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THE SEXUAL PSYCHOPATH—A CIVIC-SOCIAL RESPONSIBILITY

A Discussion of Definitions, with Comments on Existing and Needed Legislation and Treatment Resources for Abnormal Sex Offenders

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The problem of how to deal with the sexual psychopath has become one of the burning issues of the day among authorities in correction and mental hygiene. Habitual sex offenders have been the object of special laws in at least thirteen jurisdictions in recent legislative sessions.* Several states, including California, New York, Maryland and New Jersey are making studies looking to the establishment of more cogent treatment plans through which to curtail the apparently growing menace to public security occasioned by the vicious crimes of psychopaths.

There has been a spate of writing on the subject, proceeding largely from medical and psychological scholars, who have given attention mainly to matters of definition and symptomatology, and very little to treatment methods. Legal authorities have remained generally reticent and uncritical concerning the issues of legal and social policy involved. The literature on the subject reveals more clearly than any other one conclusion: that the nature of sexual psychopathy, its treatment techniques, and the form of legislation best designed to curtail its criminal expressions for the most part are realms still unexplored.

The problem is so serious, nevertheless, as to call for careful study looking toward the discovery of methods by which the psychopath can reasonably be discovered and treated within the limitations of current knowledge. Proper consideration must also be directed to the protection of individual liberties against the abuses that could easily flow from unguided empiricism in an area that is confused by moral issues of sex as well as disagreement concerning diagnosis and therapy.

The effort to enact legislation on a problem that has stimulated acute public anxiety inevitably involves the dangers of inadequate formulation of new legal norms and of poorly conceived policy. This is the more true where the issues involved are—as in the instance of sexual psychopathy—technical, and where novel questions of psychiatric definition, therapy, and resources are raised.

* Washington, D. C., Michigan, Vermont, Minnesota, New Hampshire, Indiana, Wisconsin, Illinois, Ohio, California, Massachusetts, Washington, and New Jersey. See chart pp. 368-373.

It is the function of a Commission recently established by the Governor of the State of New Jersey to inquire carefully into the considerations involved, and if possible to recommend an improved approach to the curtailment of the crimes of sexual psychopaths. The technical advisor to the Commission proposes here to examine the several major problems upon which the feasibility and form of legislation for the specialized treatment of the sexual psychopath may depend and to consider in a preliminary way the elements that may enter into a resolution of these problems.

DO WE KNOW WHAT SEXUAL PSYCHOPATHY IS?

Obviously, before attempting to control a problem, its substantive character needs to be defined. More particularly, if it be proposed that a medico-psychological status should be the basis of specialized treatment under the law, there should be a great measure of consensus among psychiatrists as to the nature of the disorder. There should be agreement on sufficiently clear and specific characteristics or symptoms to assure a uniform administration of the law: so that in diagnosis different authorities will discriminate the deviant similarly, and will avoid subjecting to potentially long-term and expensive detention individuals who do not need to be treated. What is the state of contemporary expert opinion in regard to sexual psychopathy?

Definitions Do Not Yet Agree

Upon the record, psychiatric authorities are widely split in their interpretations of the nature of sexual psychopathy. Some would define the psychopathic state by *exclusion*, as a condition of psychological abnormality in which there is neither psychosis nor psychoneurosis but chronic abnormal responses to the environment. Various writers have concluded that it is a condition permitting of no uniform definition at all. Commonly the aberrant erotic trends of the sexual psychopath are considered to be merely an aspect occurring generally among all psychopathic personalities and that no effort should be made to distinguish sexual psychopaths from other psychopathic personalities. Some authorities have maintained, moreover, that the psychopathic traits are present in a large segment of the population and that in the usual life history they prove to be innocuous, or even advantageous determinants of success—that the deviant condition is one of degree rather than one of kind.

A substantial body of medical opinion has conceived the psychopathic traits to be biological and hereditary; this etiology is implied in the terms "constitutional psychopath" and "constitutional psychopathic inferiority." Others have maintained as vigorously that the state is environmentally conditioned; these authorities would define the disorder in terms of the pathological home situations of neglect and emotional deprivation from which the psychological reaction patterns are deemed to have arisen.

Apparently as an escape from these confusions, the view has been expressed that in reality a definition of sexual psychopathy is not

important, that the important goal is treatment of individuals who need therapeutic help. This sort of solution by avoidance has been crystallized in the recent legislation of some jurisdictions where sexual psychopaths are described merely as "socially dangerous sexual deviants," without establishing criteria either of social dangerousness or sexual deviation. Such legal norms as this obviously provide a latitude for discretion quite inadequately directed or circumscribed--especially so in an area of conduct where widely variable individual moral evaluations may easily prevail in the absence of soundly reasoned and clearly formulated state policy.

Some Generally Accepted Characteristics of Psychopathic Personality

What then may one derive out of the mass of contemporary confusion as to the nature of sexual psychopathy? The disorder does appear to be a form of "psychopathic personality," the more general category of psychological disorder. Since it is usually maintained that the latter condition is itself marked by sexual infantilism and a lack of control over erotic drives, it appears that sexual psychopathy, if distinguishable at all, must be considered to include those cases in which the sexual deviation is extreme or habitual. In common with psychopathic personality, the condition is generally agreed to include the following characteristics in a more or less marked degree. These it may be noted, are all closely interrelated qualities of character:

1. A lack of conscience, or "superego," and hence an absence of ordinary guilt feelings about one's derelictions.
2. Deficient attachment to or affection for others, a failure to respond to the ordinary motivations founded in respect or regard for one's fellows, and therefore a disposition to ruthlessness and exploitation.
3. Excessive aggression directed outward against the environment rather than inward in repression of selfish drives.
4. An infantile level of response, seeking immediate satisfactions, often in primitive forms of behavior, sexual and otherwise.

