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Notes

CRIMINAL LAW—WISCONSIN'S SEXUAL DEVIATE ACT. The 1951 Wisconsin Legislature enacted a sexual deviate law which provides for a completely indeterminate criminal sentence of one day to life for certain sex offenders.[1] This note discusses the scope, purpose and constitutionality of the 1951 Act; the fact that similar laws have been passed in Wisconsin and other states, but have been inoperative; how the 1951 Act compares with the 1947 Wisconsin law;[2] the 1953 amendment to the 1951 Act; administrative experience during the first two years of the Act's existence; and, finally, a critical evaluation of the 1951 Act.

The 1951 Sexual Deviate Act

Scope of the Act. The 1951 Sexual Deviate Act provides[3] that persons who have been convicted of rape,[4] assault intending rape or carnal knowledge and abuse,[5] liberty with a female child,[6] or improper liberties,[7] *shall* be committed by the sentencing court to the Welfare Department for a pre-sentence social, physical and mental examination.[8] This is the mandatory provision of the Act as the judge *must* commit an individual convicted of any of the above offenses to the Welfare Department for a pre-sentence examination. There is also a discretionary provision of the Act as the statute provides that if a person is convicted of any sex crime other than those specified above, the court *may* commit him to the Department of Public Welfare for a pre-sentence examination, if the department certifies that it has adequate facilities for making such examination and is willing to accept such commitment.[9] Thus, if there is an indication of serious sex deviation in an individual convicted of a sex crime other than those specified in the mandatory provision, the offender may still be subject to treatment and indeterminate sentence.

The Welfare Department is required to complete its examination and to report its results and recommendations to the court within

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[1] Wis. Stat. § 340.485 (1951). This type of indeterminate sentence is to be distinguished from the usual indeterminate sentence with a fixed minimum and maximum term.

[2] Wis. Stat. § 51.37 (1947).

[3] The original 1951 Act provided that a person convicted of carnal knowledge and abuse [Wis. Stat. § 340.47 (1951)] shall be committed to the Welfare Department for a pre-sentence examination. The 1953 Legislature amended the 1951 Act and deleted § 340.47 from this mandatory provision. This amendment is discussed under the section of this note entitled 1953 Amendment.

[4] Wis. Stat. § 340.48 (1951).

[5] Wis. Stat. § 340.43 (1951).

[6] Wis. Stat. § 351.34 (1951).

[7] Wis. Stat. § 351.41 (1951).

[8] Wis. Stat. § 340.485 (1) (1951).

[9] Wis. Stat. § 340.485 (2) (1951).

60 days.[10] If sexual deviation is found to a sufficient degree and the department recommends treatment, the court *must* either place him on probation on condition that he receive outpatient treatment, or commit him to the department.[11] If the department does not recommend specialized treatment, the court shall sentence him in the manner provided by law.[12]

If the offender is committed to the department, the department has wide powers to treat the individual and is required to discharge him only when it is satisfied that he may be discharged without danger to the public.[13] Thus, Wisconsin has enacted a completely indeterminate criminal sentence of one day to life. Such an indefinite sentence permits a psychiatric, personal approach by making possible individualized treatment of offenders. The length of these sentences does not depend on the original crime, but on expert analysis of each convict's personality, response to therapy and tendency to recidivate.[14]

Purposes of the Act. The purposes of the Act are (1) to protect society from dangerous sex crime and (2) to provide treatment for the dangerous sex offender.[15]

A completely indeterminate sentence law is necessary to accomplish these objectives. The traditional minimum to maximum sentence might be inadequate as the dangerous sex offender would probably continue his dangerous behavior pattern after serving his term for the specific crime for which he was convicted.[16] He probably is not deterred by fear of punishment or reformed by a prison term,[17] because his acts may be in response to twisted unconscious and irrational impulses, which the actor is incapable of understanding and controlling.[18] In many cases, the basic cause for the aberrant sexual behavior lies in childhood and may be due to severe emotional deprivation.[19]

