five years, but this may be extended without limit. In the case of sexual offenders who might be sentenced to preventive detention, the psychiatrists classify the prisoner as a person with "defectively developed or permanently impaired mental abilities". The prosecutor and the court usually prefer sentences of protective measures, as these afford opportunities for more individual and flexible treatment.

Denmark.[1]

An asylum for psychopathic criminals was established at Herstedvester in 1935. The institution receives for treatment psychically abnormal individuals who are neither psychotic nor feeble-minded. The provision of the Penal Code of 1930 under which offenders are confined to this institution is section 17, which reads:[2]

> "If a person at the time of an offense owing to mental underdevelopment, weakness or derangement, including sexual abnormality, was in a mental state of a more permanent nature, but not of a character provided for in paragraph 16 (which establishes exemption from criminal responsibility to individuals suffering from insanity or mental deficiency) then the court shall decide, after due consideration of a medical certificate and all other relevant circumstances, whether the accused would benefit from punishment."

Those detained at Herstedvester are confined for an indeterminate period. The institution is a close-security one, containing mainly habitual and dangerous offenders who have displayed some degree of psychiatric deviation, but it provides for varying degrees of custody both within and without its walls. Detainees who have proven their dependability may be housed in more attractive quarters and enjoy a maximum of freedom. The design is that the inmates should be encouraged to co-operate in psycho-therapeutic treatment with a view to ultimate release.

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1 Radzinowicz, Sexual Offences, pp. 478 et seq.

2 Treatment of the Sex Offender in Denmark, by Paul W. Tappan, American Journal of Psychiatry, vol. 108, Oct. 1951, pp. 241-2.

There are four classes of institution in which abnormal sexual offenders may be confined, viz., (1) a prison for psychopaths, (2) an institution for psychopaths, (3) a mental hospital, and (4) an institution for feeble-minded. The following table sets forth the punishments and preventive measures imposed in the period 1933-1953 on offenders, guilty of the following classes of offences: (1) incestuous offences, (2) indecent behaviour or exposure, (3) rape and similar offences, (4) carnal knowledge of a child under 15, (5) other heterosexual offences, and (6) other homosexual offences:

TABLE 17

	1	2	3	4	5	6
Decisions by the prosecutors:						
Handed over to child welfare	57	656		921		87
Fine	11	781		143		13
Prosecution not undertaken	221	2395		2671		168
Convictions by the courts:						
Fine	26	242	1	1	-	5
Sentence served while arrested	-	83	-	12	1	10
Simple detention:						
30 days incl.	22	195	3	6	-	2
30-60 days incl.	13	60	3	-	-	-
60 days - 3 months incl.	18	117	6	4	1	3
Over 3 months	2	2	-	-	-	-
Imprisonment:						
30 days incl.	-	164	8	22	4	32
30-60 days incl.	4	792	27	187	15	146
60 days - 3 months incl.	26	1161	26	571	54	269
3 - 6 months incl.	75	709	57	969	90	395
6 - 12 months incl.	138	160	75	619	54	198
1 - 2 years incl.	95	31	101	258	46	97
2 - 3 years incl.	86	3	64	59	11	13
3 - 4 years incl.	54	-	27	23	7	1
4 - 6 years incl.	60	1	26	18	4	-
6 - 8 years incl.	2	-	6	-	2	-
8 - 12 years incl.	-	-	4	-	-	-
Youth prison (Borstal)	1	11	2	6	-	-
Prison for psychopaths	4	10	1	7	3	6
Work-house	-	37	7	9	-	6
Preventive detention	1	1	1	1	-	1

	1	2	3	4	5	6
Institution for psychopaths	10	78	26	48	7	98
Mental hospital	16	82	3	57	7	27
Institution for feebleminded	14	47	25	53	6	30
Supervision, etc.	3	61	4	30	1	19
Castrated:						
Finally released	3	12	9	27	46	9
Died in the inst.					1	
Recidivists					4	
Not Castrated:						
Finally released		10	2	19	23	2
Kept in the inst.			2	1	2	
Died in the inst.	1					1
Recidivists		4		7	9	1
Later castrated		3		4	9	1

Belgium.[1]

Professor F. Dumon summarizes the law of Belgium with respect to preventive detention in this way:[2]

> "According to the law of the 9th April 1930 for the social protection of abnormal people and habitual delinquents, punishment cannot be imposed on 'offenders who are in a state of insanity or of serious mental defect or debility such as to make them incapable of controlling their actions'. In such cases the courts have the power to impose a 'measure of social defence' a kind of indeterminate sentence, under which the offenders are detained in special institutions where they are given special treatment and are periodically examined as to their state of 'social danger' and possible release.

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1 Radzinowicz, Sexual Offences, pp. 493 et seq.

2 Ibid., p. 499.

> Some offenders are such as to suggest mental abnormality of the persons who commit them (exhibitionism, indecencies committed in public, rape or assault of a child by his parent), but it is essential to keep in mind that no offence is in itself a sufficient proof of such an abnormality and the law of the 9th of August 1930 can only be applied if it is established that the sexual offender was insane or in such a state of mental defect as to make him incapable of controlling his actions."

United States of America.

We have compiled a digest (Appendix IV) of the special laws of the states of the United States of America relating to sexual deviates. Professor Paul W. Tappan, who prepared a report for the New Jersey Legislature in 1950, has made this observation with respect to these laws:[1]

> "It should be noted that, except for New Jersey, Ohio, Virginia, Wisconsin and Wyoming, the several statutes provide for an indeterminate commitment without a terminal maximum. This fact together with the tendency to commit a large proportion of minor offenders has resulted in a situation where individuals whose conduct is no more than a nuisance in the community may be incarcerated for long periods of time, due to the disinclination of hospital authorities to assert that the patient is cured. It is obvious that the tradiational policy of fines and short jail sentences for minor sex offenders is no solution to their problem. Query: Is it any better a solution to confine those individuals for long periods in the costly and unproductive custody of mental hospitals that provide no curative treatment? Experience thus far appears to bear out the conclusion that there is no present solution to the widespread problems of homosexuality, exhibitionism, peeping toms and other minor deviations. . . .

CONCLUSION

From our inquiry into the administrative experience that has developed under the new sex offender laws, it is

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1 Radzinowicz, Sexual Offences, pp. 512-14.

apparent that they are inoperative or rather nearly so in most of the jurisdictions. California has perhaps employed its statute more extensively through the decade of its operation than any of the other states: they have found between thirty and forty cases a year to be sexual psychopaths. In many other instances they have resorted to castration at the 'consent' of the offender by which he avoids adjudication.

The writer's investigations of this problem in the United States had led to these major conclusions:

1. There are relatively very few aggressive and dangerous sex offenders in the criminal population. Most of the deviates are mild, submissive, and inadequate, more an annoyance than a menace to the community. From a psychological point of view they represent widely varied rather than a single or a few types.

2. Our sex offenders are among the least recidivous of all types of criminals. They do not characteristically repeat as do our burglars, arsonists, and thieves.

3. The more serious and dangerous sex criminals receive long sentences and in many jurisdictions parole is arbitrarily withheld from them. Deviates that are curable by methods at present employed can be treated fully within the time provided by the maximum sentences under our traditional laws. Where they repeat they may be held still longer under our habitual criminal statutes.

4. For those sex criminals who are not curable because we lack the methods, the personnel, and the institutional resources, there is no greater justification for the completely indeterminate sentence than there is for other categories of felons. If our purpose be to extend the unproductive confinement of sex deviates, we should do so frankly by the direct establishment of longer sentences, not indirectly through futile pretence at psychotherapeutic or medical treatment that is in fact non-existent.

5. From all the evidence we can only conclude that, what with the limitations of our substantive, procedural, and penal law of sexual crime and the concealed character of most sexually deviant practices, the state is quite ineffective in discovering and constraining crime in this field. Moreover, in light of the state of contemporary opinion and behaviour in relation to sex - in the legislature, on the bench, and in the streets - one should not anticipate any great

improvement either in efficiency or consistency of adminstering the prohibitive laws. Confusion and invidious injustice are inherent in the total situation.

6. Finally, and particularly, it should be stressed that insofar as we aim at something more ambitious than custodial confinement of the sexual offender, we can do so only through employing facilities and personnel for research. It is time that the states stopped trying to solve the problem by a combination of fantastic statutory rules and Utopian criminological precepts that have no relation to the facts of criminal treatment. What is needed is time, research, and well trained personnel, and not merely legislation which permits long terms of confinement."

Canada.

It is convenient to repeat here the provisions of section 665 C.C.:

"665. (1) Notwithstanding anything in this Act or any other Act of the Parliament of Canada an accused who is sentenced to preventive detention shall serve in a penitentiary the sentence for the offence of which he was convicted as well as the sentence of preventive detention.

(2) An accused who is sentenced to preventive detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformative treatment as may be prescribed by law."

It is clear from the evidence that no penitentiary or part of a penitentiary in Canada has been set apart for the purpose of receiving those sentenced to preventive detention under the provisions of section 661 (3). These prisoners appear to be treated in the same manner as any other prisoners. Although the provisions of the Criminal Code governing this class of offender contemplate that they will receive special psychiatric treatment, facilities for such treatment are not available. Dr. M. J. O'Connor, a psychiatrist on the staff of Kingston Penitentiary, when giving evidence before us emphasized the inadequacy of the psychiatric services in that institution. He is the only psychiatrist provided to render professional psychiatric services to a population of eight hundred inmates. He gives five half-days a week to these services. He said the psychiatric ward of nine beds is used for those who are acutely ill. In answer to a question relating to the

examination and treatment of those sentenced as criminal sexual psychopaths, he said:[1]

> "They could be seen at very close definite intervals if one wished to arrange to do so. To put it very bluntly, I am not making now any effort to treat anyone so convicted in Kingston Penitentiary, because the attendant difficulties to therapy are so great as to make it very questionable if I am not wasting my time, and as a part-time man, the pressure from the mentally sick in the prison and those who are acutely disturbed is so great that I can scarcely keep up with it, let alone try long-term intensive therapy, which is what these people would require if one is going to do anything. Seeing them once a month is useless. They would require rather intensive therapy, and in the face of the present situation that is impossible."

Dr. O'Connor further said that the methods of treatment that he suggested could not be carried out in a prison. His recommendation was that a treatment centre should be set up apart from the regular prison, with reference back to the courts for release. His suggestion had the support of many other witnesses. Mr. J. J. Robinette, Q.C., expressed this point of view with much cogency:[2]

> ". . . I think it is wrong that the period of preventive detention should be served in a penal institution. The section now requires that the period of preventive detention be served in a penitentiary. The purpose of preventive detention as I understand it is, that the person involved be isolated from the community. Therefore, any institution in which he may be put obviously should be one involving a maximum of security, but, on the other hand, he is not being put there to be punished, and that institution in which he is placed should not be a penal institution but, rather, should be an institution of complete comfort, an institution where most of the amenities of life exist, such as newspaper, radio, television, and so on. It should be a comfortable place because they are not being punished; they are being kept away from society because of some mental or physical deficiency which may not be entirely their own fault. In other words,

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1 Evidence, (Ont.) pp. 1438-39
2 Evidence, (Ont.) pp. 1333-34

> such an institution should have the maximum security, it should be comfortable, and thirdly, every opportunity and facility should be available for the possible cure of the person being confined."

Other witnesses were of the view that the sexual offender undergoing preventive detention ought not to be segregated from the normal prison population because of the training facilities available in the penitentiary.

The public is most concerned with two classes of sexual deviates: (1) those who are disposed to obtain their sexual gratification through violence, and (2) those who corrupt children. The former class includes the sadists and the latter the pedophiliacs. It is very difficult to recognize any individual, particularly a sadist, as belonging to one of these classes until an outrageous offence has been committed. We have already referred to this matter in discussing the brief of the Psychiatric Services Branch of the Department of Health of the Province of Saskatchewan and the evidence of Chief Constable Chisholm.[1] Dr. Frederick van Nostrand, Director of Neurological Services of the Ontario Department of Reform Institutions, has expressed the view[2] that doctors and psychiatrists by examining a man cannot determine that he is a sexual deviate. He said:[3]

> "Many can be diagnosed as having psychopathic personalities but we have no specific way of determining what type of anti-social activity he will display."

Further, he said:[4]

> "Sex deviates are found in all walks of life. It is often a great surprise to their friends and their neighbours when they are brought to court and the evidence reveals years of sexual misbehaviour of very disgusting types."

We were told by a medical witness who practises in a Canadian city that he knew of people who obtained their sexual satisfaction through administering or submitting to flagellation. This witness stat-

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1 Supra, p. 60.
2 Report of Toronto Star Citizens' Forum on Sex Offenders, 1956, (Exhibit 105) pp. 44-5.
3 Ibid., p. 45.
4 Ibid., p. 46.

ed that the practice is by no means limited to people thought of as inferior or deteriorated. He said some of these people are extremely brilliant and outstanding in the community. The witness went on to say that there is in the United States of America a club of sadists and that this club has in some of the large cities chapters whose members include persons occupying important positions in the commerical, industrial and public life of the nation.

Persons who are pedophiliacs may be sadists but the majority of them are sexually undeveloped, mentally deficient or show signs of senility. The offences of these members of society who menace children are too often treated as trivial and offenders are fined or imprisoned for short terms, from which they are set at large, enabling them to practise their sexual perversions until again apprehended.

It is most difficult to arrive at final conclusions as to the best course to follow with respect to the custody and treatment of the classes of sexual offenders with which we are here concerned. We emphasize again that responsible medical authorities do not take an optimistic view of the possibility of successful treatment of sexually perverted persons, and that the public mind should be disabused of the idea that there are known "cures". Nevertheless in view of the fact that in some cases persons of this class have been helped toward recovery every effort should be put forth both within and without penal institutions to assist those who may be helped. The outlook however may be bleak, as indicated by the following authorities:

The Saskatchewan Division of the Canadian Mental Health Association:[1]

> "Furthermore, psychopaths can be a great nuisance in a mental hospital and their activities can greatly interfere with the well being of the psychiatrically sick patients. Considerable administrative difficulties arise as an entirely different form of nursing attitude is required in dealing with a psychopath from that of dealing with a psychotic patient. It is extremely hard for nurses to adopt the same attitudes simultaneously."

Dr. G. H. Stevenson:[2]

> "We have no psychiatric answers to many of these cases, and with many of them I think it is a matter simply of indefinite custody and retraining so far as that may be possible,

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1 Exhibit 21, pp. 551-52

2 Evidence, (B.C.) p. 589.

but I have to confess to a great deal of pessimism about persons who are included in this category."

Dr. D. Ewen Cameron, Professor of Psychiatry at McGill University:[1]

". . . in other words that the psychopath, even where treatment facilities are provided for him . . . will not necessarily make use of them; and it is - and here I can speak with much more certainty -- it is absolutely essential for the success of any psychotherapy that the prisoner should be willing to undergo psychotherapy. If that cannot be attained, then the individual cannot be cured. Other methods than psychotherapy have been mentioned, such as the matter of using hormones, and the rather extreme measure of removal of sex glands and the like, but our general impression in the field is that these methods are of little avail."

Dr. J. C. Theriault:[2]

"Probably some more enthusiastic psychiatrist would say that they can cure them, but short of psycho-analysis, which apparently takes two or three years of intensive work, I do not think there is much you can gain, especially when these people are sent to you against their will."

Dr. Murray MacKay, Superintendent of the Nova Scotia Hospital:[3]

". . . as regards the real psychopath, where a group of psychiatrists would have no doubt as to where he belonged, I personally doubt if we could ever do anything in the way of curing that man by our present medical knowledge, while hoping of course that as time goes on we will find out some method of treating them. I have had cases which are diagnosed as psychopaths who did respond to treatment, but on reviewing the cases I had the feeling that our diagnosis was wrong and actually they were not psychopaths."

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1 Evidence, (P.Q.) pp. 832-33.
2 Evidence, (P.E.I.) p. 201
3 Evidence, (N.S.) p. 265.

Dr. Louis Bourgoin, attached to St. Michel Archange Hospital, Quebec City: [1]

> "If for the last fifty years psychiatry made giant strides of progress in the field of mental illnesses proper, it must also be recognized that its knowledge concerning sexual anomalies has but little evolved and the purely therapeutic measures are, so to say, practically non-existent. This deplorable state of affairs is partly due to the fact that medical science, for various reasons, was never free to explore the field, and mostly to the too little known fact that there exist some illnesses for which medical science can do nothing."

Notwithstanding these pessimistic views, we think that a positive attitude toward the problem is of great importance, and a positive attitude demands more than mere custodial care for the prisoners we are discussing. We are convinced that with custodial care must go definite progressive methods of the application of all known helpful means of treatment and the development of new means. These we must leave to the medical profession.

CASTRATION

Because a few witnesses appearing before us advocated compulsory or voluntary castration of the sexual recidivist, we have considered the castration laws of some countries where it has been adopted.

Sweden.

A law relating to castration was introduced in Sweden in 1944. These measures do not constitute a penalty for crime, and the court does not prescribe castration as a punishment. The law can be invoked only where there is good reason to assume that a person on account of his sexual impulses is liable to commit an offence which may cause serious danger or injury to another person, and where the offender gives his consent to the operation. Notwithstanding the consent,

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1 Exhibit 37, p. 821

the approval of a medical board is as a rule required. There is no provision in the law for compulsory castration.[1]

Norway.

Under a Norwegian law which has been in effect since 1934, a person may be castrated or sterilized at his request if there are satisfactory reasons for the request. Castration may be authorized by the director of the health board, but if the person in question is under twenty-one years of age, insane, or mentally defective, the decision must be taken by a special board of five members with the director of the health board as chairman. In these cases the consent of the guardian or a specially elected curator is also necessary.[2] Professor J. Andenaes makes this observation with respect to the Norwegian law:[3]

> "If the operation is performed before conviction, it can give the prosecutor grounds for waiving the prosecution. If the case is nevertheless left to the court, it can be a reason for more lenient punishment or a suspended sentence and for not applying protective measures. If the operation is performed while the delinquent is serving a sentence of imprisonment or undergoing protective measures, it can justify his being set at liberty at an early date as the risk of new crimes has been removed, or at least considerably reduced. In fact the majority of castrations are performed on delinquents who are sentenced to long terms of imprisonment or to protective measures, and who request the operation as a means of regaining liberty."

Denmark.

The first castration law in Europe was enacted in Denmark in 1929. The law was amended to take its present form in 1935. There is provision for compulsory castration, but this in practice is never carried out, and authorities state that on a subsequent revision of the law the compulsory feature will be dropped. The operation is performed on a voluntary basis, except where the person involved "by reason of mental abnormality is unable to understand the significance

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1 Radzinowciz, Sexual Offences, pp. 461-62
2 Ibid., p. 475
3 Ibid., pp. 475-76

of the operation". In such cases the guardian of the person may make an application on behalf of the individual. Although it is said that the operation is carried out on a purely voluntary basis, consent is not infrequently given, with a view to early release, while the person is serving a sentence of imprisonment, or it may be given after conviction and before sentence, with a view to release on probation. In Denmark during a ten-year period out of 3,185 sexual offenders 139 were castrated. 35.5 per cent. of the offenders castrated had no previous punishment, and 38.8 per cent. had several punishments. Of those who had no previous punishment, 32 of the 48 cases were mentally defective persons and therefore had already been subject to institutional care.

