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LEGISLATIVE REFERENCE BUREAU

SEXUAL PSYCHOPATHS

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TERRITORY OF HAWAII

by

Norman Meller

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SUMMARY

During the 1947 session of the territorial legislature two bills were introduced to provide for the commitment and treatment of sexual psychopathic persons. S.B. No. 213 of 1947, utilizing the same procedure as is now followed for the commitment of the insane or mentally ill, does not include the element of criminality. In contradistinction, S.B. No. 227 of 1947 applies only to persons charged with crime who are shown to be sexual psychopaths. Each of these bills has in principle its counterparts on the mainland, although there is not widespread adoption of either.

Fundamental to legislation of this nature is that adequate means be adopted to protect the civil rights of the individual. All comparable statutes on the mainland provide for hearings, but agreement is not evidenced on the right to jury trial. The defining of who is a "sexual psychopath" in terms within the grasp of the layman appears to be especially difficult.

Should a "sexual psychopath" act be adopted in the Territory, the immediate problems which would have to be anticipated are the number of persons who would be committed, the cost of the program, and what extra personnel and facilities would be necessary. Mainland experience as well as data available in the Territory permits the making of approximate estimates.

Basic to both bills is the proposal that society protect itself against persons who are not "insane" but whose mental condition causes them to commit criminal acts of a sexual nature by incarcerating them until they no longer have such tendency. More controversial is whether society is entitled to the same protection before any criminal act has been committed. Apart from safeguarding society, an essential element of both bills is the furnishing of medical treatment to such sexual psychopaths in order to attempt to cure them. If the primary purpose is considered to be curative, then the commission of a criminal act becomes less material than the need of such persons for treatment.

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1. The Problem

"Insanity" is not a word of easy definition--it has no precise legal meaning and has long since lost an approved place in the medical vocabulary.¹

When insanity is raised as a defense to crime, the English case of Regina v. McNaghten² is relied upon as precedent for the application of the "right and wrong" test--if a man charged with crime was able to distinguish between right and wrong, legally he is sane. Actually, this test for legal "insanity" discloses only one of many forms of mental disorder which may materially affect one's moral responsibility for a criminal act. For example, the person who commits a crime under "irresistible impulse" may be denied the legal defense of "insanity" due to his consciousness of wrongdoing, but expert evidence may demonstrate that he was well nigh powerless to curb the urge which led to crime. A sexual psychopath, as the term is popularly understood, is one of these persons whose mental condition ordinarily does not permit a defense of legal "insanity," but whose propensity to perform anti-social acts of a sexual nature is often evidenced in the

¹This is an attempt to state the problem in laymen's language, devoid of the technical terms and definitions which confuse the uninitiated as well as furnish a fertile field for the semantic disputes of both psychiatrists and psychologists. We have probably erred in the emphasis on simplicity, but it appears that little would be gained in a report of this nature by trying to distinguish in detail between psychoses and psychopathic states on the one hand, or to describe in detail each of the wide variety of disorders, such as manic-depressive insanity, dementia precox, paranoia, and the alcoholic insanities, which are considered to fall within the term "insanity." Similarly, it is recognized that persons who are popularly considered as "sexual psychopaths"--persons with mental conditions predisposing to anti-social acts of a sexual nature not legally classifiable as insane--may not be psychopaths at all but may be psychotics or have demonstrable physical lesions.

²8 Eng. Rep. R. 718 (1843).

form of sexual crimes and whose mental condition may be diagnosed by qualified experts.

Apart from these criminal aspects of "insanity," it is recognized that individuals suffering from mental conditions which make their going at large a source of danger to themselves or others can be committed to mental hospitals or **insane asylums** as insane until they are cured. The "right and wrong test" is obviously not the criterion for determining the advisability of commitment. Being essentially a civil matter, all of the procedural protections in criminal trials are not applicable to the hearings for commitment. Sexual psychopaths as a class are ordinarily not included within this type of "insane" persons either, but depending upon an individual's condition and actions, his mental state may be such that he is considered "insane" and a fit subject for commitment.

Since the sex offender has a definite tendency to repeat such crimes,³ merely returning him to prison after each new anti-social act does not protect society. Punishment through incarceration in prison fails to serve as a deterrent. Indefinite custody until cured is not generally available, for just as he is not legally "insane" for purposes of the criminal law, so he may not be "insane" with regard to the procedures established by law for the commitment to insane asylums or mental hospitals. Thus there is a tendency for society to attempt to protect itself by making special provision for the commitment of sexual psychopaths, and if they can be cured through medical treatment, to furnish it.

³"The Legal Disposition of the Sexual Psychopath," Pennsylvania Law Review, Vol. 96, No. 6, June 1948, p. 874. The Kinsey report concluded from data on more than 1200 persons convicted of sex offenses that there were very few who modified their sexual patterns as the result of their contacts with the law. Kinsey, et al, Sexual Behavior in the Human Male, 1948, p. 392.

There is no exact point of time beyond which it is agreed the public is logically justified in protecting itself by detaining a sexual psychopath short of incarceration for crime. Conceivably, after a person has been tried or even sentenced for a sexual crime⁴ he may be examined, and if determined to be a sexual psychopath, committed indefinitely as mentally ill until pronounced cured. Instead of having committed a sexual crime, the trial or sentence for any crime might be utilized as the point at which sexual psychopathy is to be ascertained. But both of these require at least one crime to set the procedure in operation. A third method adopted for protecting the public is to compel an examination and commit a sexual psychopath to a mental hospital indefinitely, solely on proof of a mental condition predisposing him to commit sexual crimes and without his being charged with or being convicted for any crime.

If a person is to be committed to an insane asylum or mental hospital, it is essential that his rights as an individual citizen be protected. The mental condition he is charged with having must be defined in the statute in specific terms, an adequate hearing procedure outlined, and rights of appeal safeguarded to prevent arbitrary or illegal action. Fundamental is the problem of expressing medical concepts in language understandable both to the jurist and the layman.

2. Territorial Bills and Mainland Counterparts

Two bills providing for the commitment and treatment of sexual psychopathic persons in the territorial hospital were introduced during the 1947

⁴Sexual crimes in the Territory would include abduction (11650), adultery (11657), assault with intent to rape or ravish (11665), carnal abuse (11669), fornication (11661), incest (11670), indecent assault (11666), intercourse with females under age (11663), lascivious conduct (11673), polygamy (11671), procuring (11676), prostitution (11771), rape (11678), criminal seduction (11680), and sodomy (11681, Revised Laws of Hawaii 1945).

session of the Territorial legislature. S.B. No. 213 of 1947 provides for the commitment of the mentally ill or insane and does not require proof of criminality. In contradistinction, the second bill, S.B. No. 227, provides for specialized treatment of persons charged with any type of crime who are shown to be sexual psychopaths. Each of these bills has in principle its counterpart on the mainland, although there has been no widespread adoption of either.

