

Preliminary Report of the
SUBCOMMITTEE ON SEX CRIMES
 of the
**ASSEMBLY INTERIM COMMITTEE ON
 JUDICIAL SYSTEM AND
 JUDICIAL PROCESS**

Created by House Resolution No. 232—Regular Legislative Session 1949
 and
 House Resolution No. 43—First Extraordinary Legislative Session 1949

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Kinsey - 55-57 (2x) 60 (2x) 87 18 state
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162 - NO treatment 264 - says no recidivism

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Hoover (68) rapist repeats: (69) plead lower (12) of child prier
 rape l)

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ASSEMBLY INTERIM COMMITTEE ON JUDICIAL SYSTEM
AND JUDICIAL PROCESS

California Legislature—1949 Regular Session

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LETTER OF TRANSMITTAL
ASSEMBLY INTERIM COMMITTEE
ON
JUDICIAL SYSTEM AND JUDICIAL PROCESS
California Legislature

RALPH M. BROWN
CHAIRMAN
MEMBER CALIFORNIA LEGISLATURE
THIRTIETH ASSEMBLY DISTRICT, STANISLAUS COUNTY

ASSEMBLY CHAMBERS, STATE OF CALIFORNIA
SACRAMENTO, March 8, 1950

HON. SAM L. COLLINS
Speaker of the Assembly
Assembly Chambers, Sacramento, California

DEAR MR. SPEAKER: Pursuant to House Resolution No. 232 of the 1949 Regular Session of the Assembly, and House Resolution No. 43 of the 1949 First Extraordinary Session of the Assembly, the Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process does herewith submit its preliminary report of the investigation of sex crimes in California.

The following report completely covers this important subject and should show to the public that there is no immediate answer to the problems presented. It will definitely indicate that those who come forth with panaceas to cure the situation have not familiarized themselves with the existing conditions. We urge all those with solutions to study what we have discovered in our search for the answer.

Respectfully submitted,

HON. RALPH M. BROWN, *Chairman*
HON. JULIAN BECK, *Vice Chairman*
HON. H. ALLEN SMITH
HON. WILLIAM H. ROSENTHAL
HON. GORDON A. FLEURY
HON. STANLEY T. TOMLINSON

House Resolution No. 43

Relative to an investigation and report by the Assembly Interim Committee on the Judicial System and Judicial Process on the subject of legislation relating to sex offenses

WHEREAS, One of the subjects submitted to the Legislature at this special session is to consider and act upon legislation relating to sex offenses; and

WHEREAS, It is necessary that the Assembly be fully informed on all facts and matters relating or pertaining to this subject in order that it may give proper consideration to the numerous measures pending before it; now, therefore, be it

Resolved by the Assembly of the State of California, as follows:

1. The Assembly Interim Committee on the Judicial System and Judicial Process (created by H. R. No. 232, 1949 Regular Session) is authorized and directed to ascertain, study, and analyze all facts relating to sex offenses that are introduced during this special session, including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and shall report thereon to the Assembly prior to the final adjournment of the 1951 Regular Session or may report thereon to the Assembly at any extraordinary session called prior to the 1951 Regular Session, the proclamation of which includes the subject of this resolution, including in the reports its recommendations for appropriate legislation.

2. The sum of fifteen thousand dollars (\$15,000) or so much thereof as may be necessary is hereby made available from the Assembly Contingent Fund payable from any money appropriated for the contingent expenses of the Assembly for the 1949 First Extraordinary Session of the Legislature for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution, to be paid from the said Contingent Fund and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer.

(Adopted, Assembly Journal, 12-21-49, p. 408—First Extraordinary Session)

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FOREWORD

Two small children were murdered by sex fiends in Southern and Central California in the fall of 1949. The publicity of these murders focused the attention of the public upon sex crimes and sex offenders. There was much public opinion that the size of the sex crime problem was such that existing legislation and techniques of control were inadequate.

Assemblyman Ralph M. Brown, Chairman of the Assembly Interim Committee on Judicial System and Judicial Process, appointed a Subcommittee to Investigate Sex Crimes, in November, 1949. This subcommittee undertook to ascertain, study, and analyze all facts relating to sex offenses. For this purpose the Subcommittee to Investigate Sex Crimes held three hearings open to the public in Los Angeles on December 7, 8, and 9, 1949. Persons who were invited to testify and who volunteered information included psychiatrists, neurologists, judges, district attorneys, police chiefs, public defenders, parole and probation officers, educators, and representatives of interested civic organizations. The hearings were transcribed and the testimony is in the subcommittee's files.

The Subcommittee to Investigate Sex Crimes held a meeting in Sacramento on December 14, 1949, to hear the testimony of Dr. Alfred C. Kinsey of Indiana University, and Mr. Richard A. McGee, Director of the Department of Corrections, State of California.

Two more public hearings were held by the subcommittee in San Francisco on January 13 and 14, 1950. At these hearings, testimony was heard from law enforcement officials, psychiatrists, and officials from the California Departments of Corrections and Mental Hygiene.

The subcommittee and its staff made a study of activity being made in eastern and middlewestern states to solve the sex crime problem in those areas. Attention was directed particularly to existing and proposed legislation, law enforcement methods and results, treatment facilities and techniques, and research results and programs.

The subcommittee has prepared a report setting out its findings, and conclusions for the assistance of the California Legislature at the special session convening March 6, 1950. Although a special session of the Legislature was called by the Governor to convene on December 12, 1949, to consider legislation on the sex crime problem only a few bills were passed. Action on most of the bills offered to deal with the sex crime problem was deferred until pertinent information could be considered and correlated and there could be developed an overall, uniform, and long range program for solution of the problem.