Dr. Paul W. Tappan has given this summary of the Danish experiment: [1]

> "Among the findings of Sands and LeMaire are the following significant points:
>
> 1. Castration was applied most commonly where the offender revealed sexual abnormality, mental deficiency, or psychopathy. The most important group - the 'sexually abnormal' displaying repetitive and compulsive traits - was made up largely of homosexuals (those attacking young males), hypersexuals, bisexuals, paedophiliacs, exhibitionists, sadists, fetishists, masochists, and urolagniacs.
>
> 2. Recidivism rates among the sex offenders were low, the average among all offenders being 16.8%. In cases of rape, indecent behavior toward boys, and indecent exposure, however, the rates were relatively higher (22.3%, 27.9%, and 32.9% respectively). Castration was performed most commonly in cases that combined these offenses with the mental conditions noted under 1 above.[9]

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9 Le Maire notes that 'legislation and the general interpretation of public morals have established so narrow a margin regarding sexual divergences that an infringement of the existing rules will not necessarily be evidence of actual abnormalities.' This observation is at least equally applicable in the United States, as Dr. Kinsey's research has evidenced

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1 Treatment of the Sex Offender in Denmark, by Paul W. Tappan, American Journal of Psychiatry, vol. 108, Oct. 1951, p. 241

so well. This may be taken to mean that in numerous instances of sex offenses there is no aberration, no great danger of recidivism, no real need for treatment. This is in accordance with the writer's observations in relation to legislative policy in the United States. See the New Jersey Report on The Habitual Sex Offender.

3. The castrates were divided almost equally between 3 categories as to prior criminal history: those not previously convicted, those with one past conviction, and multiple offenders. However, two-thirds of the first category were mental deficients (who were found to respond favorably to castration).

4. Castration was not employed generally in cases where no special motive for the offense could be discovered, where alcohol was primarily responsible, where the offender was under 18, where he was mentally backward but not technically 'deficient', or where the offense resulted from abstinence (faute de mieux). In these cases the recidivist rates are generally very low and treatment of some other sort may usually prove adequate. Le Maire points out that in most cases of sex crime the recidivism rates are low, persistent recidivism is even rarer, and where recidivism does occur, there is little probability of the type of offense becoming more serious.[10]

5. Castration was recommended for only a limited sphere of cases, in general where there has been marked recurrence of the deviation and considerable danger to the public. As Le Maire has emphasized: 'Radical special measures should not uncritically be instituted even if demands regarding the same are repeatedly raised by both the public and the press.'

Dr. Sturup has analyzed the data on 300 cases received at Herstedvester from 1935 to 1943, of whom 79 were castrated and 40 noncastrated sexual criminals, the remainder psychopaths of other types. He finds in 1950 that only 2 of the 79 castrates have been sexual recidivists, while an additional 14 have committed offenses of other sorts. Among the noncastrated, however, 16 have recidivated sexually after

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10 Le Maire found the type of offense in recidivist cases to be homologous in 73.5% of the instances. Only the cases of 'abnormal sexuality' displayed rather frequent repetition and versatility.

release, and an additional 10 have committed crimes of other sorts. The 139 nonsexual criminals who spent, on the average, between 3 and 4 years at the institution reveal a 57% recidivist rate since release. It should be remembered, however, that these cases were for the most part difficult psychopaths and repetitive offenders. Sturup concludes: 'Surprisingly few disadvantages attach to castration, but even so it must, in my opinion, be used with a certain amount of discretion, especially in cases of lighter sexual offenses. The detainee must show hypersexuality beyond doubt or a stable sexually conditioned criminality, before we use this irreversible treatment.' "

The Netherlands.

Castration is not specifically provided for by statute but is an administrative medical therapeutic measure resorted to only at the request of the offender. In any case approval of the government must be given. Dr. Tappan says: [1]

"A considerable amount of experiemental work has been done with other types of treatment. In particular, where the problem is one of hypersexuality the tendency is to employ hormone treatment rather than castration. They have found the administration of estrogenic substance (the female sex hormone) to be effective in such cases, with the accompanying physiological changes much less profound than those resulting from gonadectomy. The endocrinological treatment is not irreversible, of course, and in some cases can be terminated after a relatively brief period."

After studying European experiments, Dr. Tappan has come to the following conclusion: [2]

"Castration, however effective it may appear to be in European experience with specialized types of sex deviates, cannot gain favor in the United States. At best it is a technique that should be employed, according to authorities abroad, for only a very limited, carefully selected group and with supplementary treatment of a social-psychia-

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1 Treatment of the Sex Offender in Denmark, by Paul W. Tappan, American Journal of Psychiatry, vol. 108, October 1951, p. 241, at 247.

2 Ibid., p. 248.

tric nature. Castration is a non-reversible procedure subject to serious abuses as Nazi experience has thoroughly proved. What with the hysteria so easily provoked in the United States relative to sex criminality, there is very real danger that the castration technique, if it were adopted here, would too easily be misapplied. Moreover, other methods of treatment, such as glandular therapy, which constitute far less of an assault upon the person, can be employed with effects rather similar to those produced by castration (viz., desexualization and reduction of aggression). With the too-easy answer of castration at hand, once used, the development of other and superior methods would very possibly be neglected. Finally, though there is disagreement on the point, it appears that castration may produce pronounced personality as well as physical changes that may complicate the problems of the deviate and increase his danger to the community."

Castration can hardly be considered a subject lying within the field of the administration of criminal justice. As a punitive measure it is quite inconsistent with modern views of law enforcement. Sentences imposing mutilation of the human body have not been a part of the criminal law during the last century. Sterilization as a health measure has been recognized by legislation in the Province of Alberta.[1] In neither England nor Canada has there been any substantial body of opinion expressed in favour of making castration a part of the criminal law.

The evidence we have heard does not support a conclusion that a person who is dangerous to others by reason of his lack of power to control his sexual impulses is made safe by castration. A panel of well-qualified authorities discussed the whole question of sexual offenders in Toronto on the 26th of January, 1956.[2] On that occasion Dr. Kenneth G. Gray, Associate Professor (Forensic Psychiatry), of the University of Toronto, in reply to the question, "Can a sex deviate be cured by surgery?", said:[3]

"I realize that there is a little evidence, if you like, particularly in Denmark where castration has been used, which would indicate perhaps that this procedure might be of some benefit,

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1 Sexual Sterilization Act, R.S.A. 1942, c. 194

2 Report of Toronto Star Citizens' Forum on Sex Offenders, 1956 (Exhibit 105).

3 Ibid., p. 50

but any Canadian psychiatrists I have discussed this question with don't believe that surgery would help in solving our problem."

Dr. Manfred S. Guttmacher, Chief Medical Officer of the Supreme Court Bench, Baltimore, Maryland, said: [1]

> "I think this is an instance of how little we really know. I certainly have a feeling of horror when this is the treatment suggested. On the other hand, there have been reports out of Denmark, some in California and some in Kansas - and I certainly am not advocating this because we know far too little about it. First, we don't know what else it does to the human being. We don't know how many may become actually insane following the operation, or what happens to their general personality structure. I do think this is one of the many areas in which there is need for the deepest and most painstaking investigation."

Dr. Ralph Brancale, Director of the New Jersey State Diagnostic Center, Menlo Park, New Jersey, said : [2]

> "Of course, I object to this surgical procedure on the basis it is theoretically unsound. People get the idea that sex offenders have something wrong with their sex impulses or sexual urges and fail to take into account that the major problem of the sexual offenders lies in their personalities and attitudes and their previous experiences and has nothing to do with genitals or testicles. So that simply doing some surgery is not the answer. We are dealing with a personality."

Dr. Frederick van Nostrand, Director of Neurological Services, of the Ontario Department of Reform Institutions, referred to "the Danish experiment", and said: [3]

> "I think in fairness we must say they (the Danes) are making no big claim to cure. They are claiming, in selected cases, castration has permitted them to discharge the offender from

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1 Report of Toronto Star Citizens' Forum on Sex Offenders, 1956 (Exhibit 105), pp. 50-51

2 Ibid., p. 51

3 Ibid., p. 52

> the institution, and he is capable of getting by in society. But their laws are very rigid, and such sex offender is on parole for the rest of his life, and if he offends again he can be pulled in.
>
> . . . There is no evidence that castration, after a vicious habit pattern has been formed, will prevent him from molesting women, even if he is impotent."

Karpman[1] lists ten different authorities on the subject of castration, and all agree that it offers no satisfactory solution to the problem of the sex offender. Even though the ability of the dangerous sex offender to penetrate the female organ may be diminished, the loss of power to accomplish the object may cause the offender to be more vicious rather than inhibit antisocial behaviour. It would appear to be a fair conclusion that the root of the perversion in sexual recidivists is in the psychological field, and, even with a decrease in the sex drive or with the capacity to perform the normal sexual act completely destroyed, the likelihood of the offender turning to abnormal acts is increased.

We do not think that it is consistent with Canadian views of civil rights that offenders should be put in such a position that they may elect or in reality may be obliged to elect between submitting to voluntary castration and submitting to imprisonment. As we have stated, the evidence given before us and the authorities we have consulted do not appear to support the conclusion that "the risk of new crimes has been removed, or at least considerably reduced" by castration.

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1 Karpman, The Sexual Offender and his Offenses, pp. 245-46.

CHAPTER IX

THE NEW JERSEY LAW AND THE CALIFORNIA LAW

In most countries where special legislation has been adopted applicable to so-called psychopathic sexual offenders, treatment of such offenders has been closely integrated with treatment of all sexual offenders. In New Jersey and California very definite legislative and administrative experiments have been undertaken in the field of treatment of sexual offenders.

New Jersey.

The New Jersey law was passed as a result of an exhaustive study of the problem of the sexual offender conducted by a commission in 1949-50. This law in large measure combines judicial and clinical procedure. A copy of the statute of 1950 and the amendment of 1951 is set out in full in Appendix III. Of those coming to the diagnostic center for examination about 25 per cent. go back to the court with no recommendation, and sentence is imposed in the ordinary course. About 25 per cent. are recommended for probation, about 25 per cent. are recommended for release with treatment, and about 25 per cent. are sent to hospital. Those who come within section 3 may be allowed to go on probation on condition that they report for treatment. If the offender fails to report for treatment the court may revoke the order for probation and make an order for committal to an institution. The Commissioner of Institutions and Agencies of the State decides in what institution a person committed for treatment should be confined.

Dr. Brancale spoke with reservation on the subject of treatment, as may be seen from the following excerpt from the verbatim report of the meeting with us: [1]

> "THE CHAIRMAN: Then we proceed from there to the question of treatment. I suppose it depends on what type of offence we are talking about when we talk about treatment.
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> DR. BRANCALE: Well, once the individual is found to be a psychiatric case, treatment is going to be left up to

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1 Exhibit 107-A, p. 35

the institution, the state hospital. I think we may as well admit that we are in the earliest phases of treating the repetitious offender. I think that we are all in the same boat, in the sense that, firstly, we haven't enough clinicians, and, secondly, not enough competent clinicians who have specialized in the correctional case. I think that is a general defect, so that we are shy of resources, both personnel resources and hospital resources. We have not developed any precise methodology of dealing with sex offenders, so that we have to do the best we can with what we know and what we have. We depend upon the individual interview, the individual analytical interview, and we get very little of that in our hospitals at this moment. I don't know, Commissioner, if we ever will get what we ought to have. It is just above zero. We do rely upon the occasional supportive interview, interpretative interview. We are attempting to establish some group therapy."

We were told that when the sexual offenders were received into the mental hospitals they were put into wards with other patients. It is too early to appraise the New Jersey experiment, and our examination of the records would involve a detailed examination of the law as it applies to the offences named in the statute and the punishments prescribed, which vary from three to twenty years, having regard to the character of the offence. We were told that about 40 per cent. of those committed to hospital were exhibitionists, and could not be kept longer than three years. An offender who commits rape is rarely recommended for parole or treatment, and usually is sent back to the court for sentence. In New Jersey the matter of sentence of a convicted sexual offender is dealt with basically as a clinical problem and not one for judicial decision. Discretion as to sentence can be exercised only after the clinical board has found that the prisoner's conduct was characterized by the features set out in sub-paragraphs (a), (b) and (c) of section 3 of the Act. This in effect gives to a non-judicial board a very definite control over the liberty of the subject, while, on the other hand, no matter how dangerous the offender may be, he must be released to society at the expiration of the maximum term for which he might have been sentenced for the offence committed.

The State of New Jersey is geographically suitable for this combination of clinical and judicial functions. All convicted adults may be brought to the diagnostic center in the morning and returned to the prison from which they came on the same day. In this way the diagnostic center can be used in much closer co-operation with the courts than would be possible in Canada.

We think there are features in the New Jersey experiment that should be watched with interest but in Canada there are constitutional difficulties involved in conferring on a clinical board the right to

decide whether a convicted person should be admitted to probation, sentenced to treatment, confined to a medical hospital or returned to the court for sentence. These difficulties, of course, might be overcome by confining the power of the board to making recommendations which the court could be free to adopt or reject as in its discretion seemed in the public interest.

In Dr. Brancale's opinion, the problem of the sexual offender is basically the same as that of the non-sexual offender. He was asked this question and made this answer: [1]

> "THE CHAIRMAN: I was just going to ask you that question. Is there any great distinction between the sexual offender who would come within this Act and the persistent offender who manifests his criminality in other ways?
>
> DR. BRANCALE: No, there is not; but we are able to apply this law to the sexual offender because from the standpoint of social evolution society seems to recognize that the repetitious sex offender is ill and the repetitious thief is not; so that I am quite sure that five years from to-day, or ten or fifteen years from to-day, we will not make the distinction between the pathological sexualist and the pathological thief."

After study of European methods of treatment of sexual offenders, Dr. Tappan has said: [2]

> "For the most part, both here and in the European countries investigated, the focus is upon the so-called 'sexual psychopath', but this group is not at all sharply defined either in law or administrative practice, and there are no consistent, soundly guided criteria for the classification of these sex offenders.
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> The most that one may conclude from the evidence thus far available is that there does exist a rather distinct group of sex-deviated habitual offenders who are non-psychotic but distorted in their emotional and volitional responses, a group requiring specialized treatment because of their hazard to the community. These individuals engage in repetitive,

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1 Exhibit 107-A, p. 37.

2. Treatment of the Sex Offender in Denmark, by Paul W. Tappan, American Journal of Psychiatry, vol. 108, Oct. 1951, pp. 241-2.

compulsive and dangerous sex crimes. But they constitute a very small percentage of all sex offenders and, indeed, only a small part of those usually labeled psychopaths."

California.

In the autumn of 1949 two small children were murdered in the State of California. They were said to be the victims of sexual perverts. As a result of aroused public opinion, an investigation was conduced by a sub-committee of the California Legislature into the existing legislation and techniques to determine whether they were adequate for the control of sexual crimes and sexual criminals. A total of $187,800 was appropriated to finance an extensive study into the whole question of sexual crimes and sexual offenders. The final report of the committee was made in January 1953.

California has had a sexual psychopath law since 1939, with amendments in 1945, 1949, 1950, 1951 and 1952. The present law refers to a sexual psychopath as one affected with mental disorder, psychopathic personality or marked departure from normal mentality in a form predisposing to commission of a sexual offence and in a degree constituting a menace to the health of others. It provides for an application for a hearing to declare a person a sexual psychopath after he has been convicted of certain named offences which, because of statutory definition, are difficult to relate to offences named in section 661 C. C. The application is made on the basis of an affidavit. There is provision for a psychiatric report made after a psychiatric examination during a ninety-day period of observation, and for a jury trial on request. The psychiatrists making the examination and report must attend to testify at the trial of the issue. Witnesses may be subpoenaed by either prosecution or defence. The proceedings are mandatory upon conviction of a felonious sexual offence involving a child under fourteen years of age or a sexual offence that is a misdemeanour where the offender has a prior record for sexual offences. Where the prisoner is found to be a sexual psychopath he is committed to a mental hospital for an indeterminate period. If in the opinion of the hospital superintendent the person is no longer considered to be a menace or still a menace and unlikely to benefit from treatment, he may be certified back to the court, where he may be placed on probation of not less than five years, sentenced under the original conviction or recommitted as a sexual psychopath for further treatment. The offender has the right to have his status reviewed after each six months of incarceration.

Appendix V is a statistical record furnished by the Bureau of Criminal Statistics of the State of California showing the disposition of felonious sexual offenders for the years 1953, 1954 and 1955 and January to June of 1956. In examining these tables it is to be remem-

bered that in the State of California rape includes not only carnal knowledge without the consent of the female but carnal knowledge with her consent where she is below the age of eighteen years. It is to be observed that in the years 1954, 1955 and 1956 approximately 60 per cent. of those convicted of the named sexual crimes were released on probation. Approximately 14 per cent. were committed to mental hospitals. While it may be too early to judge the results of the experiment in California, the statistics do not reveal that there has yet been any marked reduction in the number of felonious sexual offences committed. The record is 3,859 for 1953, 4,363 for 1954, 4,374 for 1955, and 2,412 for January to June 1956.

In response to an inquiry we made, Ronald H. Beattie, Chief of the Bureau of Statistics of the State, replied: [1]

> "I think it is extremely doubtful that general statistics show any particular effect as a result of the Sexual Psychopath Act. Very often the additional attention that is focused and its attended discussion as a result of the passage of such a law may result in the reporting and prosecution of even more offenses of this type than have been previously acted upon by law enforcement officials. Further the actual use of the Sexual Psychopath Law varies considerably from area to area within the State."

In addition to the sexual psychopath law there is in California a supplementary law known as the Mentally Abnormal Sex Offender Act. This Act authorizes the voluntary commitment for treatment in mental hospitals of persons who are not technically offenders or formally charged with any crime but are characterized by uncontrolled sexual tendencies that make them a potential menace to their families and communities; it has been in effect since 1949, but has been little used. A report on sexual deviation research in California discussing the Act, states: [2]

> "The theory back of the law is a meritorious one. It places the emphasis on prevention and recognizes the need to find some effective means for treating or confining potentially dangerous sex deviates before they commit any serious crime against others. The theory does not work out well in practice because there is no sure way of identifying potentially dangerous sex criminals who have not

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1 Appendix V.

2 California Sexual Deviation Research, second interim report, January 1953, p. 37

actually been charged with any criminal offense. Even if such methods of detection were available, democratic public policy could not tolerate the violation of the civil liberties of persons who might come within the legal definition of a mentally abnormal sex offender but refuse hospitalization or other treatment."

CHAPTER X

RELEASE

Any provision in the law for an indeterminate sentence of a sexual offender to preventive detention must necessarily involve some definite procedure for release, otherwise an indeterminate sentence may result in unjust imprisonment for life, notwithstanding that it is not a sentence to life imprisonment. Section 666 C.C. places on the Minister of Justice the responsibility of determining whether a person "should be permitted to be at large on licence, and if so, on what conditions". There is no provision enabling the Minister of Justice or any other authority to discharge the prisoner. Once he has been sentenced to preventive detention, he can be released only on licence. Under the Canadian administrative procedure, responsibility for the custody of those sentenced to preventive detention is clearly distinguished from the authority to release. The latter comes within the jurisdiction of the Remission Service of the Department of Justice, while the former is within the authority of the Penitentiary Commission. The power to release prisoners serving sentences of preventive detention is derived from the Ticket of Leave Act, [1] which is the legislation under which the Remission Service operates, and applies not only to persons serving determinate sentences but to those serving indeterminate sentences. The Ticket of Leave Act provides that a license issued under it is forfeited when the holder thereof is convicted of any indictable offence. In addition to the automatic forfeiture of a licence issued under the Ticket of Leave Act, the Governor General has power to revoke a licence, with the advice of the executive, when the licence-holder is misconducting himself or is not observing the terms of the licence. We think it unjust that a sexual offender who has been found fit for release from preventive detention should necessarily be compelled to continue to serve an indeterminate sentence as a sexual offender merely because he has committed an indictable offence of a non-sexual character.