The pioneer in this type of legislation was Michigan which passed the first "sex offender" act in 1937. This statute was the following year declared unconstitutional on the grounds that the act provided for criminal proceedings without observing certain constitutionally guaranteed rights.⁵

In 1939, Minnesota passed a sexual psychopath offender act which was tested and found valid by the United States Supreme Court.⁶ Massachusetts⁷ and Wisconsin⁸ have modeled their statutes on the Minnesota act. Similarly, the language of S.B. No. 213 of 1947 as originally introduced was in effect based upon that of the Minnesota statute coupled with the court's interpretation.⁹ In none of these three states nor in S.B. No. 213 of 1947 is it

⁵People v. Frontezack (1938) 286 Mich. 51, 281 N.W. 534.

⁶This statute was upheld by the Minnesota court in State ex rel Pearson v. Probate Court of Ramsey County et al. (1939) 205 Minn. 545; 287 N.W. 297, and subsequently by the United States Supreme Court in Minnesota v. Probate Court (1940) 309 U. S. 270. For an evaluation of the law and the court's decision, see James E. Hughes, "The Minnesota 'Sexual Irresponsibles' Law," Mental Hygiene, Vol. XXV, No. 1, January 1941, pp. 76-86.

⁷Mass. Acts 1947, ch. 683, sec. 1.

⁸Wisconsin Stat. 1947, ch. 51.37, sec. 1.

⁹See discussion of definition of sexual psychopaths, pp. 11-14.

necessary that the alleged sexual psychopath be charged with a criminal act before he may be examined and a determination of sexual psychopathy be made.¹⁰

S.B. No. 227 of 1947, unlike S.B. No. 213 of the same session, provides for a person charged with a crime to be examined, upon petition being filed, to determine if he is a sexual psychopath. Other states in which a person charged with crime, or after conviction therefor, may be examined for criminal sexual psychopathy are California,¹¹ Illinois,¹² Michigan,¹³ Ohio,¹⁴ and Washington.¹⁵ Only the Washington statute specifically requires the crime to be one of a sexual nature, but the California courts have construed that state's statute to the same effect¹⁶ and Michigan reports that the majority of commitments result from a direct charge of sex deviation.^{16a}

¹⁰However, in Minnesota the law may be applied in practice to those persons believed to have committed sexual crimes. Letter of Dr. Royal C. Gray, Chief, Mental Health Unit, Minnesota Division of Public Institutions, September 7, 1948. Communications from Massachusetts and Wisconsin indicate their laws have been put to little use.

¹¹Calif. Welfare and Institutions Code, secs. 5500-5516.

¹²Revised Statutes of Illinois 1947, ch. 38, secs. 820-825.

¹³Michigan Public Acts of 1939, No. 165, as amended by Michigan Public Acts of 1947, No. 242.

¹⁴Throckmorton's Ohio Code Annotated, secs. 13451-19 to 13451-22, as amended (Baldwin's Ohio Code Service, 1948 Cumulative Supplement). Actually the Ohio act includes all psychopathic offenders, and not just sexual psychopaths. However, as examination is mandatory after the conviction of certain sexual crimes, Ohio's statute is discussed herein.

¹⁵Washington Session Laws of 1947, ch. 273, sec. 1.

¹⁶People v. Haley (1941) 46 C. A. 2d 618, 116 Pac. 2d 498.

^{16a}Letter of Mr. Charles F. Wagg, Deputy Director, Michigan Department of Mental Health, September 17, 1948.

In view of the two different approaches to the problem evidenced by Senate Bills No. 213 and 227 of 1947, comparison of their procedural aspects with practices on the mainland are facilitated by treating the bills separately.¹⁷

S.B. No. 213 of 1947 (commitment without regard to criminality):

The procedure presently followed in the Territory for the commitment of the insane would be made equally applicable to the alleged sexual psychopath.¹⁸ This would be essentially:

(1) Petition for commitment. An application for an order of commitment is presented to a district magistrate or circuit judge by a close relative, or any one of a group of persons listed, in the form of a statement of the facts upon which the allegation of sexual psychopathy is made, accompanied by a certificate of one or more physicians who meet prescribed qualifications. Notice of the application must be served upon the person involved or a relative or guardian as prescribed in the statute.

(2) Hearing. If no written request for hearing is made, the magistrate or judge may proceed to determine the question of sexual psychopathy. In the event a hearing is demanded, or if the magistrate or judge so desires, a hearing is held. No provision is made for a jury. An appeal from an order of commitment may be made to the territorial psychiatric commission within ten days from the decision, but it does not operate to stay commitment.

(3) Commitment. In view of the terminology of S. B. No. 213 of 1947, commitment will be only to the territorial hospital. The alternative of

¹⁷For schematic presentation of procedural provisions of all eight state sexual psychopath acts, see Appendix A.

¹⁸Commitment procedure for the insane is prescribed in Revised Statutes of Hawaii 1945, secs. 4015-20; see also, secs. 4029-31, 4038, 4039.

placing such person in the care and custody of a relative or guardian, which is possible in the case of the insane, appears to be precluded.

(4) Discharge or parole. The medical director of the territorial hospital may discharge a patient at any time if he is satisfied that the person is cured or is no longer dangerous to the public safety. Applications for a discharge or parole may be made by the patient or on his behalf by friend or relative. At the discretion of the medical director, the patient may be paroled subject to recall to the hospital under the terms of the original commitment.

(5) Mainland counterparts of S.B. No. 213. Of the three states-- Massachusetts, Minnesota, and Wisconsin--which have enacted legislation comparable to S.B. No. 213 of 1947, all have adapted over to sexual psychopaths the general provisions of law applicable to the commitment and care of the mentally ill. However, more detail relating specifically to the commitment of sexual psychopaths is incorporated in the sexual psychopath laws of these three states. These commitment proceedings are roughly comparable to that proposed for the Territory, the primary difference being with regard to the right to a jury trial. Like S.B. No. 213 of 1947, Minnesota makes no provision for a jury hearing; in Massachusetts the judge may, in his discretion, have the issue determined by a jury; and in Wisconsin the alleged sexual psychopath, or a friend or relative, may demand a jury trial.

In each of the three states, a specific statement in the sexual psychopath act denies to the person determined to be a sexual psychopath the ability to raise such determination as a defense against criminal charges. S.B. No. 213 of 1947 is silent in this regard.

S.B. No. 227 of 1947 (criminal sexual psychopaths):

Unlike S.B. No. 213, S.B. No. 227 of 1947 contains in detail the

procedure to be followed for persons charged with any criminal offense who appear to be sexual psychopaths:

(1) Petition for commitment. The county attorney, the public prosecutor, or the attorney general may file a petition in the same proceeding wherein the person stands charged with crime setting forth the facts tending to show sexual psychopathy.¹⁹

(2) Examination and hearing. When a petition has been filed the court appoints two psychiatrists to examine the alleged psychopath.²⁰ If they both conclude the person is a sexual psychopath, prior to the trial on the criminal charge the court conducts a hearing to determine the issue of psychopathy. No provision is made for a jury trial.

(3) Commitment. Upon determination of sexual psychopathy the accused person is committed to the territorial hospital or other appropriate institution under the department of institutions until he is fully and permanently recovered.