It has been demonstrated to the subcommittee that the problem of sex crimes has two major aspects. The first and foremost is the protection of the community from the sex offender. The second is the responsibility due the individual offender for his control, correction, or treatment. It was for the furtherance of these two purposes that the material in this report was gathered and digested, and is now presented.

The subcommittee wishes to express its appreciation to the many persons who contributed to this report by their appearance at hearings, their expression of opinions, their correspondence, and their research on various aspects of the study. Their names appear in alphabetical order in the Appendix.

House
Resolution No. 232

Relative to the creation of the Assembly Interim Committee on the
Judicial System and Judicial Process

WHEREAS, There is great need of a thorough investigation into all phases of the Judicial System of the State, and the administration of justice therein, in order that facts may be obtained and correlated as a basis for future legislation; and

WHEREAS, The facts relating to said subjects can best be secured by a fact-finding committee of the Legislature; now, therefore, be it

Resolved by the Assembly of the State of California, as follows:

1. The Assembly Interim Committee on the Judicial System and Judicial Process is hereby created and authorized and directed to ascertain, study and analyze all facts relating to the subject of this resolution, and all facts included and in any way related to the subjects mentioned in the recitals hereof, including but not limited to:

(a) The composition, structure, jurisdiction and administration of the several courts;

(b) The method of selection, compensation and retirement of judicial officers and attaches;

(c) The procedure, process, and rules of the courts, statutory and otherwise;

(d) All provisions of the law relating to civil actions and remedies, and all laws relating to criminal procedure;

(e) All laws relating to publication of notices and service of process;

(f) All laws relating to family relations including marriage, divorce and adoptions and the administration of such laws, including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Assembly, including in the reports its recommendations for appropriate legislation.

2. The committee shall consist of the same Members of the Assembly who comprise the membership of the Assembly Standing Judiciary Committee and the chairman shall be appointed by the Speaker. Vacancies occurring in the membership of the committee shall be filled by the appointing power.

3. The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1951 Regular Session, with authority to file its final report not later than the fifteenth legislative day of that session.

4. The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

5. The committee has the following additional powers and duties:

(a) To select a vice chairman from its membership.

(b) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(c) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(d) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

6. The sum of twenty thousand dollars (\$20,000) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Assembly for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution, to be paid from the said Contingent Fund and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer.

(Adopted June 28, 1949; Assembly Journal of the
1949 Regular Session, pages 5130 and 5131)

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Respectfully submitted,

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Hon. GORDON A. FLEURY
Hon. STANLEY T. TOMLINSON

CHAPTER I

WHAT ARE SEX CRIMES—THE STATUTORY LAW

A. THE CRIME WHICH IS FORBIDDEN IS THE OVERT ACT
NOT THE URGE

A crime is conduct which is proscribed by law. However immoral or distasteful or unpleasant an act may seem in the eyes of a person's fellow citizens, it is not a crime unless forbidden by law.

The law looks for the essential element of an overt act. Wishful thinking is not a violation. The overt act may be passive rather than aggressive. It may be a failure to perform a duty rather than an affirmative action. There must be, however, some act constituting criminal conduct in order that a court may convict a person.

The convicting court looks to the past conduct of the defendant. The issue is what did the accused do; it is not what inclination or tendency does he show. Predictions of the defendant's future conduct are matters for consideration following his conviction.

B. DEFINITION: "SEX CRIME" EQUALS CRIME PLUS SEX

Probably there can be no better definition of "sex crime" than that it is a crime which has some connection with sex. The term "sex crime" covers such a variety of acts that a longer definition is usually too wordy to be useful or too narrow in scope.

A definition has been offered by Dr. George N. Thompson, associate clinical professor of neurology and psychiatry at the School of Medicine at the University of Southern California in an address over KECA, November 22, 1949. It is, "By definition, a sex crime is any criminal act in which some type of sexual satisfaction is the motivating force of the crime." Dr. Thompson's definition is broader than some might realize because it would include arson committed by the pyromaniac, murder by the sadist, and theft by the kleptomaniac. The definition is narrower than others because it omits crimes with sexual significance which are committed for economic or other motives.

Since the term "sex crime" or "sex offense" has had widely varying definitions when used by persons appearing before the committee and by persons who have prepared materials available for the committee's study, the committee has attempted to use the terms in this report in a single meaning. The committee has chosen the broadest sense of the term. Where a narrower meaning is desired, limiting words are used, e.g. "sex crimes of force," "sex crimes against children," etc. Without an adjective or limiting term, a "sex crime" means a crime which has some connection with sex.

C. GENERALIZATIONS AS TO SEX CRIMES

Most of the sex practices known to man are forbidden by statute.

The State of California does not prohibit all practices that are prohibited in other states. On the other hand, the California Penal Code is as comprehensive as the laws in any other state.

In all states, sex crimes usually have a popular connotation different from the definition contained in the penal law.

The names used for the crimes differ widely in various states. For instance the crime of sodomy has nine different names in as many states: Sodomy, buggery, infamous conduct, crime against nature, pederasty, fellatio and cunnilingus, bestiality, sexual perversion, and disorderly conduct.

California, like most states has certain statutes which sharply define specific crimes. It has other statutes which are catch-alls designed to cover any number of acts. All states have such catch-all statutes, but they are narrowest in meaning in such states as California which have a large number of specific statutes.

