STATEMENT OF SUPERIOR JUDGE CHARLES W. FRICKE OF LOS ANGELES

CHAMBERS OF THE SUPERIOR COURT
LOS ANGELES, CALIFORNIA, December 7, 1949

Judiciary Interim Committee
California Legislature
State Building, Los Angeles 12, California

Re: *Handling of Sex Misdemeanants*

Gentlemen:

The sex offender who commits the more serious type of sex offense and is charged with a felony quite frequently has a record of previous misdemeanor sex convictions in the justice's or municipal court where the offense charged, being merely a misdemeanor, can result in only a comparatively short jail sentence. There is good medical reason to believe, however, that a competent psychiatric examination would in many of these cases disclose insanity, mental deficiency or abnormality, degeneracy or a definite tendency toward the commission of sex offenses.

A proper search of the criminal records, including those of the Federal Bureau of Investigation at Washington, D. C., would, in a fair number of these cases, disclose prior convictions of the accused of sex offenses. In present practice such records are not furnished the trial judge.

It is suggested that it might be advisable to provide by law:

1. That no person convicted of a sex offense be sentenced or placed on probation until the court has been furnished with the records, if any, as to the defendant's prior criminal record.

2. That, upon conviction of a sex offense, the defendant be examined by a psychiatrist and, if found to be a person who is likely to commit similar offenses in the future, that the court shall order that proceedings be initiated to place the defendant in an institution such as a hospital for the insane, to be there detained until the likelihood of further sex offenses by him no longer exists.

Very truly yours,

CHAS. W. FRICKE

Division 6, Part 1, Chapter 4, Sections 5500 et seq. of the Welfare and Institutions Code provides for proceedings leading to the commitment of sexual psychopaths to a state hospital. Under the definition (sec. 5500) the term 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 and safety of others, with any of the following conditions: (a) Mental disease or disorder; (b) psychopathic personality; (c) marked departures from normal mentality." While there has been no final interpretation of Section 5500, classification (a) seems to contemplate cases of diseased and disordered minds which do not, however, come up to the standard required by the defense of insanity, and class (b) is well understood. While class (c) is so phrased that it might include cases where there is a marked departure from normal mentality above the normal, it must be construed as including only those cases in which we have a subnormal mentality, since the entire subject is directed to abnormalities.

Under Section 5501, as amended in 1949, the sexual psychopath provisions are applicable only in cases where a person is charged with crime and "after adjudication of the charge."

Nature of Crime Charged

The language of Section 5501 "charged with a crime" was "intended to mean charged with a crime having some relation to the type of offenses referred to in Section 5500" and if no such relation exists, the denial of proceedings under the sexual psychopath law is proper. (*People* v. *Haley*,

Since the general word "crime" is used, this includes cases of misdemeanor as well as felonies and, since an "adjudication" includes both an acquittal as well as a conviction, the legislature evidently intended to include criminal cases in which the issue of guilty or not guilty has been determined one way or the other and to exclude all other cases.

Commencement of the Proceeding—Discretion of the Court

Section 5501 provides that the proceeding shall be begun by the filing of an affidavit setting forth fully the facts upon which the allegation that the person is a sexual psychopath is based. When necessary the court may issue a warrant for the apprehension of such person. The section provides that when such an affidavit is filed "the court may adjourn the proceedings or suspend the sentence and proceed as provided by this chapter." This language indicates that the proceeding may be initiated even after sentence, and the use of the word "may" makes it a matter of discretion whether, upon the affidavits filed the court will proceed under the sexual psychopath statute. As said in *People* v. *Haley*, 46 Cal. App. 2d 618, 622, "the court has a sound discretion under Section 5501, supra, to determine from the affidavits filed and the evidence adduced whether the petitioner is in fact a sexual psychopath as defined by the preceding section of that code. The section clearly infers that the court possesses that discretion, for the court may adjourn the criminal proceeding only when it appears by affidavit to the satisfaction of the court that such person is a sexual psychopath * * *. It is not mandatory that the court shall adjourn the criminal proceeding when the affidavit is filed * * *. Unless there is an abuse of that discretion the ruling of the court in that regard may not be disturbed on appeal." Where the unequivocal and uncontradicted showing is made that defendant falls within the statute a denial by the court of a hearing is an abuse of discretion. (*People* v. *Barnett*, 27 Cal. 2d 649.) Where of three physicians appointed by the court two expressed an opinion that defendant was a sexual psychopath and one was of the opinion that he was a sex pervert the appellate court held that the trial judge was not bound to accept the numerical preponderance of the experts and his decision that defendant was not a sexual psychopath but a sex pervert was affirmed. *People* v. *Parrish*, 75 Cal. App. 2d 907. Note: The trial court and the appellate court here recognize that a sex pervert is not necessarily a sexual psychopath. Under Section 5500 a sex pervert to fall within the definition of sexual psychopath must also come within classes (a), (b), or (c) set forth in that section.)

Not An Adjudication of Insanity

The finding by a court that a defendant is a sexual psychopath is not an adjudication that the defendant is insane nor does the sexual psychopath law so contemplate. (*People* v. *Tipton*, 90 A. C. A. 115.)

Section 5502 contains interesting provisions which are not entirely clear. It provides that "if the person is found by the court not to be a sexual psychopath the superior court shall return the person to the court in which the case originated for disposition." This language would seem to indicate that, where the criminal case is pending in another court the sexual psychopath proceeding shall be in the superior court and

may mean that even though the case be pending in a criminal department of the superior court the Legislature intended that sexual psychopath proceedings should be filed in the civil division of the court, an intent further indicated by Section 5501 which provides that the affidavit shall be in substantially the same form as the affidavit in a proceeding to have a person declared a mental incompetent. However, since the law does not exclude the criminal departments it is obviously better that sexual psychopath proceedings be conducted there.