(4) Discharge. Procedure for discharge upon recovery is commenced by the filing of a petition with the court by which the psychopath was committed. A hearing is held, and if full recovery is found to have occurred, the person is discharged from the custody of the director of institutions and is ordered to stand trial for the criminal offense originally charged.

¹⁹In view of the circuit courts being expressly declared to have jurisdiction for the purpose of conducting hearings for commitment and detention of criminal sexual psychopathic persons, it is not clear whether or not petitions may be filed only in those criminal cases which are tried by circuit courts.

²⁰One of the elements in the definition of sexual psychopath as contained in S.B. No. 227 of 1947 is that the suspected psychopath is not feeble-minded to an extent making him criminally irresponsible. As feeble-mindedness may be determined by a psychologist in the psychological clinic of the Territory or one certified by the clinic, the question has arisen whether a psychologist should be placed on the examining board, or provision be made for a psychologist's services.

(5) Mainland counterparts of S.B. No. 227. Of the five states with statutes providing for the examination and commitment of sexual psychopaths after they are accused of crime, not one, like S.B. No. 227, narrows the possible time for the psychopathic examination and hearing to the period from the making of the accusation of the criminal offense to the standing of trial for the criminal charge. The 1936 statute of Illinois fixes the same period, but another statute adopted in 1947 requires examination of criminals convicted of certain sex crimes prior to their release from prison and their commitment to a state hospital if found to be criminal sexual psychopaths.²¹

California and Michigan provide for the determination of the sexual psychopathy of a person charged with crime before or after conviction and before sentence. The hearing in Washington follows the conviction or plea of guilty to described sex crimes if prior thereto a petition alleging sexual psychopathy is filed.²² In Ohio, the court must, after the commission of certain sex crimes²³ and may after the conviction of other crimes, refer the convicted person for examination. Where referral for examination is not automatic, the petition alleging the existence of sexual psychopathy is filed by the prosecuting attorney or attorney general (Illinois,²⁴ Michigan, Washington) and in California may apparently be filed by any interested person.

²¹Revised Statutes of Illinois 1947, ch. 106, sec. 112. Sex crimes listed are: rape, incest, crime against nature, taking indecent liberties with a child, or an attempt to commit any of the foregoing.

²²Crimes listed in Washington are: abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of minors where sex offenses are involved, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing a child for immoral purposes, and any disorderly conduct involving a sex offense.

²³Crimes which require a mandatory examination in Ohio are: rape, carnal knowledge of girl under sixteen and attempts to have such knowledge, improper liberties with or indecent exposure before female child under fourteen, incest, and sodomy.

²⁴Examination of incarcerated criminals prior to release from penitentiary is automatic. See note 21, supra.

A jury trial to decide the question of sexual psychopathy may be demanded by the alleged criminal sexual psychopath in California, Michigan, and Washington. Illinois is the only state which specifically requires impaneling of a jury to determine if a person is a criminal sexual psychopath.²⁵

The states that make provision for criminal sexual psychopaths are not agreed on restraining the freedom of the sexual psychopath until cured. A recent decision interpreting California's sexual psychopathic act concludes that when a sexual psychopath is returned to the court from a mental hospital because further treatment will not be beneficial, the court cannot recommit him as a sexual psychopath even though he is not cured.²⁶ In Washington, the sexual psychopath must first serve his criminal sentence before being committed to a mental hospital until cured, while in Illinois his trial is suspended until after he is considered recovered. However, in Illinois should a criminal serving a sentence for other than a sex crime be kept in the Psychopathic Division of the Department of Public Safety as a criminal sexual psychopath because of diagnosis after sentence, still at the end of his term, he must be released despite his sexual psychopathy.

Only one state, Michigan, absolves the person adjudged to be a sexual psychopath from liability for prosecution and punishment for the crime for which he was originally charged. California and Ohio modify his liability, California by providing that if the person is not summoned by the court to stand trial within thirty days from the time he is reported recovered, he may be placed on parole for not less than five years and thereafter may be discharged if he shows no tendency to revert to his sexual psychopathic state.

²⁵This jury requirement applies only with regard to persons awaiting trial and not to the examination of persons convicted of enumerated sex crimes prior to their release from penitentiary.

²⁶Ex parte Stone (1948) 87 A.C.A. 882, 197 Pac. 2d 847.

For the purpose of reckoning eligibility for parole or discharge, Ohio applies the time the psychopath spent in a hospital receiving treatment against the period he was originally sentenced to serve.

3. Defining Sexual Psychopath

The mere commission of a sexual crime does not make one a psychopath.²⁷ On the one extreme he may be insane by every legally recognized test; on the other extreme, though his action is anti-social, mentally he may show no sign of being other than perfectly normal. Whether a psychopathic state exists in any individual case is basically dependent on the decision of experts.²⁸ The problem in defining sexual psychopathy encountered when drafting a statute is how to express in words understandable to the layman and the lawyer the mental condition which the expert is to find on his examination. In most states, this is solved by requiring some history of repeated anti-social action of a sexual nature or of a mental condition existing over a period of time coupled with criminal propensities to the commission of sex offenses. Although this aids the expert in diagnosing the mental condition he finds on examination, it appears also to indicate reluctance to rely solely on an expert's opinion of present mental state unsupported by some prior action which the layman can evaluate.

²⁷For a discussion of environmental, social, biological, and constitutional factors influencing the acceptability of sexual behavior and the resulting determination of what constitutes a sexual psychopathic personality see: W. Norwood East, "Sexual Offenders--A British View," The Yale Law Journal, Vol. 55, No. 3, April 1936, at pp. 530-43.

²⁸The problem may be visually likened to an area of normal behavior imperceptibly shading off to a middle ground of psychopathy which in turn similarly leads into an area of psychosis. As a result, there is reason for disagreement among experts--psychiatrists and psychologists--as to whether or not an individual case falls within the middle ground of psychopathy.

Acts Providing for Commitment Without Regard to Criminality:

The act adopted by Minnesota in 1939 defined the term psychopathic personality to mean:

the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, 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.

However, in interpreting the statute, the Minnesota Supreme Court in effect added the elements of habitual misconduct evidencing complete inability to control one's self, thus incorporating into the law factors which could be weighed by a laymen. The pertinent part of the opinion reads:

the Act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the²⁹ objects of their uncontrolled and uncontrollable desire,

When the Minnesota act was tested before the United States Supreme Court, the construction by the Minnesota court was relied upon to defend the definition in the act against the contention of vagueness and indefiniteness. The court stressed the fact that:

there must be proof of a "habitual course of misconduct in sexual matters". . . which has shown "an utter lack of power to control their sexual impulses," and hence that they "are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire." These underlying conditions, calling for evidence of past conduct pointing to probable consequences are as susceptible of proof as many of the criteria constantly applied in prosecutions for crime.³⁰

²⁹State ex rel Pearson v. Probate Court of Ramsey County et al. (1939) 205 Minn. 545, at p. 555; 287 N.W. 297, at p. 302.

³⁰Minnesota ex rel Pearson v. Probate Court (1940) 309 U. S. 270, at p. 274.