Punishments for sex crimes do not follow a logical pattern. There are wide variations between states as to maximum penalties. For instance, the crime of sodomy is punishable in two states by a term of life imprisonment; whereas three states have a maximum term of only three years. Wide variations appear within a state as to maximum penalties. In California, for instance, until the 1949 Special Session of the Legislature enacted an amendment to Penal Code Section 286, the maximum term for sodomy was 10 years whereas assault with intent to commit sodomy was punishable by a term of 20 years. See Penal Code Section 220.

Three trends in legislation concerning sex crimes were reported by Dr. Alfred C. Kinsey to the committee in Sacramento, on December 14, 1949. First, "The trend throughout the years has been toward a lessening of the penalties." Second, "The trend has been very definitely toward the elimination of sex law. And "The third trend has been an attempt to recognize which of the sex offenders are in actuality psychiatric cases, and to treat those cases under much the same procedures as cases of insanity are treated under the laws of the particular state in which they occur."

D. LIST OF SEX CRIMES—ELEMENTS AND PENALTIES

1. Crimes Involving Illegal Sexual Intercourse

One group of sex crimes contains the common element of illegal sexual intercourse. In four of these crimes: Rape, abduction, seduction, and prostitution, the conduct is proscribed primarily because the method of obtaining the sexual intercourse is improper. In three of the crimes: Incest, adultery, and fornication, the significant factor is the relationship or status of the parties who engage in the forbidden sexual intercourse.

a. Where the method is the distinguishing characteristic.

(1) *Rape without consent*—The crime of rape includes certain illegal acts of sexual intercourse with a female who is not the wife of the perpetrator.

Rape has two important categories. The first is statutory rape, in which the female is under an age set by statute. This crime is discussed under Section D.7 of this Chapter entitled "Crimes Against Children." The second is rape without consent, in which the consent of the female, because of one circumstance or another, has not been given to the act of sexual intercourse.

The classic type of rape without consent is that described by Blackstone as "the carnal knowledge of a woman forcibly and against her

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will." The California law now recognizes that the required consent is lacking in many other circumstances besides the one where her resistance is overcome by force. Where the female is a lunatic, mental defective, intoxicated, drugged, afraid of immediate bodily harm, unconscious of the nature of the act, or acting under a belief that the perpetrator is her husband, the act is considered to be against her will. See California Penal Code Section 261, subdivisions 2, 3, 4, 5, 6.

"The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration however slight, is sufficient to complete the crime." California Penal Code Section 263.

A woman may be guilty of rape if she assists or conspires in the perpetration of the act by a man upon another woman.

Defenses to the crime of rape include the fact that the perpetrator is married to the female (unless he is an accessory to the rape by another man) or that he is under 14 and his physical ability to accomplish penetration is not proved as an independent fact and beyond a reasonable doubt. The female's lack of chastity is not a defense in itself; i.e., a prostitute can be raped.

The elements of the crime of rape in California are generally the same as in most other states. Many states, however, do not include specific statutes concerning the situations where consent is obtained by impersonating the female's husband, by using drugs or anesthetics, or because of her insanity or imbecility, etc., or where the act of intercourse is with any inmate of a deaf and dumb school or institution, as does Virginia, or intercourse when the woman is in custody of the law, as do the statutes of New York, North Dakota, South Carolina, and Wyoming.

Rape is a felony in California, and the maximum punishment is a term of 50 years. This maximum is near the average for the states. There are 18 states with a maximum penalty of death and nine more with life imprisonment as the maximum. Four states have a maximum term of 20 years, one state has 15 years, and Rhode Island has a maximum of five years.

(2) *Abduction*—The crime of abduction is the taking away of any woman unlawfully, against her will, and by force, menace, or duress compelling her to do certain acts.

Abduction for the purpose of sexual intercourse or "defilement" is covered by California Penal Code Section 265 (See also Section 266b). Section 265 also covers abduction for the purpose of marriage to any person. There is no limitation of the crime as to the age or chastity of the female in this section.

The history of the crime of abduction goes back to early English origin where "stealing an heiress" was apparently one of the means of acquiring a fortune. See Statute of 1487, 3 Henry VII, c. 2.

The crime of abduction is unlawful in every state, but the California statute is more specific as to the sexual element than the statutes of a few states. Also to constitute the crime in California there must be both a taking and a consummation of the defilement or the marriage; whereas in New York the crime is committed as soon as there is a taking for these purposes.

Abduction is a felony in California and is punishable by a term of 2 to 14 years. This is near the average for the states. In Michigan

the maximum penalty is a term of one year to life imprisonment. Two states give a maximum of 21 years. On the other hand six states give a maximum of five years, and Colorado's maximum is one year and/or a maximum fine of \$1,000.

(3) *Seduction*—The crime of seduction is the act of persuading a female to surrender her chastity. The perpetrator overcomes the objections of the female by means of promises, and/or bribes, without the employment of force.

In California, either a false promise of marriage or any other artful fraudulent enticement (such as "medical treatment") is recognized as sufficient to sustain a conviction. See California Penal Code Sections 266 and 268.

The age of the female is immaterial, but it must be proved that the girl had not had sexual intercourse before the alleged seduction. In some states, the statutes require only a "chaste reputation."

A defense to the prosecution for seduction under promise of marriage is the actual marriage of the parties before the prosecution begins.

All but 12 states have a seduction statute, but California has a broader statute than most. Twenty-four states limit prosecutions to seductions under promise of marriage. A few states say that the female must be under a certain age, and in three states the male must be over a certain age. New Jersey limits prosecution to the situation where the seduced female is actually pregnant.