Section 5512 presents a mechanical problem. It provides that if the judge believes that the person is a sexual psychopath he shall sign an order that the person be "committed to the Department of Mental Hygiene for placement in a state hospital for the care and treatment of the insane." Under this provision the court is required to commit the person to the Department of Mental Hygiene, a department of the State Government and not a place, the placement of the psychopath being left up to the Department of Mental Hygiene. This leaves it up to that department to not only designate the hospital but to at least indicate the procedure for transferring the psychopath to the hospital nominated by the department. The statute does not authorize the court to designate, or commit to a particular hospital until the department has so acted.

The fourth paragraph of Section 5512 is confusing, as it applies to a person found by the hospital authorities to be a sexual psychopath and yet provides for the court making an order for the return of the psychopath and a hearing (see also paragraph 5). Just why there should be a further hearing is not set forth in the section and it would seem that, having been found by the court and the hospital to be a sexual psychopath, that person should remain in the hospital and not be returned into court. Sections 5517 and 5518 seem to cover what shall become of the person who has been committed and placed in a state hospital, the procedures there set forth not involving a court hearing until the person has been returned to court. These last named sections evidently apply to persons who have been in the hospital a substantial length of time whereas Section 5512 relates to proceedings to follow the report of the superintendent of the hospital within 90 days after the patient has been received. It is obvious why (see paragraph 3) a person who is found not to be a sexual psychopath should be returned to court within the 90-day period but it is not clear why a person who is found to be a sexual psychopath should be returned after the superintendent's 90-day report.

Mentally Abnormal Sex Offenders

In 1949 Chapter 4.5, following the sexual psychopath law, was added to the code.

Section 5600 contains an involved and dubious definition. It eliminates all persons mentally ill or mentally defective, clearly eliminating insane persons, and still includes within the definition a person who evidences "an utter lack of power to control his sexual impulses" and has "uncontrolled and uncontrollable desires." Can there be such a person unless he is mentally ill or mentally defective? The authorities on mental and nervous diseases and neurology seem to agree that, unless there is mental defect or mental illness, sex impulses can be controlled

Section 5600 limits the persons who may initiate such a proceeding to the parent, spouse or child of the person or the person himself. This limitation makes the law unavailable to other persons and allows the sex offender to remain at large, at least so far as this remedy is concerned, unless the person himself or his family initiate the proceeding. Experience shows that the sex offender is most unlikely to himself seek a remedy or a commitment because of his condition and that the immediate family are about the last persons to be convinced that they have a sex offender in the family circle and do nothing about it when they do know.

The proceeding generally bears a close resemblance to that in cases of sexual psychopathy and may lead to the person's placement in a state hospital for not exceeding two years (Section 5604) and the hospital superintendent may at any time discharge such person or give him a leave of absence from the hospital on such conditions as he deems proper. This hardly seems protective as to the interests of society. Mentally abnormal sex offenders possessed of uncontrollable impulses to attack others should, when once placed in an institution, remain there until they are no longer a menace. This is particularly true since under Section 5607 the law applies only to persons against whom no criminal charge has been filed and persons against whom a criminal charge has been made which has been prosecuted to a final judgment.

This law does not, as does the sexual psychopath law, provide for the effect and relationship of this special proceeding with reference to the conviction of the person of a sexual crime and it looks very much as though this is a law which will permit a habitual sex offender to evade punishment for a sex crime of which he has been convicted. The law (see Section 5601) seems intended "for the welfare of such person" rather than the protection of society.

Another criticism of the law is that no notice of such proceeding need be given to the prosecuting attorney who convicted the defendant nor is any provision made for permitting opposition to the proceeding. Apparently the only parties are the sex offender himself and the person who filed the petition, with no one to represent society or the general public. The law looks very much like a statutory provision for the protection of dangerous sex perverts.

STATEMENT OF HAROLD W. SCHWEITZER

Presiding Judge, Criminal Divisions, Municipal Court of Los Angeles City

Pursuant to your request, I appear before you this day to present the viewpoint of a judge of the Los Angeles Municipal Court on the subject of the enforcement and the adequacy of the laws pertaining to sex crimes. I want it clearly understood that the opinions I express herein are personal and do not necessarily represent the views of the members of the municipal court.

The place of the municpal court in the handling of sex cases is often overlooked. Excluding from consideration rape and prostitution cases, we find that in 1948, approximately 95 percent of the complaints filed in Los Angeles charging the commission of sex crimes were disposed of as misdemeanor cases in the Los Angeles Municipal Court. This number was greater than the total of all sex perversion cases filed in all other courts in California combined. During the current year, while serving as the presiding judge of the criminal calendar division of the municipal court, an average of 10 sex perversion cases per day have been disposed of in my court alone. The fact that so large a number of cases involving sex perversions are handled as misdemeanors is often overlooked by the Legislature and our people generally. Typical of this oversight is illustrated by the fact that the Los Angeles County Grand Jury just completed an investigation on sex crimes, sent recommendations to the Governor, and yet that investigation did not include any consideration of misdemeanor sex perversion cases, which as I have said, constitute approximately 95 percent of the total perversion cases committed in Los Angeles.

It is worthy to note that in almost every instance the only difference between a misdemeanor sex crime and a felony is a matter of degree; the intent to commit a felony is usually present and the defendant has the same potentialities as the felon sex deviate.