The Minnesota definition, along with the interpretative language of the courts, has been incorporated into the laws of Massachusetts and Wisconsin. S.B. No. 213 of 1947 as originally introduced was patterned after the Minnesota law, as modified by the courts. However, the definition contained in S.B. No. 213 of 1947 was amended so that in its final form it reads:

A sexual psychopathic person is a person who has shown such utter lack of control of his sexual impulses that he is in fact seriously dangerous to other persons.

It will be noted that this amendment has retained the "utter lack of control" and "dangerous to other persons" factors, but only incidentally implies the "habitual misconduct" concept and totally eliminates the enumeration of personality traits, such as emotional instability and lack of good judgment, evidencing mental disorder. Because of these deletions, the definition of sexual psychopath in S.B. No. 213 as amended has no close parallel in any of the mainland sexual psychopath acts.³¹

Criminal Sexual Psychopaths:

The bill which provides for commitment of criminal sexual psychopaths-- S.B. No. 227 of 1947--contains a definition of a sexual psychopath which is almost word-for-word the same as that contained in the statutes of Illinois and Michigan, and very similar to that incorporated into the Washington law. Paraphrased, it is (1) a mental disorder not insanity or feeble-mindedness,

³¹See Appendix B, containing the definitions of sexual psychopaths as found in the statutes of California, Illinois, Massachusetts, Michigan, Minnesota, Washington, and Wisconsin, and the general definition of psychopath found in the Ohio act. The Vermont Statute which applies to all psychopaths contains no definition of psychopaths, as such, merely referring to persons who, because of mental deficiency or psychopathic personality, violate the criminal laws of the state or are guilty of gross immoral conduct, thereby constituting a threat to the public welfare or who are dangerous to be at large in the community.

(ii) having existed for at least one year, (iii) coupled with criminal propensities to the commission of sex offenses.

Although ordinarily not found in the section of law containing the definition, an essential element in S.B. No. 227 and every one of the criminal sexual psychopath acts is that the suspected psychopath must be accused or convicted of crime.

4. Aids to Evaluation

Upon the passage of a bill for the commitment of sexual psychopaths-- either in the form of S.B. No. 213 or S.B. No. 227 of 1947--facilities must be available for the custody and care of such persons. The nature of these facilities in turn depends upon the anticipated number of commitments and the anticipated degree of success in treatment of hospitalized psychopaths.

Number of Possible Commitments in Hawaii:

Since S.B. No. 227 of 1947 would only apply to persons accused of crime, it can be assumed that a smaller number of persons would be committed under its provisions than under S.B. No. 213 of 1947 which permits commitment without regard to crime. This is borne out by information received from the state of Minnesota, which does not require accusation of crime before commencement of proceedings, and from the states of California, Illinois, and Michigan, all of which have laws providing for commitment only of sexual psychopaths accused or convicted of crime.³²

³²The 2 states with laws similar to that of Minnesota--Massachusetts and Wisconsin--reported 2 and no commitments, respectively. The Washington statute apparently has never been used. Information for the 4 states included in the table was obtained as follows: California - letter of Mr. A. Edward Nichols, Administrative Adviser, California Department of Mental Hygiene, December 10, 1948; Illinois - Dr. Roy G. Barrick, Criminologist, Illinois Department of Public Safety, October 19, 1948; Michigan - Mr. Charles F. Wagg, Deputy Director, Michigan Department of Public Health, September 17, 1948; Minnesota - Dr. Royal C. Gray, Chief of Mental Health Unit, Division of Public Institutions, Minnesota Department of Social Security, September 7, 1948.

<u>State</u>	<u>Period Covered*</u>	<u>Average Committed*</u>	<u>Pop. Compared to Hawaii's*</u>	<u>State Law Similar To</u>
Calif.	July '39 - June '47	37	16 to 19 X larger	SB 227, 1947
Ill.	July '38 - June '47	2	16 to 19 X larger	" " "
Mich.	Oct. '39 - Aug. '48	30	11 to 12 X larger	" " "
Minn.	1939 - 1948	20	5½ to 6½ X larger	" 213 "

*These data represent only rough approximations. The column "average committed" represents new commitments per year averaged over the period indicated. For the year period prior to October, 1948, Illinois committed 19 persons as compared with the total of 16 committed in the previous nine years, the period covered in the table.

Assuming that Hawaii does not have a disproportionately large number of persons who would be classed as sexual psychopaths, on the basis of experience in the other states the annual commitment rate in the Territory under either bill should not be large--an estimate of 10 new commitments a year appears almost maximum.³³ Strange as it may seem, this would appear to be true even for the first few years under such a Territorial act. Mainland experience in California, Michigan, and Minnesota indicates no abnormally high number of commitments as the result of the initial impact of their laws. Unfortunately, no information for these states is available showing the number of unsuccessful commitment proceedings; all references are only to the number of persons actually committed.

Anticipated Load on Territorial Facilities:

If the principle to be observed in the application of the Territorial act is to remove sexual psychopaths from society until they are cured or can

³³It should be here indicated that both Dr. Marcus Guensberg, Medical Director of the Territorial Hospital, and Dr. S. D. Porteus, Professor Emeritus, Psychological and Psychopathic Clinic, estimated a probable maximum of 10 commitments a year under S.B. No. 227. Dr. Porteus estimated the same maximum for S.B. No. 213; Dr. Guensberg considers the annual commitment rate under this bill may range up to 15 or 20 persons.

be safely paroled,³⁴ the number of sexual psychopaths remaining hospitalized is going to grow progressively larger. California, Illinois, and Minnesota reported a higher commitment than discharge rate. In Minnesota, where a sexual psychopath need not be accused of crime before proceedings may be instituted, more than a 30 per cent discharge rate was reported, the period of hospitalization averaging 4 years prior to discharge. Although California's act relates only to the criminal sexual psychopath, the California discharge experience is about the same. Due to California's parole procedure, the resident sexual psychopathic population in California mental hospitals has not exceeded 100 in the period 1939 - 1947, and only on July 1, 1948, reached the total of 124 (see Appendix C).

The extent to which the department of institutions would need new structures and equipment in good part is dependent upon (i) the emphasis placed upon treatment of sexual psychopaths, as opposed to mere custody, and, (ii) the estimated number to be hospitalized.

Information received from the four states included in the table on page 15--California, Illinois, Michigan, and Minnesota--indicates that separate facilities for sexual psychopaths are not furnished in any of them. The degree of segregation practiced apparently varies from state to state. Unless the present population of the territorial hospital is such that its facilities are now taxed to the limit, considered from the viewpoint of custody, alone, it would seem in the light of these mainland practices that the initial impact of a sexual psychopath law in the Territory should not result in

³⁴It will be recalled that California's law is not so constituted. In California, a sexual psychopath may be returned to the court if further treatment will not be beneficial, irrespective of the fact he is not cured. (See note 26, supra).

an immediate need to increase facilities. However, this conclusion is reached without regard to the nature of the treatment to be rendered in the territorial hospital.