Seduction is a felony in California, and the maximum penalty is a term of five years and/or a fine of \$5,000. This is in line with the majority of states. Georgia has a maximum term of 20 years, and five states have a maximum term of ten years. Twenty-two states have a maximum term of five years. Seduction is no crime in at least eight states.

(4) *Prostitution*—Prostitution is the act of permitting common or indiscriminate sexual intercourse for hire.

The illicit industry of prostitution is covered in minute detail in the criminal laws of California as it is in almost every state. Penalties are provided for nearly all the parties that take part in the trade.

The parties engaged in the business of prostitution may be segregated into 15 classifications. The *operator* maintains a house where prostitution is carried on with his knowledge. The *procurer* supplies the house with women by means of force, threats, promises, enticements, etc. The *abductor* is a procurer by force. The *agent* is a person who assists a procurer. A *pimp* may be an agent for the prostitute or house or the procurer. The *transporter* is one who knowingly transports a female for the purpose of prostitution. The *creditor* is a person who detains a prostitute in a house until she pays off a debt she has incurred while in the house. The *husband* of the prostitute very often has caused his wife to become a prostitute. The *resident and employee* makes it impossible for the house to continue to operate and fails to report it to the police. The *landlord or sublessor* who knows of the activity provides the place for the illicit trade. The *informant* is the person who informs anyone besides the police of the method for obtaining a prostitute in a locality. The *associator* is the person who frequents the company of prostitutes. The *prostitute* and the *customer* are self-explanatory categories.

The prostitute herself is usually subject to the least serious penalty. In California, under Penal Code Section 647, a common prostitute is a vagrant and subject to a fine of \$500 and/or a term of six months in the county jail. The customer "who frequents a house of ill-repute" is subject to a punishment of a term of five years in California. This is the highest of any state, and in most states he is not punishable at all.

For code sections covering these prostitution offenses see California Penal Code Sections 266, 266a, 266b, 266c, 266g, 267, 309, 315, 316, 318, 647.

b. Where the relationship or status of the parties is the distinguishing characteristic.

(1) *Incest*—The crime of incest is a voluntary act of sexual intercourse between persons who are too closely related to each other. California Penal Code Section 285 and Civil Code Section 59 establish the taboo between "parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews." First cousins are not within the forbidden degree of relationship in California.

The companion crime of "incestuous marriage" is established in California by the same code sections. Although most states have the latter crime, 11 states have only the crime of "incestuous sexual intercourse."

Incest is a felony in California and has a maximum penalty of a term of 50 years. This is the heaviest penalty provided by any of the states. Twenty-two states have a maximum term of ten years, and Virginia has a maximum of only one year and/or a fine of \$500. Many states make the penalty vary according to the degree of relationship between the parties.

(2) *Adultery*—The crime of adultery is a voluntary act of sexual intercourse by a married person with someone other than his or her spouse. See California Civil Code Section 93 and California Penal Code Sections 269a and 269b.

The crime of adultery in California has a broader scope than in many states. In some states, the sexual intercourse must be habitual before a person is guilty. At least 12 states even require the adultery to be open and notorious for conviction. In three states the prosecution cannot be commenced unless the aggrieved spouse complains. In at least five states adultery is not a crime.

A number of states give adultery a broader scope than in California. In seven states, if the woman is married, the man is guilty of adultery whether he is married or not. In eleven other states, both parties are guilty of adultery if either the man or woman is married. These states thus change adultery to mean sexual intercourse with a married person in addition to sexual intercourse by a married person.

Adultery is a misdemeanor in California and is punishable by a term of one year and/or a fine of \$1,000. This is near the average penalty for the states. The greatest penalty is a five-year term and/or a fine of \$1,000, and the smallest is a fine of \$10 to \$50.

(3) *Fornication*—The crime of fornication is an illegal act of sexual intercourse by an unmarried person. In California and nine other states there is no provision for the crime of fornication.

In the states where fornication is a crime, the penalty is a light one. The penalties range from Oregon's maximum term of five years or fine of \$500 to North Dakota's term of 30 days or Rhode Island's maximum fine of \$10.

2. Crimes Involving "Unnatural Practices"

a. *In General: The law approves and recognizes only one method of sexual intercourse*

That method is the relationship between the sex organ of a man and the sex organ of a woman. Other practices of sexual gratification such as connections per anum or per os (mouth) are forbidden. These other practices are here classed as "unnatural" in the sense that they are proscribed by law.

The states differ widely in terminology and organization of statutes in handling this area of sex crimes. Some states such as Minnesota, New York, and Washington have a single statute specifically setting out all types of relationships and calling all of them "sodomy." Such a statute would read, "Every person who shall carnally know, or shall have sexual intercourse in any manner with any animal or bird, or shall carnally know any male or female by the anus or with the mouth or tongue; or who shall attempt intercourse with a dead body is guilty of sodomy." Other states such as Michigan, California, and Georgia have separate statutes for the different acts. The organization of these crimes in this report does not follow that of any state, but it is an attempt at a logical development.

Generally both the active and passive person in these acts is guilty of the crime.

b. Relations Between Man and Man

(1) *Sodomy* is copulation between the male organ and the anus of the other party. Sexual intercourse between males per anus has been practiced at least as far back as Biblical times in the town of Sodom; whence comes the term. The term sodomy has come to have a much broader meaning than this in a number of states and even covers most of the crimes listed below as "unnatural practices."

Sodomy, in its narrow and historical sense, is a crime for either party in California under Penal Code Section 286.