Few people have any conception of the nature and extent of sex crimes. Because of our innate and inherent smugness, sex has always been discussed in a hush-hush manner, and because of decency, the newspapers only mention occasional cases. In 1948, there were 104 felony complaints and 2,188 misdemeanor complaints on sex offenses (excluding all rape and prostitution cases) filed in Los Angeles, resulting in 54 felony convictions and 1,929 misdemeanor convictions. Sixty-eight of these defendants were convicted of crimes against children, 131 of indecent exposure and 1,670 of unnatural sex acts. Few people realize that the defendants in these cases came from all walks and stations of life, that they are of all ages, and from both sexes. Sex abnormality is no respecter of persons; we find sex deviates in the best of families, regardless of background, education or occupation. It strikes like any disease, and usually without warning.

Yesterday you heard the opinions of some outstanding medical experts. You received almost as many different opinions as you had witnesses. The only conclusions that you were able to reach were:

(1) That the sex criminal is a medical problem;
(2) That the sex deviate should be institutionalized, treated by competent medical personnel, and not released to society until he is either cured or is no longer a menace to the health and safety of others;
(3) That medical experts are not in agreement with reference to the diagnosis, care and treatment of sex criminals; and
(4) That jail does not cure but aggravates the pervert's condition so that upon release he is usually more of a menace than upon confinement.

These principles are recognized generally by the Sexual Psychopathic Act (Sec. 5500, et seq., Welfare and Institutions Code), but as will be pointed out later, there are serious difficulties in the application of that law.

It is easy for the public to demand the sterilization and life imprisonment of all sex perverts but our penal laws generally are predicated upon the premises of punishment and rehabilitation. As I have heretofore stated, approximately 95 percent of the cases of sex perversion prosecuted in Los Angeles are misdemeanors only, and the maximum punishment for any of them is six months in jail and a fine of $500. The judge in each case is confronted with an extremely difficult problem of weighing the potential danger of each pervert. Should he be confined for six months and then released as a greater menace to society, or should he be placed on probation, under the close supervision of probation authorities? With regard to probation, it is worthy to note that even though there be some weaknesses or abuses in our probation and parole system, probation or parole, as the case might be, is not a matter of leniency, but is supervisory control over an individual who is trying to reestablish himself in society. Both the public and the individual get the benefit of supervision during the difficult period or readjustment. With regard to sex cases, conditions are usually imposed on defendants to secure all necessary medical attention and guidance.

Now passing on to a discussion of some specific sex laws, Governor Warren recently stated that because only a few hundred convicted sex criminals had registered under the state law (P. C. 290), it appeared to him that the law was not being enforced. Undoubtedly there are a considerable number of sex criminals who have not registered with the state authorities, but to me the explanation is that in Los Angeles most sex criminals are prosecuted under a law that is not included in the State Registration Act. In 1948 alone, 1,670 persons were convicted in the Los Angeles Municipal Court of Penal Code 647.5 (Vag. Lewd). Almost without exception, each defendant was participating in a homosexual or other unnatural sex act. A considerable number might have been convicted of a felony (P. C. 286 or 288a). Each of those defendants is required to register as a sex criminal under Los Angeles Municipal Code Section 52.38d but not under the state law. Examination of the type of offenses listed in Penal Code 290 indicates clearly to me that the Legislature contemplated the registration of these "vag. lewds."

Penal Code 647.5 refers to an "idle, or lewd, or dissolute person, or associate of known thieves." As will be noted, it is worded in the disjunctive, and includes types of offenses which should not properly be designated as sex crimes. Actually, however, the number of these nonsex cases is small, only 34 in Los Angeles in 1948.

It is recommended that Penal Code 290 be amended to include therein persons convicted of being a lewd or dissolute person under Penal Code 647.5. A specific reference to the type of charge will eliminate

the registration requirement as to the few persons convicted under the other offenses mentioned in Penal Code 647.5.

Penologists and medical experts have concluded that many crimes of violence, not enumerated in Penal Code 290 as sex crimes, are committed by sexual psychopaths for the purpose of sexual gratification; examples are many of the pyromaniacs who commit arson, sadists who commit an assault with a deadly weapon, battery, and even the Peeping Tom. Although these cases to which I refer are not numerous, when they do occur, such defendants should certainly be considered as sexual criminals and handled accordingly. Authority should be given to courts to order such defendants to register under Penal Code 290, and that section should be amended to compel such persons to comply with such order.

As to the Sexual Psychopathic Act (Sec. 5500 et seq., Welfare and Institutions Code), this law is an example of progressive legislation; it recognizes the need for institutionalization, with medical treatment, for sexual psychopaths, as distinguished from the usual incarceration for other criminals. Section 5500 of the law defines a sexual psychopath as "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."

Section 5501 of the Welfare and Institutions Code provides generally for the initiation of a proceeding if "* * * it appears by affidavit to the satisfaction of the court that such person is a sexual psychopath." The affidavit is very similar to a criminal complaint. Relatives, friends, law enforcement officers, jail physicians and others, however, are reluctant to sign such affidavit. The court has no authority to initiate a proceeding on its own motion. As a result, such proceedings are seldom commenced.

Section 5047 of the Welfare and Institutions Code pertains to the petition filed in cases of mentally ill persons, and provides that no person filing such petition "shall be rendered liable thereby either civilly or criminally." No similar provision is included in the Sexual Psychopathic Act; the reasons favoring such a provision are identical in both proceedings, and the inclusion of such a provision in the Sexual Psychopathic Act will remove a major objection to its use. I therefore recommend the inclusion of a nonliability provision in Section 5501 of the Welfare and Institutions Code, similar to that now contained in Section 5047, Welfare and Institutions Code.