A special detailed administrative procedure has been set up in the Department of Justice which enables the Remission Service to develop an extensive case history of anyone sentenced to preventive detention. Mr. A. J. MacLeod described the procedure to us, as follows: [2]

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1 R.S.C. 1952, c. 264
2 Evidence, (Ont.) pp. 55-62

"The first indication that the Remission Service has that an inmate has arrived in the penitentiary comes from a document called the 'Newcomers Question Sheet', which is passed to the Remission Service by the penitentiary to which the inmate has been committed. It sets out certain factual information that is taken from the inmate as soon as he arrives at the institution. That information consists, among other things, of the inmate's name, any aliases that he may have, the place and date of sentence, the term of sentence, the offences for which he has been convicted, the name of the presiding judge or magistrate, physical characteristics of the inmate, place of birth, education, occupation, religion, employment, military history, names of accomplices, previous convictions, if any, and any special remarks that the authorities in the institution see fit to make.

On the basis of the information set out on the Newcomer's Question Sheet, we then approach the Fingerprint Section of the Royal Canadian Mounted Police with a request for a copy of the previous record of the inmate and his photograph.

Upon arrival in the institution, the inmate is interviewed by the Classification Officer, who has had training in psychology. The Classification Officer submits a report to the Remission Service, based on his interview with the inmate and documents that may have accompanied the inmate from the place of trial. This report covers such matters as the family history of the inmate, his health and habits, recreation and leisure activities, his military service record, education and employment. It will generally include a summary setting out the impression that the Classification Officer has gained of the man at this interview.

The Remission Service also receives from the penitentiary from time to time information with respect to transfer of the inmate to a mental institution, if that has taken place, or again, any change made in the employment of the inmate in the institution.

The Newcomer's Question Sheet, received from the Penitentiary, is identified by a heading typed in red ink, identifying the case as one of a person found to be a criminal sexual psychopath. This immediately indicates to the officers and other personnel in the Remission Service that the procedure to be followed is different from the procedure that is followed in the ordinary case.

A file is made up which is identified on its face as relating to a person found to be a criminal sexual psychopath. A special index card is created that bears the file number of the case, the institution concerned, the inmate's number, the offences committed and imprisonment imposed, the date when the definite sentence will be satisfied and the date of the first review. The first review is set down for a time three years after the inmate is received in the institution, i.e., three years after he starts to serve the definite sentence imposed upon him for the substantive offence of which he has been convicted. The definite sentence imposed upon him cannot, of course, be less than two years. In most cases, the definite sentence is more than two years. In the result, therefore, the first review will take place before the inmate has commenced to serve the indeterminate portion of the sentence imposed upon him.

A uniform procedure has been established to ensure that, at an early stage in the term of imprisonment, there is assembled the material that will be essential for purposes of the first review. These steps are taken to avoid the danger that, in the course of two and one-half years, the information that is necessary might become unavailable or, at the last, difficult to secure.

It is the responsibility of the officer in the Remission Service to whom the case is assigned, to secure this information. A report is obtained from the Police Force that investigated the offence. This provides the history of the offence and frequently will include information with respect to the offender which will not otherwise be available.

The Classification Officer's initial report has already been referred to.

A very important document is the transcript of the evidence given by the two psychiatrists who gave evidence at the trial. It should be added that this transcript will also include any evidence given on behalf of the accused on the trial of the issue whether or not there should be a finding that he is a criminal sexual psychopath.

The Penitentiary psychiatrist is requested to make a report with respect to the inmate and this report will be obtained from Dr. Gendreau of the Penitentiary Commission. Dr. Gendreau's opinion will also be sought.

There will frequently be occasions when other reports will be sought, such for example, as the reports of Probation Officers or case workers employed by social agencies.

The Remission Service maintains, in Montreal and Vancouver, field representatives whose responsibility it is to visit inmates in the institutions. This representative will, at an early stage, be informed that the inmate has been received in the institution and is serving an indeterminate sentence.

As has been noted, a date will have been set for the first review, and it is the responsibility of the investigating officer to ensure that the file is brought forward six months prior to that date in order that any necessary further investigation may be made at that time. A system of cross-checking ensures that no case can be overlooked.

The Field Representative of the Remission Service, that is, the officer who visits the institution and interviews inmates, is required to interview the prisoner on his first visit to the institution following receipt of advice that the man is undergoing imprisonment as a criminal sexual psychopath. This is, of course different from the procedure usually followed. It is not customary, in the ordinary case of imprisonment for a definite term, for the Remission Service representative to seek out the inmate. On the contrary, it is the responsibility of the inmate in such a case to inform the Warden that he wishes to have an interview with the Remission Service representative when that officer visits the institution.

In the course of this visit, after arranging for an interview with the inmate, the Field Representative will discuss the case with the penitentiary officials concerned, for instance, the Warden, Classification Officer, Psychiatrist, Padre, and the Chief Training Instructor or Work Supervisor of the inmate.

A comprehensive report of this visit to the institution, in so far as it relates to the inmate concerned, will be made by the Field Representative to the Remission Service in Ottawa.

The Field Representative is required to interview the inmate not less than once in every two years and to submit reports in respect of each interview. I should mention, of course, that the Field Representative will, in addition to this, be prepared to meet the inmate, at his

request, on any occasion when he is visiting the institution, which ordinarily will be not less than twice each year.

As I have already indicated, a review will be carried out at least once in every three years. This accords with the direction that is made in Section 575H of the Code for the review of the condition, history and circumstances of a person who is detained in custody under a sentence of preventive detention pursuant to a finding that he is an habitual criminal.

The investigating officer in the Remission Service will have marked the file for attention six months before the review date in order to enable the material that I have already mentioned to be collected, namely, a Warden's Report, an up-to-date Classification Officer's Report, an up-to-date Field Representative's Report, a comprehensive report from the Penitentiary psychiatrist, the report of an independent psychiatrist, if it appears to be desirable to obtain one, and other special reports that, in the circumstances, it may be desirable to obtain. The entire file is then sent to the trial Judge for any comments that he may wish to make.

When the trial Judge has reported, the case will then be studied thoroughly by the officers in the Remission Service and a recommendation submitted to the Minister. If it is not found to be possible to recommend the release of the inmate on Ticket of Leave, the file will be marked to be brought forward six months prior to the date of the next review. The date fixed for the next review will, of course, be three years from the time fixed for the first review, and subsequent reviews will be made at three-year intervals, with the same system being followed in each for the collection of material six months before the time set for the review.

The procedure that I have outlined should not be taken to be a hard and fast system, nor should it be thought that reviews at intervals sooner than the expiration of a three-year period will not be possible. An overriding consideration will always be this: inasmuch as the purpose of the imprisonment is to afford an opportunity, if at all possible, for the 'cure' of the inmate, the production of evidence at any time that a substantial degree of 'cure' has been effected will be the occasion for an immediate investigation. This may occur at any time during the three-year period between automatic reviews. Evidence of this nature might be found in a routine report of the prison psychiatrist or in a

special report that he might make. It might be found in a letter written to the Remission Service by the prisoner himself, his counsel, relatives or friends. This must necessarily be the case when one has regard to the fact that the primary purpose of the indeterminate detention is not punishment of the accused, but protection of society and reformation of the inmate. If a 'cure' has been effected to the point where the inmate is no longer a danger to society and as a result it is not necessary to detain the prisoner in order to protect society, there is no justification for continued detention. In such circumstances, to postpone an investigation until the time set for the automatic review of the case would not be in accord with what would appear to be the purpose underlying the legislation."

The Royal Prerogative of Mercy.

The royal prerogative of mercy may be exercised toward anyone sentenced to preventive detention, and in the exercise of this prerogative an indeterminate sentence may be terminated unconditionally.

CHAPTER XI

RESEARCH

If it is true that the basic problems of sexual offenders are inseparable from those of non-sexual offenders, the need for research in the field of the causes of sexual deviation necessarily involves the need for research in the general field of criminology. Guttmacher and Weihofen deny that sexual offenders need the special handling assumed in most sexual psychopath laws. [1]

While these conclusions may be quite true, and we substantially agree with them, nevertheless an examination of the cases set out in Appendix II convinces us that, while a law of the character now in force in Canada has only limited effect, the principle of the law is right. On the other hand, we believe there is great necessity for concentration on ways and means of clinical study and experiment to arrest the development of sexual deviation. The responsibility for this extends far beyond the jurisdiction of the courts, and even of the legislative bodies.

A clinic was established in Toronto in 1956 under the provisions of the Ontario Mental Hospitals Act, [2] named the Forensic Clinic, Toronto. This clinic was set up as a division of the Toronto Psychiatric Hospital and affiliated with the Department of Psychiatry in the University of Toronto. The object of the clinic was to extend the forensic services of the Toronto Psychiatric Hospital which has been for some years receiving patients committed for mental examination by order of the courts. The new clinic operates an out-patient service providing diagnostic and treatment services for cases that have been before the courts. These services are not restricted to persons charged with sexual offences, but at the present time about half the patients attending the clinic are classified as "sexual deviates". Between April 20, 1956, and April 30, 1957, 176 patients were treated, of whom 150 were male and 26 female. The following table shows the referrals and the age groups:

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1 California Sexual Deviation Research, second interim report, January 1953, p. 108.

2 R.S.O. 1950, c. 229, Part XIX.

TABLE 18

FORENSIC OUT PATIENT CLINIC
SUMMARY OF STATISTICS
PERCENTAGES

One Year's Operation, from 20th April 1956 to
April 30th 1957

Total Number of New Patients 176
Total Number of Male Patients . . . . 150, that is 85.22%
Total Number of Female Patients . . 26, that is 14.78%

REFERRALS.	No. of Patients Referred	Percentages
Courts	37	21.02%
Probation Officers	78	44.31%
Private Physicians	10	5.68%
Hospitals	23	12.86%
Family	4	2.27%
Friend	2	1.13%
Self	11	6.25%
Community Service	6	3.40%
Staff	5	2.84%
	176	

AGE GROUPS.

Total Number of Males Referred: 150.

No. between 15 - 19 years . . . . . 42, that is 28.00%
" " 20 - 24 " . . . . . 30, " " 20.00%
" " 25 - 29 " . . . . . 22, " " 14.66%
No. 30 years and over . . . . . 56, " " 37.33%

Total Number of Females Referred: 26.

No. between 15 - 19 years . . . . . 9, that is 34.61%
" " 20 - 24 " . . . . . 6, " " 23.07%
" " 25 - 29 " . . . . . 4, " " 15.38%
No. 30 years and over . . . . . 7, " " 26.92%

Of the 176 patients, 96 were classified as sex deviates. The following table shows a breakdown of this classification, together with an assessment of the suitability for therapy:

TABLE 19

FORENSIC OUT PATIENT CLINIC

SYNOPSIS FOR ONE YEAR'S OPERATION

Total Number of Patients Referred to Clinic 176

96 were Sex Deviate Cases, i.e., 54.54%

80 were Non Sex Deviate Cases, i.e., 45.46%

SEX DEVIATE CLASSIFICATION	REFERRED FROM COURTS AND PROBATION OFFICERS						REFERRED FROM OTHER SOURCES				
	Total No. Pts.	Treatment Suitability	G	F	P	U		Treatment Suitability	G	F	P	U
HOMOSEXUALITY	34 = 35.41%	13 = 38.23%	4	2	6	1	21 = 61.77%		11	6	4	-
EXHIBITIONISM	26 = 27.08%	21 = 80.76%	5	3	9	4	5 = 19.24%		3	2	-	-
PEDOPHILIA	16 = 16.66%	14 = 87.50%	-	7	7	-	2 = 12.50%		1	-	1	-
VOYEURISM	3 = 3.12%	2 = 66.66%	-	1	-	1	1 = 33.33%		-	1	-	-
SADO MASOCHISM	2 = 2.08%	2 = 100%	-	2	-	-	- -		-	-	-	-
INCEST	3 = 3.12%	- -	-	-	-	-	3 = 100%		2	-	1	-
FELIATIO	1 = 1.04%	1 = 100%	-	1	-	-	- -		-	-	-	-
TRANSVESTISM	2 = 2.08%	1 = 50%	-	1	-	-	1 = 50%		-	-	1	-
FETISHISM	1 = 1.04%	1 = 100%	-	1	-	-	- -		-	-	-	-
CUNNILINGUS	1 = 1.04%	1 = 100%	1	-	-	-	- -		-	-	-	-
MULTIPLE SEX DEV	1 = 1.04%	1 = 100%	-	1	-	-	- -		-	-	-	-
BESTIALITY	2 = 2.08%	2 = 100%	-	1	1	-	- -		-	-	-	-
MISCELLANEOUS	1 = 1.04%	1 = 100%	-	-	1	-	- -		-	-	-	-
UNASSESSED	3 = 3.12%	2 = 66.66%	-	-	-	2	1 = 33.33%		-	-	1	-
	96	62	10	20	24	8	34		17	9	8	-

GOOD	16.12%	GOOD	50%
FAIR	32.24%	FAIR	26.47%
POOR	38.71%	POOR	23.53%
UNASSESSED	12.90%		

We think the proper authorities should embark on a program of education of parents, teachers and all those in charge of young persons, to co-operate with clinics established on the principle of the Forensic Clinic of Toronto, so that all known effective measures may be taken to arrest the development in young persons of tendencies toward sexual deviation.

In addition to this, an organized scientific study of the cases of all those committed to serve indeterminate sentences should be undertaken, and if possible extended to all sexual offenders serving sentences in penitentiaries, with a view to developing improved methods of treatment of those committed to prison, whether for an indeterminate or determinate period.

We believe that the recommendations made in the brief of the Provincial and National Councils of Women [1] should receive sympathetic consideration. This brief suggested a board of outstanding scientists, including medical, psychiatric and sociological experts appointed by the Government of Canada to conduct intensive research into the whole field of sexual deviation, with co-operation of provincial committees.

In addition, diagnostic centres equipped with proper medical facilities should be established in conjunction with special institutional treatment under the direction and auspices of universities. These diagnostic centres should operate in close relationship with the courts. When these centres have been set up and have functioned for a sufficient period of time to appraise their success, the legislation we recommend ought to be reviewed in the light of known results.

In the Province of Ontario a survey was made of the institutions under provincial jurisdiction with special attention given to the problem created by the sexual offender. Specific recommendations included segregation of the sexual offender, clinical investigation, treatment and research. At the time of the survey the Province did not have facilities for complete segregation. Since then an institution has been opened at Millbrook for segregation and treatment of "psychopaths". A select committee of the Legislature reported on the problems in the administration of reform institutions in 1953; the report contains five recommendations as to sexual offenders: (1) that facilities be provided for detailed study of all convicted sexual offenders for guidance of the court; (2) that all sexual offenders be given indefinite sentences which are not to be terminated until curative measures have

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1 Exhibit 40, p. 857 and p. 1489.

been applied; (3) that a separate close-security unit adequately staffed with trained personnel be established for the treatment of sexual offenders; (4) that persons charged with sexual offences in institutions should be tried in regular courts and if found guilty sent to the special unit for treatment; and (5) that an extensive scientific study be undertaken into the nature of sexual deviation and the methods of dealing with it.

We refer to these recommendations without comment other than to say that the adoption of (2) or (3) as they stand would not in our opinion be wise or just. The concept of "close-security" is emphatically punitive, while the other recommendations of the select committee are based on the assumption that all sexual offenders require treatment and can be successfully treated. As we have said, we can find no basis for this broad assumption.

CHAPTER XII

SUMMARY OF CONCLUSIONS

1. The use of the term "psychopath" as applied to the class of sexual offenders coming within the terms of reference is undesirable.

2. The law should be changed as we hereinafter recommend.

3. Section 661 C. C. should not be extended to cover any offences not named therein.

4. Juvenile Court judges should not have the power to impose indeterminate sentences, but persons committing sexual offences against children should be proceeded against in the regular courts rather than under the Juvenile Delinquents Act, so that in proper cases they may be proceeded against under section 661 C. C.

5. The issue of whether an offender comes within section 661 C. C. should continue to be tried by a judge without a jury.

6. It is unnecessary that there should be any statutory provision that the notice required to be served under section 661 C. C. should set out the grounds on which the prosecution is proceeding.

7. There should be statutory provision that where any nomination or authorization is required to be made or given under Part XVIII of the Criminal Code a document purporting to be signed by the Attorney General of a province be made prima facie evidence of its contents.

8. The rights of the prisoner and the Crown with respect to appeals under section 667 C. C. should be clarified.

9. No amendment should be made to The Canada Evidence Act creating any presumption against the prisoner where proceedings are taken under section 661 C. C.

10. A standard of proof no higher than balance of probability should be sufficient to bring a person within the provisions of section 661 C. C.

11. No amendment should be made to TheCanada Evidence Act providing that persons charged with sexual offences might be convicted on the unsworn evidence of children without corroboration.

12. If the courts hold that the provisions of section 16 of The Canada Evidence Act and section 566 C. C. do not apply to proceedings under section 661 C. C., The Canada Evidence Act should be so amended as to make them apply.

13. The courts should be given power to refer any prisoner convicted of any indictable offence for psychiatric examination before sentence.

14. The provisions of the law requiring a court to sentence a prisoner found to come within section 661 C. C. to serve a definite term of imprisonment before the sentence of preventive detention commences are not consistent with the theory of the law.

15. Castration should not be adopted as part of the criminal law of Canada.

16. There is urgent need in Canada for research in all aspects of sexual deviation, with a view to development of means of correction and prevention.

17. The efforts to treat those undergoing preventive detention under the provisions of section 661 C. C. are inadequate.

18. The so-called psychopathic sexual offender is essentially no different from any other psychopathic offender.

19. The only present justification for any statutory provision for preventive detention of sexual offenders is segregation from society; it cannot be justified on the ground that they will receive curative treatment while in prison.

20. The failure of police authorities to report all sexual offenders with proper identification to the Royal Canadian Mounted Police militates against the enforcement of the law.

CHAPTER XIII

RECOMMENDATIONS

We recommend that:

1. Section 659 (b) C.C. be repealed and the following substituted therefor:

> "Dangerous sexual offender" as the words are used in this Part means a person who, by his conduct in sexual matters, has shown a failure to control his sexual impulses and who is likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses."

2. Section 661 (1) be amended by striking out the word "may" and substituting the word "shall" therefor, by striking out the word "criminal" and substituting the word "dangerous" therefor, and by striking out the word "psychopath" and substituting the word "offender" therefor.

3. Section 661 (2) be amended by striking out the word "may" and substituting the word "shall" therefor, by striking out the words "evidence that it considers necessary" and substituting the words "relevant evidence" therefor, and by striking out the word "but" and substituting the word "and" therefor.

4. Section 661 (3) be repealed and the following substitued therefor:

> "Where the court finds that the accused is a dangerous sexual offender it shall, notwithstanding anything in this Act or any other Act of the Parliament of Canada, sentence the accused to preventive detention."

5. The amended sections read as follows:

"659. In this Part,

(a) 'court' means

(i) a superior court of criminal jurisdiction, or
(ii) a court of criminal jurisdiction;

(b) 'dangerous sexual offender' as the words are used in this Part means a person who, by his conduct in sexual matters, has shown a failure to control his sexual impulses and who is likely to cause injury, pain or other evil to any person through failure in the future to control his sexual impulses,

(c) 'preventive detention' means detention in a penitentiary for an indeterminate period.