(2) *Fellatio* is copulation between the male sex organ and the mouth of the other party. This act is a crime for both active and passive parties under California Penal Code Section 288a.

Sodomy is a felony in California, and the maximum penalty is a term of 20 years.

Fellatio is likewise a felony and has a maximum penalty of a term of 16 years.

These California maximum penalties correspond to the severe penalties of other states. Georgia and Nevada have maximum penalties of life, and 25 other states have maximum terms of 10 or more years. Only three states have the maximum term as low as three years.

c. Relations Between Man and Woman

(1) Sodomy practiced upon a woman is a crime in California for both parties and is covered by Penal Code Section 286.

(2) Fellatio in the sense of an oral copulation of a man's sex organ by a woman is a crime in California for both parties and is covered by Penal Code Section 288a.

(3) Cunnilingus is the oral copulation of a female's sex organs. It is made a crime for both parties by Penal Code Section 288a.

It is no defense to any of these crimes that the parties are married to each other. Thus in spite of discussion in medical or other treatises on marital relationships, these practices are illegal in every state.

These crimes are felonies in California and the maximum penalties are 20 years for sodomy and 16 years for fellatio or cunnilingus. These penalties correspond with the penalties of other states.

d. Relations Between Woman and Woman

If cunnilingus, the oral copulation of the female sex organs, is practiced by a woman it is a crime in California for both parties under Penal Code Section 288a.

The crime of cunnilingus is a felony in California as in most states and has a maximum penalty of a term of 16 years.

e. Relations Between Human and Animal or Bird

Bestiality is the practice by a man or woman of obtaining gratification with an animal or bird. California Penal Code Section 286 states, "Every person who is guilty of the infamous crime against nature, committed * * * with any animal * * * is punishable * * *." The cases do not indicate whether "the infamous crime against nature" includes all possible practices by man or woman with a beast. Presumably all types could be prosecuted under this section. There are states such as New York which are more explicit on the nature of the crime. (See quote above.)

Bestiality is a felony in California and the maximum penalty is a term of 20 years.

f. Relations Between Human and Corpse

Necrophilia is the practice of sexual relations with a corpse. There is no specific code section covering this act in the California Codes. A perpetrator is prosecuted as a vagrant under Penal Code Section 647 (5) because his conduct renders him a "lewd or dissolute person."

This crime is a misdemeanor and renders the offender subject to a maximum penalty of a term of six months in the county jail and/or a fine of \$500.

If the perpetrator mutilates, disinters, or removes the body, he is guilty of a crime under California Health and Safety Code Section 705 (2), which is a felony. In many other states, however, sexual relations with a corpse are covered specifically by a statute. The crime is usually a felony, and is severely punished.

3. Attempted Sex Crimes

a. Attempts

An attempted crime is an endeavor to accomplish a crime carried beyond mere preparation, but falling short of execution of the ultimate design in any part of it.

The punishments for attempts of most of the sex crimes are covered by the provisions of California Penal Code Section 664. In general, the maximum punishment is one half the term or fine established for the completed offense.

b. Assaults and Batteries

Many acts which are sexually motivated and offensive to other persons are prosecuted as assaults and batteries.

A battery is any willful and unlawful use of force or violence upon the person of another. California Penal Code Section 242.

An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another. California Penal Code Section 240.

Both an assault and a battery are misdemeanors, and are punishable by a term of six months in the county jail and/or a fine. The fine for a battery is \$1,000; for an assault the fine is \$500.

An assault with intent to commit rape or the infamous crime against nature (sodomy) is a felony and is punishable by a term up to 20 years. See California Penal Code Section 220.

An assault with intent to commit any other felony (such as fellatio or cunnilingus) is a felony and is punishable by a term of five years and/or a fine of \$500.

c. Conspiracies

A conspiracy to commit a felony is punishable in California in the same manner and to the same extent as is provided for the punishment of the said felony.

A conspiracy to commit any other crime is punishable at the maximum by a term of imprisonment in the county jail of one year, or in state prison for three years or by a fine of \$5,000, or both.

d. Solicitations

Solicitation of rape by force and violence is covered by California Penal Code Section 653f. It is a felony and is punishable by a term of five years or a fine of \$5,000.

Solicitation of other sex crimes is not a specific crime in California except to the extent that the conduct would be covered by some other catch-all statute. For instance the conduct might amount to the lewd behavior of a vagrant under Penal Code Section 647 (5). This would be punishable by a term of six months in the county jail and/or a fine of \$500.

The conduct might be an act of disturbing the peace or use of indecent language in the presence or hearing of women or children. This is punishable by California Penal Code Section 415, by a term of 90 days in the county jail and/or a fine of \$200.

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4. Sex Offenses Causing Embarrassment or Nuisance

There are a number of sex offenses which lack the element of physical contact with another party and which are characterized by the fact that they cause embarrassment or are a nuisance to the public.

a. *Conduct of a Peeping Tom or Voyeur*

Since 1947, California has had a statute specifically covering the practice of spying into the windows or doors of a human habitation. Penal Code Section 647 (12) claims a person who has done this as a voyant. The statute limits the crime to the act which is committed at nighttime and in which the perpetrator commits a trespass on the private property of another. It is immaterial whether the voyeur spies upon a man or woman or any particular object. In North Carolina, the crime is limited to "peeping into a room occupied by a woman."

This crime is a misdemeanor and is punishable by a term of six months in the county jail and/or a fine of \$500.