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[10] Wis. Stat. § 340.485 (4) (1951).
[11] Wis. Stat. § 340.485 (6) (1951).
[12] Wis. Stat. § 340.485 (5) (1951).
[13] Wis. Stat. § 340.485 (8), (11) (1951).
[14] Note, *New York's New Indeterminate Sentence Law for Sex Offenders*, 60 Yale L. J. 346 (1951).
[15] Report to Members, State Board of Public Welfare, from Tramburg, Director, State Department of Public Welfare (Feb. 21, 1952); files of the Division of Corrections, State Department of Public Welfare.
[16] Ploscowe, Sex and the Law 223-26 (1951).
[17] Yale L. J., *op. cit. supra* note 14, at 346.
[18] For example, the rapist who is trying to deny the existence of homosexual urges through the irrational effort of a rape. Another example is the offender who has sex relations with children because he is insecure and lacks the courage to attempt sexual contact with contemporaries. Guttmacher & Weihofen, Psychiatry and the Law 107-14 (1952). See Ploscowe, *op. cit. supra* note 16, at 211-12.
[19] Abrahamsen, a leading psychiatrist, did a study of 102 sex offenders at Sing Sing and found that all these sex offenders suffered, or felt that they were suffer-

In order to accomplish the objectives of protection of society and treatment of the sex offender it is essential that a distinction be made between the comparatively larger number of non-dangerous sexual deviates and the relatively small number of dangerous sexual deviates. The non-dangerous deviates may offend the good taste of the community (such as homosexuals, exhibitionists and "peepers") but are not a physical threat. Dangerous sex deviates are actually a threat to the community and usually engage in conduct involving the use of force (such as rapists, sadists and sex slayers) or engage in sex practices with children.[20]

It is essential to distinguish between these two groups because of the limited knowledge concerning effective treatment.[21] Assuming it would be desirable to provide treatment for all sex offenders, it would be impossible at the present time due to limited treatment facilities and methods.[22] There seems to be agreement that the only effective treatment at the present time is some type of psychotherapy, but that this probably is not effective in all cases. This is a lengthy, expensive type of treatment and it would be impossible to treat all sex offenders with psychotherapy, at the present time due to the shortage of skilled personnel.[23]

The 1951 Act effectively distinguishes between dangerous and non-dangerous sex offenders by limiting the mandatory provisions of the Act to the most serious sex crimes, which are those involving the use of force or where there is a serious age disparity between the offender and the victim.[24] Dangerous sex offenders who are convicted of lesser sex offenses, may be committed under the discretionary provisions of the Act.[25]

Similar Laws Passed, but Inoperative. Before the enactment of the 1951 Act, at least 13 states, including Wisconsin, had passed similar legislation aimed at the sex offender.[26] The Wisconsin law, popularly

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ing from severe emotional deprivation in their childhood. He found that as these offenders could not identify with their parents in childhood, they then failed to accept the moral and social codes, thereby failing to develop a conscience. Abrahamsen, *Study of 102 Sex Offenders at Sing Sing*, FEDERAL PROBATION 28 (Sept. 1950).

[20] TAPPAN, THE HABITUAL SEX OFFENDER 17 (1950).

[21] Tappan, a leading sociologist, says, "As compared with other types of psychological and constitutional abnormality, we are peculiarly at a loss in the handling of abnormal sex offenders. Methods of effective treatment have not yet been worked out." TAPPAN, *op. cit. supra* note 20, at 15. Abrahamsen is more optimistic and considered 50% of the offenders treatable at the present time in a mental hospital or on an outpatient basis. Abrahamsen, *supra* note 19, at 30-31.

[22] REPORT OF THE ILLINOIS COMMISSION ON SEX OFFENDERS 19 (1953).

[23] GUTTMACHER & WEIHOFEN, *supra* note 18, at 194; TAPPAN, *op. cit. supra* note 20, at 16.

[24] WIS. STAT. § 340.435 (1) (1951).

[25] WIS. STAT. § 340.435 (2) (1951).

