Sexual psychopath statutes are basically the products of two major forces: news agencies and private groups. The various news media have on frequent occasions stirred public emotion by giving greater attention to sex crimes than to other types of crime. Then, too, certain elements of society have realized that the commission of sex crimes is usually, if not always, evidence of a mental disorder which should be treated rather than punished. As a result of these forces, legislatures in over one-half of the United States have enacted statutes dealing particularly with sex offenders. These statutes evidence varying degrees of consideration and thoroughness. In general, however, they proceed on the premise that the “sexual psychopath” is neither normal nor “legally insane” and, for that reason, requires special consideration, both for his own sake and for the safety of society. The purposes of the sexual psychopath statutes are thus twofold: to protect society and to rehabilitate the offender.

Provisions of Sexual Psychopath Statutes

At present, twenty-six states and the District of Columbia have enacted statutes which deal with the commitment of “psychopathic” sex offenders. Should the reader wish to compare the essential elements of these various statutes, he is referred to a comparison chart in the Appendix. (The headings preceding the following paragraphs correspond to the same headings in the Appendix.)

Elements of Definition

The statutes are not in agreement as to what a “psychopathic” sex offender is, but, usually, such a person is defined as one lacking the power to control his sexual impulses or having criminal propensities toward the commission of sex offenses.

2 Ibid.
3 See Appendix.
5 The sexual psychopath laws represent a new approach, reflecting thinking of modern psychiatry and psychology, in that they provide civil commitment, segregation, and treatment of the sexual psychopath rather than criminal punishment. Annot., 24 A.L.R.2d 350, 351 (1952).
Some statutes add the requirement that he must be a physical threat to others.  

**Designation of Condition**  
As a result of the different definitions used to describe the condition of such a person, the statutes are not in agreement as to the proper designation of his condition. The majority of statutes, for example, label him a "sexual psychopath", while others call him a "sexually dangerous person". A few statutes mention no designation at all. (For purposes of uniformity throughout this comment all such persons, however defined, will be referred to as "sexual psychopaths". 

**Basis of Jurisdiction**  
There are three points of view as to what is the basis for the courts' jurisdiction over sexual psychopaths. Sixteen statutes provide that the offender must have been convicted of some crime, or of a specific sex crime before the court may proceed to determine whether he should be committed for treatment. Seven statutes merely require that the alleged offender be charged with some crime, or a sex crime. The remaining five indicate a general lack of power to control his sexual impulses. . . .

**Discretion in Initiating Proceedings**  
The majority of statutes provide that the state or district attorneys either may or must initiate the sexual psychopath proceedings, depending upon the statute and basis of jurisdiction. A few states allow anyone showing cause, or the individual on his own behalf, to request a special hearing. Many statutes provide that if an alleged sexual psychopath is already on trial for some crime, the trial judge may, in his discretion, arrest the proceedings at any point and order a mental examination and special hearing for the defendant. Other statutes either shall appear to the Attorney General or to the State's Attorney of the county wherein such person is so charged, that such person is a sexually dangerous person, then the Attorney General or State's Attorney . . . may file with the clerk of the court in the same proceeding wherein such person stands charged with criminal offense, a petition . . .

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*E.g., PA. STAT. ANN. tit. 19, §1166 (1958) (“If any such person . . . constitutes a threat of bodily harm to members of the public . . . may sentence such person to a state institution.”); TENN. CODE ANN. §83–1301 (Supp. 1959) (“[Sex offender includes] any person . . . is likely to attack or otherwise inflict injury, degradation, pain or other evil on the objects of his uncontrollable desires.”).  
  
*E.g., OHIO REV. CODE ANN. §2947.25 (Baldwin 1958) (“After conviction and before sentence, a trial court must refer for examination all persons convicted under [specified sections] of the Revised Code, to the department of mental hygiene and correction or to a state facility designated by the department, or to a psychopathic clinic approved by the department, or to three psychiatrists. Prior to sentence the court may refer for such examination any person who has been convicted of any felony except murder in the first degree where mercy has not been recommended, or any misdemeanor involving a sex offense . . . .”) (emphasis added); UTAH CODE ANN. §77-49-1 (1953) (“Whenever any person is convicted of the offense of rape, sodomy, incest, lewdness, indecent exposure or carnal knowledge . . . . the judge shall order a mental examination of such person . . . .”)

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*E.g., IL. REV. STAT. ch. 38, §822 (1959) (“When any person is charged with a criminal offense and it statutes do not even require that a charge be brought against the person, but simply demand that cause be shown that he probably is a sexual psychopath.”