Appendix D incorporates the intensive treatment program proposed by the department of institutions for sexual psychopaths hospitalized at the territorial hospital. It would appear to require extra personnel and equipment even should the rate of new commitments run no higher than 10 each year, being premised on the fact that the sexual psychopaths are to be hospitalized for treatment, and not merely for custody. The department's estimate of its needs, assuming on somewhere between 50 and 70 sexual psychopaths per year requiring hospitalization and treatment, lists as necessary 17 new persons added to the hospital staff (psychiatrist, psychologist, 2 social workers, 2 occupational therapists, stenographer, 10 counselors), 4 dormitories, 2 dining rooms, 2 living rooms, a social hall, 2 work-shops, a library, a gym, various accessory rooms, and quarters for supervising personnel.

Choice Between S.B. No. 213 and S.B. No. 227 of 1947:

Both bills evidence an intent to accomplish a dual objective--to protect society and to consider sexual psychopaths as ill and requiring medical treatment. The bills differ basically on the point of time at which commitment proceedings will start. The one - S.B. No. 227 - which will limit the scope of the law to persons accused of crime, affords society no protection from the time of possible diagnosis until commission of a criminal act. The other - S.B. No. 213 - by permitting the hospitalization of sexual psychopaths before any crime has been committed may result in the encroachment on the liberties of an individual who has not and will never harm society. To the extent the ability to make an accurate diagnosis is questioned, the interposing of the element of a criminal act may be regarded as an essential safeguard.

The Massachusetts Special Commission Investigating the Prevalence of Sex Crimes concluded that "a formula for accurate detection of the dangerous sexual offender before he has committed an act has not yet been developed."³⁵ It recommended the replacement of Massachusetts's present law (which, like S.B. No. 213, does not require a criminal act) by a criminal sexual psychopath act wherein conviction of one of a number of named sexual crimes must occur before examination and commitment as a sexual psychopath. This suggested change is premised on the contention that "action on mere suspicion cannot be justified nor permitted" where issues of civil rights and human freedom are involved.³⁶

On the other hand, there is dissatisfaction with Illinois's sexual psychopath law and serious consideration has been given to replacing it by an act in which crime or charge thereof is not necessary to institute proceedings for commitment. This change would, in principle, be the equivalent of substituting S.B. No. 213 for S.B. No. 227.

In 1947, Governor Dewey vetoed a proposed criminal sexual psychopathic act for New York due to his considering adequate protection was not afforded for the convicted sex offender.³⁷ Whichever approach is adopted in the

³⁵Final Report of the Special Commission Investigating the Prevalence of Sex Crimes; Boston, Mass.; April 1948, p. 17. The life of this Commission has been extended; see Chapter 8 of the Massachusetts Regular Session of 1948.

Vermont similarly in 1945 (Act 116 of Acts and Resolves of Vermont 1945) changed its statutory procedure so as to provide for examination and commitment of sexual psychopaths after conviction of a felony or three misdemeanors. Vermont's law originally permitted commitment without allegation of crime (Act 100 of Acts and Resolves of Vermont 1943). At present, Vermont's law applies to all psychopaths, and is discussed infra.

³⁶Ibid, p. 7.

³⁷"The Legal Disposition of the Sexual Psychopath," University of Pennsylvania Law Review; Vol. 96, No. 6, June 1948; p. 872 at p. 877.

Territory - commitment before or after criminal charge - and after the problem of definition has been solved, there still remain for decision the details of the trial, the procedures for appeal, and consideration of the effects of release. On the basis of the previous discussion of the details of the two Senate Bills (pp. 6-14) amendment may be indicated. Particularly with regard to S.B. No. 213, the novelty of definition as incorporated in the amended bill and some of the procedural provisions noted of S.B. No. 227 may warrant further consideration prior to adoption.

Why Limit Law to Sexual Psychopaths:

It is the sex crime which tends to make the newspaper headlines, to stir the passions. Particularly is this true in the case of an offender charged with a heinous crime having a long history of sexual offenses in his police record. Actually sex crimes are a relatively small part of the total crime picture.

Over a 42-year period (1900-1942) sex offenses of all kinds constituted only from 2 to 5 per cent of the total number of crimes prosecuted annually in all courts of Massachusetts.³⁸ From the data compiled from 734,041 fingerprint arrest records for violation of state laws and municipal ordinances in 1947, only 37,332, or 5.09 per cent were for sex crimes.³⁹ In the years 1946 and 1947, sex crimes in the Territory were 2.5 per cent and 2.1 per cent, respectively, of the total actual offenses known to the police.⁴⁰

³⁸Final Report of the Special Commission Investigating the Prevalence of Sex Crimes, op. cit., p. 4.

³⁹Rape - 9,742; commercialized vice - 9,712; other sex offenses - 17,878. Uniform Crime Reports for the United States and Its Possessions; Federal Bureau of Investigation; Washington, D.C.; Vol. XVIII, No. 2, 1947; Table 44, p. 115.

⁴⁰See Appendix E.

These statistics should not be accepted as presenting an absolute guide to the number of sex crimes. In offenses where children are involved, there may be a tendency not to report the crime or to fail to prosecute. Similarly, because of the morals element involved, prosecution may be for some other crime committed simultaneously, or for some lesser offense such as vagrancy. However, they do reveal that the sex crime does not bulk numerically as large as its exaggerated news value would lead one to assume.

The sexual psychopath--however defined--is only a narrow segment when contrasted with the larger group known as psychopaths. Psychopaths are not legally "insane", but they have the same propensity to commit anti-social acts, called criminal, previously commented upon when discussing sexual psychopaths.

These are individuals who show a lifelong and constitutional tendency not to conform to the customs of the group. They habitually misbehave. They have no sense of responsibility to their fellow men or to society as a whole. Due to their inherent inability to follow any one occupation, they succumb readily to the temptation of getting easy money through a life of crime. There is usually a history of delinquency in early life. These individuals fail to learn by experience. They are inadequate, incompatible, and inefficient. This class is sometimes designated as "Constitutional Psychopathic Inferiority." Before making this diagnosis, every other diagnostic possibility must be considered and excluded. In this group we see pathological lying, prostitution, vagrancy, illegitimacy, alcoholism, and drug addiction. The term "moral deficiency" is sometimes used to characterize this group. These patients may have psychotic episodes superimposed upon the trends just mentioned. Many of these individuals come into contact with the courts on account of threats, assaults, quarrels and vagrancy.⁴¹

⁴¹"Mental Abnormality in Relation to Crime", American Journal of Medical Jurisprudence; Vol. II, No. 3, March-April 1939; pp. 161, 163, quoted in State ex rel Pearson v. Probate Court (1939) 205 Minn. 545, 287 N.W. 297, at pp. 299, 300.

Recognizing the narrowness of the statutes applying only to criminal sexual psychopaths, at least two states--Ohio and Vermont--have enacted laws encompassing all psychopaths. After conviction of sex crimes in Ohio, examination is mandatory; examination is permissive as to persons convicted of other felonies. Vermont's statute permits examination after conviction of a felony or 3 misdemeanors. Upon diagnosis of psychopathy the individual is not allowed to return to society until discharged as cured.