[26] TAPPAN, *op. cit. supra* note 20, at 26.

referred to as the "Sexual Psychopath Law"[27] was passed by the 1947 Legislature. Almost all of these laws, including the 1947 Wisconsin Act, were inoperative because they were hastily passed in a period of undue anxiety[28] concerning sex crimes, and then forgotten, or no facilities[29] were set up to treat the sex offender.[30]

Actually, the sex offender need not be differentiated from many other criminal offenders. The anxiety of the public resulting in the distinguishing of the sex offender from other criminals is caused principally by prevalent, but erroneous, fallacies concerning the number, dangerousness and persistance of sex offenders.[31] Fact-finding reports indicate there is no reason for hysteria regarding the sex problem. These reports have found that total sex offenses are only about 3% of the total offenses reported by the police,[32] that not more than 5% of *convicted sex offenders are dangerous*,[33] that there is no general trend toward an increase in sex offenses,[34] that sex offenders have one of the lowest rates as "repeaters",[35] that sex offenders rarely progress to a more serious type of sex crime,[36] and that homicide associated with sex crime is very rare.[37]

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[27] WIS. STAT. § 51.37 (1947).

[28] Sutherland, *The Sexual Psychopath Laws*, 40 J. CRIM. L. & CRIMINOLOGY 543 (Jan.-Feb. 1950) points to J. Edgar Hoover, *How Safe is Your Daughter?* 144 AMER. MAG. 32-33 (July 1947) and Wittels, *What Can We Do About Sex Crimes?* 221 SAT. EVE. POST 30 ff. (Dec. 11, 1948) as examples of popular literature arousing the public's anxiety.

[29] The 1947 Wisconsin Act was ineffective because of lack of facilities. WIS. STAT. § 51.37 (3) (1947) provided that any person determined by the court to be a sexual psychopath was to be committed to an institution designated by the County Board of Supervisors of Milwaukee County. As no facilities were available in Milwaukee County for the care and hospitalization of sexual psychopathy and no facilities were set up, the law was completely ineffective. Files of the Division of Corrections, State Department of Public Welfare; 40 OPS. WIS. ATT'Y GEN. 28 (1951).

[30] Sutherland, *supra* note 28, at 553.

[31] TAPPAN, *op. cit. supra* note 20, at 13-14.

[32] ILLINOIS REPORT, *op. cit. supra* note 22, at 2.

[33] *Id.* at 11.

[34] *Id.* at 26.

[35] TAPPAN, *op. cit. supra* note 20, at 14. Tappan indicates that sex offenders have one of the lowest rates as "repeaters" of all types of crime. The ones who do repeat are minor offenders such as peepers, exhibitionists and homosexuals and not the offenders who commit violent crimes. This is confirmed by Sutherland, *supra* note 29, at 547-48, and GUTTMACHER & WEIHOFEN, *op. cit. supra* note 18, at 112. A Wisconsin study indicated 23.3% of the sex offenders admitted to Wisconsin State Prison and Wisconsin State Reformatory for a 2 year period had previous records of sex offenses. But these included all kinds of sex offneses. STUDY ON SEX OFFENDERS ADMITTED TO WISCONSIN STATE PRISON AND WISCONSIN STATE REFORMATORY JAN. 1, 1948-DEC. 31, 1950 (Files, Welfare Dep't).

[36] Most psychiatrists believe that sex deviates persist in the type of behavior in which they have discovered satisfaction and they are confirmed by statistics. Progression from minor to major sex crimes is exceptional. GUTTMACHER & WEIHOFEN, *op. cit. supra* note 18, at 111; PLOSCOWE, *op. cit. supra* note 18, at 162; TAPPAN, *op. cit. supra* note 20, at 14.

