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A COMPARATIVE STUDY OF AMERICAN SEX STATUTES

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Since Dr. Kinsey and his associates made their study of the sexual drives public in 1948¹ the dynamic aspect of sex in the everyday life processes has been the subject of extensive and varied comment. Very little, if anything, however, has actually been done by lawyers and legislators in the field of sex legislation. Yet, anyone who has made even the most cursory survey of American sex laws cannot help but feel utter bewilderment at the crazy-quilt legislation that has been produced by the state legislatures. For example, it seems anomalous that in Louisiana and North Carolina a mandatory death sentence is provided for rape, while in New Jersey the convict may escape with only a nominal fine. In the treatment of a subject whose problems are so unvarying nationally, the only uniformity that exists is uniformity in variation.

In order to illustrate the confusion and lack of uniformity that exists in our present regulation of sexual activity, an examination has been made of the sex statutes and penalties in all forty-eight states of the Union. The total number of laws in the field of sex regulation are so diversified and extend over so wide a range of human behavior and activity,² however, that for purposes of illustrative comparison only that behavior which both a layman and a lawyer would most likely consider to be a proper activity for primary legislation has been selected for examination.

The six areas of regulation chosen are: adultery, fornication, seduction, sodomy, incest and rape.³

A. RAPE

Carnal knowledge of a woman forcibly against her will is made a felonious offense⁴ in all forty-eight states. As seen from Figure I, no further unanimity exists, however. For example, although rape is gen-

1. KINSEY, POMEROY AND MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948).

2. The following are illustrative: Nudist camps, contraception, bastardy, chastity, abortion, lewd behavior, advertisements concerning certain diseases, miscegenation, obscene language, obscene or pornographic literature, keeping of a disorderly house, prostitution

3. The use of the term "rape" here includes the offense of statutory rape.

4. The term "felony," or "felonious" is used throughout the chapter to mean any offense that is, or may be punished by death or imprisonment in a penitentiary, including the offense of "high misdemeanor," as found, for example, in New Jersey.

erally conceded to head the list of serious sex offenses, it is punishable by death in only 18 states.⁵ It is not meant that the death penalty in these states is mandatory,⁶ for only the statutes of Louisiana and North Carolina so provide. It does mean, however, that in 30 states it is not possible to receive a death penalty upon conviction of the offense of rape.

FIGURE I

RAPE

1. Ala.	10 yrs. to death	27. N.C.	Death
2. Ariz.	5 yrs. to life	28. N.D.	Not less than 1 yr.
3. Ark.	Life or death	29. N.H.	30 yrs.*
4. Cal.	50 yrs.*	30. N.J.	\$5,000* and/or 30 yrs.*
5. Colo.	3 yrs. to life	31. N.M.	1-99 yrs.
6. Conn.	30 yrs.*	32. N.Y.	20 yrs.*
7. Del.	Life or death	33. Ohio	3-20 yrs.
8. Fla.	Life, death, or any term of yrs.	34. Okla.	15 yrs.† to death
9. Ga.	Death, or 1-20 yrs. if mercy recommended	35. Ore.	3-20 yrs.
10. Idaho	1 yr. to life	36. Pa.	\$7,000 and/or 15 yrs.*
11. Ill.	1 yr. to life	37. R.I.	5 yrs.*
12. Ind.	2-21 yrs.	38. S.C.	Death, or if mercy is recommended, 5-40 yrs.
13. Iowa	5 yrs. to life	39. S.D.	10 yrs.†
14. Kan.	5-21 yrs.	40. Tenn.	Death, life, or not less than 10 yrs.
15. Ky.	10-20 yrs., or by life or death	41. Tex.	Death, life, or not less than 5 yrs.
16. La.	Death	42. Utah	Not less than 5 yrs.
17. Me.	Any term of yrs.	43. Vt.	20 yrs.* and/or \$2,000*
18. Md.	Life, death, or 18 mths. to 21 yrs.	44. Va.	Death, life, or any term not less than 5 yrs.
19. Mass.	Life, or for any term of yrs.	45. Wash.	5 yrs.†
20. Mich.	Life, or any term of yrs.	46. W.Va.	Life or death, or 5-20 yrs. if mercy recommended
21. Minn.	7-30 yrs.	47. Wis.	1-30 yrs.; if female a prostitute, 1-7 yrs.
22. Miss.	Life or death	48. Wyo.	1 yr. to life
23. Mo.	Death, or not less than 2 yrs.		
24. Mont.	2-99 yrs.		
25. Neb.	3-20 yrs.		
26. Nev.	5 yrs. to life. If committed with extreme cruelty, 20 yrs. to death		

* Maximum sentence or fine.

† Minimum.

5. Ala., Ark., Del., Fla., Ga., Ky., La., Md., Miss., Mo., Nev., N. C., Okla., S. C., Tenn., Tex., Va., W. Va. See Figure I.

6. While South Carolina and Georgia might be classified as mandatory death penalty states, since the statutes in the two states allow a lesser penalty if mercy is recommended, they have not been so included. See Figure I.

(1) LIFE SENTENCES

Likewise, in only 29 states⁷ is a life sentence, or its equivalent,⁸ to be found.

(2) MINIMUM SENTENCES

Proceeding from the other side, that of a minimum sentence which one convicted of rape could possibly receive, it is found that 40 states guarantee the convict a sentence of at least one year. In the remaining eight states⁹ only the maximum penalties are set out in the statutes, and in three of these it is possible for a convicted defendant to receive a monetary fine as the sole penalty.¹⁰

(3) GEOGRAPHICAL COMPARISON OF PENALTIES

Upon further analysis, it is seen that of the 18 states providing for the capital punishment of rape, 13 are east of the Mississippi River,¹¹ and may be classified loosely as "Southern" States. The remaining five states are all west of the Mississippi River.¹² The most plausible explanation for this phenomenon, perhaps, is that for the most part, these were slave states and have always contained a large percentage of the Negro population,¹³ and it would be quite natural for a white legislature in such state to include a death sentence.