Various other traits have been attributed to the psychopath by different authorities, but with little agreement among them; in the main such additional qualities may be interpreted as simply further elaborations of those mentioned above. Behavior symptoms such as these are none too satisfactory a basis upon which to predicate a medical diagnosis: they are even less so for the purpose of formulating substantive legal norms, occurring as they do in normal personalities in varying degrees of intensity without real risk of criminalism resulting.

It is difficult and dangerous to attempt to establish a new status of psychological abnormality, inevitably carrying a heavy load of stigma as well as frequently very prolonged segregation for treatment, that is founded merely upon distinctions in degree of variation from normal in sexuality or aggression. This is the more true when the defect does not involve the ordinary and obvious traits of intellectual deficiency or of psychotic disturbances such as delusions,

hallucinations, et cetera, through which psychopathological disorders have traditionally been diagnosed.

Some Conclusions

It must be concluded, in relation to our first question, that sexual psychopathy appears not to be a precisely defined syndrome of pathology such as to permit clear and accurate distinction from normal personality. This is true especially of vast numbers of borderline cases of semi-psychopathic individuals: In an age that spawns masses of egocentric, insecure, and rigid character structures and that tolerates widely elastic standards in sex behavior, it is no easy task to distinguish the dangerous psychopaths who need treatment, save by their commission of specific criminal acts, vicious enough obviously to require state intervention and efforts to modify their character and conduct. Illinois, Michigan, California and Ohio as well as New Jersey require conviction of a crime as the basis for a finding of psychopathy.

WHAT KIND OF LAWS ARE NEEDED?

How should a law be formulated so as to provide for the wider employment of effective treatment? It appears that statutes to deal with the sexual psychopath might be formulated in any of four major forms.

The law might enumerate certain criminal offenses which, in connection with a psychiatric diagnosis of psychopathy, might result in adjudication to the status of psychopath or sexual psychopath. This was the course followed by New Jersey in Chapter 20, Public Laws of 1949, in a statute directed toward individuals convicted of rape, sodomy, incest, lewdness, indecent exposure, uttering or expressing obscene literature or pictures, indecent communications to females of any nature whatsoever, or carnal abuse. Such an offender must be committed for mental examination prior to sentence and, where it appears that the person suffered from any form of abnormal mental illness resulting in the commission of one of the sex offenses enumerated, he is to be committed by the judge to an appropriate institution as designated by the Department of Institutions and Agencies for a term the maximum of which shall in no event exceed that provided by law for the crime of which the offender was convicted.

The policy established in this law possesses several obvious virtues, particularly in insuring protection to individual liberties. It would not subject to adjudication individuals who had committed no crimes, thus avoiding the hazard of attributing the status as a consequence of loose norms to persons who had not and would not seriously threaten the public welfare. Further it protects individuals believed to be sexual psychopaths from detention prolonged further than the criminal statutes already provide.

The statute will be criticized by some authorities on two main grounds: *One*, because it fails to provide for the preventive adjudication of deviants who, if they were treated in time, would not be led by their abnormality to engage in crime. The preventive goal

is patently desirable, but raises serious questions of policy to be discussed below. *Two*, because in limiting the detention period to the maximum fixed under the criminal statute, it may permit the release of individuals needing further treatment whose criminal potentialities are a continuing threat to the community. This is a quandary too that calls for solution. In fact, it is a problem that ramifies the entire correctional process because of our system of partially definite sentences that permits release of some individuals who are still antisocial in their orientation.

The wisdom of the new New Jersey law is based fundamentally upon the same sound reasoning that has prevented the development of completely indeterminate sentences for crimes; the power to hold individuals indefinitely in correctional institutions for most ordinary criminal acts is far too great a responsibility when we are still so little able to predict the convict's future course of conduct and when we have such small ground for assurance that the types of treatment we employ will be more effective if extended indefinitely. Unless it can be shown as to the sexual psychopath that it is possible not only to diagnose the condition accurately, but beyond that to make dependable prognosis of his future conduct and to employ efficacious treatment methods, there appears to be no valid rationale for more prolonged detention than is meted out to other offenders.

A third but lesser criticism may be directed at the New Jersey law because it provides for psychiatric observation only *after* conviction of an offense, when, if the accused were given a pre-conviction remand for medical study, he might be adjudicated a psychopath for treatment without being convicted as a criminal. Under such an approach as this, psychopathy might be held a defense to a criminal charge such as insanity or extreme mental defect now is. It would be difficult, however, to rationalize this defense into the traditional "right-wrong" test, since there is usually no question of the psychopath's capacity intellectually to apprehend the wrongness of his behavior. Moreover, the technique of preconviction diagnosis may easily lead to the practice of adjudicating as psychopaths for extended treatment individuals against whom no crime could be fairly proven.

The second type of statute would merely denominate the circumstance of sexual psychopathy as a basis for adjudication. This is, in fact, the most common formulation of law thus far to deal with the problem. As recommended in the University of Pennsylvania model bill, the sexual psychopath is designated as a "socially dangerous sexual deviant" under the laws of New Hampshire and Wisconsin. In Massachusetts and Washington, D. C., he is defined as one who "by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the subjects of his desire."

These laws provide for a mandatory psychiatric study where the defendant is accused of certain sex offenses and for discretionary remand for observation and civil adjudication for treatment where

the state "is satisfied that good cause exists for judicial inquiry as to whether a person is a sexual psychopath." The regulations for compulsory examinations are quite analogous to the New Jersey law described above. The additional provisions for discretionary diagnosis and civil adjudication upon a finding of the abnormality, however, raise numerous questions. It is undoubtedly significant that, thus far at any rate, these states have been loath to employ the discretionary feature of the law.

The Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry has criticized these laws resting upon a status of sexual psychopathy on the ground that "there is still little agreement even among psychiatrists as to the precise meaning of this term. . . . Once having become a part of public law such a term attains a fixity unresponsive to newer scientific knowledge and application." This body recommends, however, that the definition of the psychiatrically deviated sex offender be in the functionally descriptive terms of socially dangerous sexual behavior. They would require the findings of (1) repetitive compulsive acts, (2) forced sex relations, and (3) age disparity.

Aside from the employment of the term, *sexual psychopath*, these laws present difficulties even more important, perhaps, than that of terminology. If there is an admitted lack of consensus among psychiatric authorities as to the meaning of the disorder, how then may the state justifiably diagnose, adjudicate and treat individuals who are merely believed to be socially dangerous? What are the criteria of "social dangerousness" and what degree or kind of sexual deviation is conceived sufficient to justify detention?

The Committee referred to above recognized that "an undetermined number of adults mutually and privately carry out deviated sexual practices with other persons of adult status," and does not consider that such persons should come within the purview of the legislation. Their recommendation that those diagnosed as deviants should be handled under wholly indeterminate commitments suggests an even greater need for precision as to the nature of the disorder and for agreement among authorities.

The concepts used in several state laws of "repeated misconduct in sexual matters," the "lack of power to control sexual impulses," and the "likelihood that (the deviant will) attack or otherwise inflict evil on the objects of his desire" are extremely loose constructs, quite incongruous to a system of justice under law that has aspired for the most part to perpetuate the principle, "nulla poena sine lege." These functional terms do not themselves define the disorder clearly, and the authorities who apply the terms to specific cases are not in accord even in such basic matters as prevalence, etiology, curability, or treatment method.

A third possible approach to legislation would be to specify in the law the criteria or characteristics upon which adjudications should be based. Here the term, sexual psychopath or psychopathic per-

sonality could be avoided if that seemed desirable in consideration of possible future developments in psychiatric knowledge and terminology. Among those states that have laws on the subject thus far, Illinois has come closest to this sort of attack upon the problem, but the criteria there are quite loose, looking to the gradual evolution of acceptable working definitions.

Illinois establishes three criteria: (1) "Possession of mental disorder amounting neither to insanity nor to feeble-mindedness" with its character expressed only through such symptomatic qualities as emotional instability, lack of response to social standards, and general lack of control; (2) the disorder must have existed for a period of one year; (3) the offender must exhibit propensities for the commission of sex offenses. These standards appear to clarify the issue but little, resting as they do upon rather vague symptoms and propensities, but they do provide a somewhat greater protection against administrative variability than do the statutes referred to in our second category. Ideally more specific and precise inclusions should be established. Again, it is dubious policy to leave the connotations so freely open to variation in interpretation.

Finally, statutes might be enacted to provide for voluntary self-commitment for treatment on the part of individuals who have become aware of dangerous peculiarities in their sexual or aggressive strivings, and who are diagnosed as psychological deviants after observation. It would appear eminently reasonable and desirable to provide this measure of protection to the public against the latent aggressions of psychopathic types. Perhaps it should be remarked, however, that those individuals with insight and fear in regard to their behavior, guilt feelings in relation to their drives, and a readiness to accept treatment, would be interpreted by most psychiatrists not to be psychopaths at all, but compulsive or obsessive neurotics, some of them merely seeking punishment.

Are These Approaches Adequate?

Each of the types of approach suggested has severe critics for its failure adequately to meet the problem. Each takes us back again to questions of definition, both as to the nature of the psychopathic disorder and to the more general issue of what problem it is that we seek to solve. Not all sex deviants are sexual psychopaths. It appears that many who commit serious sexual crimes do not belong to this category of abnormality: some are neurotic, some psychotic, undoubtedly many are psychologically normal under prevailing psychiatric standards. Moreover, some sexual psychopaths may be addicted to other more serious non-sexual criminality. Therefore, if the purpose of attack be the curtailment of sex offenses, the requirement of a diagnosis of sexual psychopathy for special treatment (as in the laws of jurisdictions other than New Jersey) must limit considerably the scope of these efforts. Other types of sex deviants, too, including those with neurotic and psychotic structures need treatment. Only the limitations of our treatment resources and the greater seriousness of crimes committed by the psychopaths would justify giving them rather than others intensive psychiatric aid.

If the purpose of legislation be a broader one of controlling the vicious and widely assorted crimes of psychopaths, from which so much injury occurs to society outside the area of sex, it seems that new laws should be directed more generally toward the psychopathic personality rather than the sexual psychopath. Many of the former will not be discovered in erotic deviations, but in excessively aggressive behavior, for example. Some support for the wider approach to a full range of psychopathic personality types may be derived from the fact that the same treatment methods would appear to be needed for those whose threat to the community lies mainly outside the field of sex, and there is much support for the view that all psychopaths should be treated together. Similarly difficult questions of definition, diagnosis, and treatment will be encountered, however, in attempting to deal with psychopathic personalities in general.

LEGISLATION IS NOT ENOUGH

Having looked at some of the problems associated with the various types of statutes that have been considered or enacted, we shall postpone a recommendation on the type of law that seems best designed to meet the problem until later in this paper, and come now to the third and last major question in regard to treatment of the psychopath. Is it worthwhile to enact supplementary legislation at this time to provide special treatment for these deviates?

A successful program in the handling of psychopaths is by no means assured by merely legislating for their discovery and apprehension. The task of law-making alone is all too easy to accomplish, as any study of legislative history will show. The feasibility of innovations in treatment depends much more fundamentally on our ability to assure that remedial work is performed on the deviants after they are apprehended. A new statute without necessary implementation of program may be considerably worse than useless through resulting failures of treatment and damage to prestige of what may be an intrinsically good idea.