[37] GUTTMACHER & WEIHOFEN, *op. cit. supra* note 18, at 111; TAPPAN, *op. cit. supra* note 20, at 13, 14. Sutherland, a leading sociologist, indicates that homicide associated with sex crime is unusual. He also indicates that it is doubtful whether

It is true that the usual minimum to maximum sentence may be inadequate to protect society from the dangerous sex offenders who are neither deterred by fear of punishment or reformed by prison terms.[37] But it is recognized that the same basic causes, such as family tensions, may result in sexual or non-sexual criminality[39] and the non-sexual criminals are as dangerous and non-deterrable, and more numerous, than the sexual criminals.[40]

In spite of the fact that sex offenders are not a distinct type of criminal, and individuals who commit non-sexual crimes may be as much, or more, in need of therapy, it is desirable to concentrate treatment on a small group, such as dangerous sex offenders, as a beginning. If the program is successful, it might be desirable to have indeterminate terms for all criminals convicted of a felony.[41] However, in concentrating on the sex offender, it is essential that the distinction be made between the large number of non-dangerous sexual deviates and the dangerous sexual deviates. The 1951 Wisconsin Act makes this distinction, as previously discussed; but most laws have failed to make this distinction.[42]

Comparison with the 1947 Act. The present Act requires that a sex offender be convicted of a specific sex crime before commitment to the Welfare Department. No definition of a sexual deviate is attempted.[43] This is a definite improvement over the 1947 Act as it eliminates two undesirable features of the 1947 Act.

First, the 1947 Act attempted to define, and use as a standard for commitment, the term "sexual psychopath".[44] This term is a vague psychiatric term and even psychiatrists cannot agree as to its meaning.[45]

Second, the 1947 Act did not require that a person be convicted

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the number of rape-murders in the United States is greater than 100 per year and it may be no more than 25. Sutherland, *supra* note 20, at 545–46.

[39] 60 YALE L. J. *op. cit. supra* note 14, at 346.

[40] *Id.* at 355; GUTTMACHER & WEIHOFEN, *op. cit. supra* note 18, at 132.

[41] ILLINOIS REPORT, *op. cit. supra* note 23, at 1.

[42] The committee which drafted the 1951 Wisconsin Act recognized that eventually it might be desirable to have indeterminate terms for all criminals convicted of a felony. COMMITTEE REPORT, COMMITTEE TO DEVELOP A LAW REGARDING SEX DEVIATES, 8 (1951).

[43] TAPPAN, *op. cit. supra* note 20, at 18.

[44] WIS. STAT. § 340.485 (1), (2) (1951).

[45] The term "sexual psychopath" means "any person suffering from such conditions of emotional instability or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to himself and to other persons." WIS. STAT. § 51.37 (1) (1947).

[46] But most psychiatrists agree that a psychopathic condition is not a sufficiently clear diagnostic entity to justify legislation. Tappan thoroughly deals with problems of definition. TAPPAN, *op. cit. supra* note 20, at 15, 36–43. Sutherland, *supra* note 23, at 551.

of a sex crime before being committed to an institution for an indeterminate sentence.[46] Any person could petition a district attorney to have an individual examined for sexual psychopathy.[47] The person petitioning for the examination was exempt from damages, as long as he or she acted in good faith.[48]

These provisions of the 1947 Act were especially dangerous in view of the fact that it is impossible to accurately predict the danger of serious crimes being committed by sex deviates.[49] Thus non-dangerous sex deviates could have been constrained for long periods of time, without having been convicted of any specific sex crime.[50] The 1951 Act provides safeguards against this danger by requiring conviction of a sex crime before any commitment to the Welfare Department,[51] and conviction of a serious sex crime before a mandatory commitment is made to the Department.[52]

There are no provisions making the 1951 Act applicable to juveniles. Here is another improvement over the 1947 Act, which specifically covered the juvenile with the purpose of applying preventive treatment to sexually deviated youngsters who might become habitual sex criminals.[53] The 1951 Act is an improvement as there is no accurate method of determining that a juvenile will become a sex offender. A youngster may appear to be sex deviated, but will probably become normal as he matures.[54]

By requiring conviction and making the entire action a criminal proceeding, the 1951 Wisconsin Act provides the accused person with the procedural safeguards of the criminal law. In some states these procedural safeguards are not provided as the basis of jurisdiction is civil, instead of criminal.[55] Under the 1947 Act, action could be taken without even a criminal charge being filed.[56] This type of statute has been specifically criticized as it could result in a serious