The geographical distribution of states providing for life imprisonment, or its equivalent,¹⁴ using the same division as made above, places the "Western" States at the head of the list with a total of 16.¹⁵ The "Southern" States follow with nine,¹⁶ and the "North" is represented only by Illinois, Maine, Massachusetts and Michigan.

In regard to the eight states which do not provide at least a one year minimum sentence, all are in the "North," except California.¹⁷ Included

7. Ala., Ariz., Ark., Colo., Del., Fla., Idaho, Ill., Iowa, Ky., Me., Md., Mass., Mich., Miss., Mo., Mont., Nev., N. D., N. M., Okla., S. D., Tenn., Tex., Utah, Va., Wash., W. Va., Wyo. See Figure I.

8. As used, "equivalent" means: "Any term of years," "99 years," and includes statutes which place merely a minimum, such as "not less than five years," and which place no maximum penalty.

9. Cal., Conn., N. H., N. J., N. Y., Pa., R. I., and Vt. See Figure I.

10. N. J., Pa., and Vt. See Figure I.

11. Ala., Del., Fla., Ga., Ky., La., Md., Miss., N. C., S. C., Tenn., Va., and W. Va. See Figure I.

12. Ark., Mo., Okla., Tex., and Nev. See Figure I.

13. This cannot be true of Nevada, and, as a result, no such explanation can be attempted for its death penalty provision. Moreover, since the Nevada death penalty is applicable only in instances of extreme cruelty, such would necessitate an indiscriminate application to both Negro and White.

14. See note 8 *supra*, for definition of "equivalent."

15. Ariz., Ark., Colo., Idaho, Iowa, Mo., Okla., Mont., Nev., N. D., N. M., S. D., Tex., Utah, Wash., Wyo. See Figure I.

16. Ala., Del., Fla., Ky., Md., Miss., Tenn., Va., W. Va. See Figure I.

17. Conn., N. H., N. J., N. Y., Pa., R. I., and Vt. See Figure I.

in this list, also, are the three states of New Jersey, Pennsylvania and Vermont, which permit a fine to serve as full punishment for the offense. Also included is the State of Rhode Island, which sets a maximum penalty of five years upon conviction for the crime of rape.

B. STATUTORY RAPE

Carnal knowledge of a female child, however young, was not regarded as rape under the early common law if the child assented.¹⁸ During the reign of Elizabeth, however, a statute was enacted making it a felony to have carnal intercourse with a minor under ten years of age, either with or without her consent.¹⁹ Similar statutes have been enacted in the United States. Figure II shows the age limits set by the states and the penalties which may be assessed against a defendant upon conviction of such offense.

Figure II does not lend itself easily to discussion and comparison due to the fact that within a given state the penalty upon conviction may vary according to the age group into which the minor "victim" is placed, and that there may be two or more age groups. A good example is the Kentucky statute which provides the following penalties to be imposed according to three different age groups:

Minor under 12 years of age—Death, or 20 to 50 years
 Minor under 16 years of age—5 to 20 years
 Minor under 18 years of age—2 to 10 years.²⁰

On the other hand, statutes in many states, of which Montana is illustrative,²¹ merely provide that if the minor is under 18 years of age, the penalty that may be imposed upon conviction is from two to 99 years. That is, only one age is given, and the penalty remains the same for all persons of that age or under. Although this difficulty is present, there are certain areas in which profitable comparison might be made. One of these is the age limit set by the statutes beyond which consent by the minor is a defense to prosecution.

Twenty-three state statutes provide that if the minor is under 18 years of age consent is *no* defense,²² and 21 states set 16 years as the age

18. Reg. v. Webb, 2 Carr. & K. 937 (1848); Reg. v. Read, 1 Den. C.C. 377 (1848); Reg. v. Martin, 9 Car. & P. 213 (1839); See also CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES §297 (4th ed. 1940).

19. CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES §297 (4th ed. 1940). The Statute was: 18 Eliz. c. 7, §4. Also see: 1 Hale P.C. 628 (1847); Reg. v. Cockburn, 3 Cox C.C. 542 (1849).

20. See Figure II.

21. See Figure II.

22. Ariz., Cal., Colo., Fla., Idaho, Kan., Ky., Minn., Miss., Mo., Mont., Neb., Nev., N. D., N. Y., Okla., R. I., S. D., Tex., Utah, Wash., Wis., Wyo. See Figure II.

at which consent *will bar* prosecution under such statute.²³ The Georgia statute penalizes only if the minor is under 14 years of age, while Delaware descends as low as seven years to place the age of consent. Tennessee stands alone in decreeing that a child under the age of 21 years is incapable of consenting to an act of sexual intercourse.²⁴

(1) DEATH PENALTY

A death penalty upon conviction of statutory rape is permissible in 16 states under the following circumstances:

Age of Minor

- | | |
|--|---|
| <p>A. Under 7 years
1. Delaware</p> | <p>D. Under 14 years
1. Georgia
2. Maryland
3. Oklahoma
4. Virginia</p> |
| <p>B. Under 10 years
1. Florida</p> | <p>E. Under 16 years
1. Missouri
2. South Carolina
3. West Virginia</p> |
| <p>C. Under 12 years
1. Alabama
2. Kentucky
3. Louisiana
4. Mississippi
5. North Carolina
6. Tennessee</p> | <p>F. Under 18 years
1. Texas</p> |

It is interesting that here, as in the case of rape by force and against the consent of the victim, almost all of the states providing a death sentence are Southern states. In addition, all the states listed above also permit a penalty of death for rape committed against the will and consent of the female victim.²⁵

(2) LIFE SENTENCES

Life sentences, or their equivalent,²⁶ are permissible in a total of 30 states, eight of which so provide whenever the child is under the age of 18 years,²⁷ and eight²⁸ do so when the minor is under 16 years of age.²⁹ It is significant that in only 13 states is it possible to escape after conviction with a fine as the sole penalty.³⁰

23. Ala., Ark., Conn., Ill., Ind., Iowa, Me., Md., Mass., Mich., N. C., N. H., N. J., N. M., Ohio, Ore., Pa., S. C., Vt., Va., W. Va. See Figure II.