For purposes of considering the development of therapeutic resources, we will assume that the psychopathic condition can be defined and diagnosed uniformly enough for legislative purposes, and that legal norms can be drawn with appropriate constitutional safeguards. Beyond these limiting and, as we have seen, rather dubious assumptions, several other practical issues still require solution before we can justify the passage of new laws and the organization of new treatment resources. These center mainly around the problems of treatment.

What Can Treatment Accomplish?

Can the sexual psychopath be improved sufficiently under treatment to permit his release into the community and to justify costly therapeutic efforts in his behalf? Here again one encounters a wide spread of opinion, with many authorities maintaining that the psychopath is incurable. This is the view particularly of those who maintain that the disorder arises out of constitutional factors that

they deem irremediable, at least by any known methods. Some proponents of this idea have argued that, in the interest of the economical disposition of limited therapeutic resources, we should in effect let our criminal psychopaths rot in custodial and incapacitative detention because of their unamenability to ordinary methods of control. They maintain that those patients who have appeared to respond to therapeutic efforts were not in reality psychopaths.

Other authorities believe on the contrary that some, perhaps a majority, of deviants can at least be released to a limited supervision in the community under parole or probation. There are those in support of this theory who recommend that many psychopaths ought not to be submitted to custody at all because of the hostility engendered in them by their confinement. Research now under way in New York State appears inclining to the conclusion that sexual psychopaths should be paroled for therapeutic out-patient treatment in various communities of the State. To this writer it is dubious that the security problems associated with this approach have been sufficiently considered by the clinical authorities there. A good many environmentalist psychologists and case workers believe that the re-training of the psychopath is a slow and difficult, but feasible, process of reconditioning personality and behavior through inducing identification and guilt feelings.

It appears probable in the light of the limited evidence available thus far that some psychopaths could be safely restored to community living after sustained institutional treatment. Whether the results would repay the heavy expenditure of professional facilities is a most difficult issue, some of the ramifications of which will be considered below.

What Treatment Measures Are Needed?

There is a very real and fundamental problem, implied by the views outlined above, as to whether really effective methods of treatment are now known to medical and correctional authorities. Certainly a large measure of variety and empiricism marks contemporary efforts to deal with these individuals. The position may very reasonably be taken that legislation for special handling should await further development of more effective and less costly techniques.

An apparently minority view today is that the influence of maturation along with firm disciplinary control in a correctional environment are enough to remedy the problem, that under protective custody these individuals will "grow out of" their hostile and aggressive trends. It is impossible to say to what extent this idea—that present methods of treatment are enough—proceeds from an overly optimistic and conservative inertia. Quite possibly the endocrine and other physiological changes that come with age are effective in modifying many psychopaths. It is virtually certain that the general decline in criminality among matured adults comes from the "slowing down" of passions and hostilities. It makes sense to assume that many men denominated psychopaths today in our correctional institutions do mature out of the disorder. That these are "true" psychopaths this writer, at least, can neither affirm nor deny.

Most authorities who write about the psychopath—it should be borne in mind that in the main these authors are psychiatrically oriented—either assume or maintain that individual psychotherapy is necessary for effective treatment of these deviants. Measures of individual and group therapy are being employed currently, at least on an experimental scale, in several jurisdictions (including New York, Washington, D. C., under the Federal Bureau of Prisons, and presumably to some extent in other states that have enacted laws for the special handling of psychopaths).

Unfortunately, the degree of success attending the employment of these methods remains indeterminate thus far. The methods themselves are neither specific nor uniform among the experts. That further work needs to be done on an experimental basis is clear. There will be a plentiful supply of subjects for such efforts through the operation of the traditional criminal and correctional law. That legislation should be enacted to discover more candidates for treatment—in particular preventively designed civil statutes for the adjudication of non-criminals—is a highly dubious proposition so long as there is already a more than ample supply of criminal offenders in our institutions upon whom empirical approaches may be tested.

Treatment Costs

One conclusion has been amply verified to date: the per capita costs implied in the time of experts required for currently employed methods of treatment are very high. The estimate of some psychiatrists in this field that a proportion of one psychiatrist to each ten or twelve patients is required for adequate individualized treatment is probably not excessive under these current techniques of psychotherapy. Even under considerably more conservative estimates it would appear certain that the state cannot afford to conduct these treatment efforts on much more than an experimental scale, looking to the development of quicker and less costly techniques.

Until they can be treated curatively, it may be necessary to apprehend criminal psychopaths and secure them against danger to the community in correctional facilities that are little more than custodial. We cannot justify preventive adjudication on loose criteria unless we are prepared to provide diagnostic and therapeutic resources on a scale that will insure "a fair return," as measured both by the accuracy and fairness of selection of cases of psychopaths, and their successful treatment to protect the community.

How Should Treatment Be Administered?

Should treatment of the sexual psychopath be carried out through his separate segregation or through co-mingling with other deviants?

Ideally, if resources were unlimited, it would appear that these individuals should be handled under a policy of institutional segregation and intensive psychotherapy. However, if it is considered improbable that adequate treatment resources could be provided, would it be worthwhile to establish separate institutional segregation? Correctional experience has shown very convincingly that the psycho-

path is a most difficult type to handle in institutions. Characteristically he gives considerably more trouble than other types of offenders. In the limited experience of attempting to segregate psychopaths there has been strong evidence that this method is dangerous and ineffective where no real treatment program is in operation. If thorough-going clinical treatment is not to be provided, it appears that it is safer and simpler to filter psychopaths throughout the penal system rather than attempting to deal with them as a separate group.