[46] The 1947 Act provided that if a person was determined to be a sexual psychopath, using the definition referred to in note 44, *supra*, he was to be committed to an institution for an indeterminate term. WIS. STAT. § 51.37 (3) (1947).
[47] WIS. STAT. § 51.37 (2) (1947).
[48] WIS. STAT. § 51.37 (7) (1947).
[49] TAPPAN, *op. cit. supra* note 20, at 28; Sutherland, *supra* note 28, at 551.
[50] Tappan indicates that "This inability to predict is of special importance in relation to recent laws that are designed to constrain individuals who have committed no law violations. . . ." TAPPAN, *op. cit. supra* note 20, at 15.
[51] WIS. STAT. § 340.485 (1), (2) (1951).
[52] WIS. STAT. § 340.485 (1) (1951).
[53] WIS. STAT. § 51.37 (2) (1947).
[54] Tappan indicates that a youngster's difficulties may be due to the natural sexual curiosities of the young, the exploratory phases in their development, the emergence of sexual impulses before the individual has matured socially and emotionally and the common incidence of pre-heterosexual drives in young individuals who become normal as they mature. TAPPAN, *op. cit. supra* note 20, at 31.
[55] PLOSCOWE, *op. cit. supra* note 16, at 231.
[56] WIS. STAT. § 51.37 (2) (1947).

deprivation of liberty, especially in case of serious abuse in administration.[47] For example, under the 1947 Act, in view of the vague definition of a sexual psychopath[48] and the inability to predict whether a sex deviate will commit a serious crime,[49] non-dangerous deviates could have been confined for long periods of time without being charged or found guilty of any crime.

The 1951 Act also provides safeguards against prolonged confinement which is unjustified. Every individual must be given a periodic examination at least once per year to determine whether existing orders should be continued in force.[50] The Act provides for periodic determinations by the court that made the original commitment, as to the right of the department to continue the offender under its control because of his dangerousness to the public.[51] If the court determines that the department has the right to continue the individual under control, he has a right of appeal to the proper appellate court.[52]

1951 Act is Constitutional. In the recent Wisconsin Supreme Court case of *State* ex rel. *Volden v. Haas*[53] the constitutionality of the 1951 Act was upheld. It was contended that the provision requiring the court, if the department recommends specialized treatment, to place the individual on probation on condition of outpatient treatment or to commit the person to the department,[54] operated to deprive such person of his liberty without due process of law, as the statute gives an individual no right to a court hearing on the question of his mental condition and need for specialized treatment, until the expiration of the maximum term for which he is imprisoned.[55]

The court held that the appellant was afforded all the rights of due process at the time of the trial, but upon conviction he was subject to whatever loss of liberty the legislature prescribed for his crime, and this might be commitment to the Welfare Department.[56]

The appellant also challenged the constitutionality of the Act on the ground that it delegates to the Welfare Department the judicial power to adjudge what the sentence should be. Appellant contended

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[47] TAPPAN, *op. cit. supra* note 20, at 27-30; Sutherland, *supra* note 28, at 551-553. Sutherland specifically criticizes the Wisconsin 1947 Act.

[48] See note 44 *supra*.

[49] See note 50 *supra*.

[50] WIS. STAT. § 340.485 (9) (1951).

[51] WIS. STAT. § 340.485 (13), (14) (1951). The periodic court hearings are to be held at the expiration of the maximum term provided by law for the particular offense and thereafter at five year intervals. WIS. STAT. § 340.485 (13), (15) (1951).

[52] WIS. STAT. § 340.485 (16) (1951).

[53] 264 Wis. 127, 58 N.W.2d 577 (1953).

[54] WIS. STAT. § 340.485 (6) (1951).

[55] 264 Wis. 127, 129, 58 N.W.2d 577, 578 (1953).