24. See Figure II.

25. See note 5 *supra*.

26. See note 8 *supra*.

27. Ariz., Colo., Idaho, Mont., Nev., N. D., Tex., Wyo. See Figure II.

28. Ill., Iowa, Mass., Mich., Mo., N. C., N. M., W. Va. See Figure II.

29. The rest of the total breaks down as follows: Under 15 years of age: Wash. Under 14: Me., Md., Okla., and Va. Under 13: Utah. Under 12: Ala., Ind., Miss., Tenn. Under 10: Fla., Minn., N. M., S. D. Under 7: Del. See Figure II.

30. Conn., Fla., Ga., Ky., Me., Md., Miss., Mo., N. C., N. J., Pa., Vt., Wis. See Figure II.

FIGURE II

STATUTORY RAPE

- | | | | |
|-----------|---|-----------|--|
| 1. Ala. | Under 12, 10 yrs. to death;
12-16 yrs. of age, 2-10 yrs. | 24. Mont. | Under 18, 2-99 yrs. |
| 2. Ariz. | Under 18, 5 yrs. to life | 25. Neb. | Under 18, 3-20 yrs. |
| 3. Ark. | Under 16, 1-21 yrs. | 26. Nev. | Under 18, 5 yrs. to life |
| 4. Cal. | Under 18, 1-50 yrs. | 27. N.C. | Under 12, death; under 16,
fined or imprisoned in
court's discretion. |
| 5. Colo. | Under 18, 3 yrs. to life | 28. N.D. | Under 18, not less than 1 yr. |
| 6. Conn. | Under 16, 30 yrs.* and/or
\$1,000 | 29. N.H. | Under 16, 30 yrs.* |
| 7. Del. | Under 7, life or death | 30. N.J. | Under 12, 30 yrs.* and/or
\$5,000*; under 16, 15
yrs.* and/or \$2,000.* |
| 8. Fla. | Under 10, life or death or
any term of years; under
18, 10 yrs.* or \$2,000* | 31. N.M. | Under 10, life; under 16,
1-99 yrs. |
| 9. Ga. | Under 14, death or 1-20 yrs.;
or a misdemeanor if jury
recommends, \$1,000* or 6
mths.* | 32. N.Y. | Under 18, 10 yrs.* |
| 10. Idaho | Under 18, 1 yr. to life | 33. Ohio | Under 16, 1-20 yrs.; or 6
mths. county jail |
| 11. Ill. | Under 16, 1 yr. to life | 34. Okla. | Under 14, 15 yrs. to death;
under 18, 1-15 yrs. |
| 12. Ind. | Under 12, life; under 16,
2-21 yrs. | 35. Ore. | Under 16, 3-20 yrs. |
| 13. Iowa | Under 16, 5r. to life | 36. Pa. | Under 16, \$7,000* and/or
15 yrs.* |
| 14. Kan. | Under 18, 1-21 yrs. | 37. R.I. | Under 16, 15 yrs.*; under
18, 5 yrs.* |
| 15. Ky. | Under 12, death, or 20-50
yrs.; under 16, 5-20 yrs.;
under 18, 2-10 yrs., unless
prosecutrix immoral,
\$500* | 38. S.C. | Under 16, death, unless if
mercy asked and victim
over 10 but under 16, 14
yrs.*; or over 14 but un-
der 16, 5 yrs.* |
| 16. La. | Under 12, death; 12-17 yrs.
of age, 5 yrs.* | 39. S.D. | Under 10, not less than 10
yrs.; under 18, 20 yrs.* |
| 17. Me. | Under 14, any term of years;
under 16, \$500* or 2 yrs.* | 40. Tenn. | Under 12, life, death, or not
less than 10 yrs.; under
21, 3-10 yrs. |
| 18. Md. | Under 14, life, death, or 18
mths. to 21 yrs.; under 16,
2 yrs.* and/or \$500* | 41. Tex. | Under 18, life, death, or any
term not less than 5 yrs. |
| 19. Mass. | Under 16, life, or any term
of years | 42. Utah | Under 13, not less than 5
yrs.; under 18, 5 yrs.* |
| 20. Mich. | Under 16, life, or any term
of years | 43. Vt. | Under 16, 20 yrs.* and/or
\$2,000.* |
| 21. Minn. | Under 10, life; under 14,
7-30 yrs.; under 18, 7 yrs.* | 44. Va. | Under 14, 5 yrs. to life, or
death, between 14 and 16,
1-20 yrs. |
| 22. Miss. | Under 12, life or death;
under 18, 5 yrs.* or \$500*
and/or 6 mths. | 45. Wash. | Under 15, life; 15 to 18 yrs.
of age, 20 yrs.* |
| 23. Mo. | Under 16, death, or not less
than 2 yrs.; 16 to 18 yrs.
of age, 2 yrs. or \$100-
\$500; or 1-6 mths. county
jail, and/or \$100-\$500. | 46. W.Va. | Under 16, life or death.
Mercy asked, 5-20 yrs. |
| | | 47. Wis. | Under 18, 1-35 yrs. or \$200. |
| | | 48. Wyo. | Under 18, 1 yr. to life. |

* Maximum fine or sentence.