The legislators who enacted the Sexual Psychopathic Act either did not have full information on the number of "unnatural" sex crimes committed daily or they did not intend that the law apply to more than a very few of the number, because they failed to make adequate provisions for the care and treatment of the large number of sexual psychopaths that we have at large. Our institutions are overcrowded and understaffed. Furthermore, the proceedings under this act are cumbersome, and require, following the completion of a criminal trial, a separate and complete trial on the psychopathic issue. As heretofore stated, an average of 10 cases of sex perversion is handled in my

court alone each day and I have serious doubts that the psychopathic department of the superior court is prepared to conduct trials in each of these cases on the psychopathic issue, or could handle them without disrupting the entire court. These objections deprive us of the benefit of this excellent law in most cases.

A suggested means of streamlining the procedure under the act would be to incorporate therein a provision that upon a second or succeeding conviction of any sex crime referred to in Penal Code 290, as amended to include Penal Code 647.5, a finding shall be made that the defendant is a sexual psychopath and the defendant shall be forthwith committed to the Department of Mental Hygiene for observation, treatment and care as prescribed by the Sexual Psychopathic Act. Such a provision of law would simplify superior court procedures by eliminating entirely the trial in the psychopathic court, and at the same time, accomplish the purpose of the law. Following a second or subsequent conviction, there also appears to be no valid reason for filing an affidavit, pursuant to Section 5501, Welfare and Institutions Code; the criminal court should be empowered to refer the case to the psychopathic court on its own motion. I further recommend that this procedure be mandatory, principally for rehabilitory purposes.

To insure the success of the Sexual Psychopathic Act, adequate facilities for the diagnosis, confinement, treatment and rehabilitation of sex criminals must be provided. We have no such facility today. In connection therewith, and as the medical experts pointed out to you yesterday, we have many types of sex deviates. Some are dangerous and require maximum supervision; others require little or no supervision. Each type requires special attention and treatment. Such an institution should be established in the immediate future, and should be exclusively for sex deviates.

Coupled with this institutionalized care, further medical research must be undertaken; witness the serious conflict in opinions within the medical profession. Such research could best be handled on a national scale, possibly under the supervision of the U. S. Public Health Service. Perhaps money could be obtained from a private research foundation. In any event, the problem is so vast and the expense of research so great that it must be undertaken with public funds, and our Legislature should make every effort to inaugurate such a program forthwith.

Public hysteria at times like these demands sterilization of sex criminals. Our present law provides for sterilization in the case of the carnal abuse of a female under 10 years of age (Penal Code 645), and in certain cases where an inmate of a state prison gives evidence of degeneracy (Penal Code 2670). Medical science is divided on the value of sterilization of sexual psychopaths; however, I feel that this doubt should be resolved in favor of society. As both a punitive and preventive measure, I recommend that Penal Code 645 be amended to authorize the sterilization of any person convicted of Penal Code 288, namely, a lewd and lascivious sex act with a child under 14 years of age, the requirement of sterilization to be discretionary with the trial court.

Recently Judge Byron J. Walters of the municipal court advocated a complete medical clinic, operated under the control of the municipal court, to assist the municipal court, exclusively, in connection with diagnosis and prognosis of sex deviates. Although such a staff would be helpful, I do not believe that such a proposal is the economical solution. I am very fearful of the trend of governmental agencies to expand their own facilities rather than share facilities with other agencies. What our courts need, and I include such civil courts as divorce and probate courts as well as criminal courts, is a diagnostic facility, possibly operating under the Department of Mental Hygiene. Such a facility should be provided in the larger metropolitan areas of the State. It would be an impartial agency for psychiatric investigations, and use could be made of it in every case involving a psychopathic question. In view of the wide divergence of opinion on sexual psychiatric problems, a neutral source of opinion is especially important. In addition to its general use, in criminal cases, its use would be within the spirit of the mandatory probation referral requirement set forth in Penal Code 1203. Also it could assist in the rehabilitory work of parolees and probationers. It would be available for the court's use under Penal Code 288.1, which provides generally for a mandatory report of a psychiatrist in cases where the victim was under 14 years of age.

Judge Vernon Hunt of the municipal court has suggested as preventive therapy the establishment in each county of a facility of the county hospital, or it might be a part of the diagnostic clinic just discussed, for use as a psychiatric center, staffed with doctors, psychiatrists and chaplains where indigent persons with sexual problems might obtain some guidance and assistance. The inclusion of a chaplain as a member of a three-man team is interesting, and stems from the excellent result Alcoholics Anonymous members have received by way of spiritual guidance. There is no doubt that there is need in most counties for a free psychiatric center, to be operated as an out-patient service in connection with other county medical facilities. At the present time there is no public psychiatric agency for indigents and they cannot afford the services of private psychiatrists.

It has been a pleasure to appear before you. I hope that my comments and recommendations will be helpful in your study. I do not intend to be presumptuous, but allow me to inject a word of caution. The sex problem is serious and it has been overlooked too long. However, this does not mean that the Legislature should permit itself to be stampeded into drastic action. The subject must be thoroughly and carefully studied. Beware of the individual who presumes to know the answers because, as you learned yesterday, the medical fraternity is far from being in agreement within its own ranks. We must support a research program on the treatment of sex deviates, and since the medical profession is in agreement that such persons should be institutionalized until cured or free of potential menace, we must have adequate facilities for their confinement.

STATEMENT OF JUDGE W. TURNEY FOX

Superior Court Judge, Los Angeles County

Suggestions re Improvement of Laws Dealing With Sex Offenses, Their Administration, and Other Related Matters

1. Redraft the definition of sexual psychopath so that it will be understandable and definite (Sec. 5500, W. and I. Code). This was a recommendation of Governor's Conference on Mental Health (P. 72-9-a Final Report).