[56] *Id.* at 130, 58 N.W.2d at 578.

that the legislature could only vest this sentencing power in the courts.[67]

The court held that the legislature may grant an administrative board the authority to supervise a convicted person, either within or without a penal institution. The court referred to the fact that methods of dealing with convicted criminals have changed, as the function of administering laws respecting parole and probation, good time allowances, etc., has been placed to a large extent within the authority of non-judicial agencies. The court pointed to specific Wisconsin statutes providing the Welfare Department with authority respecting parole and probation.[68]

1953 Amendment. The 1951 Act provided that persons convicted of statutory rape (carnal knowledge and abuse)[69] *shall* be committed for a pre-sentence examination to the department.[70] The 1953 Legislature passed a bill deleting statutory rape (Sec. 340.47) from the mandatory section of the Act.[71] This means that upon a conviction of statutory rape the judge now has discretion, under the discretionary provision of the Act, as to whether the convicted individual should be committed to the Welfare Department for the pre-sentence examination.[72]

This was a needed change in the Act because statutory rape should not usually be considered a dangerous sex offense. It is recognized that statutory rape is, in the majority of cases, not the result of deviate sexual behavior, but arises out of sexual experimentation of adolescents.[73] However, some statutory rape cases may involve dangerous sexual behavior. This may be especially true when there is a wide disparity between the age of the offender and the age of the victim.[74] If such a case should arise in Wisconsin the judge could commit this offender to the department under the discretionary part of the Act.[75]

Administration of the Act

Treatment. The Wisconsin State Prison is designated as a receiving center for all persons committed under the 1951 Act, except for some

[67] 264 Wis. 127, 132, 58 N.W.2d 577, 579 (1953).
[68] *Ibid.* The court specifically says, "It is our opinion that section 340.485 (6) . . . is constitutional, . . ." *Id.* at 135, 58 N.W.2d at 581. There do not seem to be any other constitutional questions in regard to this statute, so the writer feels that the entire statute is constitutional.
[69] Wis. Stat. § 340.47 (1951).
[70] Wis. Stat. § 340.485 (1) (1951).
[71] Bill 67A (Wis. 1953).
[72] Wis. Stat. § 340.485 (2) (1951).
[73] Ploscowe, *op. cit. supra* note 16, at 179-193.
[74] *Ibid.*
[75] Wis. Stat. § 340.485 (2) (1951).

cases arising in Milwaukee, where Milwaukee County facilities are used.[16] The individual is taken to the state prision for the pre-sentence examination and also for the indeterminate sentence.[17] The prison was selected because of the limited knowledge regarding treatment. Therefore, custody was considered most important and custodial needs are better met at the prison than elsewhere.[18]

After the individual is committed to the department for specialized treatment and sent to the state prison, treatment is immediately initiated and psychiatric therapeutic sessions are had with the offenders weekly or tri-monthly. The department feels that progress is being made with these sex offenders. Present treatment methods are thought to be most promising in 25% of the cases.[19]

The sex offenders are not segregated from the remainder of the prison population and treatment has been made possible in an atmosphere not generally regarded as suited to such purpose. However, the judgment of the department is that this is a medical problem and should not be handled in a strictly penal institution. The long range plans of the department are for the erection of a distinct treatment center, which will be a medium security institution. This institution would be devoted to the care of non-aggressive sex deviates, as well as other prisoners in need of intensive clinical help, rather than security.[20]

Statistics. As of January 27, 1953, (one year and one-half after passage of the Act) a total of 260 cases had been committed to the department for examination and recommendation. Sex deviation was found in 72 cases. No deviation was found in 165 of the offenders; 6 were recommended for commitment to the Central State Hospital and 17 cases were still under evaluation at the time of this report.[21]

The 165 found not to be deviated were returned to the courts for sentencing in the manner provided by law.[22] Of the 72 found to be deviated, 50 were still confined at the state prison as of January 26, 1953. The other 22 had either been paroled, discharged, placed on

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[16] WIS. STAT. § 340.485 (3) (1951) provides that some place of detention must be established by the department.

[17] Unless the offender is psychotic. In that case he may be sent to the Central State Hospital for the indeterminate sentence.