C. SODOMY

Figure III is a compilation of penalties which may be imposed upon conviction of the offense of sodomy. Sodomy has been made a felony in 46 states, and in only New Hampshire and Vermont is it not punished at all. Colorado, Georgia, and Nevada are the only states, however, that prescribe a life sentence, and only a total of five other states provide for penitentiary sentences in excess of 30 years.³¹

Upon a further breakdown of the penalties imposed in the various states, the following is seen: two states set a maximum penalty of three years;³² six states order maximum penitentiary terms of five years;³³ 14 states, a maximum of 10 years;³⁴ five have a 15 year maximum;³⁵ eight have a 20 year maximum;³⁶ New Jersey and Arkansas impose a 21 year sentence; and Connecticut decrees a maximum penitentiary term of 30 years. Also, in six states, it is possible for a defendant to escape with the imposition of only a monetary penalty.³⁷

No geographical similarities exist in relation to the penalties directed upon the conviction of sodomy, unless it is that of the states in which it is possible to receive a longer term than 30 years. Six of the eight so providing are Western states.³⁸

FIGURE III

SODOMY

1. Ala.	2-10 yrs.	15. Ky.	2-5 yrs.
2. Ariz.	1-5 yrs.	16. La.	5 yrs.* and/or \$2,000*
3. Ark.	5-21 yrs.	17. Me.	1-10 yrs.
4. Cal.	1-10 yrs. Committed orally, 15 yrs.*	18. Md.	1-10 yrs.
5. Colo.	1 yr. to life	19. Mass.	20 yrs.*
6. Conn.	30 yrs.*	20. Mich.	15 yrs.*
7. Del.	3 yrs.* and \$1,000*	21. Minn.	20 yrs.*
8. Fla.	20 yrs.*	22. Miss.	10 yrs.*
9. Ga.	Life; bestiality, 5-20 yrs.	23. Mo.	2 yrs.†
10. Idaho	5 yrs.†	24. Mont.	5 yrs.†
11. Ill.	1-10 yrs.	25. Neb.	20 yrs.*
12. Ind.	\$100-\$1,000 and/or 2-14 yrs.	26. Nev.	5 yrs. to life
13. Iowa	10 yrs.*	27. N.C.	5-60 yrs.
14. Kan.	10 yrs.*	28. N.D.	1-10 yrs.
		29. N.H.	No crime

* Maximum penalty.

† Minimum penalty.

31. Idaho, Mo., Mont., N. C., N. M. See Figure III.

32. Va., Del.

33. Ariz., Ky., La., S. C., Wis., Wyo.

34. Ala., Cal., Ill., Iowa, Kan., Me., Md., Miss., N. D., Okla., Pa., S. D., Wash., W. Va.

35. Ind. (14 yrs.), Mich., Ore., Tenn., Tex.

36. Fla., Mass., Minn., Neb., N. Y., Ohio, R. I., Utah.

37. Ind., La., N. J., N. M., Pa., S. C.

38. Idaho, Mo., Mont., N. M., Colo., Nev., Ga., N. C. are the eight states. See Figure III.

FIGURE III (Continued)

30. N.J. \$1,000* and/or 21 yrs.*	40. Tenn. 5-15 yrs.
31. N.M. 1 yr.† and/or \$1,000†	41. Tex. 2-15 yrs.
32. N.Y. 20 yrs.*	42. Utah 3-20 yrs.
33. Ohio 1-20 yrs.	43. Vt. No crime
34. Okla. 10 yrs.*	44. Va. 1-3 yrs.
35. Ore. 1-15 yrs.	45. Wash. 10 yrs.*
36. Pa. 10 yrs.* and/or \$5,000*	46. W.Va. 1-10 yrs.
37. R.I. 7-20 yrs.	47. Wis. 1-5 yrs.
38. S.C. 5 yrs. and/or \$500†	48. Wyo. 5 yrs.* or 1 yr.* county jail
39. S.D. 10 yrs.*	

*Maximum penalty.
 †Minimum penalty.

D. INCEST

Figure IV is a general portrayal of the nature and extent of the legislative regulation of the crime of incest.³⁹ Legislation exists in all the states, and incest is considered a felony in all jurisdictions except Delaware and Virginia, where it is by terms of the statute a misdemeanor.⁴⁰

Once again, no geographical uniformity is to be found in the penalties imposed by the various states. The only general agreement which exists at all concerns the maximum sentences imposed as shown by the following breakdown:

MAXIMUM PENALTIES

1. 3 years..... 1 State ⁴¹	6. 20 years..... 4 States ⁴⁶
2. 5 years..... 3 States ⁴²	7. 21 years..... 3 States ⁴⁷
3. 7 years..... 4 States ⁴³	8. 25 years..... 1 State ⁴⁸
4. 10 years..... 21 States ⁴⁴	9. 50 years..... 2 States ⁴⁹
5. 15 years..... 3 States ⁴⁵	
	Total 42 States

The discrepancy in the total in the above analysis is due to the fact that in five states⁵⁰ the severity of the sentence depends upon the degree

39. In order to completely understand the regulation of incest in the forty-eight states, it would be necessary to specifically set out the provisions in every statute in detail, due to the fact that the degree of the relationship necessary to constitute the offense varies from state to state. As a result, Figure IV is, at most, only a general portrayal of the situation.

40. In Indiana, Oregon and Wyoming incest may be either a felony or a misdemeanor in the discretion of the court. See Figure IV. In New Jersey, incest, although punishable by penitentiary imprisonment, is a "high misdemeanor."

41. Oregon.
 42. Pa., Vt., Wyo.
 43. Ala., Del., Kan., Mo.
 44. Ariz., Ark., Conn., Idaho, Me., Md., Mich., Minn., Miss., Mont., Nev., N. D., N. Y., Ohio, Okla., R. I., S. D., Tex., Wash., W. Va., Wis.
 45. Neb., N. C., Utah.
 46. Fla., Ga., Mass., N. H.
 47. Ind., Ky., Tenn.
 48. Iowa.
 49. Cal., N. M.
 50. Colo., Ill., La., N. J., and Va.

of kinship of the parties and that the South Carolina Statute sets a minimum sentence only of not less than one year.⁵¹

Just as in the case of sodomy,⁵² it is possible for a convicted offender to receive only a monetary penalty for incest. The statutes of nine states are evidence of this fact.⁵³ Especially interesting is the fact that in six of the nine states it would appear possible, in theory at least, for a convict to receive a fine as small as fifty cents, or even less.⁵⁴