In view of the numerous amendments to this law passed by the Legislature earlier this year, which went into effect last October 1st, more frequent use of this law should now be made.

2. Redraft the definition of "mentally abnormal sex offender" (Sec. 5600, W. & I. Code). The definition is now entirely too restrictive. It should be broadened and simplified so that it will be easier to bring persons who indulge in abnormal sex acts within its provisions.

3. Amend the "Mentally Abnormal Sex Offender" Law so that the district attorney may file a petition in court to have persons who indulge in abnormal sex acts examined and committed to the Department of Mental Hygiene for placement in a state hospital for supervision, care and treatment. The present restrictive definition and voluntary feature of the law makes it impracticable and likely to be seldom used. The procedural set-up might in general be patterned after that now provided for the mentally ill—the right to trial by jury should, of course, be preserved. This would not be a criminal proceeding.

4. The "Little Lindbergh" Law (Sec. 209, Penal Code) should be amended so as to provide for the death penalty, or life imprisonment without possibility of parole, at the discretion of the jury trying the case, where a child is kidnaped for the purpose of an illegal sex act and suffers bodily harm.

5. When a child is killed by a person who is guilty of committing lewd or lascivious acts (Sec. 288, P. C.) upon it, the offense should be made murder in the first degree, without the necessity of the prosecution proving premeditation. This is now the law where the killing is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary or mayhem (Sec. 189, P. C.).

6. Make mandatory the registration (Sec. 290, P. C.) of persons convicted of sex offenses when convicted, and require them to report periodically—say, every three months—to the law enforcement officer with whom they register, until they are able to produce a certificate from a reputable psychiatrist that the person is no longer a menace to the health and safety of others.

7. Fingerprint all persons found guilty of sex crimes, even though the offense is only a misdemeanor.

8. Appropriate a substantial amount of money for research in the field of abnormal sex behavior.

9. The Probation Department of Los Angeles County and other major counties should be provided with a psychiatric clinic through which all sex offenders should go so that the courts, both municipal and superior, should have the benefit of psychiatric reports in handling all such cases.

STATEMENT OF DON REDWINE

City Prosecutor, City of Los Angeles

Judiciary Interim Committee

California State Assembly

GENTLEMEN: I appreciate the opportunity of appearing before your committee to add the contribution of the Los Angeles City Attorney toward the solution of a problem which has caused our office, together with all prosecuting authorities throughout the State of California, the expenditure of a tremendous amount of time and thought and which has been one of our major difficulties throughout past years.

I realize that your committee is hearing reports from the representatives of the medical profession, the police department and the judges, in addition to other recommendations and reports and, therefore, in our report and such recommendations as we may offer, I will attempt insofar as possible to eliminate duplications.

The City of Los Angeles probably has as many prosecutions, at least of a misdemeanor nature, involving sex crimes or crimes that might eventually lead to sexual disorders, as the balance of the State of California. This is caused in part by the large population and partly, I believe, by an efficient police department appreciating and realizing the danger to society involved.

For a number of years our office has been in almost constant contact with Captain Bolling and Lieutenant England of the Police Juvenile Division and at their instance certain ordinances, and state laws also, have been enacted tending to prevent persons from coming into contact with or being exposed to situations and conditions which might eventually lead to sexual disorders or abnormal sexual behavior.

From the information which I have at hand, it appears that the City of Los Angeles is as far or further advanced than any city in legislation of this type and nature. Among local legislation of this character I might mention ordinances which prohibit the possession of lewd pictures within 300 feet of a school or playground, or any place where children congregate; and the display of nude pictures in news or magazine stands or theater lobbies.

This office in the past, at the instance of the Los Angeles Police Department, has prosecuted a number of magazine distributors for selling or possessing lewd, obscene and indecent pictures and stories and I am informed that at the present time several off-color magazines have a special expurgated edition which is sent only to Los Angeles in order to escape prosecution under such ordinances.

We have also prosecuted a number of cases under our city ordinance for operating indecent shows which tend to corrupt the morals of youths and others or which plays deal with sex degeneracy or perversion.

A number of years ago Los Angeles passed a so-called "Convict Registration Ordinance" which not only requires all persons convicted of a felony since January 1, 1921, to register with the Chief of Police, but specifically enumerates, as presently worded, a number of misdemeanors involving sexual abnormalities and requires those convicted of such misdemeanors to register. The list now includes, to the best of my knowledge, all sex misdemeanor crimes that this office is called upon to prosecute.

Our ordinance also requires registration by those persons convicted of sexual offenses even though such persons have had their convictions set aside and expunged by virtue of Section 1203.4 of the Penal Code.

In 1947, Section 290 was added to the Penal Code of the State of California requiring registration throughout the State, following in general terms our city ordinance but lacking certain provisions contained in our city ordinance which we feel to be necessary for proper identification and control of this class of offender.

For instance, the largest number of our sex crimes or cases involving sexual perversion are prosecuted under subdivision 5 of Section 647 of the Penal Code (Vag. Lewd). Although required under our city ordinance, the state law, as presently written, does not require registration for violation of this Penal Code section. It requires registration for "any offense involving lewd and lascivious conduct under Section 702 of the Welfare and Institutions Code."

It is our opinion that Section 290 of the Penal Code should require registration for all convictions under Section 702 of the Welfare and Institutions Code and also for that portion of Subdivision 5 of Section 647 of the Penal Code upon a conviction of being a lewd or dissolute person. Section 290 of the Penal Code should definitely contain a provision requiring registration upon a conviction even though a defendant is on probation or parole and he should not be relieved of the duty of registering merely because his record has been expunged under Section 1203.4 of the Penal Code.