661. (1) Where an accused is convicted of

(a) an offence under

(i) section 136,
(ii) section 138,
(iii) section 141,
(iv) section 147,
(v) section 148, or
(vi) section 149; or

(b) an attempt to commit an offence under a provision mentioned in paragraph (a),

the court shall, upon application, before passing sentence hear evidence as to whether the accused is a dangerous sexual offender.

(2) On the hearing of an application under subsection (1) the court shall hear any relevant evidence, and shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney General.

(3) Where the court finds that the accused is a dangerous sexual offender it shall, notwithstanding anything in this Act or any other Act of the Parliament of Canada, sentence the accused to preventive detention."

6. Section 667 C.C. be repealed and the following substituted therefor:

"667. (1) A prisoner who is sentenced to preventive detention under this Part may appeal to the court of appeal against the finding that he is an habitual criminal or a dangerous sexual offender, and the Attorney General may appeal to the court of appeal against the dismissal of an application made under this Part.

(2) On the hearing of an appeal against a finding that the prisoner is an habitual criminal or a dangerous sexual offender the court of appeal may

(a) dismiss the appeal or
(b) set aside the finding and the sentence of preventive detention and impose on the prisoner any determinate sentence provided by law.

(3) On an appeal by the Attorney General against the dismissal of an application made under this Part the court may

(a) dismiss the appeal, or
(b) allow the appeal, make a finding that the accused is an habitual criminal or a dangerous sexual offender and impose a sentence of preventive detention.

(4) The provisions of Part XVIII with respect to procedure on appeals apply, mutatis mutandis, to appeals under this section."

7. The Canada Evidence Act be amended to provide that for purposes of an application under Part XVIII of the Criminal Code a document purporting to be signed by the Attorney General of a province should be prima facie evidence of its contents.

8. Section 46 of the Penitentiaries Act be amended by inserting after the word "life" the words "preventive detention".

9. Special provision be made in the penitentiary system for the custody, control and treatment of every sexual offender undergoing preventive detention, and section 666 C.C. be amended accordingly.

10. The case of every prisoner undergoing preventive detention be reviewed by a properly constituted board at least once a year for the purpose of determining whether it is safe for the prisoner to be at large.

11. Special legislative provision be made for the release on licence of prisoners undergoing preventive detention and for the revocation of such licences.

12. Where a sexual offender has been sentenced to preventive detention and released on licence the licence be notrevoked automatically merely because of conviction for crime while at large, but power be vested in the court to revoke the licence.

13. The Criminal Code be amended to provide that every prisoner sentenced as a dangerous sexual offender have the right to have his case reviewed every three years by a superior, county or district court judge for the purpose of determining whether he should be further detained; on such review the judge be required to hear representations on behalf of the prisoner and those in authority over him; and on the hearing the judge have power to discharge the prisoner from the sentence of preventive detention imposed on him, order that he be released on licence on such terms as may seem just, or refuse to make any order.

14. Upon recommendation 13 being adopted, sections 664 and 666 C. C. be repealed in so far as they would apply to dangerous sexual offenders.

15. The Government of Canada, through special grants to universities and otherwise, develop special research schemes to determine the causes of sexual abnormality and improve methods of treatment.

16. Special clinics be set up in co-operation with the courts and penal institutions, to which a person found guilty of any sexual offence may be required to report for study and treatment.

17. The responsible authorities be compelled to report all convictions for sexual offences to the identification bureau of the Royal Canadian Mounted Police together with the identifying characteristics of the prisonners.

We have the honour to be,

Sir,

Your obedient servants,

J. C. McRuer,
Chairman.

Gustave Desrochers,
Commissioner.

Helen Kinnear,
Commissioner.

APPENDIX I

ORGANIZATIONS WHICH MADE REPRESENTATIONS AND WITNESSES HEARD

Organizations

Alberta Federation of Home & School Associations, Inc.
Alberta Psychiatric Association.
Attorney General, Department of (for Provinces of British Columbia, New Brunswick, Nova Scotia and Ontario).

Baron de Hirsch Institute and Jewish Child Welfare Bureau, Montreal.
Bertha Slonemsky Chapter of Hadassah, Ottawa.
Blythwood Home & School Association, Toronto.
British Columbia Parent-Teacher Federation.
British Columbia Probation and Correction Association.

Canadian Association of Social Workers.
Canadian Association of Social Workers, British Columbia Mainland Branch.
Canadian Bar Association (Nova Scotia Subsection of Criminal Justice Section, Committee on the Administration of Criminal Justice of the British Columbia Section, and Committee on Administration of Criminal Justice).
Canadian Daughters' League, Ontario Provincial Council.
Canadian Medical Association (British Columbia Division; Manitoba Division, Psychiatric Section; Ontario Division; and Saskatchewan Division).
Canadian Mental Health Association (Saskatchewan Division).
Canadian Mental Health Association, Toronto.
Catholic Big Brothers Association of Toronto.
Catholic Women's League of Canada.
Children's Aid Society of Vancouver.
Child Study Association, Group 6, Sarnia, Ont.
Child Study Group No. 1, Petrolia, Ont.
Church of England (Diocesan Social Service Commission of Halifax).
College of Physicians and Surgeons (Alberta and Saskatchewan).
Community Chest and Council of Greater Vancouver.
Corunna Child Study Group II, Corunna, Ont.

Elizabeth Fry Society (of British Columbia, of Kingston, Ont., of Ottawa, Toronto Branch, and of Vancouver).

Federated Women's Institutes of Ontario.

Health and Welfare, Department of, (Division of Mental Health), Province of Prince Edward Island.
Health, Department of (for Provinces of New Brunswick, Nova Scotia and Ontario).

Imperial Order of Daughters of the Empire.

John Howard Society (of British Columbia (Vancouver Section), of Nova Scotia, of Ontario, of Quebec,* of Saskatoon and of Vancouver Island).
Juvenile and Family Court, Municipality of Metropolitan Toronto.
Juvenile and Family Courts, British Columbia.

Kitchener-Waterloo Home and School Council, Kitchener, Ont.

Ladies' Auxiliary to Fontbonne Hall (Home for Children), London, Ont.
Laval University (Department of Psychiatry).
Law Society of British Columbia.

Manitoba Home and School Federation.
Maritime School of Social Work, Halifax.
Maycourt Club of Ottawa.
Mental Health, Division of, Province of Alberta.
Montreal Council of Social Agencies.
Montreal Council of Women.
Montreal Legal Aid Bureau, Inc.

National Council of Jewish Women (National Board of Directors).
National Council of Women of Canada.

Ontario Association of Children's Aid Societies.
Ontario Federation of Home and School Associations.
Ontario Neuro-psychiatric Association.
Ontario Provincial Police.
Ottawa Women's Forum, Ottawa.
Ottawa Women's Presbytery Association.
Owen Sound, Council of the City of.

Parents' Action League, Toronto.
Prince Edward Island Federation of Home and School Associations.
Provincial Council of Women, Ontario.
Provincial (Quebec) and National Councils of Women.
Public Health, Department of, Province of Saskatchewan (Psychiatric Services Branch).

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* Brief submitted by Maxwell Cohen, Dr. Alastair MacLeod and William Westley; concurred in by Joseph Cohen, Q.C.

Quebec Federation of Home & School Associations.

Recreation Directors' Federation of Ontario.
Reform Institutions, Department of, Province of Ontario.
Regina Council of Women.
Royal Canadian Mounted Police.

Saskatchewan Psychiatric Association.
Service de Réadaptation Sociale de Québec, Inc.
Social Welfare Branch, Psychiatric Division, Province of British Columbia.
Social Welfare, Department of, (Corrections Branch), Province of Saskatchewan.
Société d'Orientation et de Réhabilitation Sociale, Montreal.
Society for the Protection of Women and Children, Inc., Montreal.

Toronto Local Council of Women.

Unitarian Church (Church of Our Father, Ottawa).
United Church of Canada.
University of Alberta (Department of Medicine).
University of British Columbia (Faculty of Law).
University of Manitoba (Faculty of Medicine, Department of Psychiatry).
University of Montreal (Department of Psychiatry).
University of Toronto (Faculty of Medicine, Department of Psychiatry).

Vancouver City Police Department.

Welfare Association of Manitoba.
Welfare Council of Halifax.
Western Ontario Child Study Association (Group #7, Sarnia, Ont.; Lakeshore Group, Sarnia, Ont.; Petrolia Group 2; and Sarnia, Ont.).
Windsor, Ont., City of (Board of Control).

Witnesses

Alcorn, Dr. D. E.
Ambrose, G. R.
Arnott, John
Atcheson, Dr. J. D.

Black, G. S.
Black, Dr. W. G.
Black, Dr. W. W.
Borins, N., Q.C.
Bourgoin, Dr. L.
Bowden, Dr. N. E.
Boyer, Dr. G. F.
Bull, H. H., Q.C.

Cameron, Dr. D.E.
Cardwell, Dr. W. A.
Carter, H. P.
Chevalier, A., Q.C.

Chisholm, John
Clelland, Dr. C. A.
Clouston, D. M.
Cohen, M.
Common, W. B., Q.C.
Coté, Dr. F.
Crook, A. J.

Dansereau, D., Q.C.
Darby, The Hon. W. E., Q.C.

Elmore, T. S., Q.C.

Foote, The Hon. J. W., V.C.
Fournier, J., Q.C.
Franks, W. J.
Freeman, Mrs. J.

Gendreau, Dr. L. P.
Genest, Dr. R.
Gibson, Maj.-Gen. R. B.
Gilleland, Mrs. M. R.
Girling, Mrs. D. M.
Goff, W. A.
Gray, Dr. K. G.
Green, R. J.
Greer, Rev. F. H. K.
Gregoire, E.
Griffin, Dr. J. D.

Heal, Dr. F. C.
Hickman, Dr. H. W.
Hirsch, Dr. S.

Kerr, Mrs. G.
Kirkpatrick, A. M.

Lane, W. F.
Leach, M.
LeBel, G.
Letourneau, G.
Lucy, Dr. J. D.

MacKay, Dr. R. W. M.
MacLeod, Dr. A.
MacLeod, A. J.
MacLean, Dr. R. R
MacPhatter, Mrs. G.
Marshall, Dr. C. S.
Martel, Dr. L.
Martin, K. M., Q.C.
Martin, Dr. M. G.
McDonald, L. H.
McKenna, J., Q.C.
McKerracher, Dr. D. G.
McNeel, Dr. B. H.
Menzies, Dr. E. C.
Mercier, Raoul, Q.C.
Michie, Dr. T. C.
Milligan, Dr. J. E.
Mundie, J. I.
Murchison, Dr. A. J.
Mutchmor, Rev. J. R.

Nelson, Dr. G. F.
Norris, T. G., Q.C.

O'Brien, Dr. G. J.
O'Connor, Dr. M. J.

Pelletier, O.
Phillips, The Hon. Dr. M.
Pincock, Dr. T. A.
Potter, E. G.
Pottle, Dr. C. H.
Prosser, Dr. R. R.

Rand, Mrs. W. L.
Remnant, S. J. R., Q.C.
Reusing, Mrs. H. F.
Roberts, The Hon. K.
Robinette, J. J., Q.C.

Senn, Dr. J. N.
Shepherd, W. F.
Sigurdson, H. R.
Stephens, Dr. G. M.
Stern, Dr. K.
Stevenson, B. K.
Stevenson, Dr. G. H.
Stokes, Dr. A. B.

Telford, Mrs. G.
Tennant, Dr. C. S.
Theriault, Dr. J. C.
Thomson, I. M.

Tracy, Mrs. J. M.

Van Nostrand, Dr. F. H.

Waddington, Mrs. M.

Walton, Mrs. W. R.

Weatherhead, Mrs. T. M.

Weir, Miss J.

Whitman, Dr. R. L.

Williams, Rev. I. D.

In addition to hearing these witnesses at public hearings, some evidence was taken in camera.

APPENDIX II

A SUMMARY OF THE CASES OF PRISONERS SERVING SENTENCES UNDER THE PROVISIONS OF SECTIONS 659 (b) AND 661 OF THE CRIMINAL CODE

All the prisoners referred to in this appendix are serving sentences of imprisonment for two years or more to be followed by indeterminate periods. Numbers are used to avoid identification, and the information set out is confined to that which is disclosed in official records. Case histories compiled by the authorities are necessarily confidential.

1.

This prisoner was born in 1924. In 1949 he was convicted of rape and found to be a criminal sexual psychopath; he was sentenced to three and a half years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1942 - indecent assault on a female - sentenced to 6 months' imprisonment.

1946 - indecent assault on a female - sentenced to 6 months' imprisonment.

The facts giving rise to the current sentence are:-

The prisoner, after consuming a small amount of beer with the complainant, whom he had not previously known, expressed a desire to accompany her to the depot where she planned to take a bus to her home. This the complainant permitted. However, the prisoner boarded the bus with her, accompanied her when she alighted and walked some distance with her until they arrived at a dark place in the street, where he threw her into a ditch, holding one hand over her mouth when she tried to scream. The victim told the prisoner she was wearing a corrective brace for a fallen womb. He said, "If I don't get it I will kill you, I'd kill you anyway if I had a knife." Then, tearing out the internal brace, he raped her. Following the attack he sat the complainant up in the ditch and told her she could "bloody well stay there". The woman crawled home, and sometime later heard someone trying to get in through the bathroom window; after several attempts he went away. The following day the prisoner telephoned the complainant and told her that if she did not inform the police he would pay for the cleaning of her soiled clothes. The police officers found the

internal brace at the location of the attack. When arrested the prisoner is said to have stated that he did not mind being accused of assaulting a female, but if charged with rape he would probably get seven years, and to have used the words, "If I do, when I get out I'll hang for the bitch, because I'll slit her god-damn throat from ear to ear." At the trial when he was asked by the trial judge if he had anything to say before sentence was passed he replied, "Yes, I'll kill the little bitch when I get out."

A psychiatrist who gave evidence at the trial stated that the prisoner's background showed an instability throughout his life, and that the consumption of alcohol caused a loss of control with regard to sexual behaviour. Another psychiatrist stated that during the prisoner's lifetime there had been various episodes of anti-social acts dating back a number of years, and after reviewing actual delinquencies from their inception to the time of the current offence he classified the prisoner as a sexual psychopathic personality who upon consuming alcohol was unable to control his abnormal tendencies.

An appeal was taken in this case to the Court of Appeal and the appeal was dismissed.

2.

This prisoner was born in 1924. In 1949 he was convicted of indecent assault on a female, gross indecency and four charges of assault occasioning bodily harm, and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1944 - forgery (4 charges) - sentenced to 2 months' imprisonment on each charge concurrent.

1945 - attempt theft with violence - sentenced to 6 months' imprisonment.

1945 - forgery - sentenced to 12 months' imprisonment.

1946 - false pretences - sentenced to 3 years' imprisonment.

The facts giving rise to the current sentence are:-

On his release from penitentiary in 1949 the prisoner, dressed as an officer, went to a military hospital, and by means of a card surreptitiously obtained was able to pose as a doctor and get access to files of

soldiers or of individuals making application to enlist in the navy. Having access to these files, he learned the name and address of a youth who had been rejected on medical examination. Having this information, he presented himself at the home of this youth and, passing himself off as a doctor, convinced the family that he could care for the boy. He lived in the house, induced the young man to drink intoxicating liquor and, using a chisel and a needle, performed certain operations on him. The prisoner committed fellatio and masturbation with the youth while occupying the same bed. One evening he caused the boy to become so drunk that the parents, believing that he was about to die, called a priest to perform the last rites. While at this home the prisoner, pretending to give medical attention to an eighteen-year-old girl, indecently assaulted her. Following this the prisoner was arrested.

Statements given to the police indicate that the prisoner derived enjoyment from seeing others suffer, especially if he provoked the suffering. One of the psychiatrists who gave evidence at the trial said that the prisoner was a maniac, and that he was not master of his sexual impulses, which, in the psychiatrist's opinion, drove him to sadism. This psychiatrist thought it very dangerous to allow the prisoner to be at liberty. The other psychiatrist who gave evidence at the trial said that he would classify the prisoner as a constitutional psychopath. In his opinion the prisoner was an instinctive sexual deviate, manifesting anomalies and tendencies toward mystification (mythomania), such as the impersonation of individuals, having tendencies toward homosexuality and sadism and a tendency to get sexual enjoyment by inflicting physical or moral suffering on other persons.

3.

This prisoner was born in 1920. In 1951 he was convicted of indecent assault on a female and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1931 - theft (2 charges)	- suspended sentence for six months, restitution and probation.
1937 - indecent assault	- suspended sentence for 6 months.

1938 - (Jan.) - theft - warned, remanded to Jan. 28, 1938.

1938 - (May) - indecent assault- sentenced to 2 years less 1 day.

1942 - indecent assault on female - sentenced to 6 months' imprisonment.

1943 - (April) - indecent assault on female - sentenced to 6 months' imprisonment.

1943 - (Sept.) - indecent assault on female - sentenced to 18 months' imprisonment.

1946 - (1) Breach of Juvenile Delinquents Act - sentenced to 1 year's imprisonment.

- (2) Conduct likely to cause a breach of the peace - sentenced to 6 months' imprisonment concurrent.

1948 - contributing to juvenile delinquency (2 charges) - sentenced to 2 years' imprisonment on each charge concurrent.

1950 - breach of Juvenile Delinquents Act (involving indecent acts with young girls) - committed to a mental hospital as insane.

The facts giving rise to the current sentence are:-

The prisoner was seen playing with a four-year-old boy and his six-year-old sister in a sandpile in the rear of a grocery store. He took the little girl around the waist and placed his hands on her private parts. The child stated that the prisoner had asked her to go to some place with him. Upon being arrested the prisoner was committed as insane and removed to a mental hospital.

A psychiatrist stated on the hearing leading to his committal:

> "I found him (the prisoner) to be mentally defective. In addition, he has the irresistible impulse that can be considered a psychosis."

After observation in the mental hospital for about six months the Medical Superintendent reported:

> "During the time he has been in this Hospital, we have actually seen no evidence of psychosis, and psychometric examination indicates he has a normal intelligence. He, himself, has suggested that if he is released from the Hospital, he will leave the Province. Whereas, I realize that this man probably is a menace to be at large, it would appear that I am not justified in holding him here."

The prisoner was discharged from the hospital on March 3, 1951, in the custody of the Royal Canadian Mounted Police, to stand his trial. On March 20, 1951, he was convicted of an indecent assault on a female and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. An appeal was taken from the finding that he was a criminal sexual psychopath, and a new trial was directed. The prisoner was again convicted on November 17, 1951, and sentenced to two years' imprisonment and to an indeterminate period thereafter.

The pattern in this case appeared to be similar to the course of conduct which gave rise to other convictions.

One psychiatrist stated at the trial that the prisoner was not psychotic, was of normal intelligence, but suffered from a personality defect. The other psychiatrist testified that he had examined the prisoner on two occasions prior to the trial, and found him to be a criminal sexual psychopath as that term is used in the Criminal Code.

4.

This prisoner was born in 1901. In 1951 he was convicted of indecent assault on a female and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous convictions and sentences are:

1925 - theft - sentenced to 1 month's imprisonment definite and 5 months' imprisonment indefinite.

1931 - indecent assault - sentenced to 24 months' imprisonment.

1935 - penal law (New York State) - sentenced to 59 days' imprisonment.

1935 - violation of Immigration Act (New York State) - sentenced to 30 days' imprisonment.

1941 - disorderly conduct (New York State) - sentenced to 30 days' imprisonment.

1946 - (1) indecent assault, found guilty of common assault - fined $20.00 and $4.20 costs or two months' imprisonment.