FIGURE IV

INCEST

1. Ala.	1-7 yrs.	25. Neb.	5-15 yrs.
2. Ariz.	10 yrs.*	26. Nev.	1-10 yrs.
3. Ark.	3-10 yrs.	27. N.C.	15 yrs.*
4. Cal.	1-50 yrs.	28. N.D.	1-10 yrs.
5. Colo.	\$100-\$500, or 6 mths.-5 yrs. Father and daughter co- habiting, 20 yrs.*	29. N.H.	\$1,000* or 20 yrs.* or both
6. Conn.	10 yrs.*	30. N.J.	\$1,000* and/or 15 yrs.* (Parent); otherwise, 5 yrs.* and/or \$1,000.*
7. Del.	\$500* and 7 yrs.* (Misde- meanor)	31. N.M.	50 yrs.*
8. Fla.	20 yrs.*	32. N.Y.	10 yrs.*
9. Ga.	1-20 yrs.	33. Ohio	1-10 yrs.
10. Idaho	10 yrs.*	34. Okla.	10 yrs.*
11. Ill.	1-10 yrs. Father and daugh- ter, 1-20 yrs.	35. Ore.	1-3 yrs., or 3 mths. to 1 yr. county jail, or \$200-\$1,000
12. Ind.	2-21 yrs., or 6 mths.-1 yr. county jail	36. Pa.	\$2,000* and/or 5 yrs.
13. Iowa	25 yrs.*	37. R.I.	10 yrs.*
14. Kan.	7 yrs.*	38. S.C.	\$500† or 1 yr.† or both
15. Ky.	2-21 yrs.	39. S.D.	10 yrs.*
16. La.	15 yrs.* (Ascendant or de- scendant). 5 yrs.* and/or \$1,000* (aunt, uncle, niece or nephew)	40. Tenn.	5-21 yrs.
17. Me.	1-10 yrs.	41. Tex.	2-10 yrs.
18. Md.	1-10 yrs.	42. Utah	3-15 yrs.
19. Mass.	20 yrs.*	43. Vt.	5 yrs. and/or \$1,000*
20. Mich.	10 yrs.*	44. Va.	\$500* and/or 12 mths.* (mis- demeanor); father and daughter, 1-10 yrs., or \$500* and/or 12 mths.* county jail
21. Minn.	10 yrs.*	45. Wash.	10 yrs.*
22. Miss.	10 yrs.*	46. W.Va.	5-10 yrs.
23. Mo.	7 yrs.*	47. Wis.	2-10 yrs.
24. Mont.	10 yrs.*	48. Wyo.	5 yrs.* or 1 yr.* county jail

* Maximum penalty.

† Minimum penalty.

51. See Figure IV.

52. See Figure III.

53. Colo., La., N. H., N. J., Ore., Pa., S. C., Vt., Va. See Figure IV.

54. La., N. H., N. J., Pa., Vt., Va. See Figure IV for the penalties imposed in these states.

E. SEDUCTION

The extent of the regulation of seduction in the United States is set out in Figure V. While seduction is outlawed in all but 13 states,⁵⁵ there is almost total agreement that the offense does not warrant severe punishment. Georgia, with a penalty of 20 years, stands alone, for no other state statute prescribes a prison sentence of more than 10 years.⁵⁶ Twenty-two states are content with only a five year prison term.⁵⁷

The punishment in the remaining states ranges from a one year penalty in Illinois⁵⁸ to a term of three years,⁵⁹ and in South Carolina the offense is punishable only as a misdemeanor with the exact penalty determined by the court. It is also possible in a total of 17 jurisdictions for a convict to escape with a fine as the sole retribution.⁶⁰

FIGURE V

SEDUCTION

1. Ala.	1-10 yrs.	22. Miss.	10 yrs.* , under 18; 5 yrs.* over 18
2. Ariz.	1-5 yrs.	23. Mo.	2-5 yrs., or \$1,000* and 1 yr.* county jail
3. Ark.	1-10 yrs. and \$5,000*	24. Mont.	5 yrs.* and/or \$5,000*
4. Cal.	5 yrs.* and/or \$5,000*	25. Neb.	6 mths.-5 yrs. penitentiary, or 6 mths.* county jail
5. Colo.	10 yrs.*	26. Nev.	No crime
6. Conn.	5 yrs.* and \$1,000*	27. N.C.	5 yrs.* or fined at court's discretion
7. Del.	No crime	28. N.D.	1-5 yrs., or 1 yr.* county jail and/or \$1,000*
8. Fla.	No crime	29. N.H.	No crime
9. Ga.	2-20 yrs.	30. N.J.	7 yrs.* and/or \$2,000*
10. Idaho	No crime	31. N.M.	1-3 yrs. and/or \$1,000-\$3,000
11. Ill.	\$1,000-\$5,000 and/or 1 yr.*	32. N.Y.	5 yrs.* and/or \$1,000*
12. Ind.	6 mths.-5 yrs. and \$100-\$500	33. Ohio	6 mths.-3 yrs.
13. Iowa	5 yrs.* , or \$1,000* and 1 yr.* county jail	34. Okla.	5 yrs.* and/or \$1,000* , or 1 yr.* county jail and/or \$1,000*
14. Kan.	No crime	35. Ore.	1-5 yrs., or 3 mths.-1 yr. county jail, or \$500-\$1,000
15. Ky.	1-5 yrs.		
16. La.	No crime		
17. Me.	No crime		
18. Md.	No crime		
19. Mass	3 yrs.* and/or \$1,000		
20. Mich.	5 yrs.* or \$2,500*		
21. Minn.	5 yrs.* and/or \$1,000*		

55. Del., Fla., Idaho, Kan., La., Me., Md., Nev., N. H., Tenn., Utah., Vt., and W. Va. do not have seduction statutes.

56. States imposing a 10 year maximum sentence total 6. They are: Ala., Ark., Colo., Tex., Va., and Miss. if "female" is under 18 yrs. of age. New Jersey prescribes a maximum term of 7 years.