In view of the broad definition of "psychopath" which in essence is based on social non-conformity, the requirement of commission of a crime before examination and hospitalization becomes even more of a safeguard of civil rights than is the situation in sexual psychopath acts. Vermont has been very strict in each case sent for observation and consequently the number actually committed under the law has been small.⁴²

Why we continue to imprison persons for crime is not particularly clear at the present time. Once, imprisonment may have been motivated solely by the desire to punish or to achieve penitence on the part of the person incarcerated. During this period of imprisonment society itself obtained protection. But these reasons no longer suffice. Without reformation, society's protection is only temporary and penitence meaningless. Then, too, it has been demonstrated the prisoner's mental state may condition him to crime and only through medical treatment and care will the twin objectives of society's protection and personal reformation be arrived at. And it is at this stage we now find ourselves.

⁴²Letter of Dr. R. A. Chittick, Superintendent, Vermont Hospital, September 22, 1948.

If we continue to adhere to the concept that punishment follows moral guilt, the new vista of criminal psychopathy is disturbing for the existence of such a mental condition precludes full moral responsibility. Thus we continue to punish as for crime while at the same time giving some attention to medical diagnosis and treatment. We are on the border of accepting or rejecting the psychiatrists' contentions that crime in good part is only the manifestation of mental disorder - that it is as much the problem of the doctor as the jailor. To this extent, the laws of Ohio and Vermont - narrow as their scope may be - represent a step in a direction which may lead toward the fundamental revamping of our entire penal system.

Appendix A.

PROVISIONS OF STATE SEXUAL PSYCHOPATH STATUTES

State	Starting Procedure For Commitment	Examining Psychiatrists	Jury Trial	Commitment	Release	Criminal Liability
<u>California</u> (Wel. & Inst. Code)	§5501. Affidavit alleging sexual psychopathy filed by interested per- son before or after trial of person charged with crime.	§5504. Court appoints 2 or 3.	§5512.5. Same right to jury trial as pro- vided for men- tally ill or in- sane. (§5125 - if dissatisfied with commitment order, within 5 days may demand jury trial be- fore superior court.)	§5512. Commit- ted to Dept. of Inst. for place- ment in hospital for treatment of insane.	§5502.5. Supt. of hos- pital gives opinion to committing court if re- covered. If not recovered and will not benefit by further treat- ment, Supt. may return back to courts.	§5502.5. If within 30 days after Supt.'s opinion person not recalled to court to stand charges, he is paroled for 5 years.
<u>Illinois</u> (Revised Statutes 1947, Ch. 38)	§822. Att. Gen. or state's atty. for county may petition hearing before trial on criminal offense.	§823. Court appoints 2.	§824. Jury im- paneled to de- termine if per- son is criminal sexual psycho- path.	§824. Commit- ted to Dept. of Public Safety, for confinement in prison or hospital.	§825. Appli- cation showing recovery filed in committing court. Jury to determine if recovered.	§825. Stands trial.
<u>Massachu- setts</u> (Acts, 1947; Ch. 683)	No crime need be committed. §2. Petition pre- pared by dist. atty. and executed by person having knowledge of facts.	§2. Court ap- points 2 phy- sicians, certi- fied by Dept. of Mental Health.	§2. Judge, in his discretion, may provide for determination of issue by jury.	§3. Committed to Dept. of Mental Health for placement in proper in- stitution.	§5. On peti- tion of person to committing court, or on Dept. of Men- tal Health filing facts showing recov- ery. Procedure same as for commitment.	§6. Psychopathy not a defense; must stand trial; stay of execu- tion or sentence until discharged as recovered.

APP. A - 2

PROVISIONS OF STATE SEXUAL PSYCHOPATH STATUTES - (Continued)

State	Starting Procedure For Commitment	Examining Psychiatrists	Jury Trial	Commitment	Release	Criminal Liability
<u>Michigan</u> (Public and Local Acts 1939, No. 165, as amended by No. 242 of 1947)	§3 (No. 242). Atty. Gen., prosecuting atty. of county or someone on behalf of person charged with crime files statement alleging psychopathy before criminal hearing, after conviction and before sen- tence, or after sentence if placed on parole.	§4 (No. 242). Court appoints 2.	§5 (No. 165). Without jury un- less demanded within 15 days of filing of psychiatric reports.	§5 (No. 165). Committed to State Hospital Commission for detention in proper insti- tution.	§6 (No. 165). Commission may release upon parole as con- dition merits. §7 (No. 242). Released only after fully recovered. Pe- tition filed with court--no jury unless re- quested 15 days after filing.	§8 (No. 242). Not liable for original crime.
<u>Minnesota</u> (Minnesota Statutes 1941)	No crime need be committed. §526.10. Petition prepared by county atty. and executed by person having knowledge of facts.	§526.10. Court appoints 2 duly licensed doc- tors of medi- cine.	No provision for jury.	§525.753. Court determines institution for commitment.	§526.761. After commit- ment, may release to person for care and safe keeping if Director of Social Wel. approves or if bond given. §526.762. Under control of Dir. until dis- charged by him or court.	§526.11. Psy- chopathy not a defense.

APP. A - 3

PROVISIONS OF STATE SEXUAL PSYCHOPATH STATUTES - (Continued)

State	Starting Procedure For Commitment	Examining Psychiatrists	Jury Trial	Commitment	Release	Criminal Liability
<u>Ohio</u> (Throck- morton's Code Ann.; Baldwin's 1948 Supp.)	§13451-20. After conviction and before sentence for certain sex crimes, court must refer for examination; in other felonies but first degree murder, may refer.	§13451-20. Referred to Dept. of Public Welfare, institution designated by Dept., to a psychopathic clinic approved by Dept., or to 3 psychiatrists.	No provision for jury.	§13451-20. Indefinite commitment to Dept. of Public Welfare; if Dept. fails to designate appropriate inst. because of lack of facilities, then to inst. would have been sentenced to for crime.	§13451-22. If maximum sentence for crime not served, transferred to regular penal inst.; if served, place on trial visit under supervision until finally released. §13451-22a. After serving maximum, prisoner may petition for release.	Psychopathy not a defense.
<u>Washington</u> (Session Laws, 1947, Ch. 273)	§1(b). Prosecuting atty. of county may petition hearing of person charged with "sex crime" (abduction, incest, rape, assault with intent to rape, indecent assault contributing to the delinquency of minors involving sex offenses, sodomy, indecent exposure, indecent liberties with children, car-	§4(a). Court appoints one or more.	§5(b). Without jury unless demanded within 10 days after service of petition.	§5(f,g). Serves sentence first, but to be treated during sentence; then committed to nearest state or county hospital having facilities.	§6. If paroled or completed sentence have another hearing to determine if cured, and if committed after serving sentence, may file for rehearing once a year.	§5(f). Serves term first.