(2) common assault (4 charges) - fined $20.00 and $4.20 costs or two months' imprisonment each charge consecutive andoconsecutive to No. 1.

(3) loitering - fined $40.00 and $4.20 costs or two months' imprisonment.

1948 - breach of the Juvenile Delinquents Act - sentenced to 3 months' imprisonment.

1949 - indecent assault (3 charges) - sentenced to 1 year's imprisonment each charge concurrent.

The facts giving rise to the current sentence are:-

By means of newspaper advertisements the prisoner offered his services as a cleaner in an apartment house. He was accordingly employed by a family. On the occasion in question, when the mother left the home for a few minutes, the prisoner, while alone with her four-year-old daughter, attacked the child, and upon the mother's return he was caught in the act of practising oral masturbation on the child. After arresting him the police officers found in a bureau drawer in his lodgings about fifty pairs of women's underpants.

The psychiatrists were of the opinion that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code. The record does not show that the prisoner is either mentally deficient or psychotic, but does demonstrate that he has a mental inadequacy which renders him subject to abnormal sexual behaviour under the influence of alcohol. The convictions in 1949 involved three girls of seven and a half to ten years of age.

5.

This prisoner was born in 1889. In 1951 he was convicted of indecent assault and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period.

Although the prisoner does not appear to have had any previous criminal record, it is clear that he had a very corrupting influence on young boys. He was charged with two offences of indecently assaulting boys of the age of fourteen years, and was convicted on both charges. The evidence showed that he resided alone in a remote district. By showing a generous and friendly disposition toward young boys he enticed them to his home for the purpose of practising homosexual acts. During his trial the prisoner testified that he had only been experiencing homosexual tendencies during the past five years, but it was revealed by the psychiatrists who examined him and testified at the trial that he had acknowledged previous homosexual acts extending over a period of twenty years. The opinion of the psychiatrists was that not only was he a homosexual but he would continue to be one, and his tendency toward homosexuality would increase. The record in this case would appear to show that the prisoner is a sexual degenerate who regards his abnormality as normal.

6.

This prisoner was born in 1910. In 1951 he was convicted of indecent assault on a male and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1938 - theft and receiving - sentenced to 3 months' imprisonment.

- obtaining money by false pretences - sentenced to 8 days' imprisonment concurrent.

1946 - false pretences (7 charges) - sentenced to 12 months' imprisonment each charge concurrent.

1946 - false pretences (16 charges) - sentenced to 18 months' imprisonment each charge concurrent.

1946 - obtaining money under false pretences (2 charges) - sentenced to 3 months' imprisonment each charge concurrent and concurrent to sentence dated Sept. 14, 1946.

1948 - false pretences (4 charges) - fined $25.00 or 1 month's imprisonment on each charge concurrent.

1950 - (1) conspiracy (to obtain money by fraud) - sentenced to 14 months' imprisonment from November 14, 1949.

(2) impersonating police constable - sentenced to 1 month's imprisonment from November 14, 1949.

1950 - escape from jail - sentenced to 6 months' imprisonment to date from November 14, 1949.

1951 - conspiracy to obtain money by fraud (2 charges) - sentenced to 1 month's imprisonment each charge concurrent.

The facts giving rise to the current sentence are:-

The prisoner pretended to be a private social worker. He had an office, which enabled him to meet and talk freely with young men. Having obtained the addresses of several youths, he made a practice of becoming acquainted with their respective parents under the guise of a private social worker, psychologist and patron of the poor. After discussions with the parents, he would obtain permission to give psychological tests to the young men in question in consideration of money to be paid by the parents. In a typical instance, when a youth went to the prisoner's office the prisoner, after asking some ordinary questions about age, name, address and education, quickly bringing up the question of sexuality and explaining to the youth how to have intercourse with a woman, asked him if he had been circumcised. When the boy replied that he did not know, the prisoner asked him to undress. The prisoner then examined the youth's penis and handled it in such manner as to cause a discharge. When this examination was completed the youth was shown photographs of naked men and women and advised to masturbate with another young man in great secret, which he was told would be good for his health.

The evidence of the psychiatrists was that they were of the opinion that the prisoner was a criminal sexual psychopath as the term is used in the Criminal Code.

7.

This prisoner was born in 1906. In 1951 he was convicted of attempted rape and found to be a criminal sexual psychopath; he was sentenced to three years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1934 - indecent assault on female - sentenced to 2 months' imprisonment.

1946 - common assault - fined $20.00 and costs (fine paid).

1949 - contributing to juvenile delinquency - sentenced to 2 years' imprisonment.

The facts giving rise to the current sentence are:-

The prisoner, who had rented a room in a house on one of the poorer streets in a large city, called from the verandah of the house to a twelve-year-old girl who was playing on the sidewalk and asked her to get him a package of cigarettes at a nearby drug store. She went for the cigarettes, and when she returned he asked her to step inside. He gave her some coppers left from the change, and, telling her there were more coppers in his room if she wanted them, took her upstairs to his room, and after spending some time looking for the coppers picked her up and carried her to his bed. After ordering the child to take off her clothes and helping her to undress he took off his trousers, attempted to have sexual intercourse with her and also put his mouth to the child's private parts. He then told her to get dressed and not to tell anyone, but the child on leaving the room ran screaming from the house to her own home, where she complained to her mother. The prisoner was arrested within a few minutes. A search of his room revealed a bottle of gin. It was also learned that the prisoner had put some gin in a small glass and attempted to force the child to drink it. When she refused to open her mouth some of the liquid was spilt on her clothing.

Two psychiatrists gave evidence at the hearing. One of them described the prisoner's condition as "a constitutionally defective personality which is not subject to any remedial measures known at the present". Both psychiatrists were of the opinion that the prisoner was

a sexual psychopath within the definition of the Criminal Code. One of them stated that in his opinion there was not any satisfactory treatment for the condition from which the prisoner was suffering.

8.

This prisoner was born in 1897. In 1952 he was convicted of carnal knowledge and found to be a criminal sexual psychopath; he was sentenced to five years' imprisonment determinate, to be followed by an indeterminate period. The prisoner had one previous conviction, in 1939, on a charge of incest, for which he was sentenced to five years' imprisonment with five lashes.

The facts giving rise to the current sentence are:-

A mother of two children, a thirteen-year-old girl and a fourteen-year-old boy, became alarmed about the absence of her children. Upon going to look for them where she saw a light coming from an office on the premises of a manufacturing company by which the prisoner was employed as night watchman, she found the doors locked. Looking through the window, she saw the prisoner having sexual intercourse with the girl in the presence of the boy. The police, having been called by the mother, arrived and arrested the prisoner on the premises with the children present. It was learned that this was not the first time that the prisoner had committed sexual offences with these children; on a previous occasion he had made the boy perform the act with his sister while the prisoner masturbated.

Four psychiatrists gave evidence at the trial. One stated that the prisoner was a psychosexually disturbed man, and that this disturbance leads to a perverted form of sexual expression. The psychiatrist's opinion was that according to current psychiatric practice the prisoner would be called a sexual-psychopath; since this was a second offence, and in view of his statement that he had periods when he forgot what he was doing, it was likely he would inflict damage on a minor through sexual impulsivity. The doctor said, "This type of passive individual so frequently has a sense of sexual inferiority that they tend to work through their conflicts by sexual play with children." A second psychiatrist said he was unable to make any diagnosis of organic brain disease, but the prisoner was a man of low-average or borderline intelligence. A third was of the opinion that the prisoner was an individual of borderline intelligence who had suffered some sexual perversion for a number of years, that because of those cerebral changes which are to be expected in the next ten years, the prisoner would be less able to control his sexual perversion, and that his intellectual limitations were not so great as to render him irresponsible, but if he were free in the community he would offend more frequently

than he had done in the past. The fourth psychiatrist's evidence was confined to the opinion that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code.

9.

This prisoner was born in 1925. In 1953 he was convicted of indecent assault on a male and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1950 - common assault - fined $10.00 and costs.

1951 - taking car without owner's consent - sentenced to 1 month's imprisonment.

1952 - unlawfully damaging property under $50.00 in value - fined $10.00 and costs and to pay damages.

1952 - unlawfully damaging property over $50.00 in value - sentenced to 2 months' imprisonment.

In addition the prisoner had many convictions for offences against the Liquor Control Act.

The facts giving rise to the current sentence are:-

The prisoner forced a thirteen-year-old boy to accompany him from a playground into a bush where, after making the boy take off his clothes, he indecently assaulted him several times, and then threw him into the water of a harbour. Had it not been for two men passing in a boat the boy would probably have drowned. On previous occasions the police suspected that the prisoner had indecently assaulted small boys, but could not get the necessary evidence to support a conviction.

The prisoner was examined at a mental hospital, and the diagnosis was that he was a psychopathic personality without mental illness.

The psychiatrists who gave evidence at his trial were in agreement that the prisoner was neither mentally ill nor mentally defective, and that, although he could not be certified as a mentally ill person, he was of borderline intelligence and a problem drinker.

10.

This prisoner was born in 1922. In 1953 he was convicted of carnal knowledge and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1939 - (1) theft - suspended sentence.

(2) theft from person - suspended sentence.

1940 - (1) indecent exposure (2 charges) - sentenced to 6 months' imprisonment.

(2) vagrancy - using insulting language (3 charges) - sentenced to 6 months' imprisonment each charge concurrent.

1941 - attempt indecency - costs or 1 month's imprisonment - $500.00 personal bail to keep the peace or 15 days' imprisonment.

1944 - theft by housebreaking (2 charges) - fined 15 pounds sterling or 40 days' imprisonment.

1945 - armed robbery - sentenced to 23 months' imprisonment.

1945 - (1) conspiracy and robbery (3 charges).

(2) robbery.

(3) attempt robbery (2 charges) - sentenced to 24 months less 1 day imprisonment on each charge concurrent.

1950 - indecent exposure - time in jail (6 days).

1951 - indecent act - $200.00 bond to keep the peace or 2 months additional.

1952 - theft and receiving - time in jail (96 days).

1952 - contribute to juvenile delinquency - fined $50.00 or 2 months' imprisonment.

Some information is available with respect to the offences committed by the prisoner in 1940. A complaint was made to the police that at about 10:45 a.m. on a rainy day a ten-year-old girl, accompanied by her eight-year-old brother, was assaulted on a path near a city school. The girl gave the police officers a description of her assailant, and subsequently the children identified the prisoner from photographs in the possession of the police. For some weeks previous to this attack the police had been receiving many complaints about schoolgirls of eight to fifteen years of age being molested, usually in residential areas in the afternoon hours while returning from school. In some instances the offences consisted of indecent exposure, in others the assailant placed his hands on the girls' clothing and touched their private parts, the latter incidents occurring in places where there was very slight danger of detection. On some occasions the assailant used obscene language. Extra patrols were detailed to the area in question, but no arrests were made until two weeks after the complaint made by the girl first mentioned, when, as the result of a call informing the police that a man had exposed himself, the prisoner was apprehended. On "line-ups" being held, some complainants made identification, although most were unable to do so. The charges laid against the prisoner were:- two of indecent assault, four of indecent exposure, two of common assault, one of molesting peaceable passengers and three of vagrancy (loitering). In some cases more than one charge was laid with respect to the same incident.

While in jail awaiting trial the prisoner, at the request of his counsel, was given a mental examination, and a report was made that he was on the verge of dementia praecox.

On the charges of indecent assault the prisoner elected to be tried by a jury; on the other charges he was tried summarily. He was convicted on two charges of indecent exposure and on three charges of vagrancy (loitering), and was sentenced to six months' imprisonment on each charge, all sentences to run concurrently. On appeal to the Court of Appeal against the sentences they were reduced to two months. Thereupon the prisoner changed his election to be tried by a jury, pleaded guilty to the charges of indecent assault, posted a bond to keep the peace and paid the court costs. The record of convictions indicates that the reports of convictions of this prisoner made to the Royal Canadian Mounted Police are incomplete.

The facts giving rise to the current sentence are:-

In April 1953, in a district far removed from the scene of his previous activities, the prisoner saw a ten-year-old girl and her eight-year-old

brother walking through a bush trail. He asked directions from the children and offered them twenty-five cents to show him the way. After they had started down the trail he exposed himself to the girl, threw her to the ground, removed her underpants and raped her. The girl was silenced by his holding his hand over her face, and the boy by threats.

A psychiatrist said at the trial that the prisoner was a psychopathic personality, explaining that by that he meant a type of individual who is given to episodic impulsive behaviour without consideration for the feelings of others and incapable of learning by experience. The doctor also stated that in his opinion the prisoner evidenced a lack of power to control his sexual impulses, and was likely to attack or otherwise inflict injury, pain or other evil on other persons. The psychiatrist went on to say that treatment in cases of this sort was in an experimental stage. He said:

> "In this type of patient the outlook of treatment in my experience is very poor. I certainly cannot recollect at the moment any patient who would fall in this category whom I have successfully treated, nor have I ever seen any demonstration of such an individual, demonstrated as a cure."

The second psychiatrist called to give evidence agreed that the prisoner was a psychopathic personality, and that by reason of his lack of control of his sexual impulses was liable to inflict injury or pain on others.

11.

This prisoner was born in 1884. In 1953 he was convicted of (1) contributing to juvenile delinquency and (2) indecent assault on a male, and found to be a criminal sexual psychopath; he was sentenced to three years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1911 - sodomy - sentenced to 6 years' imprisonment.

1921 - gross indecency - sentenced to 2 years less 1 day imprisonment.

1926 - gross indecency - sentenced to 5 years' imprisonment.

1948 - gross indecency - sentenced to 4 years' imprisonment.

The records indicate that this prisoner has shown abnormal sexual tendencies for forty years. Police investigation revealed that he would endeavour to have himself placed in children's schools such as Salvation Army or service club orphanages. He would teach wood-carving, giving the appearance of a kindly old gentleman, interested only in helping the children with a hobby. He was so successful in this aspect of his work that he was given considerable publicity. In the course of his teaching he would select susceptible children on whom to practise his perversions, usually confining himself to young boys. After rubbing their private parts and having them do the same to him, he would take them to his bedroom and there perform further indecent acts. The prisoner was very plausible; by promising testamentary bequests he sometimes induced parents to permit their children to stay with him, for the ostensible purpose of helping him around the house.

The facts giving rise to the current sentence are:-

Statements of some fifteen boys were obtained during a period of several months of observation and efforts to get evidence to corroborate their stories. From previous convictions the prisoner had learned to be careful not to behave improperly in the presence of anyone who might give corroborative evidence. His practice was to endeavour to instil into his victim's mind a desire for improper relations with males only, telling the boys that sexual relations with females brought on diseases. At the trial he acknowledged his homosexual practices, and later composed and presented to a doctor at a provincial mental hospital a thesis on sexual abnormalities, in which he admitted that his only sexual desires were for boys, and stated that treatment by doctors was utterly useless. At the trial the medical evidence disclosed that the prisoner was a man of superior intelligence, showing no evidence of psychosis, but suffering from a deviated instinct with respect to his sexual urge. The doctors giving evidence were in agreement that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code.

12.

This prisoner was born in 1897. In 1953 he was convicted of indecent assault and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1915 - vagrancy - sentenced to 6 months' imprisonment.

1915 - shopbreaking and receiving - sentenced to 12 months' imprisonment.

1920 - theft - fined $10.00 or 7 days.

1930 - obstructing police - fined $25.00 and costs or 30 days.

1939 - selling lottery ticket - fined $25.00 and costs or 1 month.

The facts giving rise to the current sentence are:-

Late on a summer evening the prisoner accosted an eight-year-old girl and asked her to go for a drive around the block in his automobile. The girl entered the vehicle, which did not stop until they had reached a dark and lonely spot outside the city. On stopping the prisoner asked the girl to remove her underclothes; when she complied with this request he removed his trousers and tried to have sexual intercourse with her. Following this act he put his penis in the girl's mouth. The prisoner then drove the victim some distance farther outside the city and put her out of the automobile. She made her way to a place of business, where she requested the proprietor to get in touch with her parents. Examination showed that the girl had suffered some injury to her private parts.

The evidence of the psychiatrists showed that the prisoner belonged to that class of persons who, because of impotency, have sadistic tendencies and seek sexual gratification by abnormal practices.

13.

This prisoner was born in 1918. In 1953 he was convicted of rape and indecent assault and was found to be a criminal sexual psychopath; he was sentenced to six years' imprisonment and two years' imprisonment definite concurrent sentences, to be followed by an indeterminate period. Previous recorded conviction and sentence are:

1949 - rape (involving a 12-year-old girl) - sentenced to 5 years' imprisonment and 10 lashes.

On the evidence given in support of the first charge, the prisoner was shown to have invited a fourteen-year-old girl to come to a house to help him clean it. After he had taken her in a light truck to the house and showed it to her, he took her home. Later in the afternoon the prisoner came back for the girl and her younger sister, and taking them with him, ostensibly to clean the house, he drove out on a country road, where his truck became stuck in the mud. He and the two girls started walking back toward town; on reaching a bushy area

near the road the prisoner, threatening the older child with a knife and telling her to do as she was told, took both children into a thick bush, where he made the younger child lie face downward on the ground, and ordered her under threats to stay in that position. He then took off the older child's undergarments and, threatening her with violence if she made an outcry, raped her. The prisoner then forced the older child to take two one-dollar bills, again threatening her with violence if she told anyone. He thereupon walked away to get the services of a tractor, and the girls walked home. Four days later, in the early hours of the morning, a prowler was heard in the vicinity of the girls' home, and the older child, fearing that it might be the prisoner returning to carry out his threats of doing her further harm, became frightened and told her mother what had happened. The matter was then brought to the attention of the police.

The other charge involved an eleven-year-old girl, the daughter of parents who played in an orchestra of which the prisoner was a member. At about four o'clock in the afternoon the girl was swimming in a local creek with a number of children. The prisoner came to the swimming pool and asked the child to come out, as he wanted to see her. He thereupon told her that he wanted her to deliver some laundry for him. She consented to do this, and walked with the prisoner toward his place of employment. After going a short distance, he asked the child to go into the bush with him. When she refused, the prisoner covered her mouth with one hand and forced her into some nearby shrubbery. He then undressed her completely, and when she screamed he threatened her with violence to keep her quiet. Then, forcing her to the ground, he committed the indecent assault of which he was convicted. After completion of the act the prisoner threatened to "come and get her" if the child told her parents, and then, forcing her to take a dollar bill, persuaded her to deliver some laundry for him. The child reported the incident to her mother as soon as she arrived home, and her mother in turn reported it to the police.

The medical evidence showed that the prisoner was mentally competent apart from his sexual deviations, but was a criminal sexual psychopath as that term is used in the Criminal Code. The pattern followed by the prisoner in committing the two offences for which he is serving sentences is similar to that followed by him in the commission of the offence in 1949.

14.

This prisoner was born in 1919. In 1953 he was convicted of attempted rape and found to be a criminal sexual psychopath; he was sentenced to three years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1938 - breaking and entering and committing theft (2 charges) - sentenced to 3 months' imprisonment each charge concurrent.

1938 - (1) theft (2 charges).

(2) bringing stolen goods into Canada - sentenced to 2 years' imprisonment on each charge concurrent.

1941 - fraudulently obtaining food and lodging - suspended sentence, bound over to keep the peace, after all board and costs settled.

1942 - robbery with violence - sentenced to 1 year's imprisonment.

1944 - indecent assault on a female (under 14 years) - sentenced to 2 years' imprisonment.

1948 - indecent assault on female under 14 years - sentenced to 2 years' imprisonment.