Only six states have such specific statutes, and in the rest the peeping tom or voyeur is probably prosecuted as being guilty of "disorderly conduct."

b. *Indecent Exposure or Exhibitionism*

California Penal Code Section 311 provides: "Every person who wilfully and lewdly, either: 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, 2. Procures, counsels, or assists any person to so expose himself or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adopted to excite to vicious or lewd thoughts or acts; * * * is guilty of a misdemeanor."

Both men and women may be guilty of this crime.

This crime is punishable in every state, but not all have specific statutes to cover it.

Maximum punishment in California is a term of six months in the county jail and/or a fine of \$500. This is the normal type of penalty. Fourteen states have a maximum jail term of one year, nine states have a maximum of six months, and three states have a maximum of three months. At one extreme is Oklahoma with a maximum term of 10 years and/or a fine of \$1,000; whereas Mississippi has a term of 20 days and/or a fine of \$50.

Nudism is an associated crime but is not punishable in California. Some California communities do have ordinances to regulate the practice. There are at least three states that have nudism statutes, which regulate the participants in the practice.

c. *Masturbation*

The practice of masturbation in and of itself is not a crime in any state. In California, as in most states, however, when practiced under certain circumstances, it would be punishable. For instance, an act within view of another person would render the offender guilty of an act classifiable and punishable as indecent exposure, lewd vagrancy, or perhaps contributing to the delinquency of a minor.

Mutual masturbation, or the practice of masturbation upon other parties is a very serious crime in most states. In California, if practiced upon a child under 14 it is a lewd and lascivious act, and may draw a punishment of a term up to life imprisonment. There is further discussion of this under the heading "Crimes Against Children." If practiced upon an adult, the practice would amount to lewd vagrancy, and would be punishable as a misdemeanor under Penal Code Section 647 (5).

d. *Public Obscenity, Lewd Writing, Etc.*

(1) *Obscenity*.—The use of any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner is a misdemeanor in California. See Penal Code Section 415.

In most states the crime includes use of such language before men as well as before women or children. Also many states draw a distinction between "profanity" in the sense of sacrilegious language, and "obsenity." These states make the penalty for the latter type of language much lighter. Some states have specific statutes covering obscenity on common carriers and over the telephone.

The maximum penalty in California is a term of six months in the county jail and/or a fine of \$500. As compared with other states, this is about the average penalty, although the penalties vary a great deal within a narrow range.

(2) *Lewd Writing, Songs, Pictures, Records, Etc.*—It is a crime to deal in practically any way with lewd materials whether spoken, written, drawn, or however fashioned. California Penal Code Section 311 provides that such conduct is a misdemeanor. The maximum penalty for this misdemeanor is a term of six months in the county jail, and or a fine of \$500.

5. *Catch-all Sex Crime Statutes*

California like most states has certain statutes which are used, whether originally designed for it or not, for prosecution of a number of offenses which may be classed as sex crimes. These catch-all statutes have a narrower meaning or use in California than in many states which do not have as many specific statutes as California does.

The chief catch-all statute is Penal Code Section 647 covering a vagrant. Normally a vagrant is an idle person who will not work or begs for a living. In California a vagrant includes "every idle, lewd, or dissolute person." When an offender cannot be convicted of some crime, due to lack of evidence or some other reason, he will be charged with being a lewd vagrant.

Another catch-all statute is Penal Code Section 415 covering acts disturbing the peace, because they amount to offensive conduct.

A third type of statute is Welfare and Institutions Code Section 702 providing a penalty for certain acts contributing to the delinquency of a minor. This provision will be discussed under the heading of "Crimes Against Children."

Being a vagrant or disturbing the peace is a misdemeanor and the maximum punishment is a term of six months in the county jail and/or a fine of \$500.

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6. Other Crimes Which Are Sex-motivated

No list of sex crimes would be complete without at least a passing glance at certain crimes which are sex-motivated, yet do not seem on their surface to have a special sex significance.

Murder—One form of murder is murder committed by a sadist. Recent cases demonstrate that sex motivation sometimes leads to homicide.

Arson—Psychologists have demonstrated that many arsonists are pyromaniacs who start fires when driven by an urge for sexual satisfaction.

Theft-Burglary—The kleptomaniac is a person who takes other people's property impelled by a motivation that is primarily sexual. Many burglaries are committed by fetishists seeking such items as women's undergarments and shoes. An investigation of a Chicago case indicated that the motivation for repeated burglaries was sexual satisfaction.

Kidnaping—This crime is likewise sometimes motivated by the sexual desires of the perpetrator.

Assault and Battery—As has been mentioned before, much sex-motivated conduct is prosecuted under the statutes against assault and/or battery.

7. Crimes Against Children

a. In General

All sex crimes previously discussed protect the child as well as the adult. The illegal acts of rape, sodomy, fellatio, cunnilingus, etc., constitute criminal conduct whether the victim is five or fifty years old.

In addition, there are many laws set up specifically to protect children from sexual experience of any kind. The acts constituting these crimes have as their chief distinguishing characteristic the fact that a child is the object or victim of the sexual conduct. The purpose of these statutes is to erect a barrier around children and to protect them from the lust and lewdness of other people.

Statutes specifically designed to protect children differ as to the age of the child protected. Some statutes set a specific age such as 18, 14 or 10 years old. Others merely define the crime as an act against "children."