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require or allow the judge to order such an examination and hearing only upon the conviction of the offender. 16

Medical Examination: Qualification of Examiners

Every sexual psychopath statute contains a discretionary or mandatory provision for medical examination of the alleged sexual psychopath. 17 Usually, the staff of a state public health department or one or more "qualified" doctors examine the individual and then report their findings to the court for its use in the disposition of the case. 18 Some statutes define what they mean by "qualified" doctors; others do not. 19

Tribunal and Proceedings

A hearing of some kind is usually provided for the purpose of determining whether one is a sexual psychopath, but the required elements of such a hearing vary widely from statute to statute.

16 See note 18 infra.

17 E.g., IOWA CODE ANN. §225A.4 (Supp. 1958) ("At said hearing the court shall determine whether he shall be medically examined, if so, by whom such examination shall be conducted, and the time and place thereof.") (emphasis added); VA. CODE ANN. §53-278.3 (1950) ("The trial judge shall have power to require a mental examination.") (emphasis added).

18 E.g., PA. STAT. Tit. 19, §1167 (1958) ("No person shall be so sentenced until (1) a complete psychiatric examination shall have been made of him through the facilities of the Dept. of Welfare... or by a psychiatrist... and (2) a complete written report thereof shall have been submitted to the court."); Va. CODE ANN. §53-278.3 (1950) ("The trial judge shall have power to require the Dept. of Mental Hygiene and Hospitals to have a mental examination made of such person, and report thereon, to be made by a psychiatrist employed in any State hospital or in any mental hospital maintained by the State. Such report, when furnished to a judge, shall be available to the counsel for defendant and to the Commonwealth's attorney.").

19 E.g., Ill. REV. STAT. ch. 38, §823.a (1959) ("Qualified psychiatrist' means a reputable physician licensed to practice in Illinois who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than five years."); Ore. Rev. STAT. §137.112 (1957) ("The superintendent of the institution... shall designate a qualified psychiatrist, who may be either a member of the hospital staff or a psychiatrist engaged in private practice, to conduct the examination of such person.").

In many instances where a hearing is required, 20 some or all of the following rights are granted: (1) notice of hearing; 21 (2) personal attendance at hearing; 22 (3) counsel; 23 (4) habeas corpus; 24 (5) bail; 25 (6) presentation of evidence and subpoenaing of witnesses; 26 (7) cross-examination; 27 (8) appeal. 28 If the statutes do not explicitly provide for these provisions, the courts frequently read them into the statutes. 29

Many statutes also indicate that the past crimes

20 Some statutes provide that private hearings may be had at the court's discretion: IOWA CODE ANN. §225A.9 (Supp. 1958) ("The court may order the public excluded from such proceedings."); N.H. REV. STAT. ANN. §173:5 (1955) ("The court may, in its discretion, exclude the general public from attendance at such hearing.").

21 E.g., Ind. Ann. Stat. §9-3405 (Supp. 1959) ("Such hearing shall not be had until ten (10) days after service of a copy of such petition upon the person so charged."); Mo. Ann. Stat. §202.720 (1949) ("The court shall... give to the person to be examined at least five days notice thereof.").

22 E.g., Cal. WELFARE & INSTNS §5511 ("The alleged sexual psychopath shall be present at the hearing.").

23 E.g., Fla. Stat. Ann. §917.12(2) (Supp. 1958) ("The accused psychopath shall have the right to have legal counsel present and assisting him at such hearing."); Cal. WELFARE & INSTNS §5511 ("If he has no attorney, the judge may appoint an attorney to represent him... if he determines that the person is not financially able to employ counsel.").

24 No statutory provision on habeas corpus has been found, but the courts nevertheless provide for the right, E.g., In re Kemmerer, 309 Mich. 313, 15 N.W.2d 652 (1944) cert. denied, 329 U.S. 767 (1946).

25 E.g., IOWA CODE ANN. §225A.3 (Supp. 1958) ("Upon filing of such petition, the court in which the public offense is charged may order that the bail furnished is released and that additional bail be ordered.").

26 E.g., Mo. Ann. Stat. §202.720 (1949) ("The person charged... shall have the right to present evidence in his behalf."); Minn. Stat. §526.10 (1957) ("The 'patient' shall be entitled to have subpoenas issued out of court to compel the attendance of witnesses in his behalf.").

27 E.g., Cal. WELFARE & INSTNS §5506 ("When the psychiatrist is called and examined by the court the parties may cross-examine him in the order directed by the court."); Ohio Rev. Code Ann. §2947.25 (Baldwin 1958) ("Both the state and such person, his guardian, or next friend may appear in person or by counsel at such hearing, subpoena, examine, and cross-examine the examiners making the report.").