The facts giving rise to the current sentence are:-

On the evening in question a twelve-year-old child on her way home from a Christmas party to which she had been refused admission because she had no ticket, was accosted by the prisoner, who was driving a panel truck. He asked her if she had a ticket, and when she replied that she had not, he said he would get her one, and invited her to get into the truck, telling her that he was just going to buy some candy for the party. The child hesitated, but, relying on the prisoner's assurance that he was just going around the corner to obtain the candy, she got into the truck. Instead of going around the corner the prisoner continued to drive. The child became frightened, but the prisoner reassured her by telling her he had just a little farther to go. He eventually turned off the highway into a dark, deserted park about twelve miles from where the child had entered the truck; there his truck became stuck in the mud. The prisoner ordered the child to remain behind a refreshment booth while he went for help. The child was too frightened to obey, and followed him up the hill to a sideroad, at which point the prisoner gave her a flashlight and ordered her to go back. When she refused, he finally consented to let her walk some distance behind him, and on one occasion when a motor car approached he hid himself and the child in the bushes on the roadside until it had

passed. With the child still a distance behind him, he arrived at a gasoline station, where he inquired for a tow truck. Not being able to secure one, he continued on to a taxicab office, where he telephoned to a friend to come and pull out his truck. The prisoner then made his way back to the park with the girl following. On arriving there, he ordered her to get into the back of the truck, warned her not to make any noise, and locked the doors. After some time his friend arrived with a light truck, but was unable to free the prisoner's truck. Leaving the child locked in the truck, the prisoner went for further assistance and secured the services of a truck driver, who pulled the truck out and then drove away, leaving the prisoner, who, with the child locked in the back of the truck, drove out of the park to a sideroad, where he stopped and allowed the girl to get into the front seat with him. He drove for some distance to a lonely sideroad, where, stopping, he took out his penis and ordered the child to put her hand on it. By this time the child was terrified. Pulling off her underpants and pushing her down on the seat, he got on top of her and put his penis between her legs, causing the child to cry out in pain. Telling her to keep quiet, the prisoner raised his hand as though to hit her. As she continued to cry, he applied his penis to her mouth, saying, "All right, if you don't want it that way, you will do it the other way." The prisoner then wiped himself off and wiped the child's mouth with a handkerchief. After the child's clothing was put on he drove her to the eastern suburbs of the city and let her out of the truck on a side street, giving her nineteen cents and warning her not to tell her mother. The child reached home after midnight and immediately related the facts to her mother. From her detailed description of the man and the truck the prisoner was identified.

The evidence of the psychiatrists did not indicate any definite mental disease, but showed that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code. In condonation of the offence it was contended that the prisoner had been drinking. The learned trial judge held that consumption of alcohol was not the underlying cause of the prisoner's lack of power to control his sexual impulses.

15.

This prisoner was born in 1910. In 1953 he was convicted of rape and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1932 - common assault	- sentenced to 1 month's imprisonment.

1933 - carnal knowledge	- suspended sentence on bond.
1934 - taking automobile without owner's consent	- sentence confined to time already spent in jail.
1936 - rape	- sentenced to 5 years' imprisonment to date from June 27, 1936.
1943 - (1) carnal knowledge	- sentenced to 5 years' imprisonment to date from March 18, 1943.
(2) attempt rape	- sentenced to 3 years' imprisonment concurrent.

The facts giving rise to the current sentence are:-

The complainant was an eighteen-year-old girl who, on returning home from her place of employment at an early hour on a dark, foggy morning, was grabbed from behind and thrown to the ground. Her assailant held her by the throat and threatened to harm her if she called out. He then allowed her to get up and, holding her arms behind her, made her start to walk, again threatening to harm her if she cried out. After they had walked in this manner for about eight-tenths of a mile the complainant broke loose and started to run away. She had run only a few steps when she stumbled and fell, and the prisoner, catching hold of her again, forced her to walk another block to some railway tracks and along the railway tracks two blocks, when he threw her on the ground, tore off her underclothes and has sexual intercourse with her. After this he showed her the way home, as she was lost. The complainant gave the police a description of the man and the clothing he was wearing. No report of the incident was published, and the prisoner, apparently believing that the complainant had not reported the attack to the police, attempted to communicate with her. He called at her place of employment, but did not see her because she had changed shifts. Later on he called at her home, on the pretext of selling potatoes. The occupant of the home observed that the man answered the description given by the complainant. The police were notified, and the prisoner was arrested. At the first trial the jury disagreed; at the second trial the jury found the prisoner guilty. A new trial was granted by the Court of Appeal, and on the third trial the prisoner was found guilty.

Neither of the psychiatrists who gave evidence could find that the prisoner was suffering from any definite mental illness, but both were convinced that he was a criminal sexual psychopath as that term is used in the Criminal Code.

16.

This prisoner was born in 1932. In 1954 he was convicted on a plea of guilty of an attempt to have carnal knowledge of a girl under fourteen years of age, and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded conviction and sentence are:

1953 - indecent assault on a female
(a six-year-old girl) - sentenced to 6 months' imprisonment.

The facts giving rise to the current sentence are:-

On the day of the offence the prisoner accosted a three-and-a-half-year-old girl on the street and arranged to meet her behind a nearby house. They walked separately to the place assigned, where, taking out his penis, he told the child that he was going to put it into her. Upon catching sight of the girl's brother and a woman watching from a distance, he told the child to go home. Upon appearing before the magistrate the prisoner at his own request was committed to a mental hospital. Two months later he appeared before the magistrate for sentence.

The evidence of the psychiatrists showed that the prisoner was a mentally deficient person. One of the psychiatrists said that the prisoner's answers disclosed

> ". . . that he might continue to behave in the same way . . . that he spoke of his acts without any concern and at times he almost bragged about what he had done without any feeling that he might stop and that he would continue to do so and had no hope of controlling himself."

17.

This prisoner was born in 1910. In 1954 he pleaded guilty to two charges, (1) an attempt to have carnal knowledge of a girl under fourteen and (2) indecent assault on a female, and was found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate on one charge and four months' imprisonment determinate on the other charge, the sentences to run concurrently, to be followed by an indeterminate period.

The record does not disclose that the prisoner had any previous convictions.

The facts giving rise to the current sentence showed a pattern of conduct. The mother of a four-year-old girl complained to the police that the child had been molested by the prisoner. The prisoner had taken the girl with her five-year-old brother for a drive around the town in his truck, eventually taking the girl to some bushes, where he felt around her private parts while her brother waited on the road. The child was subsequently examined by a doctor, who reported that there had been no penetration, although there was slight redness and discharge which could have been caused by irritation. The prisoner upon being questioned by the police admitted taking the children for a ride in his truck, but asserted that he had only chased a rabbit in the bushes with the girl. He was given a severe warning and told to keep away from the children. It was felt at the time that there was not sufficient corroborative evidence to warrant laying a charge.

About three months later the mother of a seven-year-old girl reported that her daughter had told her that a man by the name of the prisoner had had intercourse with her. The child was examined by a doctor, who reported that there had been a moderate degree of mechanical irritation of the external genitals, but that in his opinion it would appear that actual entrance and intercourse by an adult would have been physically impossible and had not occurred. Police officers interviewed another ten-year-old girl with reference to her relations with the prisoner. She stated that toward the end of the previous month in her back yard the prisoner had offered her a quarter to go with him to his apartment. This she had refused to do. Another ten-year-old girl said that the prisoner had come into the yard at her home and asked her to go with him for a quarter, that he had attempted to put his hand up her dress, and that she had slapped him on the head. Another girl, aged eleven, stated that on different occasions before these events the prisoner had come into the yard of her home and placed his hand on her legs.

The psychiatrists who gave evidence were in agreement that the prisoner's actions showed a pattern of sexual misconduct that indicated that he gained sexual satisfaction from molesting young children, and was a criminal sexual psychopath as that term is used in the Criminal Code.

18.

This prisoner was born in 1935. In 1953 he was convicted of contributing to juvenile delinquency (an indecent assault on a juvenile female) and attempted rape, and was found to be a criminal sexual psychopath; he was sentenced to six months' imprisonment determinate for contributing to juvenile delinquency and to 5 years' imprisonment

determinate for attempted rape, to be followed by an indeterminate period.

The facts giving rise to the current sentence are:-

At three o'clock one afternoon an eleven-year-old girl was accosted by the prisoner, who, upon the pretence of having lost his directions, offered to pay the child money if she would guide him to a certain street. Upon approaching a bushy area he seized her by the arm, forcing her into the brush, and there threatened to kill her if she resisted his advances. After removing his trousers he forced the child to remove her underclothes and attempted intercourse with her in a standing position. The girl was then forced to remove all her clothes, and several more attacks were made upon her in both standing and lying positions. According to the girl's evidence, this act was repeated four or five times over a period of three quarters of an hour. The evidence did not indicate that penetration had been made. At one stage during the episode the prisoner, having masturbated, forced the child by threats of violence to lick spermatozoa from his penis. Two other teen-age girls, noticing the accused and the girl in the bushes, told a fifteen-year-old boy, upon whose approach the prisoner took flight. Acting on previous knowledge of the prisoner, the police arrested him.

In the course of the trial the prisoner admitted having committed in the preceding three or four months three other acts of a similar nature with young girls. The admissions were: (1) he forced a ten-year-old girl to put her mouth on his penis, (2) he removed underclothes of a three-and-a-half-year-old girl and molested her, and (3) he removed clothes of a six-year-old girl and molested her. The records show that the previous conviction of contributing to juvenile delinquency involved a six-year-old girl.

The evidence showed that in all cases the prisoner would take his victims into nearby bushes before molesting them. If the children were of an understanding age the prisoner's practice was to use the pretence of loss of direction, and by asking them to accompany him to a designated street he would lure them to a secluded spot. The victims were usually subjected to foul language in the course of the assaults. A defence was offered that the accused had been intoxicated at the time of the assault giving rise to the trial, but the evidence did not support this contention. The prisoner was known to indulge freely in liquor, although only eighteen years of age.

One psychiatrist giving evidence stated that on intelligence tests the prisoner was above the last level of borderline intelligence, and "with his borderline intelligence, I feel that he is not in a position to handle his normal sex drive instinct." It seemed to the doctor there

was a definite likelihood of the prisoner's pattern of conduct continuing. The doctor's evidence indicates the difficulty caused in these cases by the use of the word "psychopath". He said:

> "On the other hand, he does not come into the category of a sexual psychopath in the ordinary term, although we know that in these borderline cases, this borderline group, there is a higher percentage of sexual psychopaths than there are in those of normal intelligence. Therefore, it is difficult to place him under this Section of the Code."

It is evident that the doctor was directing his mind to the word "psychopath" as it is used in a medical sense rather than to the legal sense in which the word is defined in the Criminal Code. The other psychiatrist was of the opinion that the prisoner should be classified as a criminal sexual psychopath as that term is used in the Criminal Code. He agreed that the prisoner lacked control of his sexual impulses and would be likely to attack or otherwise inflict injury, pain or other evil on another person.

The following extract from the trial judge's statement before passing sentence is relevant to our inquiry.

> "Now, I am very much concerned to learn from Dr. Campbell that there is apparently little in the way of prescribed treatment for persons who are found to be criminal sexual psychopaths. I understand that persons who are criminal sexual psychopaths, as that expression is understood by psychiatrists, do not respond very often to treatment. There is in this case, however, some hope that this boy, if given proper training by skilled persons, will respond to treatment and will be able to take his place in society. Whether that hope will be justified by the response which he makes to the treatment, only the future can tell, but it is indispensable, I think, in the interests of society and in the interests of this young man, that he should have that opportunity.
>
> It was, therefore, with considerable alarm that I listened to Dr. Campbell's evidence as to lack of suitable treatment and training in the penitentiary for this young man. I recommend in the strongest way that the responsible authorities provide proper psychiatric treatment for this young man, and treatment by trained psychologists, if that is necessary, to give him every opportunity of responding to it and taking his place in society."

19.

This prisoner was born in 1917. In 1955 he was convicted of indecent assault and found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1940 - false pretences - sentenced to 3 months' imprisonment.

1944 - breach of the Juvenile Delinquents Act (seduction of a girl between 16 and 18 years of age) - sentenced to 3 months' imprisonment.

1945 - carnal knowledge - sentenced to five years' imprisonment.

1952 - indecent assault on a female - sentenced to 6 months' imprisonment.

The facts giving rise to the current sentence are:-

The prisoner molested two little girls. He enticed one eight-year-old girl to his rooms by promising to give her comic books and to show her how to dance; there he committed the indecent assault of which he was convicted. The records show that on several occasions another small girl was indecently treated by him in his room.

The evidence of the psychiatrists showed that the prisoner was living with his wife and claimed to have normal marital relationships and a happy adjustment in his home, that he denied excessive use of alcohol, and that as measured by his school record and by an intelligence test he was a man of average intelligence. The psychiatrists' evidence indicated that previously he had been found guilty of sexual offences on girls ranging from ten to sixteen or eighteen years of age, the last offence having been committed on a ten-year-old girl. Both psychiatrists found him to be a criminal sexual psychopath as that term is used in the Criminal Code. One of the psychiatrists said:

> "In my opinion there is, my lord, and I believe an essential part of it is his inability to learn by experience, in other words, no amount of punishment can be devised that would change that man's behaviour."

20.

This prisoner, a school-teacher, was born in 1928. In 1954 he was convicted of indecent assault (one charge), making obscene pictures (one charge), buggery (eight charges) and gross indecency (twenty-nine charges), and found to be a criminal sexual psychopath; he was sentenced to a total of seven years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded conviction and sentence are:

1951 - gross indecency - sentenced to a fine of $200 or 4 months' imprisonment.

The facts giving rise to the current sentence are:

Police officers about to search the house occupied by the prisoner looked through a window and observed the prisoner developing and enlarging pictures under a very dim light. A number of negatives of photographs were seen lying on the bed. When the officers searched the room they found a number of negatives of photographs of boys in the nude and two albums containing similar pictures. Other photographs, letters, diaries, albums and cameras were seized. Some photographs of nude juveniles committing indecent acts were found in a book entitled "Golden Legends". The prisoner, upon being charged with making obscene photographs of nude boys, signed a written statement admitting taking the pictures in question and stating that they were posed; he contended that they were just "humourous shots". The prisoner apparently gave the boys involved with him good marks in school to which they were not entitled, and sometimes punished them, explaining to them that he did not want to be suspected of being too friendly with them. The boys were told by the prisoner that if they informed on him they would get the same punishment as he would. As a consequence of information received and the statement made, a number of boys at the school where the prisoner taught were interviewed and made statements. The diaries and letters found in the room indicated that the prisoner had been carrying on the same perversions during the period he was serving in the Air Force and while attending Normal School, and that in addition he was carrying on correspondence with at least two school-teachers with similar habits.

One of the psychiatrists said:

> "I came to the conclusion that this man is constantly sizing up and observing all males, whom he sees as suitable candidates for his attention, and that he indulges in these practices whenever the opportunity is presented, but that he exercises some caution in making his advances; but his inhibitions are very,

very much less than normal and, on occasions, he does not use any sound judgment and probably exercises, or gives very little thought to the possible consequences of his acts."

A second psychiatrist expressed the view that there was a consistent pattern of the homosexual in the prisoner's behaviour which appeared to be firmly established, and that he had an inability to adapt himself to society's ideas of right and wrong, with little thought of the consequences either to himself or other people involved.

21.

This prisoner was born in 1909. In 1955 he was convicted of gross indecency and found to be a criminal sexual psychopath; he was sentenced to five years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1938 - indecent assault on male - sentenced to 6 months' imprisonment and $150 and costs or 6 months and 1 year indefinite.

1941 - indecent assault of male person - sentenced to 5 years' imprisonment.

1949 - contributing to juvenile delinquency - sentenced to 2 years' imprisonment and fined $500 or 6 months.

1953 - breach of Juvenile Delinquents Act (indecent assault on male juveniles) - sentenced to 2 years' imprisonment.

The facts giving rise to the current sentence are:

The prisoner accosted a fifteen-year-old boy at a bus terminal and invited the boy to his room in a hotel, where the prisoner committed fellatio. On arraignment the prisoner pleaded guilty to a charge of gross indecency. Previous convictions involved indecent acts with juveniles. The behaviour of the prisoner, following a consistent pattern, was to wait for an opportunity to accost boys on the street, and after inviting them to attend a theatre or to have a meal with him, under promise of money to take them to his room and there practice his sexual perversions.

- One psychiatrist, after stating that the prisoner was a confirmed homosexual, said:

> "It is my opinion that unless these people are recognized early and they receive the benefits of psychological guidance, there is very little hope of changing them; and when they are what I am convinced this man is - a confirmed homosexual - miracles can happen, but I don't look for them."

The other psychiatrist said that the prisoner apparently was dominated by a desire for sexual relations with boys only, having no desire for sexual relations with men or women. Both doctors agreed that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code. The record indicates that this prisoner is below average intelligence.

22.

This prisoner was born in 1926. In 1956 he was convicted of rape and found to be a criminal sexual psychopath; he was sentenced to three years' imprisonment determinate, to be followed by an indeterminate period. Previous recorded convictions and sentences are:

1941 - common assault - sentenced to 30 days' imprisonment.

1942 - breach of Probation Act - fined $10.00 and costs or 10 days.

1946 - driving while intoxicated - sentenced to 15 days' imprisonment.

1952 - (1) assault; (2) damage to property - fined $10.00 and damages or 30 days consecutive to 1.

1952 - assault occasioning actual bodily harm - sentenced to 18 months' imprisonment.

1954 - indecent assault on a female - fined $30.00 and costs or 2 months' imprisonment.

The facts giving rise to the current sentence are:-

The prisoner observed the complainant, a fourteen-year-old girl, walking on a nearly deserted street. He drove past her, parked his motor-car and concealed himself in a ditch, waiting for the girl to pass. When she passed he seized her from behind and threatened her with violence if she would not keep quiet. Tearing off her brassiere, he gagged her with it and tied her hands with her shoelaces. He then forced her into his motor-car and drove to a nearby deserted dump, where he undressed himself, removed all of the complainant's clothing and attempted to have intercourse with her. When she refused he forced his penis into her mouth, after which he finally accomplished sexual intercourse with her by force. He then took her into his motor-car again, pretending that he was going to let her go. After choking her he threw her into some nearby water, from which she escaped after the prisoner had fled.

Both psychiatrists who gave evidence were of the opinion that the prisoner was a criminal sexual psychopath as that term is used in the Criminal Code.

23.

This prisoner was born in 1938. In 1956 he was convicted of attempted sexual intercourse with a female under fourteen and assault occasioning bodily harm, and was found to be a criminal sexual psychopath; he was sentenced to two years' imprisonment determinate, to be followed by an indeterminate period. He had no previous record of convictions.

The facts giving rise to the current sentence are:

On an afternoon in August of 1955 two girls of the respective ages of seven and nine years were playing in a park in a large city, in company with the brother of one of the girls and some other boys. Eventually the boys became separated from the girls, and the girls started down a path in the direction in which the boys had gone. Before they had gone far they were accosted by the prisoner, who asked them where they were going. They replied that they were going to find the younger girl's brother, and he told them that he knew where the boys were. He engaged in some conversation with the children, and lifted them up on to a wall. During the conversation he made a comment about the age of the children. Following this the younger child ran up a path in the direction of a building in the park. The prisoner caught hold of her, and she walked along with him down a path in the direction in which her brother had gone. Some time later the prisoner and the little girl were seen by an employee of the park who was in charge of an area reached by the path they had followed. The children asked for a drink of water, which was given to them. The older girl returned home and told the

younger girl's parents what had happened. Nothing more was heard or seen of the prisoner and the younger girl until police officers, after wide search instigated by her parents, found them in the early hours of the following morning sleeping under the end of a bridge about a mile from where they had been last seen. At that time the little girl's underpants were down to her knees and she was lying on her stomach. Upon being awakened, the girl asked to be taken home, and the prisoner, upon being asked what he was doing there, replied, "Nothing," and said he was sorry he had kept the girl out. The child said that the prisoner had been hitting her; to this he made no reply.