Practically no such statute is designed to adapt the criminality of the act or the punishment of the crime to differences in maturation and social development between children. Factors which distinguish cases such as the education or experience of a child, the customs of a local community, etc. are left to be considered, if at all, by officers administering and enforcing the laws.

b. Statutory Rape

The crime of statutory rape is an act of sexual intercourse with a female, not the wife of the perpetrator, who is under the statutory age. In California this age is 18 years. See California Penal Code Section 261 (1). The common law set the age at 10 years, and in many states,

the age is set at 16 or even 12 years. A number of states vary the maximum penalty according to the age of the victim.

As a defense, consent is immaterial. Such a consent is not recognized as legal consent. In California, as in most states, factors such as the fact that the female was unchaste or in appearance or statement that the girl was "older" are no defense. The unchastity of the female, especially if she is over 14 or 16, is either a defense to the crime or lowers the maximum possible punishment in a few states.

The age of the male does not affect the character of the crime in most states. In California, if he is under 18, however, the offense must be, and if he is 18 to 21 it may be certified to the jurisdiction of the juvenile court and handled in accordance with procedures there.

In four states, Florida, Kentucky, North Carolina, and Washington, statutory rape includes the offense of sexual intercourse between an adult female and a minor male. In California, as in most states, this conduct is criminal under the provisions against contributing to the delinquency of a minor.

Statutory rape is a felony in California and is punishable by a term of 10 years. Most states correspond to California and make the punishment the same as the regular crime of rape. In a few states the penalty for statutory rape is more severe than for rape, but in a few others, it is less severe.

Assaults and indecent acts which lead to this crime may be classed as attempts or assaults to commit rape.

c. Teacher's Seduction of Pupil

In five states, a specific statute makes it a crime for a male teacher to have sexual intercourse with a female pupil. In four of these states, the age limit is not set. California has no such provision.

d. Lewd or Lascivious Acts With Children

California Penal Code Section 288 provides: "Any person who shall wilfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of from one year to life."

It is to be noted that this statute provides a special penalty of life imprisonment for any sex crime which is committed against a child under the age of 14.

The statute also makes a crime of certain conduct which amounts to carnal abuse of the child. It goes beyond conduct which amounts to an attempt to commit rape or an assault with intent to commit rape. It covers both male and female children. Lewd fondling, indecent familiarities, mutual masturbation and other acts of forbidden sexual experience are punishable.

Statutes covering lewd and lascivious acts upon children appear in a majority of states, but in three the crime is limited to such acts upon a female child. In three states, the child must be under 18, in twelve jurisdictions the child may be under 16. The penalties in these other states with special statutes are generally severe.

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e. Lewd acts in presence of children

California has a specific statute, Penal Code Section 273g which provides: "Any person who in the presence of any child indulges in any degrading, lewd, immoral or vicious habits or practices, or who is habitually drunk in the presence of any child in his care, custody or control, is guilty of a misdemeanor."

The punishment is a term of six months and/or a fine of \$500.

Only a few such states as Louisiana, North Carolina, and Wyoming have similar specific statutes. Most states make such practices as sexual intercourse in the presence of a minor, etc., punishable under their "contributing to the delinquency of a minor" laws.

f. Contributing to delinquency of minors

In California, as in many states, the statutory provision concerning contributing to the delinquency of minors is a catch-all statute. Section 702 and 700 of the Welfare and Institutions Code cover illegal conduct which has sexual significance, and most that does not. For example, encouraging a person under 21 to habitually use alcohol, tobacco, or drugs would be "contributing to his delinquency."

Even the delinquencies of a sexual nature which are within the provisions of these statutes encompass a broad area. Such conduct as sexual intercourse in a room where a minor is situated would be punishable. (See also California Penal Code Section 273g.) Taking a minor to or keeping him in a house of prostitution would be covered. Causing the minor to become infected with a venereal disease would be contributing to his or her delinquency. Any conduct which would cause the minor to be in danger of leading an idle, dissolute, lewd or immoral life would be so punishable.

The crime of contributing to the delinquency of a minor is punishable by a term of one year in the county jail and/or a fine of \$1,000, or a period of probation of five years.

g. Molesting children: loitering where school children attend

In California, under Penal Code Section 647a, every person who annoys or molests any child or who loiters about any school or public place where school children attend is a vagrant. Oftentimes more serious sex crimes are averted by flight, resistance, or intervention, and these statutes are designed to cover the preliminary conduct which can be proved in such a situation.

Punishment in California for either the molesting or the loitering is a term of six months in the county jail and/or a fine of \$500. But a second conviction for molesting a child is punishable by a term of five years.

h. Child-stealing

In California kidnapping of a child is covered by Penal Code Section 278. It provides that "Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years."

i. Obscenity

As pointed out previously, the crime of using obscene language is limited in California to the situation where women or children are present. See Penal Code Section 415.

j. Immoral exhibitions and business

The California Labor Code, Section 1308, makes it a crime for anyone who has lawful custody of a minor person under 16 years of age to use the minor to engage in any obscene, indecent, or immoral purposes, exhibitions or practices whatsoever. The offense is a misdemeanor and is punishable by a term of six months in the county jail and/or a fine of \$50 to \$250.

k. Prostitution

California has certain statutes connected with the crime of prostitution which have particular reference to children. Seduction of a previously chaste female under the age of 18 for the purpose of prostitution is a misdemeanor punishable by a term of one year and/or a fine of \$1,000. See Penal Code Section 266. Abduction of a female under 18 years from any individual having legal charge of her person for the purpose of prostitution, is a felony and is punishable by a term of five years and a fine of \$1,000. See Penal Code Section 267. Admitting or keeping any minor of either sex within a house of prostitution is a misdemeanor punishable by a term of six months and/or a fine of \$500. See Penal Code Section 309. Sixteen states have this third crime. Missouri has a maximum punishment of a term of two to twenty years; Virginia has a term of ten years. Nine states are in line with California.