57. Ariz., Cal., Conn., Ind., Iowa, Ky., Mich., Minn., Miss. (female over 18 yrs. of age), Mo., Mont., Neb., N. C., N. D., N. Y., Okla., Ore., R. I., S. D., Wash., Wis., and Wyo.

58. See Figure V.

59. Mass., N. M., Ohio, and Pa. See Figure V.

60. Cal., Ill., Mass., Mich., Minn., Mont., N. C., N. D., N. J., N. M., N. Y., Okla., Ore., Pa., S. C., S. D., Wash.

FIGURE V (Continued)

36. Pa.	3 yrs.* and/or \$1,000*	42. Utah	No crime
37. R.I.	5 yrs.*	43. Vt.	No crime
38. S.C.	Misdemeanor, punishable at discretion of court	44. Va.	2-10 yrs.
39. S.D.	5 yrs.* and/or \$1,000*, or 1 yr.* county jail and/or \$1,000	45. Wash.	5 yrs.* and/or \$1,000*, or 1 yr.* county jail and/or \$1,000*
40. Tenn.	No crime	46. W.Va.	No crime
41. Tex.	2-10 yrs.	47. Wis.	1-5 yrs., or 1 yr.* county jail
		48. Wyo.	5 yrs.* or 1 yr.* county jail

*Maximum penalty.

F. ADULTERY

Adultery, although expressly forbidden by the Sixth Commandment, is not punished at all in Louisiana, New Mexico, and Tennessee, and 13 states view single, isolated acts involving a spouse as outside the purview of state concern. These states penalize only those persons "living in," or "cohabiting in" a state of adultery.⁶¹

(1) PRISON TERMS UPON CONVICTION

It is interesting that Maine and Vermont provide two of the four greatest penalties upon conviction of adultery. Maine decrees a maximum five year or a maximum \$1,000 punishment, and Vermont a five year, and/or a maximum \$1,000 penalty. Connecticut also provides a maximum penalty of five years, and Oklahoma sets the same maximum term, or a fine of \$500, or both. No state has seen fit to provide a penitentiary term of more than five years' duration, and a total of eight jurisdictions set only a six month maximum sentence.⁶² Ohio and Wyoming, however, consider incarceration for no longer than three months as adequate retribution.

(2) MONETARY PENALTIES

As might well be expected from what has already been seen, a total of 36 states permit a monetary penalty in lieu of a prison sentence,⁶³ and five jurisdictions provide *only* for a fine upon conviction.⁶⁴ The amounts of the fines one could receive, however, are rather substantial. Alabama,

61. Ala., Ark., Colo., Fla., Ill., Ind., Miss., Mo., Mont., Nev., N. C., Ohio, Wyo. See Figure VI.

62. Ala., Colo., Ga., Ind., Kan., Miss., Mont., and N. Y. See Figure VI. In Georgia, if the convict is sentenced to a chain gang to work on public projects, he may receive a 1 year sentence. Otherwise, 6 months imprisonment is the maximum jail term. See: Ga. Code Ann. §§26-5801 and 27-2506 (1935).

63. The nine states which *do not* permit only a monetary penalty will be listed since that number is smaller. These states are: Ariz., Conn., Iowa, Miss., Neb., N. H., Ohio, Utah, and Wyo. See Figure VI. Three states, Louisiana, New Mexico and Tennessee, do not punish adultery at all.

64. Ky., Md., Tex., Va., and W. Va.

Virginia, and West Virginia, for example, place no maximum amount, but require only a minimum, thereby allowing any additional exaction to rest in the discretion of the court or jury.⁶⁵

The State of Michigan, with a limit of \$2,000, heads the list of states setting an express limitation. A total of 12 states, however, permit a \$1,000 levy,⁶⁶ and 15 allow as much as \$500 to be assessed against a defendant upon conviction.⁶⁷ Proceeding from this point, the fines range all the way down to a flat, mandatory sum of \$10 exacted by the statutes of the State of Maryland.

It is interesting also to compare the permissible prison sentences with the maximum fine that may be levied in any given state. For example, while Maine provides a maximum penalty of five years imprisonment or a \$1,000 fine, South Dakota has fixed the sum of \$500 as a sufficient monetary substitute for a five year prison term. A cursory glance at Figure VI will show just how much discrepancy exists among the 48 states.

(3) GEOGRAPHICAL SIMILARITIES

There are no apparent geographical or sectional similarities among the states in the regulation of the offense of adultery. Georgia, for instance, has a \$1,000 or six month maximum penalty, while her next-door neighbor, Alabama, penalizes only "living in adultery," and across the Mississippi River in Louisiana adultery is not a crime at all. The same result occurs upon comparison of sentences and fines in the Northern and Western states.⁶⁸

FIGURE VI

ADULTERY

1. Ala.	Single act, no crime Cohabitation: 1st conviction, \$100† and/ or 6 mths.* 2nd conviction, \$300† and /or 1 yr.* 3rd conviction, 2 yrs.	2nd conviction, \$100† and /or 12 mths.* 3rd conviction, 1-3 yrs.
2. Ariz.	3 yrs.*	4. Cal. 1 yr.* and/or \$1,000*
3. Ark.	Single act, no crime Cohabitation: 1st conviction, \$20-\$100	5. Colo. Single act, no crime Cohabitation: 1st conviction, \$200* or 6 mths.* 2nd conviction, double 3rd conviction, treble
		6. Conn. 5 yrs.*

* Maximum penalty.

† Minimum penalty.