The question of the necessity of registration under our city ordinance after convictions involving sex offenses where the defendants record has subsequently been expunged has already arisen between this office and the Los Angeles County Probation Office and that office has been advised that in our opinion registration under such circumstances is required. The state law should be clarified so that there would be no doubt that registration is required in this type of case.

There appears to be a great difference of opinion among prosecutors, some judges, police and the medical profession as to the proper method of the treatment, incarceration or handling of defendants in cases involving sex perversion or sex crimes but I think you will find, almost without exception, that these four groups are of the opinion that the large majority of sex crimes and sex abnormalities constitute a grave and constantly increasing menace to society and that these abnormal people should be segregated either by incarceration in jail, commitment to institutions or by some other method to prevent contamination of normal people, both adults and children, which can only be done by association and contact with normal people.

This office in the past has prosecuted many thousands of cases, one recent case in particular, involving some 25 perverts attending a party, which is not out of the ordinary, where they were attempting to and did entice and induce young boys into committing acts of sexual degeneracy.

The records presented to your committee by the police department will indicate a constant increase in crimes of this character. This is due, I believe, to several factors: (1) the natural increase in the population of the City of Los Angeles; (2) the more efficient work and increased number of police officers attached to this type of operation; and (3) the

general public having become more and more conscious of the evils and dangers of this type of individual and cooperating to a greater extent in the apprehension and conviction of such persons.

No matter whether these abnormal people are to be incarcerated in jail, confined to a mental institution, segregated from the general public, or given some kind of treatment, as a prerequisite to punishment or involuntary treatment, it is necessary that evidence and testimony be taken before some court, body or board.

One of the difficulties encountered by this office, and I am satisfied by most law enforcement offices throughout the State, is the reluctance of women, and especially young girls, to testify and the reluctance of mothers and fathers to allow or permit their minor children to testify regarding sex offenses. Therefore, it appears that one of the primary steps in eradicating this menace is an educational program presenting to the general public the danger to their health and safety, and that of their children, by permitting these offenders to remain at large and unpunished, and impressing upon them the importance, even though it generally is embarrassing and humiliating, of reporting such offenses and furnishing the necessary information to the proper authorities and the importance of appearing in court and testifying against such defendants in order to do their share toward the public good.

It is a known fact to prosecutors, police and medical authorities that certain types of abnormal persons tend to congregate in groups at certain known locations. Realizing this fact, there recently has been enacted an ordinance in the City of Los Angeles attempting to correct this situation by prohibiting "known lewd, immoral or dissolute characters, sexual perverts and persons having been convicted of being a lewd and dissolute vagrant" from loitering or remaining in any place of business after notice by the management. The ordinance also prohibits the manager of such a place of business from allowing such perverts to loiter or remain in his establishment. Bearing in mind the fact that your committee is attempting not only to determine the proper method of handling perverts but also, I am sure, attempting to eradicate this trouble at its source, it might be advisable to seriously consider a state law along the lines of our city ordinance regulating the congregation of such perverts on a statewide basis, at least in places of public resort where an easy access to new material may be available.

Our office has been very successful in the prosecution of various types of misdemeanor offenses involving sexual perversion. Along an educational program it might be suggested that the general public, if they have not already been advised, be made fully aware of the fact that these conditions do exist. Even now, in spite of the publicity given to sex crimes, we have certain people on our jury panel who are unable to believe that an accused made an immoral advance to a member of the same sex, especially if such member, as is usually the case, is a police officer.

This office is unable upon such short notice to furnish a list breaking down the number of complaints involving sex offenses but in the last six months we have prosecuted some one thousand cases involving some

type of sex offense. It is our understanding that such records will be furnished your committee by other agencies requested to appear before you.

It seems to be the consensus that incarceration alone is not the answer to this problem in at least some cases. Your committee is undoubtedly as familiar as I am with the provisions of the state law under the Welfare and Institutions Code relating to sexual psychopaths. Undoubtedly this is a big step on a state level to effect a solution to this problem. We are heartily in accord with such a program. The 1949 amendment simplifies to a large extent the procedure to be followed in the commitment of sexual psychopaths. The proper, efficient operation under this section would necessarily require the expenditure of a large amount of state funds for institutions and personnel. The apprehension, conviction and incarceration of all criminals, including sex offenders, is now a heavy burden on the city, county and state but in the over-all picture, taking into consideration that under this act sexual psychopaths would be incarcerated and receive treatment, the amount of money expended therefor would undoubtedly be justified for the benefit of the public health, welfare and safety.

No doubt there will be presented to your committee in the course of your hearings, recommendations that the penalty in certain penal sections violated, be increased, and that certain of these sections be made felonies and incarceration be made mandatory without the right of probation or a suspended sentence. In considering the advisability of following such recommendations, it should be taken into consideration that sexual crimes consist of as large a number of varied acts as possibly do traffic violations. All types and conditions of people are involved. It is impossible to include all violators in an over-all provision and remove discretion from the court as to the sentence to be imposed for the good of society.

If incarceration is the answer to this problem, it is the certainty and not the severity of a sentence that will act as a deterrent to other violators.

As you are aware, the procedure in a felony trial is far more cumbersome than procedure in a misdemeanor trial. Unless an indictment is filed by the grand jury, it is necessary that a preliminary hearing be held. This not only delays the proceeding, but gives the defendant an opportunity to discover and receive a transcript of any testimony taken at the preliminary hearing, which, if the matter is tried in the superior court, will naturally be taken advantage of by his counsel, and possibly reduce the chances of conviction for the offense committed.