E. REMEDIAL AND OTHER PROVISIONS

1. Probation

The sex offender who is convicted of a sex crime is generally subject to the same probation provisions as other offenders. See Penal Code Section 1203. Probation may be granted unless: (1) he wilfully inflicted great bodily injury or torture in the perpetration of the crime or; (2) he had been twice previously convicted of a felony or; (3) he used or attempted to use a deadly weapon in connection with the perpetration of the crime, or; (4) he was convicted of rape by force or violence or certain other crimes of force and was armed with a deadly weapon, or; (5) where he has had a prior felony conviction in which he was armed with a deadly weapon or attempted to use a deadly weapon, or he wilfully inflicted great bodily injury or torture upon his victim, or; (6) defendant is convicted of certain specific sex crimes (rape with force or violence) or a violation of Sections 286 (sodomy and bestiality), 288 (lewd and lascivious acts against children under 14), or 288a (fellatio, cunnilingus) and has had one prior felony conviction.

No defendant convicted of lewd and lascivious acts upon children under 14 (Penal Code Section 288) shall have his sentence suspended until the court obtains a report from a reputable psychiatrist as to the mental condition of such person. See Penal Code Section 288.1.

A defendant adjudged guilty of contributing to the delinquency of a minor under Section 702 of Welfare and Institutions Code may be granted probation not exceeding five years.

2. Habitual Criminals

A person must be adjudged an habitual criminal following conviction for the third separate time of certain felonies. California Penal Code Section 644 sets out the conditions for bringing a person within this class and recites a number of felonies including rape with force or violence and rape or fornication or sodomy or carnal abuse of a child under the age of 12 years. The section provides that (1) if a defendant is convicted of these offenses and (2) has two or three prior convictions, of these offenses or any of certain other felonies enumerated, and (3) has served separate terms for these prior convictions in a state or federal prison he must be adjudged an habitual criminal, and punished by imprisonment in the state prison for life.

A person who is adjudged an habitual criminal is not eligible for parole until at least 15 years of imprisonment. If he has had three prior convictions he is not eligible until at least 20 years of imprisonment. See Penal Code Sections 3047 and 3048.

3. Registration of Persons Convicted of Certain Sex Crimes

Persons convicted in California or any state of certain sex crimes are required to register with the sheriff of the county of their residence. See California Penal Code Section 290.

The listed crimes are: Convictions since July 1, 1944 of violations of Penal Code Sections 266 (seduction for purposes of prostitution), 267 (abduction for prostitution), 268 (seduction under promise of marriage), 285 (incest), 286 (sodomy and bestiality), 288 (lewd or lascivious acts against children under 14), 288a (fellatio and cunnilingus), 647a (molesting or loitering), 261 (3) (rape with force or violence), 261 (4) (rape with threats, intoxicants or drugs), 311 (1) (2) (indecent exposure), 647 (5) (vagrancy of idle, lewd, or dissolute person), or Section 702 of Welfare and Institutions Code (contributing to delinquency of minor). Conviction of attempts to commit the above offenses and determination of sexual psychopathy are also included.

The registration consists of a statement in writing giving information required by the State Bureau of Criminal Identification and fingerprints and photograph. The section applies even if a conviction is set aside or expunged by virtue of Section 1203.4 of the Penal Code. The information is forwarded to the State Bureau of Criminal Investigation and Identification where it is available upon request to all state law enforcement agencies. Only a few states have registration statutes.

It is a misdemeanor to fail to comply and is punishable by a term of six months in the county jail and/or a fine of \$500.

4. Sterilization and Asexualization

Sterilization, or an operation to prevent procreation, may be directed by a court as an additional punishment for any person found guilty of carnal abuse of a female person under the age of 10 years. See Penal Code Section 645. (See also Section 2670 of Penal Code). Over 20 states have sterilization statutes of varying scope.

5. Sex Psychopathic Acts

These statutes are dealt with in Chapter VI.

F. GRADING OR GROUPING OF SEX CRIMES

Since there are so many sex crimes, many people feel it is necessary to group them according to the seriousness of the threat they represent to society.

The Legislature performs such a grouping when it classes certain crimes as felonies and others as misdemeanors. It divides up these classifications further when it sets different maximum punishments for them.

Many people who have studied the problem have attempted to group the crimes according to how dangerous or damaging the conduct is.

The New Jersey Commission for the Study of the Habitual Sex Offender stated on p. 11 of its February, 1950, report to the New Jersey Legislature: "It is our conclusion that a distinction must be made between (1) those sexual deviates whose conduct in the community offends good taste and morals (such as homosexuals, exhibitionists, 'peepers,' and other minor lewd offenders), and (2) that other group composed of dangerous and aggressive offenders whose behavior is a serious threat to the community (such as aggressive rapists, sadists, sex slayers, and those who attack young children)."

Dr. Alfred C. Kinsey of Indiana University makes the following classification of serious sex crimes: (1) Crimes against younger children (age unspecified); (2) crimes that involve force; (3) crimes which are compulsive and/or repetitive (e.g., exhibitionism).

In many areas of this report the study and discussion has been limited to certain sex crimes. Attention was particularly placed upon crimes which would be classed in the grouping above as "serious." At certain times, the subcommittee found it had no available information about certain aspects of some of the sex crimes.

*Kinsey specifically
includes only "younger children"*

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