The girl was examined by a doctor within a short time after she had been found by the police officers, and the doctor testified that she was at that time suffering from multiple bruises on the lower part of her back and the upper part of her hips, bruises and scratches on both legs and a bruise on the left eye, and that the entrance to the vagina was red and raw but the hymen was intact and not perforated. There were teeth-marks on the right shoulder. The bruises, which appeared to have been made by something in the nature of a belt or a piece of wood, were fresh and extremely extensive, covering every part of the child's body, but left no permanent physical injury. In the doctor's opinion, the condition of the child's private parts was consistent with a male having attempted to have sexual intercourse with her. The child was also examined on the following morning by another doctor, whose testimony confirmed these findings. Examination showed that the child's clothing was stained with blood and semen, and the prisoner's clothing with semen. On the day following the prisoner's arrest he was taken by the police officers over the path he had travelled with the child, and he pointed out the place where he had taken the child's underpants off and struck her with a stick. He said that he had been "fooling around" with the girl and had been on top of her.

Following conviction the statutory procedure was taken to have the prisoner declared to be a criminal sexual psychopath as that term is used in the Criminal Code. The evidence given at this hearing showed that one day during the summer of the year in which the prisoner was convicted he accosted two brothers aged respectively seven and eight years who were on their way to play by some water, walked with them some distance toward the water and then took them into some bushes, where he took down their pants and beat them severely with his hands and his belt. In addition he put his hands on the older boy's private parts. The mother of the boys testified that when they came home she found on examination that they were black and blue with bruises, some of which showed the imprint of the belt. A police constable who examined the boys said that in his ten years' experience in the police force he had not seen anything so sadistic on children of that age.

On another day in the same summer the prisoner accosted a ten-year-old boy on the street and took him into a lane and ordered him to take off his jeans. On seeing someone coming, he took the boy into a bush and ordered him to take off all his clothes. The boy said that there the prisoner beat him with a stick or sticks, slapped him and stuck a stick in his rectum.

Two very experienced psychiatrists gave evidence at the trial. The first testified that he had examined the prisoner on two occasions, and was convinced that he was abnormal in his sexual impulses and obtained sexual gratification from inflicting injury on others, particularly on children, whether boys or girls. The doctor's opinion was that when adult males resort to young children to obtain their sexual gratification, especially when they inflict injury, there is always danger of fatal consequences. In the doctor's opinion the prisoner would not be classified as a mental defective, and was not suffering from any mental illness. His view was that imprisonment would not act as a deterrent, and that it was reasonably probable that the prisoner would not improve but would become a greater menace.

The other psychiatrist had the prisoner as a patient in a psychiatric hospital for observation for five weeks after his arrest. During this time he was examined by the psychiatrist several times and by other members of the hospital staff. During these examinations the prisoner told of a number of instances of obtaining sexual gratification from striking young children, and said he had had such experiences since he was fourteen years of age. This psychiatrist testified that the prisoner was of a mental age of twelve years, was suffering from a form of sexual deviation known as pedophilia (a sexual attraction to young children), and in addition showed a sexual deviation known as sadism. The doctor agreed that the prisoner derived sexual gratification from inflicting injury on others, particularly on young children. He said there was a possibility that there might be improvement in the prisoner's condition in a number of years, but treatment could be carried on only in an institution.

APPENDIX III

THE NEW JERSEY LAW

CHAPTER 207, P.L. 1950, Senate No. 193

An Act concerning the disposition of persons convicted of certain enumerated sex crimes and providing for sentence, incarceration and treatment, repealing chapter twenty of the laws of one thousand nine hundred and forty-nine, and supplementing chapter one hundred ninety-two of Title 2 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey.

1. Whenever a person is convicted of the offense of rape, carnal abuse, sodomy or impairing the morals of a minor or of an attempt to commit any of the aforementioned offenses, the judge shall order the commitment of such person to the Diagnostic Center for a period not to exceed sixty days. While confined in the said Diagnostic Center, such person shall be given a complete physical and mental examination.

2. Upon completion of the physical and mental examination of such person, but in no event later than sixty days after the date of the order of commitment, a written report of the results thereof shall be sent to the court.

3. If it shall appear from said report that it has been determined through clinical findings that the offender's conduct was characterized by

   (a) a pattern of repetitive, compulsive behavior; and

   (b) either violence; or

   (c) an age disparity from which it shall appear that the victim was under the age of fifteen years and the offender is an adult aggressor; it shall be the duty of the court, upon recommendation of the Diagnostic Center, to

submit the offender to a program of specialized treatment for his mental and physical aberrations.

4. The disposition to be made by the court of such person, upon written report and recommendation of the Diagnostic Center, shall include one or more of the following measures;

(a) The court may place such person on probation with the requirement, as a condition of said probation, that he receive out-patient psychiatric treatment in the manner to be prescribed in each individual case.

(b) Such person may be committed to an institution to be designated by the Commissioner of Institutions and Agencies for treatment and upon release shall be subject to parole supervision.

In the event that the court shall order a commitment of the person as provided in this section, such order of commitment shall not specify a minimum period of detention, but in no event shall the person be confined or subject to parole supervision for a period of time greater than that provided by law for the crime of which such person was convicted.

5. The Commissioner of the Department of Institutions and Agencies, upon commitment of such person, shall thereupon arrange for his treatment in one of the institutions under the jurisdiction of the department which, in the judgment of the commissioner, is best suited to care for the needs of such person. The commissioner, in his discretion, is hereby authorized and empowered to arrange for the transfer of such person to or from any institution within the jurisdiction of the department for the purpose of providing for the needs and requirements of such person according to the individual circumstances of the case.

6. Any person committed to confinement, as provided for in section four hereof, may be released under parole supervision when it shall appear to the satisfaction of the commissioner, after recommendation by a special classification review board

appointed by the State Board of Control of Institutions and Agencies, that such person is capable of making an acceptable social adjustment in the community. It shall be the duty of the chief executive officer of any institution wherein such a person is confined to report in writing at least semiannually to the commissioner concerning the physical and mental condition of such person with a recommendation as to his continued confinement or consideration for release on parole by said special committee. The State Board of Control of Institutions and Agencies is hereby authorized and empowered to promulgate rules and regulations for the parole, revocation thereof for cause, and the proper supervision on parole of said persons when released from confinement.

7. If it shall appear from the report of such examination made of such person that the offender's conduct was not characterized by a pattern of repetitive, compulsive behavior and neither violence nor age disparity was indicated, as provided for in section three hereof, the court shall impose sentence on such person in the manner provided by law.

8. No statute relating to remission of sentence by way of commutation time for good behavior and for work performed shall apply to any such person committed pursuant to section four hereof, but provisions may be made for monetary compensation in amount to be prescribed by the State Board of Control of Institutions and Agencies, in lieu of remission of sentence for work performed.

9. The commissioner shall determine and fix the per capita cost of examining and maintaining any person committed to the Diagnostic Center and shall notify each county treasurer monthly of the number of patients committed from the several counties, and upon certification by the commissioner of the amount due, the board of chosen freeholders of the county shall make provision for payment of one-half of the cost thereof to the Diagnostic Center, the remaining one-half to be borne by the State.

10. Except as otherwise provided herein, the provisions of Title 30, Revised Statutes, and the rules and regulations promulgated by the State Board of Control pursuant thereto regarding supervision of persons released on parole and revocation of parole shall apply to any such person released on parole as provided herein.

11. Any person, believing himself to be suffering from a physical or mental condition which may result in sexual trends dangerous to the welfare of the public, may make application, upon forms to be prescribed by the Department of Institutions and Agencies, for voluntary admission to the Diagnostic Center for the purpose of receiving diagnosis therein. When such application is approved and such person is admitted, he shall be given a complete physical and mental examination. If it shall appear, as a result of such examination, that such person does in fact suffer from a physical or mental condition which may result in sexual trends of the type that might prove dangerous to the welfare of the general public, this fact shall be certified to such person and to the Commissioner of Institutions and Agencies. If such person thereupon indicates a desire to receive treatment for such condition, he may make application for voluntary admission to an institution to be designated by the commissioner and upon approval of such application he may be received in the designated institution and shall there receive the treatment indicated by the circumstances in the individual case. If such person is possessed of sufficient financial ability to defray all or a portion of the cost of his care and treatment, he shall be required so to do. If such person shall desire to leave such institution and discontinue the treatments being received by him, he shall be required to give five days' notice, in writing, to the chief executive officer of the institution of his intention to leave.

12. "An act concerning the sentencing of persons convicted of certain crime and providing for the place of their incarceration, and supplementing chapter one hundred ninety-two of Title 2 of the Revised Statutes," approved April eleventh, one thousand nine hundred and forty-nine, is repealed.

13. This act shall take effect immediately. (June 8, 1950).

(Signed by Governor Driscoll 21 April 1951. Now Chapter 44, P.L. 1951).

SENATE, NO. 108

(P.L. 1950, chap. 207.)

STATE OF NEW JERSEY

Introduced February 12, 1951

by Mr. CAFIERO

Referred to Committee on Institutions and Agencies

An Act to amend "An act concerning the disposition of persons convicted of certain enumerated sex crimes and providing for sentence, incarceration and treatment, repealing chapter twenty of the laws of one thousand nine hundred and forty-nine, and supplementing chapter one hundred ninety-two of Title 2 of the Revised Statutes," approved June eighth, one thousand nine hundred and fifty (P.L. 1950, c. 207).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section one of the act of which this act is amendatory is amended to read as follows:

"1. Whenever a person is convicted of the offense of rape, carnal abuse, sodomy, open lewdness, indecent exposure or impairing the morals of a minor or of an attempt to commit any of the afore-mentioned offenses, the judge shall order the commitment of such person to the Diagnostic Center for a period not to exceed sixty days. While confined in the said Diagnostic Center, such person shall be given a complete physical and mental examination."

2. Section six of the act of which this act is amendatory is amended to read as follows:

"6. Any person committed to confinement, as provided for in section four hereof, may be released under parole supervision when it shall appear to the satisfaction of the (commissioner) State Parole Board, after recommendation by a special classification review board appointed by the State Board of Control of Institutions and Agencies, that such person is capable of making an acceptable social adjustment in the community. It shall be the duty of the chief executive officer of any institution wherein such a person is confined to report in writing at least semi-annually to the commissioner concerning the physical and mental condition of such person with a recommendation as to his continued confinement or consideration for release on parole (by said special committee). The State Board of Control of Institutions and Agencies is hereby authorized and empowered to promulgate rules and regulations for the parole, revocation thereof for cause, and the proper supervision on parole of said persons when released from confinement."

3. This act shall take effect immediately.

APPENDIX IV

COMPARATIVE STUDY OF STATE LEGISLATION IN THE UNITED STATES RELATING TO CRIMINAL SEXUAL PSYCHOPATHS OR HABITUAL SEX OFFENDERS

The following information is the result of correspondence with the Attorneys General of all the states of the United States and a direct study of such legislation and extracts from legislation as were available.

ALABAMA

No reply.

ARIZONA

No specific legislation re sex psychopaths. But Arizona Revised Statutes Article 4 Sec. 13-1271 provides for registration with sheriff of county by any person convicted of a sex or related offence in any state - provides for full report, fingerprinting, change of address - failure to register is a misdemeanour.

ARKANSAS

No reply.

CALIFORNIA

Sexual Psychopath Act contained in Sec. 5500-5521 California Welfare and Institutions Code. Also Sec. 5600-5607 provides for commitment of mentally abnormal sex offenders. Sec. 5650-5653 authorizes research into sexual deviation and sex crimes. Refers to sexual psychopaths as one affected with mental disorder, psychopathic personality or marked departure from normal mentality in a form predisposing to commission of a sexual offence and in a degree constituting a menace to the health of others. Provides for application for hearing of person charged on basis of an affidavit - provision for jury trial on request - psychiatric examination and report - commitment to mental hospital - provides for review and release on certificate.

COLORADO

Colorado Revised Statutes 1950, Article 19, Sec. 39-19-1 provides that in cases of conviction of certain sex offences "if the district court is of the opinion that any such person if at large, constitutes a threat of bodily harm to members of the public, or is an habitual offender and mentally ill" the court may sentence person to state institution for indetermine term one day to life. Provides for psychiatric exam, hearing, commitment, review, etc.

CONNECTICUT

No special legislation.

DELAWARE

No special legislation.

DISTRICT OF COLUMBIA

Public Law 615 - Chap. 428 (1948) "The term 'sexual psychopath' means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such a lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of his desire." U.S. Attorney for D.C. to file statement of facts - provision for court hearing - right to counsel - examination by psychiatrists - jury on request - right to appeal - commitment to hospital - parole and discharge provisions.

FLORIDA

Chap. 29881 Laws of Florida 1955 Sections 917.04 et seq. re Criminal Sexual Psychopaths - Definition "Any person suffering from a mental disorder which mental disorder is coupled with criminal propensities to the commission of sex offenses, is hereby declared to be a criminal sexual psychopathic person". Procedure for petition, hearing, trial by jury, if requested, psychiatric evidence, committal to State Hospital, discharge, etc.

GEORGIA

No specific legislation dealing with sex psychopaths.

Statutes dealing with specific sex offences. Specific sections of Code dealing with taking "indecent liberties" with children under 16 years etc. Imprisonment. See Sections 26-1301a, 1302a, 1303a Code of Georgia.

IDAHO

No specific legislation at present - possible consideration by Legislature in 1957. Statutes dealing with specific sex offences. Specific section 18-6607 Idaho Code - penalty for lewd conduct with child under age of 16.

ILLINOIS

Illinois Revised Statutes 1955 Ch. 38 par. 820.01 to 825e. Now classed as sexually dangerous persons not sexual psychopaths.

INDIANA

Sexual Psychopathic Law - Burns' Indiana Statutes (1942 Repl. 1953 Supp.) Sections 9-3401, 9-3412. Refers to Criminal Sexual Psychopathic person, having mental disorder, not feeble-minded, criminal propensities to the commission of sex offences - conviction of sex offence - prosecuting attorney files petition - provision for psychiatric evidence - no jury trial - committed to Indiana Council for Mental Health - provisions for release, parole and discharge - after review.

IOWA

Chap. 121, 56th General Assembly 1955 provides full procedure for dealing with "criminal sexual psychopaths". Definition "All persons charged with a public offence, who are suffering from a mental disorder and are not a proper subject for the schools for the feeble-minded or for commitment as an insane person, having criminal propensities toward the commission of sex offences, and who may be considered dangerous to others, are hereby declared to be 'criminal sexual psychopaths'". Provides for petition by county attorney - may be on information of "any reputable person having knowledge" --- that the person charged is a criminal sexual psychopath - provides for optional jury trial - represented by counsel - psychiatric reports - commitment to State Hospital for the insane - treatment and examination at least once yearly - procedure for review by court.

KANSAS

No comprehensive statutes relative to criminal sexual psychopaths. Criminal Code provides specific punishment for specific offences. However Sections 62-1534 to 62-1537 provide generally that in the case of a conviction of a person for an offence against public morals or decency "as relating to crimes pertaining to sex, in which perversion or mental aberration, appears to be or is involved, or where the defendant appears to be mentally ill," the trial judge may refer the defendant to an appropriate state hospital for observation and treatment. This section was enacted in 1953 and has been used to a limited degree in some of the courts of the state.

KENTUCKY

No specific legislation re sex psychopaths or habitual sex offenders. Habitual Criminal provisions Kentucky R.S. 431.190. Statutory provisions relating to sex offences against minors KRS 435. 080. Provides life imprisonment or death penalty for rape of child under 12. Apparently severe penalties for specific sex offences.

LOUISIANA

No specific legislation re sex psychopaths or habitual sex offenders as such. General statutes dealing with sex offences. However Louisiana Habitual Offender Law, L.R.S. 1950 Title 15, Sect. 529.1 provides for sentencing of person who has previous convictions - presumably covers sex offences as well as others.

MAINE

No special provision re sex psychopaths. Statutes provide imprisonment for sex offences.

MARYLAND

No reply.

MASSACHUSETTS

Chap. 123a General Laws Massachusetts defines sex offender "any person who by a course of misconduct in sexual matters has evidenced a general lack of power to control his sexual impulses,

and who, as a result, is likely to attack or otherwise inflict injury, degradation, pain or other evil on the objects of his uncontrolled or uncontrollable desires." Provides for treatment centre under mental health department - upon conviction of sex offence court may commit to centre for period up to sixty days for examination and report back by at least two psychiatrists - if report indicates person to be sex offender as defined court imposes sentence prescribed for specific offence - commissioner of correction then transfers person to treatment centre but not for period longer than sentence on specific offence - provides for appeal from findings of report if on appeal court finds him not to be a sex offender then sentence carried out in jail or penitentiary - further provides for transfer of any person in custody if he appears to be a sex offender from custodial institute to treatment centre - warden to report to judge of superior court who commits him to centre - district attorney prepares petition based on report - speedy hearing before superior court - representation by counsel - proviso for jury trial - attendance of witnesses - evidence of past criminal record - provides for further court hearing six months prior to termination of sentence - may be ordered discharged at termination or required to receive out-patient treatment at centre after termination - further provides for further court hearing for person committed to centre after conviction once in every twelve months - conduct of hearing similar to original hearing - further provides for periodic examinations every year by department of mental health - further provides for treatment on voluntary application. (1954).

MICHIGAN

Act No. 25 Public Acts 1950 - Michigan "Any person who is suffering from a mental disorder and is not feeble-minded which mental disorder is coupled with criminal propensities to the commission of sex offenses is hereby declared to be a criminal sexual psychopathic person". On charge or conviction of criminal offence - provision for statements of facts to be filed - appointment of 3 psychiatrists - report based on personal examination - available to accused - accused required to answer on penalty of contempt of court - provision for jury at hearing - evidence as to offences of sex natures admissible - if found sexual psychopath then committed to state hospital - provision for discharge only after there are reasonable grounds to believe person has recovered from psychopathy - provision for trial of issue of recovery - jury on request - provision for yearly examination while in custody.

MINNESOTA

Minn. Stat. Sections 526.09, 526.10, 526.11 Laws 1939 Ch. 369 defines "psychopathic personality" - lays down procedure for determination of such condition, existence of condition does not constitute a defence - appears to apply not merely to sex offences but to all offences. "Psychopathic personality" means the existence in any person of such conditions of emotional instability, or impulsiveness of behaviour, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons.

MISSISSIPPI

No reply.

MISSOURI

Criminal Sexual Psychopath Act. R.S. Missouri 1949 Sec. 202.700 defines such person "All persons suffering from a mental disorder and not insane or feeble-minded, which mental disorder has existed for a period of not less than one year immediately prior to the filing of the petition provided for in section 202.710 coupled with criminal propensities to the commission of sex offenses, and who may be considered dangerous to others, are hereby declared to be 'criminal sexual psychopaths'." Provides for petition by county attorney, notice to the accused, psychiatric exam after propensities of being established prima facie, representation by counsel, right of appeal. Committal to state hospital - provisions for discharge.

MONTANA

No special legislation re sex psychopaths. Statutes for punishment of sex offences.