A number of violators of the misdemeanor sections under scrutiny should not be confined in the state penitentiary. If such is the case, the facts surrounding their arrest would, in a majority of cases, be sufficient to justify a prosecution under existing felony statutes.

It has been the experience of law enforcement agencies in the past that if the penalty is too severe, based on the actual situation in each case, the jury will not find the defendant guilty, even though his actions may bring him within the literal terms of the statute under which he is being prosecuted.

The misdemeanor statutes involved at the present time have a maximum penalty of six months in jail, and it is recommended that this maximum penalty be increased to one year. This would still leave the offense in the misdemeanor category and would allow the court, under conditions that appear to it to justify the same, to commit the defendant to jail upon conviction for a term more nearly commensurate with his crime.

In conclusion, I wish to again thank the committee for this opportunity of appearing before you and trust and hope that out of their findings and investigations, there will be developed a solution to a problem which is now very seriously affecting society as a whole.

Respectfully presented,

RAY L. CHESEBRO
City Attorney
By DONALD M. REDWINE
Assistant City Attorney

STATEMENT OF R. R. HODGKINSON

Chief of Police, Newport Beach

Assemblyman Smith's invitation to appear at this conference requested that I bring along statistics on sex crimes in general. However, I felt that the conference would concentrate on crimes against children, and I have confined myself to data on those. I hope I am correct in the belief that the problem which confronts this conference centers on that age group who are incapable of defending themselves.

Law enforcement officers agree to a man that crimes against children, more commonly known to us as Section 288, are the most difficult to prosecute of all which come to our attention. There are several reasons for this. I should like to enumerate some, in the hope that through education, publicity, legislation and enforcement, the prosecution of these cases might become more effective. In the first place, the victim is usually so young that juries will not accept their testimony without effective corroboration. Several of our cases have had to be dismissed because of this factor. Another handicap is the fact that immature minds do not retain details for a sufficient length of time to enable the victim to testify convincingly. It is true that we have recently passed legislation which expedites the trial, but even now the interim between the occurrence and the time when the victim relates it to the jury is long enough for important and convincing details to be forgotten. Another handicap is the fact that many parents are reluctant to subject their children to the humility of testifying in court in fear of future psychological consequences. Another handicap, and I consider this of extreme importance, is the constant danger of falsely accusing some individual of molesting a child. Those who have raised children fully realize that some children, particularly little girls, have vivid imaginations. Attempts to warn them and instruct them, if not worded judicially but overstressed, tends to create certain psychological factors. There are also physical factors, which are not at all uncommon, that operate to stimulate and increase the imagination and unfortunately, some children just plain lie. All of this operates to make the evaluation more difficult for the investigating officer.

Newport Beach has an estimated population of 20,000; of this figure I estimate that one-half are permanent year-round residents. Of the remaining 10,000 about one-half, or 5,000, are those who could be called casual visitors; they are in our city from one to thirty days. We also have in our city five separate business sections and four separate United States Post Offices, and all are separated one from the other by some part of Newport Bay. This separation makes every fellow citizen a stranger to a great many others; consequently, those who are summer visitors or weekenders could be citizens. It would, therefore, appear that our city has a geographical problem. Our department conducts a check of obvious casuals. Fortunately, neither the results of that nor the number of reported child molestations reveal any special factors. I include Newport Beach's infrequency of these crimes for such value as that fact may have for students of this type of criminal.

In the past three years we have had only 19 molesting cases reported to our department. This includes reports from parents of children having been spoken to by men in automobiles with invitations to take rides; in such cases usually the automobile is driven away without any description

or license number being obtained. The 19 reports also include those from people who have become suspicious of individuals on the beach and where we were unable, after investigation, to find any cause for action. The three-year report record is as follows:

1947	8 cases reported	3 arrests	2 convictions
1948	5 cases reported	2 arrests	2 convictions
1949	6 cases reported	1 arrest	1 conviction

Your letter asked for a statement as to our system in the keeping of records. This is done in a standard routine manner with the entire report being given a serial number. File cards are filled out for each person mentioned in the report and the usual breakdown or crime classification cards are written up. Each file card contains the case number and the breakdown card on which the suspects' names appear (if we have a suspect), and contains a brief resume of the occurrence. These cards serve as a list of known or probable offenders in our community. Information from other departments also is placed on a file card in this same file.

While the public mind, recently stirred, is on the subject of sex offenses against children, it would appear to be an appropriate time for members of our profession again to reiterate our instructions to parents and children, stressing the importance of obtaining immediately descriptions, automobile license numbers and the names and addresses of any witnesses. I also stress the immediate questioning of the child carefully and calmly by a parent with a witness present and the importance of writing down the questions and answers at once; also, the importance of summoning the police without delay. We should impress the public with the importance of full cooperation as far as testimony and court appearances is concerned.

I would like to recommend a form of education, the method of which should be devised by those better informed than myself, but which I think is needed as much as legislation and enforcement is needed, both for children and parents. If the responsibility of avoiding occurrences before they happened were placed squarely upon the shoulders of the parents and the parents were supplied with the necessary information and methods of instruction. I believe that trouble with strangers could be avoided before it begins. Many mothers and fathers allow children to reach adolescence in complete ignorance of the fact that those who dwell in this world with us are not all "nature's noblemen." All is not sweetness and light and the sooner the child finds it out the sooner he will be properly equipped to live his life in safety.

STATEMENT OF OAK K. BURGER

Member of Los Angeles Police Department's Scientific Investigation Division (crime laboratory) and instructor of Criminal Investigation and Criminology Los Angeles State College.