28 E.g., Wis. Stat. ANN. §959.15 (1958) ("The person whose liberty is involved may appeal to the proper appellate court."); Mo. Ann. Stat. §202.720 (1949) ("The person charged shall have full rights of appeal.").

and behavior of the alleged sexual psychopath are admissible in evidence. Some statutes provide that a jury shall decide the facts if the alleged offender or the court so desires.

On the other hand, numerous statutes provide for only a few or none of these elements. Some simply require that the judge, without a special hearing, determine solely on the basis of medical reports whether the alleged sex offender should be committed for treatment.

Should the judge or jury decide that the individual is not a sexual psychopath, he may be discharged, ordered to face criminal charges, or required to serve out a sentence already imposed upon him by the criminal court. On the other hand, should the judge or jury decide that he is a sexual psychopath he will in most cases be sent to a state mental hospital, or the psychiatric division of a state penitentiary, to receive special treatment for an indeterminate duration.

Procedure for Release

The statutes require regular examinations of the sexual psychopath during his commitment. The results are to be recorded and reported to the committing court or a parole board at specified times. Upon petition by the offender, by his relatives or friends, or by those in charge of him during commitment, the case may come up for consideration either before the committing court or a reviewing board.

Nature of Release: Whether Complete or Subject to Supervision

During this hearing, the main question for determination is whether the sexual psychopath is cured to the degree that he will no longer constitute a menace to society. If it is decided that further treatment is necessary, the offender will remain in the appropriate institution. If he is found to have recovered sufficiently, the releasing authority may, depending upon the statute, set the offender free, place him on probation (some maximum provided by law for the crime of which such person was convicted or to which he pleaded guilty...).

Some statutes provide that there is to be no jury trial, e.g., N.H. REV. STAT. ANN. §173:5 (1955) ("There shall be no right to a trial by jury..."). Some provide for the determination of the issue of criminal sexual psychopathy by a judge.

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Effect of Commitment on Criminal Proceedings

If the sexual psychopath had previously been convicted of a criminal offense, he may, upon release, still have to complete the sentence already imposed upon him. The statutes take varied positions on this matter; some allow commitment as a sexual psychopath to constitute a complete defense to any further criminal proceedings or incarceration growing out of the same crime which led to the offender’s commitment for treatment; others consider it no defense at all; and still others compromise these two positions in various ways. As an example of the latter, the Ohio Statute provides that if the offender was treated for a period less than the maximum sentence for the offense of which he was convicted, the individual is to be released on a parole basis.29

29 E.g., Utah Code Ann. §77-49-7 (1953) (“[H]e shall be placed on probation, paroled, or pardoned, when the superintendent shall certify to the probation, parole, or pardoning authority that such person has recovered sufficiently...so that it appears reasonably certain that repetition of the sex offenses...is unlikely.”); Ill. Ann. Stat. ch. 38, §825c (Smith-Hurd Supp. 1953) (“Whenever the Director finds that any person committed to him...appears no longer to be sexually dangerous...[he] may petition the committing court for an order authorizing the conditional release of any person committed to him.”).

30 E.g., Ind. Ann. Stat. §9-3409 (Supp. 1959) (“No person who is found...to be a criminal sexual psychopathic person...may thereafter be tried or sentenced upon the offense with which he originally stood charged, or convicted, in the committing court....”); Mich. Stat. Ann. §28.967(8) (1954) (“No person who is found in such original hearing to be a criminal sexual psychopathic person...may thereafter be tried or sentenced upon the offense with which he originally stood charged, or convicted...”).

4 E.g., Fla. Stat. Ann. §917.12(3) (Supp. 1958) (“If criminal proceedings are still pending against such person then they shall recommence....”); Vt. Stat. Ann. tit. 18, §2815 (1958) (“Upon his discharge from such confinement, such person shall be returned for sentence to the court wherein he was convicted.”).

4 Ohio Rev. Code Ann. §2947.27 (Balwin 1958) (“If the person has been confined for a period less than the maximum sentence for the offense of which he was convicted, the order shall terminate the indefinite commitment. Thereupon the sentence which was suspended...shall forthwith go into effect and the person shall be transferred to the appropriate penal or reformatory institution... If such person has been confined for a period equaling or exceeding the maximum sentence for the offense of which he was convicted, the order shall provide that the person be placed on trial visit under supervision.”).