NEBRASKA

Legislative Bill 344 Approved May 11, 1949, provides procedure for judicial inquiry as to whether or not person is a criminal sexual psychopath - apparently whether such person is convicted or not of a sex offence. Sec. 4 recites "Whenever facts are presented to the country attorney which satisfy him that good cause

exists for judicial enquiry as to whether a person is a sexual psychopath". Definition "Sexual psychopath" shall mean a person who, by a habitual course of misconduct in sexual matters, has evidenced an utter lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of his uncontrolled and uncontrollable desires. Provides for hearing by court, option of jury trial, psychiatric exam. Appeal to Supreme Court - detention in State Mental Hospital etc.

NEVADA

No specific legislation. Such laws discussed by legislature but no necessity shown, due to sparse population.

NEW HAMPSHIRE

Laws of 1949, Chapter 314, as amended by Chap. 114 Laws of 1953 - where person is arrested and charged with certain sex offences - county solicitor files petition within 72 hours of arrest with superior court of county for inquiry as to mental condition. Refers to sexual psychopath as one irresponsible with respect to sexual matters and thereby dangerous to himself or other persons because of emotional instability, impulsiveness of behavior, lack of customary standards of good judgment or failure to appreciate consequences of act. No provision for jury - psychiatric evidence - commitment to mental hospital - provision for release after review.

NEW JERSEY

Department of Institutions and Agencies operates a Diagnostic Centre at Menlo Park. New Jersey Statutes 2A Sections 164--3 and following. Whenever person convicted of sex offence mandatory commitment to Diagnostic Centre for period not to exceed 60 days - complete physical and mental examination - written report sent to court - if report shows (a) pattern of repetitive compulsive behavior and (b) either violence or (c) an age disparity from which it shall appear that the victim was under the age of 15 years and the offender is an adult aggressor; - offender compelled to take treatment - may be placed on probation and required to take out-patient psychiatric treatment - or may be committed to designated institution for treatment and upon release subject to parole supervision - if committed court shall not specify minimum period of detention but person may not be confined for period greater than sentence prescribed for specific offence - if psychiatric report does not show foregoing elements in the offender's conduct then he shall be sentenced as prescribed by law for

specific offence - provisions in statute for release under parole supervision - no commutation for good behavior - provision for voluntary admission to Diagnostic Centre. (See Appendix III).

NEW MEXICO

No special legislation. Section 40-34-21 New Mexico Statutes Annotated 1953 provides for offences against minors under 18.

NEW YORK

Provisions relating to sex offences referred to in The Mental Hygiene Law, the Correction Law, the Penal Law, and the Code of Criminal Procedure. Provides in case of sex assault on child under 10 for imprisonment for ten years or imprisonment for indeterminate term one day to life - provides in case of sex assault on child ten to sixteen for imprisonment up to ten years or for imprisonment for indeterminate term where previous conviction of similar crime. Provides that where person has previous conviction for serious sex offence and where commits or attempts to commit a felony, upon conviction on such offence may be sentenced to indeterminate term from one day to life. Section 2189A of Penal Law provides that no person convicted of a crime punishable in the discretion of the court with imprisonment for an indeterminate term, having a minimum of one day and a maximum of his natural life, shall be sentenced until a psychiatric examination shall have been made of him and a complete written report thereof shall have been submitted to the court - provides procedure for examination by psychiatrists either in place of detention or court may order his commitment for reasonable period to institution or hospital.

NORTH CAROLINA

No specific legislation re sex psychopaths. Chap. 764 North Carolina Session Laws of 1955 is a statute relating to molestation of children. Statutes relating to specific sex offences provide for imprisonment on conviction.

NORTH DAKOTA

No special legislation - general statutes dealing with sex offences. General laws regarding the insane are used where applicable.

OHIO

Ohio Revised Code Sec. 2961.11, 2961.12, 2961.13 refers to procedure for habitual criminal - habitual sex offender comes into these sections.

OKLAHOMA

No special legislation re sex psychopaths. Imprisonment for sex crimes. Exception is Title 21 Sec. 23 O.S. 1951 passed in 1945 providing specifically for imprisonment of not less than one and not more than five for indecent assault or molestation of child under 14.

OREGON

No reply.

PENNSYLVANIA

Act of General Assembly No. 495, 1952, provides that person convicted of certain sex offences may "if the court is of the opinion that any such person, if at large, constitutes a threat of bodily harm to members of the public, or is a habitual offender or mentally ill" the court may sentence to a state institution for indeterminate term from one day to life. Must be psychiatric examination, reports etc. - provides for State Department of Welfare to take over. State Parole Board has responsibility for review after sentence.

RHODE ISLAND

No reply.

SOUTH CAROLINA

No special legislation re sex psychopaths. Statutes provide imprisonment for sex offences. Apparently some demand for special legislation.

SOUTH DAKOTA

No special legislation for habitual sex offenders or sex psychopaths. Chap. 27 Sess. Laws S.D. 1955 provides up to 20 years imprisonment for indecent molestation of child under 15 with proviso for judge to order mental exam after sentence. Provisions for treatment in State Hospital.

TENNESSEE

No special legislation. Various statutes for punishment of sex offences. Matter of sex offenders and sex deviates presently under study by Tennessee Legislative Council.

TEXAS

No special legislation re sex psychopaths or habitual sex offenders. Texas Penal Code provides imprisonment for sex offences - no reference to treatment.

UTAH

Penal Code Utah 1953 provides imprisonment for specific sex offences. Chap. 49 Title 77 Penal Code provides for mental exam for convicted offender for specific sex offences, including incest, before sentence. Two psychiatrists appointed by judge - written report to him within 60 days. If no "abnormal mental illness" which resulted in the commission of the sex offence, then sentenced to imprisonment. If person convicted "suffers from any form of abnormal or subnormal mental illness, or other psychosis, which caused the commission of the sex offence" then confined to Utah State Hospital for life. Further provides for treatment in Hospital, and possible parole upon certification - but no remission of sentence for good behaviour.

VERMONT

Public Act 170 1951 Sec. 443 defines "psychopathic personality" as "those who by a habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulse, and who as a result are likely to attack or otherwise inflict injury, loss, pain or other evil on the object of their uncontrolled desire". Sec. 440 provides for court to commit a convicted person to a state institution pending determination of whether he is a "psychopathic personality". Provides for setting up of wards and treatment facilities in institutions.

VIRGINIA

Code of Virginia (1950) Section 53-278.2 provides deferment of sentence for mental report "in case of the conviction in any court of record of any person for any criminal offence which indicates sexual abnormality." Requirements for psychiatric examination - provision for sterilization in some cases.

WASHINGTON

Revised Code of Washington 1955 Chap. 71.06 Secs. 291 to 304 inclusive defines "psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment by such person difficult or impossible. "Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offences in a degree constituting him a menace to the health and safety of others, and who is not mentally ill or mentally deficient. Provides petition to be filed with court and served on defendant - hearing as to sex psychopathy may proceed despite acquittal or criminal charge - commitment to hospital on "reasonable" grounds for believing person to be a sex psychopath - further examination and report from hospital - report to court - finding as to sex psychopathy - commitment - provides option of jury trial - procedure for release or parole.

WEST VIRGINIA

No special legislation re sex psychopaths. West Virginia Code does provide imprisonment for sex offences. Apparently no provision for treatment.

WISCONSIN

Wisconsin Statutes 1953 Section 340.485 Amended by Chap. 375 Wisconsin Laws 1955 provides that after conviction for rape and associated crime court shall commit to department of Public Welfare, and after conviction for other sex offences the court may commit to department where department certifies it has adequate facilities - presentence, social, physical and mental examination - report to court - commitment to care of the department where report justifies it - otherwise sentenced - right to appeal - treatment - frequency of examination - indeterminate term ceases at end of

maximum term for substantive offence unless department applies for extension on ground of danger to society - only after full court hearing - provisions for voluntary admission to institution for diagnostic treatment.

WYOMING

Chap. 25 Sess. Laws 1951 Where person pleads guilty of sex crime, judge will have an investigation and physical exam before passing sentence. May place him on probation with requirement of receiving psychiatric treatment at own expense. Other provisions for committing to hospitals for treatment.

APPENDIX V

CALIFORNIA STATISTICS

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
BUREAU OF CRIMINAL STATISTICS
RONALD H. BEATTIE, Chief

December 10, 1956

505 State Office Bldg., No. 1,
Sacramento, California.

The Honorable J. C. McRuer, LL.D.
Chief Justice of the High Court for Ontario
Osgoode Hall
Toronto, Ontario
Canada

Dear Sir:

In response to your letter of November 29, we have prepared tables showing the number of defendants disposed of in the superior courts of California who had been charged with sex offenses for each of the past three calendar years and for the first half of the calendar year 1956.

In addition, we can report that on a state-wide basis the number of persons arrested and booked for felony sex offenses was as follows for the past three and one-year calendar years:

1953	3,859
1954	4,363
1955	4,374
1956 (Jan.-June)	2,412

I think it is extremely doubtful that general statistics show any particular effect as a result of the Sexual Psychopath Act. Very often the additional attention that is focused and its attended discussion as a result of the passage of such a law may result in the reporting and prosecution of even more offenses of this type than have been previously acted upon by law enforcement officials. Further the actual use of the Sexual Psychopath Law varies considerably from area to area within the State. For instance in 1955, Los Angeles County which had

approximately 40 percent of the State's population accounted for 50 percent of the felony defendants disposed of in the superior courts and 57 percent of the commitments under the Sexual Psychopath Act following convictions in the superior courts. I should point out that the superior courts of the State are the courts of original felony jurisdiction.

A substantial portion of those committed to the Department of Mental Hygiene as sexual psychopaths are committed after conviction of a misdemeanor offense, and we do not have such statistics available. We rather doubt the effectiveness of the law can be demonstrated at this time by any available statistical records.

Sincerely yours,

(Sgd.) Ronald H. Beattie,

Ronald H. Beattie
Chief of Bureau

RHB:mab
Enc.

Disposition of Felony Defendants in
California Superior Courts
1953

Sex offenses only

Offense	Total	Cert. to Juv. Court	Total less Juvenile	Disposed of w/o Conviction				Convicted				Percent Convicted
				Total	Dism. or off Cal..	Acquitted by Jury	Acquitted by Court	Total	Guilty plea	By Jury	By Court	
Total	1,709	12	1,697	326	156	88	82	1,371	930	149	292	80.8
Rape	565	8	557	131	71	41	19	426	308	53	65	76.5
Pandering-Pimping . . .	29	-	29	6	5	1	-	23	15	5	3	-
Lewd-lascivious . .	508	2	506	150	63	38	49	356	220	56	80	70.4
Sodomy	42	-	42	5	3	1	1	37	26	4	7	-
Sex perversion .	262	2	260	25	11	3	11	235	155	18	62	90.4
Incest	15	-	15	3	-	2	1	12	10	1	1	-
Annoying child .	15	-	15	2	2	-	-	13	8	2	3	-
Indecent exposure	29	-	29	4	1	2	1	25	14	1	10	-
Lewd vagrancy .	36	-	36	-	-	-	-	36	10	4	22	-
Contributing . .	205	-	205	-	-	-	-	205	161	5	39	-
All other	3	-	3	-	-	-	-	3	3	-	-	-

Sentences Imposed on Felony Defendants Convicted
in California Superior Courts
1953
Sex offenses only

Offense	Total	Prison	Youth Authority	Probation			Fine	Mental Hospital	Per cent		
				Straight	With Jail	Jail			Prison	Probation	Jail
Total	1,371	283	40	436	246	168	10	188	20.6	49.7	12.3
Rape	426	110	31	114	98	66	-	7	25.8	49.8	15.5
Pandering-pimping	23	12	-	3	7	1	-	-	-	-	-
Lewd-lascivious	356	108	2	64	50	-	-	132	30.3	32.0	-
Sodomy	37	10	3	5	11	5	-	3	-	-	-
Sex perversion	235	25	2	140	24	29	2	13	10.6	69.8	12.3
Incest	12	9	-	-	1	-	-	2	-	-	-
Annoying Child	13	3	-	2	1	3	-	4	-	-	-
Indecent exposure	25	4	-	6	1	1	-	13	-	-	-
Lewd vagrancy	36	-	-	20	2	8	4	2	-	-	-
Contributing	205	-	2	82	50	55	4	12	-	-	-
All other	3	2	-	-	1	-	-	-	-	64.4	26.8

Disposition of Felony Defendants in
California Superior Courts
1954

Sex Offenses only

Offense	Total	Cert. to Juv. Court	Total less Juvenile	Disposed of w/o Conviction				Convicted				Percent Convicted
				Total	Dism. or off Cal.	Acquitted by Jury	Acquitted by Court	Total	Guilty plea	By Jury	By Court	
Total	1,966	17	1,949	348	185	82	81	1,601	1,134	161	306	82.1
Rape	604	14	590	122	65	31	26	468	384	30	54	79.3
Pandering-pimping . . .	54	-	54	10	8	2	-	44	24	9	11	-
Lewd-lascivious . .	619	3	616	163	80	40	43	453	269	71	113	73.5
Sodomy	29	-	29	3	1	2	-	26	15	4	7	-
Sex perversion .	338	-	338	39	23	5	11	299	210	27	62	88.5
Incest	20	-	20	3	2	1	-	17	12	4	1	-
Annoying child .	20	-	20	2	1	-	1	18	13	-	5	-
Indecent exposure	32	-	32	3	3	-	-	29	22	-	7	-
Lewd vagrancy .	17	-	17	-	-	-	-	17	12	-	5	-
Contributing . .	222	-	222	-	-	-	-	222	169	13	40	-
All other.	11	-	11	3	2	1	-	8	4	3	1	-

Sentences Imposed on Felony Defendants Convicted
in California Superior Courts
1954

Sex offenses only

Offense	Total	Prison	Youth Authority	Probation			Fine	Mental Hospital	Per cent		
				Straight	With Jail	Jail			Prison	Probation	Jail
Total	1,601	238	31	635	315	133	19	230	14.9	59.3	8.3
Rape	468	64	25	156	138	65	5	15	13.7	62.8	13.9
Pandering-pimping	44	15	-	10	16	3	-	-	-	-	-
Lewd-lascivious	453	111	3	106	57	5	-	171	24.5	36.0	1.1
Sodomy	26	9	-	8	6	1	-	2	-	-	-
Sex perversion	299	20	-	202	45	13	12	7	6.7	82.6	4.3
Incest	17	7	-	3	3	-	-	4	-	-	-
Annoying child	18	3	-	5	1	3	-	6	-	-	-
Indecent exposure	29	5	-	12	3	-	-	9	-	-	-
Lewd vagrancy	17	-	-	8	1	8	-	-	-	-	-
Contributing	222	-	3	124	43	34	2	16	-	75.2	15.3
All other	8	4	-	1	2	1	-	-	-	-	-

Disposition of Felony Defendants in
California Superior Courts
1955

Sex offenses only

Offense	Total	Cert. to Juv. Court	Total less Juvenile	Disposed of w/o Conviction				Convicted				Percent Convicted
				Total	Dism. or off. Cal.	Acquitted by Jury	Acquitted by Court	Total	Guilty Plea	By Jury	By Court	
Total	2,150	28	2,122	382	190	88	104	1,740	1,234	159	347	82.0
Rape	724	22	702	150	76	42	32	552	427	50	75	78.6
Pandering-pimping	43	-	43	12	7	4	1	31	12	11	8	-
Lewd-lascivious	695	6	689	171	82	39	50	518	347	61	110	75.2
Sodomy	39	-	39	7	5	-	2	32	21	4	7	-
Sex perversion	299	-	299	30	10	1	19	269	183	19	67	90.0
Incest	34	-	34	8	6	2	-	26	21	3	2	-
Annoying child	26	-	26	-	-	-	-	26	18	2	6	-
Indecent exposure	32	-	32	2	2	-	-	30	19	1	10	-
Lewd vagrancy	23	-	23	-	-	-	-	23	12	-	11	-
Contributing	225	-	225	-	-	-	-	225	169	6	50	-
All other	10	-	10	2	2	-	-	8	5	2	1	-

Sentences Imposed on Felony Defendants Convicted
in California Superior Courts
1955

Sex offenses only

Offense	Total	Prison	Youth Authority	Probation			Fine	Mental Hospital	Percent		
				Straight	With Jail	Jail			Prison	Probation	Jail
Total	1,740	238	47	714	320	152	12	257	13.7	59.4	8.7
Rape	552	90	37	164	155	76	3	27	16.3	57.8	13.8
Pandering-pimping	31	16	-	3	11	1	-	-	-	-	-
Lewd-lascivious	518	95	2	187	63	5	-	166	18.3	48.3	1.0
Sodomy	32	5	1	13	6	2	-	5	-	-	-
Sex perversion	269	19	1	165	27	26	8	23	7.1	71.4	9.7
Incest	26	9	-	6	4	-	-	7	-	-	-
Annoying child	26	1	-	10	-	4	-	11	-	-	-
Indecent exposure	30	-	-	16	5	2	-	7	-	-	-
Lewd vagrancy	23	-	-	18	-	4	1	-	-	-	-
Contributing	225	-	6	130	46	32	-	11	-	78.2	14.2
All other	8	3	-	2	3	-	-	-	-	-	-

Disposition of Felony Defendants in
California Superior Courts
First half, 1956

Sex offenses only

Offense	Total	Cert. to Juv. Court	Total less Juvenile	Disposed of w/o Conviction				Convicted				Percent Convicted
						Acquitted						
				Total	Dism. or off	by Jury	by Court	Total	Guilty plea	By Jury	By Court	
Total	1,016	7	1,009	166	66	47	53	843	584	81	178	83.5
Rape	336	5	331	62	30	20	12	269	199	24	46	81.3
Pandering-pimping	2	-	2	-	-	-	-	2	2	-	-	-
Lewd-lascivious	351	2	349	84	31	26	27	265	168	37	60	75.9
Sodomy	18	-	18	1	1	-	-	17	9	2	6	-
Sex perversion	162	-	162	14	2	-	12	148	104	8	36	91.4
Incest	18	-	18	2	-	-	2	16	10	5	1	-
Annoying child	8	-	8	-	-	-	-	8	5	1	2	-
Indecent exposure	21	-	21	3	2	1	-	18	13	2	3	-
Lewd vagrancy	3	-	3	-	-	-	-	3	3	-	-	-
Contributing	97	-	97	-	-	-	-	97	71	2	24	-
All other	-	-	-	-	-	-	-	-	-	-	-	-

Sentences Imposed on Felony Defendants Convicted
in California Superior Courts
First half, 1956

Sex offenses only

Offense	Total	Prison	Youth Authority	Probation			Fine	Mental Hospital	Percent		
				Straight	With Jail	Jail			Prison	Probation	Jail
Total	843	124	30	339	146	74	13	117	14.7	57.5	8.8
Rape	269	42	23	94	70	35	3	2	15.6	61.0	13.0
Pandering-pimping	2	1	-	-	1	-	-	-	-	-	-
Lewd-lascivious	265	58	3	80	37	-	-	87	21.9	44.2	-
Sodomy	17	6	-	5	4	-	-	2	-	-	-
Sex perversion	148	7	1	92	5	21	10	12	4.7	65.5	14.2
Incest	16	8	-	5	2	-	-	1	-	-	-
Annoying child	8	-	-	4	2	1	-	1	-	-	-
Indecent exposure	18	2	-	7	2	1	-	6	-	-	-
Lewd vagrancy	3	-	1	-	1	1	-	-	-	-	-
Contributing	97	-	2	52	22	15	-	6	-	76.3	15.5
All other	-	-	-	-	-	-	-	-	-	-	-

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