PROVISIONS OF STATE SEXUAL PSYCHOPATH STATUTES - (Continued)

State	Starting Procedure For Commitment	Examining Psychiatrists	Jury Trial	Commitment	Release	Criminal Liability
<u>Washington</u> (Continued)	nal knowledge of children, soliciting or enticing a child for immoral purposes, any disorderly conduct involving a sex offense). Sexual psychopathic hearing after conviction or guilty plea.					
<u>Wisconsin</u> (Wisconsin Statutes, 1947)	No crime need be committed. §51.37(2) petition prepared by dist. atty. and executed by person having knowledge.	§51.37(2). Court appoints 2 physicians one of whom if available shall have had 2 years of practice or one year in hospital for mentally ill.	§51.37(4). May demand jury trial.	§51.37(3). Committed to institution designated by county board of supervisors of any county having pop. of 500,000 or more.	§51.37(6). Re-exam before court of original commitment. May compel re-exam once a year. Court may free person on parole.	§351.66. Psychopathy not defense.

Appendix B.

DEFINITIONS OF "SEXUAL PSYCHOPATHS" IN STATE STATUTES

California - Welfare and Institutions Code; sec. 5500.

"'Sexual psychopath' means any person who is affected, in a form predisposing to the commission of sexual offenses, and in a degree constituting him a menace to the health or safety of others, with any of the following conditions:

- a) Mental disease or disorder.
- b) Psychopathic personality.
- c) Marked departures from normal mentality."

Illinois - Illinois Revised Statutes 1947; Ch. 38, sec. 820.

"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 (1) year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, are hereby declared to be criminal sexual psychopathic persons."

Massachusetts - Acts, 1947; Ch. 683, sec. 1.

"Those persons who by an habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulses and who, as a result are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desires."

Michigan - Public and Local Acts 1939; No. 165, sec. 1.

"Any person who is suffering from a mental disorder and is not insane or feeble-minded, which mental disorder has existed for a period of not less than 1 year and is coupled with criminal propensities to the commission of sex offenses is hereby declared to be a criminal sexual psychopathic person."

Minnesota - Statutes, 1941; sec. 526.09.

"The term 'psychopathic personality' . . . means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, 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."

Ohio - Baldwin's 1948 Ohio Code Service (Supp. to Throckmorton's Ohio Code Ann., 1940); sec. 13451-19.

"The term 'psychopathic offender' shall mean any person who is adjudged to have a psychopathic personality, who exhibits criminal tendencies and who by reason thereof is a menace to the public. Psychopathic personality is evidenced by such traits or characteristics inconsistent with the age of such person as emotional immaturity and instability, impulsive, irresponsible, reckless and unruly acts, excessively self-centered attitudes, deficient powers of self-discipline, lack of normal capacity to learn from experience, marked deficiency of moral sense or control."

Washington - Session Laws, 1947; Ch. 273, sec. 1.

"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 hereinafter provided for, and having been convicted at least once as a sex offender, are hereby declared to be criminal sexual psychopathic persons."

* Wisconsin - Statutes, 1947; sec. 51.37.

"The term 'sexual psychopaths' . . . means any person suffering from such conditions of emotional instability or impulsiveness of behavior, 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 himself and to other persons."

Appendix C.

MOVEMENT AND RESIDENT POPULATION DATA FOR PATIENTS COMMITTED AS
SEXUAL PSYCHOPATHS IN CALIFORNIA STATE MENTAL HOSPITALS
FOR YEARS ENDING JUNE 30, 1940 - 1948

	1940	1941	1942	1943	1944	1945	1946	1947	1948
Mentally ill:									
First admissions*	3,989	4,116	4,402	4,424	4,902	5,301	5,131	5,455	7,292**
Readmissions*	927	1,000	986	1,092	872	920	1,294	1,254	
Sexual psychopaths:									
First admissions*	39	43	35	41	32	31	34	40	78**
Readmissions*	1	7	5	6	2	7	3	4	
Placed on leave	1	5	21	24	16	17	24	40	33
Returned from leave		1	5	13	2	7	6	16	14
Discharged on leave		1		1			3	8	15
Escaped	2	2	12	4	8	13	23	11	12
Returned from escape			8		1	3	18	4	7
Discharged from escape/								5	2
Direct discharge/	2	15	12	7	9	12	19	14	17
Deaths in institution		2	1	1	5	2	2		2
On record, June 30									
Resident	36	63	70	94	93	97	90	89	124
On leave	1	4	20	30	44	54	69	85	89
On escape	2	4	7	11	18	28	33	35	38

*Excludes Transfers.

**First Admissions and Readmissions combined.

/By court action

Source: Letter of Mr. A. Edward Nichols, Administrative Adviser, California Department of Mental Hygiene,
December 10, 1948.

Appendix D.

TREATMENT OF SEXUAL PSYCHOPATHS AS OUTLINED BY TERRITORIAL DEPARTMENT OF INSTITUTIONS

The treatment of the sexual psychopaths will require, in the first place, all the essentials of modern general hospital care. Such care must include adequate housing, feeding, and clothing in accordance with principles of modern hygiene, as well as, proper medical care. To maintain physical health, to correct physical defects, and treat physical illness must be a prime consideration. At the same time, the orderly hospital routine and the feeling of security which such a regime will provide will make a substantial contribution towards the final objectives of treatment.

Specific treatments of these disorders will be based primarily on psychotherapy, individual and in groups. Individual psychotherapy will aim to resolve the basic conflicts of the sexual psychopath, will help the patient to gain insight, that is, understanding of the how's and why's of his perverse desires, and finally it will modify his attitudes and behavior pattern. Such psychotherapy will make use of modified psychoanalytical methods, narcotherapy (sodium amytal) and other modalities, as the need arises. This will be supplemented by group psychotherapy, that is, discussions of the basic problems and conflicts of the sexual offenders in group seminars under the guidance of a trained psychiatrist.

Selected cases of malignant sexual psychopathy with dangerous, aggressive drives will eventually be given the benefit of psychosurgery (prefrontal lobotomy) for the purpose of reducing or eradicating the malignant drive. Judicious use of hormone-therapy constitutes another treatment modality.

A well-designed and constructive program of occupational therapy to take the place of formal education (in younger offenders) must be made an integral part of the entire treatment program. The occupational therapy department should include a well-equipped work-shop with facilities for various manual skills, a physico-chemical laboratory, a photography shop, in addition to the training facilities offered on the farms and the industrial plant of the hospital. The purpose of such a program is to create constructive outlets for pent-up energy and at the same time offer the patient an occupational orientation, both theoretical and practical. The value of such a program as a builder of morale and social responsibilities is undeniable. The cure and permanent rehabilitation of the sexual offender, who very often is a shiftless individual with a poor work record and anti-social tendencies, will depend to a large extent on the social and economic adjustment that will eventually result from a training program, as presented.

Physical culture and training, such as, sports, games, etc., with particular emphasis on sportsmanship and fair play will form another link in the treatment program. Wholesome recreational activities like movies, social hours, dances, picnics, library and community store should be provided liberally.

Appendix E.