[18] REPORT TO MEMBERS, STATE BOARD OF PUBLIC WELFARE. FROM TRAMBURG, DIRECTOR, STATE DEPARTMENT OF PUBLIC WELFARE (Feb. 21, 1952); files of the Division of Corrections, State Department of Public Welfare.

[19] *Ibid.*

[20] A REPORT COVERING THE PERIOD JULY 26, 1951—JAN. 26, 1953 (Feb. 11, 1953).

[21] *Ibid.*

[22] WIS. STAT. § 340.485 (5) (1951).

probation or were awaiting final court action.[53] Of the 72 found to be sexually deviated, the three offenses most frequently involved were: 1. liberty with a female child (21); 2. improper liberties (19); 3. sodomy (13).[54]

Sodomy is not included in the mandatory provisions of the Act so all the commitments resulting from convictions under Wis. Stat. Sec. 351.40 (sodomy) have been made under the discretionary part of the Act. Requests by the courts under this discretionary section of the statute have all been met on an individual basis by the department. No request has been rejected.[55]

Problems. The intake of offenders has exceeded original expectations and this has impaired the work of the staff with other prisoners who are in need of psychiatric assistance. The present intake indicates that by 1958 the state must be prepared to handle approximately 200 sex offenders committed under this act. This poses the question of suitable custodial housing and sufficient medical personnel.[56]

Also, administratively, the inclusion of the offense of carnal knowledge and abuse (statutory rape) under the mandatory section of the law, has been one of the chief reasons for the excessive work load on the staff.[57] Statutory rape conviction has also needlessly exposed some individuals to a 60-day prison sentence experience, which may be particularly harmful in the case of 16- and 17-year-old boys.[58] The 1953 Amendment, previously discussed, will now correct this situation.

Conclusions

Criticisms. The 1951 Act provides for discretionary commitment by the court, if a person is convicted of "any sex crime" not specified in the mandatory section.[59] What is meant by "any sex crime"? Does "any sex crime" include a crime which is sexually motivated,

[53] Report, *supra* note 30. The special review board recommending parole consists of two psychiatrists and one attorney, none connected with the Department of Public Welfare. This is according to Wis. Stat. § 340.485 (10) (1951).

[54] Report, *supra* note 30.

[55] Individuals convicted for the following offenses have been committed to the Department under the discretionary part of the Act because serious sex deviation has been indicated: § 340.52 Advising Felony (1); § 340.55 Enticement (3); § 343.03 Arson (1); § 351.05 Intercourse: Ruin (1); § 351.33 Indecent Exposure (2); § 351.38 Circulation of Obscene Books, etc. (1) and § 351.40 Sodomy (13). Report, *supra* note 30.

[56] Report, *supra* note 30.

[57] These individuals comprise the bulk of persons found non-deviated on examination, but the court had to commit them to the department per Wis. Stat. § 340.485 (1) (1951). Report, *supra* note 30.

[58] Report from Tramburg, Director, State Department of Public Welfare, to Members, State Board of Public Welfare (August 8, 1952).

[59] Wis. Stat. § 340.485 (2) (1951).

but isn't normally considered a sex crime? For example, it is known that robbery, arson and murder may be sexually motivated and the offender may be sexually dangerous.[30] This section would be clarified if the words "other sex crimes" were defined.

Treatment must be temporarily conducted in a prison environment. There has been much criticism levelled at treating these offenders in a prison environment.[31] However, this will be corrected when the medium, hospital-type, security institution is built and, presently, treatment seems to be fairly successful.

Treatment facilities being at the state prison, the voluntary section of the Act has probably been negated.[32] Not one individual has sought to be voluntarily treated,[33] and this is probably due to the stigma that would be attached to being treated in a state prison. The committee drafting the law felt that great emphasis should be placed on early voluntary treatment of those who might believe themselves to be afflicted with an emotional disorder leading to sexually deviated behavior.[34] This may be corrected by the building of a hospital-type institution for these offenders.