65. The minimum fines in these states are: \$100, \$20, and \$20 respectively. See Figure VI.

66. Cal., Ga., Idaho, Me., Mo., Nev., N. J., Ore., Tex., Vt., Wash., Wis. See Figure VI.

67. Del., Fla., Ill., Ind., Kan., Mass., Miss., Mont., N. D., N. H., Okla., Pa., R. I., S. C., S. D. See Figure VI.

68. See Figure VI.

FIGURE VI (Continued)

7. Del.	1 yr.* and/or \$500*	26. Nev.	Single act, no crime
8. Fla.	Single act, no crime Cohabitation: 2 yrs.* or \$500*		Cohabitation: 6 mths.-1 yr. and/or \$500-\$1,000
9. Ga.	\$1,000* or 6 mths.*	27. N.C.	Single act, no crime
10. Idaho	\$100-\$1,000, or 3 mths.-3 yrs.		Cohabitation: punishable as a misdemeanor at common law
11. Ill.	Single act, no crime Cohabitation: 1st conviction, \$500* or 1 yr.* 2nd conviction, double 3rd conviction, treble	28. N.D.	1-3 yrs. and/or \$500*, or 1 yr. county jail and/or \$500*
12. Ind.	Single act, no crime Cohabitation: \$500 and/or 6 mths., or both	29. N.H.	1 yr.* and \$500*, or 3 yrs.*
13. Iowa	3 yrs.* penitentiary, or \$300* and 1 yr.* county jail	30. N.J.	\$1,000* and/or 3 yrs.*
14. Kan.	6 mths.* and/or \$500*	31. N.M.	No crime
15. Ky.	\$20-\$50	32. N.Y.	6 mths.* and/or \$250*
16. La.	No crime	33. Ohio	Single act, no crime Cohabitation: \$200* and 3 mths.*
17. Me.	5 yrs.* or \$1,000*	34. Okla.	5 yrs.* and/or \$500
18. Md.	\$10	35. Ore.	6 mths.-2 yrs., or 3 mths.-1 yr. county jail, or \$200-\$1,000
19. Mass.	3 yrs.* or \$500*	36. Pa.	\$500* and/or 1 yr.*
20. Mich.	4 yrs.* and/or \$2,000*	37. R.I.	\$500 or 1 yr.*
21. Minn.	2 yrs.* or \$300*	38. S.C.	\$100-\$500 and/or 6 mths.-1 yr.
22. Miss.	Single act, no crime Cohabitation: \$500* and 6 mths.*	39. S.D.	5 yrs.* and/or \$500*
23. Mo.	Single act, no crime Cohabitation: 1 yr.* and/or \$1,000*	40. Tenn.	No crime
24. Mont.	Single act, no crime Cohabitation: \$500* and/or 6 mths.*	41. Tex.	\$100-\$1,000
25. Neb.	1 yr.*	42. Utah	3 yrs.*
		43. Vt.	5 yrs. and/or \$1,000*
		44. Va.	\$20†
		45. Wash.	2 yrs.* or \$1,000*
		46. W.Va.	\$20†
		47. Wis.	1-3 yrs. or \$200-\$1,000
		48. Wyo.	Single act, no crime Cohabitation: \$100* and 3 mths.*

*Maximum penalty.

G. FORNICATION

In considering the companion offense to adultery, fornication, it is found that once again our lawmakers have been capricious. Twenty-eight states consider single, isolated acts of sexual intercourse as no crime at all.⁶⁹ Fifteen of these states do, however, prohibit "cohabiting" or "living in" a state of fornication.⁷⁰

69. *Ala., Ariz., Ark., Cal., Colo., Del., Ill., Ind., Iowa, Kan., La., Md., Mich., Miss., Mo., Mont., Neb., Nev., N. C., N. M., N. Y., Ohio, Okla., S. D., Tenn., Vt., Wash., Wyo.* See Figure VII.

70. These states are the states underlined in note 69, *supra*. Also, see Figure VII. Maine, also, punishes living in a state of fornication, as well as single acts.

(1) PRISON TERMS UPON CONVICTION

(a) SINGLE ACTS

Upon conviction for a single act, or acts, of fornication not involving cohabitation, the largest possible penitentiary sentence applicable is found upon the statute books of the State of Oregon. The penalty imposed by that act is incarceration for from one year to a maximum of five years.⁷¹ The State of South Carolina, with a maximum sentence of one year, is the next highest statutory regulation to be found.⁷² No other jurisdiction imposes a jail sentence of greater than six months, and a total of only seven states fall within that category.⁷³ Florida, Massachusetts, and Minnesota each set a three months, or 90 day, maximum penalty, while Maine and North Dakota apparently regard 60 and 30 day sentences as adequate punishment for those who indulge in extra-marital sexual intercourse.

(b) LIVING, OR COHABITING IN A STATE OF FORNICATION

Even states which make living in a state of fornication a punishable offense impose only relatively light punishments.⁷⁴ This is borne out by the fact that in only five jurisdictions is the sentence greater than six months.⁷⁵ Of the remaining ten states punishing cohabitation, a total of six set a six month maximum sentence,⁷⁶ while three impose only a three month penalty,⁷⁷ and Arkansas provides only a fine.

(2) FINES UPON CONVICTION

Turning to the monetary side of the ledger, it is found that in a total of seven states no penalty other than a fine may be exacted.⁷⁸ In all states save five, however, it is possible for a defendant upon conviction to receive only a monetary penalty.⁷⁹ Even the relative strictness of

71. See Figure VII.

72. See Figure VII.

73. Conn., Ga., Idaho, N. H., N. J., Utah, Wis. See Figure VII. In Georgia, if the convict is sentenced to a chain gang to work on public projects, he may be given a 1 year sentence. See Note 62 *supra*.

74. There are 15 such states. See notes 69 and 70 *supra*. All save Arkansas provide prison sentences upon conviction for the first offense. See Figure VII.

75. Ariz., 3 yrs.; Ill., and Mo., 1 yr.; Nev., 1 yr.; and North Carolina. North Carolina is included in the list where fornication is punished, as a common law misdemeanor, and the defendant may receive any sentence which the court, in the exercise of its discretion, may care to impose. *State v. Manly*, 95 N.C. 661 (1886); *State v. McNeil*, 75 N.C. 15 (1876); *State v. Powell*, 94 N.C. 920, at 923 (1886).