LOS ANGELES STATE COLLEGE
LOS ANGELES 27, CALIFORNIA, December 8, 1949

To: Subcommittee of the Judiciary Interim Committee of State Assembly.

Purpose

To suggest what part, if any, behavior research equipment such as so-called lie-detector, etc., might play in the investigation of persons suspected of deviant sexual conduct.

Present statutes appear to cover most known sex offenses. There is however, an apparent lag between the number of crimes reported, the arrests which follow, and the ultimate convictions. I am not qualified to determine precisely why this disparity follows but the fact that it does is evident in the statistics. Illustrative of this point are the figures involving those steps for three "sex category" crimes. These figures are from the Los Angeles police statistician's office and may be found on pages 31, 60, 68 through 72 (arrest tables), 102 through 106. Copies of the said statistics accompany this report.

The three crimes reported in 1948:

	Reported	Arrests	Complaints	Convictions
1. Crimes against child, 288 P. C.	632	316	81	40
2. Sex perversions, 288a P. C.	448	399	15	7
3. Sodomy, 286 P. C.	109	85	6	4

These figures indicate that at least in these three areas of sexual offenses considerably more releases are effected than complaints issued. There are several explanations for this situation, the fact that in many instances the prosecuting attorney doesn't feel that the child victim-witness qualifies as court witness, that in some instances parents do not wish to prosecute, and in a great number of cases investigating officers are unable to obtain any admission or confession from the suspect because, (a) unable to do so in interview; (b) suspect writs out of custody before a reasonable interrogation has been attempted; (c) these suspects are educated to realize that if they remain silent and/or deny everything that the case against them will fail for lack of evidence.

Note the figures on sexual pervert reports, arrests, and convictions: Four hundred and forty-eight reported, 399 arrests followed and only 15 complaints, followed by seven convictions.

The figures on crimes against children indicate that about 25 percent of the arrests are followed by complaints and that only 50 percent of the complaints evolve to convictions. Here in many instances the child witness did not qualify to testify and absence of other evidence or corroboration made prosecution unfeasible.

The figures on sodomists reveal that of the 85 cases involving arrest a total of six complaints followed. Here again we have the probable explanation that without corroborating evidence the testimony reduces to that of an accomplice and present statutes are not prosecuted on that type of testimony.

Yet these men are definite threats to the [illegible]

How can behavior research equipment help change this situation?

By assisting the investigating officer in the following ways:

(1) To determine truth of original report (in those cases where there is doubt as to integrity of the accuser.)

(2) To help determine whether the accused is actually involved.

(3) In those instances where a man is obviously guilty to help obtain an admission or confession.

(4) Where a man is determinable as a sexual deviate even though he may be innocent of the matter immediately under inquiry, so that such individual may be identified as possible offender in future instances.

(5) In those cases where it is possible to determine that an accused individual is totally innocent through combination of the interview and investigational activity stemming from information interview obtained, thereby clearing an individual.

This approach is particularly officious when it is obtained through someone not definitely associated with police reference, or where the interview may be independent of the police presence. Such interviews often act as oral-emotional expression outlets and through semi-counselling techniques many facts may be obtained which would be impossible under other influences or conditions.

STATEMENT OF SIDNEY ZAGRI

California Citizens' Committee for Mental Hygiene, Inc.

Executive Secretary and Member of the Board of Directors of the California Citizens' Committee for Mental Hygiene, Inc.; Member of the Program Committee of the Governor's Conference on Mental Health; Consultant to the Panel on Institutional Treatment and Care, Governor's Conference on Mental Health; Member of the Mental Hygiene Committee, Federation of Community Coordinating Councils of Los Angeles County; Legislative Representative for California Citizens' Committee for Mental Hygiene, Inc.; Member of Committee on Physical and Mental Health of Civic Center Coordinating Council; Member of Wisconsin Bar, L.L.B., University of Wisconsin.

I. Basic aims of legislation.
   A. Provisions for realistic community security.
   B. Treatment with the hope of restoration of the sex offender.

II. Implementation of such goals must include:
   A. Extensive program of research into the causes of sex crimes.
   B. Amendment of Sexual Psychopathic Act making it mandatory that all persons convicted of a sex crime be screened by a board of psychiatrists and penalogists to determine whether treatment might restore the individual to relative normalcy.
   C. Expansion of the facilities of the Department of Mental Hygiene to afford treatment, not mere custodial care.

III. California Sexual Psychopathic Law compares favorably with progressive legislation in the field now in effect in other states. It is very much like the Pennsylvania law which has been recommended as a model by the special Committee on Psychiatrically Deviated Offenders of the Group for the Advancement of Psychiatry.
   A. Difficulty has been that it is permissive, not mandatory, and the act has not been used except in rare cases.
      1. In Los Angeles City 3,838 sex crime arrests during the first 10 months of 1949 alone, of this number there were 304 crimes against children and the sexual psychopath law, which permits the court to order a special hearing before a board of psychiatrists to determine whether the convicted defendant is a sexual psychopath was used in only three cases.
      2. Only 77 sexual psychopaths were admitted in the State Department of Mental Hygiene during this period—1949, and 78 during the period of 1948. Since the law has been in effect the admissions have been at the rate of 40 to 50 per year.

IV. Mental hygiene facilities must be made adequate so that the law can function properly.
   A. In 1949-50, there were a total of 165 positions of physicians employed by the State Department of Mental Hygiene for a total population of 39,267 or a ratio of one doctor to 243 patients.
   B. Support Tallman's Budget requesting an increase of 15 percent or $5,000,000, 75 percent of which will be spent for increased personnel for treatment of patients.

V. Further study of problem should be made and Legislature should appropriate funds for the purpose of additional study of the problem.