OFFENSES KNOWN TO POLICE IN TERRITORY OF HAWAII

1946

<u>Offenses Reported or Known</u>		<u>Actual Offenses (Eliminating Unfounded)</u>	
Total	33,647	849 sex crimes* (2.523% of Total)	32,903
Part I, only	5,880	22 rape (0.374% of Pt. I)	5,437
Part II, only	27,767	827 sex crimes** (2.978% of Pt. II)	27,466

*rape, prostitution, other sex crimes

**prostitution, other sex crimes

1947

<u>Offenses Reported or Known</u>		<u>Actual Offenses (Eliminating Unfounded)</u>	
Total	33,309	698 sex crimes* (2.095% of Total)	32,548
Part I, only	6,293	22 rape (0.349% of Part I)	5,778
Part II, only	27,016	676 sex crimes** (2.502% of Pt. II)	26,770

*rape, prostitution, other sex crimes

**prostitution, other sex crimes

Note: Part I Offenses: Murder, manslaughter, rape, robbery, aggravated assault, burglary, larceny, auto theft.
Part II Offenses: Other assaults, forgery, embezzlement and fraud, stolen property, weapons, prostitution, sex offenses, offenses against family, drug laws, liquor laws, drunkenness, disorderly conduct, vagrancy, gambling, drunk driving, traffic and motor vehicle offenses, all other offenses.

Source: 1946 and 1947 Reports of Police Departments of the City and County of Honolulu, County of Hawaii, Kauai, and Maui.

A N A C T

PROVIDING FOR THE COMMITMENT OF SEXUAL PSYCHOPATHIC PERSONS TO THE TERRITORIAL HOSPITAL, THEIR TREATMENT AT THE TERRITORIAL HOSPITAL, AND THEIR PAROLE AND DISCHARGE FROM THE TERRITORIAL HOSPITAL.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. A sexual psychopathic person is a person who is afflicted with sexual psychopathy, that is, with conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any of such conditions, such that he is in fact irresponsible for his conduct with respect to sexual matters to an extent that he is in fact seriously dangerous to other persons, has in fact pursued a habitual course of serious misconduct in sexual matters, and has in fact shown an utter lack of power to control his sexual impulses. For such sexual psychopathy a sexual psychopathic person may be committed to the Territorial Hospital in the same manner whereby an insane or mentally ill person may be committed to the Territorial Hospital and upon being so committed shall be appropriately treated and cared for at the Territorial Hospital. When he has recovered from such sexual psychopathy he shall be paroled or discharged from the Territorial Hospital in the same manner whereby a person who has recovered from insanity or mental illness is required to be paroled or discharged from the Territorial Hospital.

SECTION 2. This Act shall take effect upon its approval.

INTRODUCED BY:

THELMA M. AKANA
SENATOR, THIRD DISTRICT.

March 21, 1947.

A N A C T

PROVIDING FOR THE COMMITMENT OF SEXUAL PSYCHOPATHIC PERSONS TO THE TERRITORIAL HOSPITAL, THEIR TREATMENT AT THE TERRITORIAL HOSPITAL, AND THEIR DISCHARGE FROM THE TERRITORIAL HOSPITAL.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. A sexual psychopathic person is a person who has shown such utter lack of control of his sexual impulses that he is in fact seriously dangerous to other persons. For such sexual psychopathy a sexual psychopathic person may be hospitalized in the Territorial Hospital in the same manner whereby a mentally ill person may be hospitalized in the Territorial Hospital and upon being so hospitalized shall be appropriately treated and cared for at the Territorial Hospital. When he has recovered from such sexual psychopathy he shall be discharged conditionally or permanently from the Territorial Hospital in the same manner whereby a person who has recovered from mental illness is required to be conditionally or permanently discharged from the Territorial Hospital.

SECTION 2. This Act shall take effect upon its approval.

INTRODUCED BY:

THELMA M. AKANA
SENATOR, THIRD DISTRICT

March 21, 1947

A N A C T

DEFINING AND RELATING TO CRIMINAL SEXUAL PSYCHOPATHIC PERSONS AND PROVIDING
FOR AND RELATING TO THE COMMITMENT AND DISPOSITION OF SUCH PERSONS
AND THE PROCEDURE THEREFOR.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Definitions. (a) Any person who is suffering from a mental disorder but is not mentally ill or feeble-minded to an extent making him criminally irresponsible for his acts, such mental disorder having existed for a period of not less than one year and being coupled with criminal propensities to the commission of sex offenses, is hereby declared to be a criminal sexual psychopathic person.

(b) A qualified psychiatrist within the meaning of this act is a reputable physician licensed to practice in the Territory of Hawaii who has limited his professional practice exclusively to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years.

SECTION 2. Jurisdiction. Jurisdiction of criminal sexual psychopathic persons charged with a criminal offense is vested in the circuit courts of the Territory, for the purpose of conducting hearings for commitment and detention of such persons, as hereinafter provided.

SECTION 3. Petitions; endorsements. When any person is charged with a criminal offense and it shall appear that such person is a criminal sexual psychopathic person, then the county attorney of such county, or the public prosecutor, or the attorney general, shall file in the court in the same proceeding wherein such person stands charged with such criminal offense, a petition in writing setting forth facts tending to show that such person is a criminal sexual psychopathic person.

SECTION 4. Examination. Upon the filing of such petition, the court shall appoint two qualified psychiatrists to make a personal examination of such alleged criminal sexual psychopathic person who shall file with the court a report in writing of the results of their examination together with their conclusions and recommendations. In the event that both of such psychiatrists in such report state their conclusions to the effect that such person is a criminal sexual psychopathic person, then proceedings shall be had as provided in this act prior to trial of such person upon the criminal

offense with which he then stands charged.

SECTION 5. Hearing; evidence; commitment. Upon a hearing held for that purpose the court shall ascertain whether or not such person is a criminal sexual psychopathic person. Upon such hearing it shall be competent to introduce evidence of the commission by such person of any number of crimes together with the record of the punishment inflicted therefor. If such person is determined to be a criminal sexual psychopathic person, then the court shall commit such person to the director of institutions for confinement in the territorial hospital or other appropriate territorial institution under the jurisdiction of the department of institutions until such person shall have fully and permanently recovered from such psychopathy.

SECTION 6. Discharge. Such criminal sexual psychopathic person shall be discharged from the custody of the director of institutions only after he shall have fully recovered from such psychopathy. At any time, when he shall appear to have so recovered, a petition in writing setting forth the facts showing such recovery may be filed with the clerk of the court by which he was committed and such court shall proceed to determine whether or not he has fully recovered from such psychopathy. If, following such hearing, such person is found to have not fully recovered from such psychopathy, then the court shall order such person to be returned to the custody of the director of institutions to be held under the previous commitment of such person.

SECTION 7. Criminal Trial. If, following such hearing, such person is found to have fully recovered from such psychopathy, then the court shall order that such person be discharged from the custody of the director of institutions to stand trial for the criminal offense charged against such person.

SECTION 8. Expense. The Territory shall defray all expenses of such person while so confined in a territorial institution and may recover the amount so paid from such person.

SECTION 9. Effective date. This Act shall take effect upon its approval.

INTRODUCED BY:

THELMA M. AKANA
SENATOR, THIRD DISTRICT

March 24, 1947