There is no indication that any credit is given for the 60 days served under the pre-sentence examination, when the case is brought to court for final adjudication. If the individual is found to be seriously deviated and committed to the department, it would be immaterial if these 60 days of credit were given, as the sentence is completely indeterminate. But should not the individual who is *not* in need of specialized treatment, and is sentenced in the manner provided by law, be given the benefit of these 60 days of confinement?

A Step Forward. In its latest report, the Welfare Department concludes:

> The law is a good one. It is workable. It is well accepted by the public . . .[35].

This legislation is a step from the punitive, purely custodial approach to one that emphasizes treatment. The 1951 Act has remedied the

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[30] GUTTMACHER & WEIHOFEN, *op. cit. supra* note 28, at 132. For an interesting case history of how abnormal sex drives resulted in a young man stabbing a girl, see Karpman, *Felonious Assault Revealed as a Symptom of Abnormal Sexuality*, 37 J. CRIM. L. & CRIMINOLOGY 193 (1946). One offender convicted of arson, which was apparently sexually motivated, has been committed to the department under the discretionary provisions of the Act. See note 85 *supra*.

[31] PLOSCOWE, *op. cit. supra* note 16, at 238.

[32] WIS. STAT. § 340.485 (17) (1951) provides, "Any person believing himself to be afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply upon forms described by the department for voluntary admission to some institution which provides diagnosis for such persons."

[33] Information from the Division of Corrections, State Department of Public Welfare.

[34] COMMITTEE REPORT, *supra* note 41.

[35] REPORT, *supra* note 30.

faults of the 1947 Act. The 1951 Act is based on the most extensive research conducted in this field. By concentrating treatment on a limited group of serious sex offenders, the law is being administered successfully. If it continues to be successful, it might pioneer additional advances in correctional treatment in the state of Wisconsin and elsewhere.

ANTON MOTZ

INSURANCE—CONSTRUCTION OF POLICY TERMS. A tire on insured's automobile exploded while the right rear wheel was being spun, damaging both the tire and other parts of the car. Insured sued for the entire damage under a policy covering "any direct and accidental loss of or damage to the automobile . . . except loss covered by collision . . . or by upset," but excluding from such coverage "tires . . . unless such loss be coincident with other loss covered by this policy." Judgment was rendered for the plaintiff and defendant insurer appealed. In *Stohlman v. State Farm Mutual Auto Ins. Co.*,[1] the court affirmed the judgment, holding with respect to the tire that the damage thereto was "coincident with other loss" and hence not within the exclusion clause.

The decision poses questions as to what tools a court may use in construing insurance contracts.

At the outset, general rules of contract law are applied and the court attempts to ascertain the meaning of disputed provisions from the true intent of the parties.[2] Reading the provision in question in context with the other provisions of the entire policy,[3] according the words employed their popular, usual significance and meaning,[4] and contrasting the apparent purpose of the provision with the over-all purpose of the policy,[5] may indicate what the parties intended and admit of but one interpretation consistent with that intent.[6]

However, the language employed is often so ambiguous, i.e., allowing of two or more entirely reasonable meanings, that the foregoing

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[1] 262 Wis. 157, 54 N.W.2d 53 (1952).

[2] Tischendorf v. Lynn Mut. Fire Ins. Co., 190 Wis. 33, 208 N.W. 917 (1926); Vaudreuil Lumber Co. v. Aetna Casualty & Surety Co., 201 Wis. 518, 230 N.W. 704 (1930).

[3] Continental Casualty Co. v. Woerpel, 190 Wis. 122, 208 N.W. 882 (1926).

[4] Bell v. American Ins. Co., 173 Wis. 533, 181 N.W. 733 (1921). In some cases, business usage or custom may prescribe the meaning.

[5] Note 2, *supra*.

[6] This is the method of interpreting "standard form" or statutory policies, as well as others. Such policies are not to be construed as legislative enactments, but as voluntary contracts, and subject to the rules applicable to contracts generally. Frozine v. St. Paul Fire & Marine Ins. Co., 195 Wis. 494, 218 N.W. 845 (1928); Straw v. Integrity Mut. Ins. Co., 248 Wis. 96, 20 N.W.2d 707 (1945).