If it is deemed desirable to provide for segregation of sexual psychopaths, the problem is then raised as to whether it is sound policy to treat them along with psychotics, with mental defectives, or with other general psychopathic personalities, or separately from other categories of psychological deviants. Here again there has been some experience in institutions for the so-called defective delinquent, and elsewhere, in handling psychopaths with other types of psychopathological offenders. It has been quite generally agreed by the medical authorities that the presence of the psychopath is disturbing to psychotic and neurotic individuals and it appears as well that the psychopaths resent confinement with "the loonies." However, there would be sound reason, as has been implied previously, to institutionalize sexual psychopaths along with the general class of psychopathic personalities. Distinction between the two is clinically artificial and psychiatrists feel that they should receive similar treatment in the same institution, but apart from other classes of pathological deviates.

The further question then arises as to whether the segregated psychopath should be confined in a separate section of an institution of some other type or in an entirely distinct facility. This is in large part a question of economics, as indeed is so much of the whole problem of specialized handling of psychopaths. If it were financially feasible, there would be some distinct advantages in treating the sexual psychopath, preferably along with other psychopaths, in a separate institution where the total program was focused upon the problems and procedures in improving this group. One likely gain would be in the attitudes of the psychopaths themselves, who have disliked confinement in institutions with the criminal insane.

If specialized facilities could be developed to serve the psychopathic population from two or more states it seems that the result might be a desirable saving in the per capita cost of operation. This device of joint state action has been employed already to a limited extent in the incarceration of women criminals. In fact, Colorado provides custody to offenders from Utah and Wyoming. A Western Interstate Committee on Institutional Care of the Council of State Governments has proposed joint action for specialized and improved services to the deaf, blind, juvenile delinquents, mental defectives and other defectives.

It is a slow and difficult process to work out the necessary arrangements because of the need to establish similar policies in cooperating jurisdictions. The tradition of state autonomy works against it, but there are real possibilities for economical improvement in the

services provided where joint action can be worked out. In the East, a New England States Governors' Conference was held in 1948 to consider the housing of all defective delinquents at Bridgewater, and in June of this year an eight-state conference was held in New Jersey at the invitation of Commissioner Sanford Bates to consider policy in the handling of habitual sex offenders and the possibility of joint action. It was agreed at this latter meeting that it would be desirable to establish specialized segregated treatment for psychopathic personalities and the principle of cooperative action was approved.

In relation to the type of treatment facility, the additional problem has been raised as to whether it is better to conduct a program under the control and in an institution of correction or of mental hygiene. It has been maintained that effective treatment is difficult in a "correctional climate" and that, since the objective is clinical treatment, an institution under the aegis of mental health should be employed. In Massachusetts, however, where this is the case, it is believed that custodial problems are so serious that the responsibility should be shifted to correction. In Washington, D. C., where psychopaths are being treated under their recent sexual psychopath law at St. Elizabeths Hospital, it is felt that they should be in a distinct institution, but one with a psychiatric orientation.

Ideally, psychopaths should be handled clinically in a facility marked distinctly by a treatment atmosphere, yet conditions of close security would need to be provided against possible escape. This somewhat anomalous combination of correctional and psychiatric features could probably be carried out about equally well under either department in a state so long as both elements were preserved. There might be greater danger, however, of punitive attitudes and methods seeping into a correctional institution, what with the too-common aversion of correctional personnel to a treatment orientation of program.

Basic Considerations Regarding Treatment

Again to summarize the view stated above, the important thing is not simply to apprehend more psychopaths than is possible under existing criminal laws, nor to determine the department to which responsibility will be charged. The fundamental consideration is whether an adequate institutional facility and professional staffing can be provided to secure effective clinical treatment. If this is not possible, either as a matter of economics or because of the unavailability of expert personnel, there would be supremely little justification for enacting further legislation for segregating sexual psychopaths.

Whether it would be possible to secure the funds, the psychiatrists, and the case-workers needed is an issue that merits most serious thought before inaugurating new policy for treatment of this group. The number of psychopaths who may need to be treated is, of course, an important aspect of this problem, and this, in turn, will depend upon whether the aim is toward the sex deviate only or all dangerous

psychopaths, whether the law is directed only toward those who have committed crimes or preventively toward potential offenders, and, perhaps most important of all, whether administration proves to be strict or loose.

A Question of Policy

We come next to another very practical issue: If it were possible to secure extension of treatment resources for the sexual psychopath, would it be sound policy to concentrate such increased services upon this group rather than upon some other category of offenders, such as violent criminals, psychotic offenders, defective delinquents, or psychopathic personalities? This is a broad question of policy that needs to be answered primarily perhaps in terms of the adequacy of treatment efforts being employed in these other areas. It would not appear to be reasonable to extend therapeutic resources in this area at too great an expense to the other facilities of the state.

There is frequent criticism of the inability in the correctional system to offer much more than custody. Intensive individualized treatment is rare even for defectives and psychotics. At the least, one may judge that until adequate clinical facilities can be provided for the treatment of criminals and the traditional classes of psychological deviates—types of cases in which the nature of the problems, their etiology, and effective methods of treatment are fairly well understood—it would be difficult to justify the civil adjudication of non-criminals deemed to be sexual psychopaths in the hope that intensive treatment may prevent the development of their criminality. This is a matter of equity and practicality in the distribution of limited resources.

CIVIC-SOCIAL RESPONSIBILITIES

To close this brief consideration of the several issues that require thoughtful study before new laws are passed, new programs erected, may I suggest some tentative and preliminary conclusions? Is it not the soundest principle, perhaps, in light of the limitations in our knowledge and tools, and the lack of agreement in the field, that for the present the state cannot afford as a matter of policy to go beyond attempting to improve its treatment of individuals who are arrested for specific, enumerated criminal acts? This writer believes (with a mind still open, but not entirely empty, on the subject) that beyond this emphasis upon expanding resources for the diagnosis and treatment of clinical types of criminals we cannot safely proceed at present, except by provisions for the preventive treatment of those who may submit themselves voluntarily for therapy. Laws should be passed to encourage this procedure. Other than this extension, however, it appears that the law now operating in New Jersey represents the most reasonable formula for providing treatment to those individuals who most clearly need it.