76. Ala., Colo., Ind., Miss., Mont., Neb.

77. Kan., Ohio, Wyo.

78. Ark., Ky., Pa., R. I., Tex., W. Va., Va. See Figure VII.

79. Ariz., Me., Neb., Ohio, Wyo. See Figure VII.

this small group is somewhat alleviated when it is considered that three⁸⁰ of these five states prohibit only the "living in" a state of fornication.

The possible fines among states prosecuting single, isolated acts of sexual intercourse range from a fine of not more than \$10 in Rhode Island to the imposition of any amount that the court in its discretion may consider an adequate penalty.⁸¹ In between these extremes, the State of Georgia imposes a \$1,000 maximum fine, three states a \$500 fine,⁸² another a \$300 penalty,⁸³ while seven jurisdictions are in agreement that \$100 is adequate retribution.⁸⁴ Fines of \$30 and \$50 are exacted by the remaining five states punishing the act of fornication.⁸⁵

The fines placed upon one convicted of "living in" a state of fornication follow much the same pattern. North Carolina and Alabama set no maximum penalties,⁸⁶ but beyond that the fines range from a \$1,000 limit in three jurisdictions,⁸⁷ \$500 in four,⁸⁸ down to the sum of \$100 levied by the States of Arkansas, Nebraska and Wyoming.⁸⁹

FIGURE VII

FORNICATION

- | | | | |
|----------|---|-----------|--|
| 1. Ala. | Single act, no crime
Cohabitation:
1st conviction, \$100† and
/or 6 mths.*
2nd conviction, \$300† and
/or 1 yr.*
3rd conviction, 2 yrs. | 4. Cal. | No crime |
| 2. Ariz. | Single act, no crime
Cohabitation: 3 yrs.* | 5. Colo. | Single act, no crime
Cohabitation:
1st conviction, \$200* or 6
mths.*
2nd conviction, double
3rd conviction, treble |
| 3. Ark. | Single act, no crime
Cohabitation:
1st conviction, \$20-\$100
2nd conviction, \$100† and
/or 12 mths.*
3rd conviction, 1-3 yrs. | 6. Conn. | \$100 and/or 6 mths.* |
| | | 7. Del. | No crime |
| | | 8. Fla. | 3 mths.* or \$30* |
| | | 9. Ga. | \$1,000* or 6 mths.* |
| | | 10. Idaho | \$300* and/or 6 mths.* |

* Maximum penalty.

80. Neb., Ohio, Wyo. See Figure VII.

81. The Virginia and West Virginia statutes provide only that the offense of fornication be punished with a fine of not less than \$20. See Figure VII.

82. Ore., S. C., and Tex. See Figure VII.

83. Idaho. See Figure VII.

84. Conn., Me., Minn., N. D., Pa., Utah, and Wis. See Figure VII.

85. N. H., N. J., and Ky. impose maximum fines of \$50; Fla. and Mass., fines of \$30. See Figure VII.

86. See Figure VII.

87. Kan., Mo., and Nev. See Figure VII.

88. Ill., Ind., Miss., and Mont. See Figure VII.

89. In between the \$500 penalty and the \$100 penalties, are fines of \$200 imposed by Colorado and Ohio, and one of \$300 imposed by Maine. See Figure VII.

FIGURE VII (Continued)

11. Ill.	Single act, no crime Cohabitation: 1st conviction, \$500* or 1 yr.* 2nd conviction, double 3rd conviction, treble	27. N.C.	Single act, no crime Cohabitation: punishable as a misdemeanor at common law
12. Ind.	Single act, no crime Cohabitation: \$500 and/or 6 mths., or both	28. N.D.	\$100* and/or 30 days*
13. Iowa	No crime	29. N.H.	\$50* or 6 mths.*
14. Kan.	Single act, no crime Cohabitation: \$500-\$1,000, or 30 days-3 mths.	30. N.J.	\$50* and/or 6 mths.*
15. Ky.	\$20-\$50	31. N.M.	No crime
16. La.	No crime	32. N.Y.	No crime
17. Me.	\$100 and 60 days	33. Ohio	Single act, no crime Cohabitation: \$200* and 3 mths.*
18. Md.	No crime	34. Okla.	No crime
19. Mass.	3 mths.* or \$30*	35. Ore.	\$50-\$500 or 1-5 yrs. or 1 mth.-1 yr. county jail
20. Mich.	No crime	36. Pa.	\$100*
21. Minn.	90 days* or \$100*	37. R.I.	\$10*
22. Miss.	Single act, no crime Cohabitation: \$500* and/or 6 mths.*	38. S.C.	\$100-\$500 and/or 6 mths.-1 yr.
23. Mo.	Single act, no crime Cohabitation: 1 yr.* and/or \$1,000*	39. S.D.	No crime
24. Mont.	Single act, no crime Cohabitation: \$500* and/or 6 mths.*	40. Tenn.	No crime
25. Neb.	Single act, no crime Cohabitation: \$100* and 6 mths.*	41. Tex.	\$50-\$500
26. Nev.	Single act, no crime Cohabitation: 6 mths.-1 yr. and/or \$500-\$1,000	42. Utah	\$100* or 6 mths.*
		43. Vt.	No crime
		44. Va.	\$20†
		45. Wash.	No crime
		46. W.Va.	\$20†
		47. Wis.	6 mths.* and/or \$100*; with chaste minor, 4 yrs.* and/or \$200*
		48. Wyo.	Single act, no crime Cohabitation: \$100* and 3 mths.*

* Maximum penalty.

CONCLUSION

In conclusion, it seems undeniable that much of our sex law is incomplete and lacking in reality; that the differences from state to state are bewildering and incomprehensive, and that a study of the field of sex regulation indicates the need for improvement.

Before the administration and enforcement of our sex laws can function satisfactorily, the substantive law itself must be fitted to present-day needs. Statute revision committees in every state, therefore, might well appraise their laws and those of their sister states, with a view toward alleviating the divergence.