On the preventive side, much more may be done through extended efforts to reach the excessively aggressive or submissive children in the school and home who lack the security and affection upon which stable character is founded. We must bring to these youngsters

a larger measure of guidance and help from their parents, their teachers, and their mentors in religion and recreation.

More particularly, however, the state needs to assume a larger responsibility for the provision of well-implemented child guidance clinics and other agency resources through which deviations may be discovered for treatment most effectively and cheaply before they become too serious. To this end clinical emphasis must go increasingly toward treatment rather than ending as so frequently it does with diagnosis.

Finally, if considerations of public protection be deemed to outweigh the hazards of legislation directed specifically toward preventive adjudication of the psychopath, a more defensible standard should be established than that in the so-called model bill of Pennsylvania and in the laws of several jurisdictions. The following might prove in practice to be a somewhat more sound formulation of the type to receive special treatment efforts, though it shares the vices we have already alluded to:

"those who are a clear and present danger to persons and property in the community, as evidenced by their habitual aggressions, their failure to employ ordinary self-control, and their lack of compunction or remorse for their behavior."

EDITORIAL NOTE: The foregoing address by Professor Paul W. Tappan was presented at a Crime Conference held at the University of Colorado, Boulder, Colorado, in August, 1949, and is published here by permission of the University and the author. For information on other papers given and discussions held at the Crime Conference, please address President Robert L. Stearns, University of Colorado, Boulder, Colorado. The chart appearing on pages 368 to 373, showing requirements of state laws to deal with psychopaths, has been prepared by Professor Tappan along the lines of an earlier chart developed by the Chicago Bar Association, in connection with his studies on behalf of the New Jersey Commission on the Habitual Sex Offender. It is published here for the first time.

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

	ILLINOIS	MICHIGAN
Legal References	C38, Sec. 820, 1938 Supplemented 1947	Sec. 28,067(1)-28,067(n) 1939, Amended 1947
I. Designation of Condition	Criminal sexual psychopathic person.	Criminal sexual psychopathic person.
II. Elements of Definition	1. Mental disorder. 2. Not insane or feeble-minded. 3. Existing for period of one year. 4. Coupled with criminal propensities toward the commission of sex offenses. (All four elements required.)	1. Mental disorder. 2. Not insane or feeble-minded. 3. Existing for period of one year. 4. Coupled with criminal propensities toward the commission of sex offenses. (All four elements required.)
III. Basis of Jurisdiction	1. Charge of criminal offenses. 2. Detention in state penitentiary.	Charge of criminal offense.
IV. Discretion in Initiating Proceeding	1. Attorney General (discretionary). 2. State's Attorney (discretionary). 3. Department of Public Safety (mandatory).	1. County Prosecutor. 2. Attorney General. 3. Someone on behalf of person charged with crime. (All discretionary.)
V. Tribunal and Proceedings	1. Type of court. 2. Provision for jury. 3. Provision for private hearing. 4. Time within which hearing must be held. 5. Jurisdiction over juveniles.	1. Court of record. 2. Jury on demand. 3. No provision for private hearing. 4. Hearing within 15 days after last report. 5. No jurisdiction over juveniles.
VI. Medical Examination—	1. Qualifications of examiners. 2. Type of facility employed for treatment.	1. Two qualified psychiatrists (reputable licensed physicians who have exclusively limited practice to mental and nervous disorders for five years). 2. Mental hospital.
VII. Effect of Commitment on Criminal Proceedings	Postponed till after release, but not defense.	Defense to crime of which accused at time of filing petition.
VIII. Procedure for Release	Proceeding initiated by committed person or other person interested.	1. Parole by State Hospital Commission; or 2. Proceedings initiated by attorney for committed person.
IX. Nature of Release—Whether Complete or Subject to Supervision	To sheriff to stand trial on original charge.	Complete if by court.
X. Number of Cases Committed Under the Law Appraisals by administrators.	10 cases in 10 years. . . . requires change; little interest in administering present statute."	Law inoperative.

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

MINNESOTA	MASSACHUSETTS	OHIO
Sec. 526.09-11 1915	Chapter 123A 1947	Gen. Code (1947 Supp.) Secs. 1346-49-1346-23
Psychopathic personality.	Psychopathic personality.	Psychopath offender.
Irresponsible for sexual conduct and thereby dangerous to others by reason of: 1. Emotional instability; or 2. Impulsiveness of action; or 3. Lack of customary standards of good judgment; or 4. Failure to appreciate consequences of acts; or 5. Combination thereof.	1. Habitual course of misconduct in sexual matters evidencing utter lack of power to control sexual impulses; and 2. Likely to attack or otherwise inflict injury, loss, pain, or other evil. (Both elements necessary.)	Psychopathic personality. 1. Emotional immaturity and instability; or 2. Impulsive, unruly, irresponsible and reckless acts; or 3. Excessively self-centered attitude; or 4. Deficient powers of self-discipline; or 5. Marked deficiency of moral sense or control.
No crime or charge thereof necessary.	No crime or charge thereof necessary.	Conviction of felony.
County Attorney (discretionary).	District Attorney (discretionary).	Court after conviction. (Mandatory in some cases; discretionary in others.)
1. Probate court. 2. No jury. 3. Private hearing (discretion of court). 5. No jurisdiction over juveniles.	1. Court of record. 2. Jury discretionary with court. 3. Private hearing (discretion of court). 5. No jurisdiction over juveniles.	1. Court record. 2. No jury. 3. No provision for private hearing. 4. Hearing within 30 days of report. 5. No jurisdiction over juveniles.
1. Two duly licensed doctors of medicine (by decision, held; concurrence of doctors not required). 2. Mental hospital.	1. Two duly licensed qualified physicians certified by Department of Mental Health. 2. Mental hospital.	1. Psychiatrists licensed in state having five years experience in mental diseases. 2. Mental hospital.
No defense, but statute of limitations runs.	No defense, but execution of sentence stayed till release.	No defense.
1. Parole by director of public institution; or 2. Proceedings initiated by him or committed person or other interested person.	Proceedings initiated by Department of Mental Health or committed person.	Proceedings initiated by Commission of Mental Hygiene or person committed.
Complete if by court.	Complete if by court.	To penal institution until total period of confinement equals applicable sentence; then release subject to supervision.
Under 200 cases in 10 years. . . . no triumph for justice or for the protection of society."	Law inoperative. "Law hurriedly enacted, not completely satisfactory; courts do not like it."	

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

	WISCONSIN	PENNSYLVANIA
Legal References	Chap. 459, Laws of 1947	Public Law 234, 1933, as amended, PL 362, 1935
I. Designation of Condition	Sexual psychopath.	Mentally ill or mentally deficient.
II. Elements of Definition	Irresponsible for sexual conduct and thereby dangerous to himself and others because of: 1. Emotional instability; or 2. Impulsiveness of behavior; or 3. Lack of customary standards of good judgment; or 4. Failure to appreciate consequences of acts; or 5. Combination of above.	Not insane, but requiring treatment in a mental hospital rather than a correctional institution.
III. Basis of Jurisdiction	No crime or charge thereof is necessary.	Completion of any person for any offense.
IV. Discretion in Initiating Proceeding	District Attorney (discretionary).	1. Trial Judge. 2. District Attorney.
V. Tribunal and Proceedings	1. Court of record (Juvenile court if under 18). 2. Jury on demand. 3. Private hearing in court's discretion. 5. Jurisdiction over juveniles.	1. Any criminal court. 2. No jury. 3. No provision for private hearing. 4. No specific time interval. 5. No jurisdiction over juveniles.
VI. Medical Examination— 1. Qualifications of examiners. 2. Type of facility employed for treatment.	1. Two duly licensed physicians. (Two years' general experience or one year's experience as a physician in a hospital for the insane.) 2. Mental hospital.	1. A psychiatrist from State Dept. of Welfare or a state or county mental hospital. 2. Mental hospital.
VII. Effect of Commitment on Criminal Proceedings	No defense.	Law applies only after conviction of a crime.
VIII. Procedure for Release	1. Parole by court upon recommendation of superintendent of institution. 2. Proceedings initiated by committed person, relative or friend.	Confinement "until further order of the court."
IX. Nature of Release—Whether Complete or Subject to Supervision	1. Complete release. 2. Parole.	No statutory provision.
X. Number of Cases Committed Under the Law Appraisals by administrators.	Law inoperative. "Law is too loosely drawn as to its coverage and treatment facilities."	Law inoperative.

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

INDIANA	NEW JERSEY	VERMONT
Laws of 1949, Chapter 1	Supplement to Title 2, Chap. 102, Laws of 1940	Sec. 6009-6709, Chap. 281, 282—Laws of 1933 & 1946
Criminal sexual psychopathic person.	Abnormal mental illness.	Mentally defective delinquents.
1. Mental disorder. 2. Not insane or feeble-minded. 3. Criminal propensities to the commission of sex offenses. (All three elements required.)	Abnormal mental illness resulting in commission of enumerated sex offenses.	1. Mental deficiency or psychopathic personality. 2. Violate criminal laws or are guilty of gross immoral conduct. (Both required.)
1. Charge of criminal offense other than homicide or rape of a female under 12. 2. Conviction of such offense where person has been placed on probation or not yet sentenced.	Conviction of rape, sodomy, incest, lewdness, indecent exposure, obscene literature or pictures, indecent communications to females, carnal abuse or attempt to commit such offenses.	1. Conviction of a felony. 2. Conviction of a misdemeanor for the third time.
1. Prosecuting Attorney. 2. Someone on behalf of the person charged. (Both discretionary.)	Judge before imposing sentence shall order mental examination.	Prosecuting Officer, Commissioner of Institutions or Judge of convicting court (discretionary).
1. All courts having general jurisdiction of criminal cases. 2. No jury. 3. No provision for private hearing. 4. Hearing not less than 10 days after service of copy of petition. 5. No juvenile jurisdiction.	1. Any court with jurisdiction over offenses enumerated. 2. No special hearing on issue of mental illness: commitment is based on report of psychiatrists. 5. No juvenile jurisdiction.	1. Criminal court. 2. No jury. 3. No provision for private hearing. 5. No juvenile jurisdiction.
1. Two qualified physicians (respondent must answer questions under penalty of contempt of court). Concurrence necessary to hold a hearing. Determination is by court. 2. Commitment is to Indiana Council for Mental Health (psychiatric facility).	1. Two or more competent physicians (recognized as experts in psychiatry), one attached to Dept. of Inst. & Agencies. Judge may commit person to Diagnostic Center for examination. Decision is based on findings of examination. 2. Judge commits person to Inst. designated by Dept. of Inst. & Agencies (psychiatric facility).	1. Commitment for diagnosis to state institution designated by Commissioner for that purpose. 2. Upon due hearing if court finds person a defective delinquent or psychopathic personality, dangerous to public welfare, person committed to penal or mental institution designated by Commissioner.
Defense to crime of which accused at time of filing petition.	Law applies only after conviction of a crime caused by mental illness.	No defense.
1. Release on parole under such conditions as his condition, in judgment of Indiana Council for Mental Health, merits. 2. Discharge only after "fully recovered" any time upon a petition in writing showing recovery filed with court by which he was committed. 3. Psychopath to be examined at least once each year by two physicians, who report findings to court and council.	Term indefinite, maximum not to exceed that provided for crime of which convicted. Release when Commissioner of Dept. certifies to paroling authority that person has recovered sufficiently to make it reasonably certain that repetition of offenses unlikely.	Discharge upon order of the court where commitment was made.
Parole or complete discharge.	Release by paroling authority after certification upon such terms as appear necessary for safety.	Returned for sentence to committing court after discharge from treatment.
One case. "Undesirable in principle, ineffective in operation; is no solution to the problem."	25 cases in six months. "A temporary measure, inadequate to handle problem."	Law virtually inoperative.

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

Legal References	NEW HAMPSHIRE	WASHINGTON, D. C.
	1 Chap.—Laws of 1919	Sec. 201-209, Public Law 615, 1919
I. Designation of Condition	Sexual psychopath.	Sexual psychopath.
II. Elements of Definition	Irresponsible with respect to sexual matters and thereby dangerous to himself or other persons because of: 1. Emotional instability; or 2. Impulsiveness of behavior; or 3. Lack of customary standards of good judgment; or 4. Failure to appreciate consequences of acts; or 5. Combination of above.	1. Not insane. 2. Repented misconduct in sexual matters evidencing lack of power to control sexual impulses. 3. Likely to attack or otherwise inflict injury, loss, pain or other evil on objects of desire. (Both elements necessary.)
III. Basis of Jurisdiction	1. Mandatory where certain sex crimes are charged. 2. Discretionary where facts less than a crime are presented.	No crime or charge thereof is necessary.
IV. Discretion in Initiating Proceeding	1. County Solicitor (mandatory for crime, discretionary upon petition by a person having knowledge of the facts).	1. U. S. Attorney (discretionary).
V. Tribunal and Proceedings 1. Type of court. 2. Provision for jury. 3. Provision for private hearing. 4. Time within which hearing must be held. 5. Jurisdiction over juveniles.	1. Superior Court of the county. 2. No jury. 3. Private hearing (discretion of court). 4. Hearing within 30 days after report. 5. Juvenile jurisdiction.	1. District court of the U. S. for the District Municipal Court. 2. Jury on demand. 3. No provision for private hearing. 4. No provision as to time of hearing. 5. No juvenile jurisdiction.
VI. Medical Examination— 1. Qualifications of examiners. 2. Type of facility employed for treatment.	1. Two psychiatrists, one from medical staff of a state mental hospital. Decision is by court on basis of the hearing. 2. Mental hospital.	1. Two qualified psychiatrists (court determines whether patient is a psychopath if there is a hearing, but patient discharged if both psychiatrists have found that he is not a psychopath). 2. Mental hospital.
VII. Effect of Commitment on Criminal Proceedings	Defense to crime of which accused at time of filing petition.	Proceeding suspended until person is determined not to be sexual psychopath or until discharge from hospital. No defense.
VIII. Procedure for Release	Release by Commission of Mental Health recommended to the committing court when director of institution believes he will not be benefited by further treatment and is no longer dangerous.	Superintendent of hospital may release on a finding that patient has sufficiently recovered so as not to be dangerous.
IX. Nature of Release—Whether Complete or Subject to Supervision	Complete discharge by court.	To court on original criminal charge, if any. Otherwise complete release.
X. Number of Cases Committed Under the Law Appraisals by administrators.	No commitments under recent statute. "These cases should not be sent to a state hospital. No treatment facilities."	14 cases a year. "A Star Chamber procedure, with inadequate diagnostic and treatment facilities."

ADMINISTRATION OF STATE LAWS ON THE HABITUAL SEX OFFENDER

STATE OF WASHINGTON	CALIFORNIA
Chap. 273, Laws of 1917	Chap. 447, 1939, as amended by Chap. 1325, 1949
Criminal sexual psychopathic person.	Sexual psychopath.
1. Mental disorder. 2. Not insane or feeble-minded. 3. Existing for period of one year. 4. Conviction at least once as sex offender. (All four elements required.)	Affected with: 1. Mental disease or disorder; or 2. Psychopathic personality; 3. Marked departures from normal mentality -- in a form predisposing to commission of sexual offenses and in a degree constituting a menace to the health of others.
Charge of sexual offense.	Criminal charge.
Prosecuting Attorney (discretionary).	Apparently on affidavit of any person.
1. Justice Court or Superior Court on original charge; Superior Court for sex psychopath hearing. 2. Jury by petition in writing. 3. No provision for private hearing. 4. Hearing subsequent to conviction for the sex offense (not less than 20 days). 5. No juvenile jurisdiction.	1. Court of record. 2. Persons found to be sexual psychopaths may demand jury trial. Commitment only on finding by three-fourths of jury. 3. No provision for private hearing. 4. Trial in not less than five days or more than ten days from jury demand. 5. No juvenile jurisdiction.
1. One or more psychiatrists (physician or surgeon licensed to practice who for not less than three years has practiced exclusively in the diagnosis and treatment of mental and nervous disorders). Decision is by court. 2. Correctional institution.	1. Two or three psychiatrists, one from state or county hospital. (Holders of physician's and surgeon's certificate whose practice has been directed primarily to diagnosis and treatment of mental and nervous disorders not less than five years). By decision, held: court not bound by psychiatrist's findings. 2. Mental hospital.
Finding of sexual psychopathy is subsequent to criminal conviction; person is sentenced to ordinary correctional institution but certified for treatment by a psychiatrist there.	Proceedings suspended.
Release after expiration of sentence upon a hearing by the committing court and a finding that he is cured.	Superintendent of hospital certifies to committing court person is no longer a menace to health and safety of others.
After expiration of sentence or parole, if person is found still to be sexual psychopath he may be committed to state or county hospital with facilities for criminal sexual psychopathic persons.	If within 30 days of certification the court does not order return for criminal proceedings, superintendent of hospital may parole, as in case of insane, for not less than five years.
Law inoperative.	No data available. "Leaves much to be desired: an ineffectual law."