4 Some states, in addition to, or apart from, the sexual psychopath statutes, have laws which require the periodical examination of inmates to ascertain whether any convict has become or given evidence that he is a sexual psychopath, e.g., Ill. Rev. Stat. ch. 108, §112 (1957). In a few states there also are statutes requiring that prior to an inmate’s eligibility for parole, the parole board may examine the inmate and thereafter disclose that release would be inadvisable because the inmate is still suffering from mental, moral, or physical impairment, e.g., Ga. Code Ann. §77-539 (1958); Miss. Code Ann. §4004-03. (1942).

41 By virtue of the tenth amendment to the federal
practically every state constitution has its own double privilege against self-incrimination. See, e.g., the states via the fourteenth amendment. Furthermore, statutes enacted as a result of the police power must have some actual and reasonable relation to the maintenance and promotion of the public health and welfare—and such must in fact be the end sought to be obtained.

For the past quarter of a century, the various provisions of the sexual psychopath statutes have been the objects of considerable legal controversy. The usual attacks have been that the statutes deny due process and equal protection of the laws, impair the right to a trial by jury and the privilege against self-incrimination, place the offender in double jeopardy, and contradict the constitutional guarantees against cruel and unusual punishments. Although the courts generally have not found these contentions sufficiently persuasive to defeat any of the sexual psychopath statutes, except in one instance, it cannot be assumed that these contentions are invalid. Debate still continues whether constitutional rights are denied by the sexual psychopath laws.

Classification of Sexual Psychopaths

The most frequent attack upon the sexual psychopath statutes is that they deny due process and equal protection of the laws because of improper classification. The right of the legislatures to devise classifications of persons and things under its jurisdiction for purposes of legislation is well recognized, provided these classifications are in accord with the aims sought to be achieved and are based upon understandable and justifiable distinctions. The classifications must be reasonable; they must not be arbitrary or capricious.

Although the courts have not seen fit to invalidate any sexual psychopath act on the ground of improper classification, nevertheless, strenuous objection can be made to the holdings of the courts in this area. The various concepts used in the statutes are to a great degree meaningless and
incomprehensible, since they do not permit evaluation of abnormality to be made according to objective medical or legal standards. When definitions are provided they usually are so indefinite that they require further definition if any degree of clarity is to be achieved. Hence, it is exceedingly difficult to determine who comes within the statutory provisions. Necessarily, such indefiniteness is left to the discretion of the judges, juries, and examining physicians who unfortunately make their decisions on the basis of relative morality, social and cultural bias, and accidental and subjective notions of what is "normal."

Thus, the argument can be made that due process is denied by sexual psychopath statutes since the offender may be confined under most statutes for an indeterminate period of time on the mere subjective determinations of so-called legal and medical "experts". Although a certain degree of vagueness in almost any statute may be healthy, since a certain amount of discretion and freedom on the part of the judge may be necessary for him to see that justice is done, nevertheless, the overriding objection of such vagueness is that prosecutors may harass the citizenry by stretching the meaning of statutory provisions so as to include many persons who could never be successfully prosecuted in a criminal trial.

Since the concepts used in the statutes are admittedly vague, the classifications based on these concepts are equally vague. The fact that judges, juries, physicians, and other persons involved in the sexual psychopath proceedings are not governed by objective standards may well lead to a denial of equal protection of the laws.

This problem is especially acute where the statutes do not distinguish between the different types and degrees of mentally abnormal sex offenders. In some states, no distinction is made between the dangerous sex criminal and the relatively harmless sex deviates, such as homosexuals, peepers, exhibitionists, and fetishists. A serious question thus arises: where there is admittedly no successful treatment for many of these less dangerous offenders, is the possible indefinite incarceration of such individuals justified in view of the small amount of annoyance they cause? Certainly in these cases the statutes are not hitting the evil where it is most felt.

It has further been submitted that the classifications are unreasonable because anyone who commits a serious crime is suffering from some mental abnormality. Why should those persons who have a propensity for committing sex crimes be treated any differently than those who have propensities for committing other types of crime? Every individual has the right not to be classified differently than anyone else, except for good reason. To place mentally abnormal sex offenders in a separate category assumes they are suffering from a malady peculiarly different than other types of offenders. Perhaps so, but it seems that all criminals are suffering from some basic mental abnormality which should be the basis of classification in this area.

It is naive to classify a particular group of offenders according to one symptom of their illness and treat them differently from those whose different overt acts of deviate behavior may be a

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57 Thus, with respect to the phrase "lack of customary standards of good judgment", the court in In re Moulton, 96 N.H. 370, 77 A.2d 26 (1950), said, "This may mean all things to all men and entirely different things to different groups of men."


60 [Prosecutors and judges], it is said, are anxious to make records as vigorous and aggressive defenders of the community. They favor the most severe penalty available, are not willing to look upon the sex offender as a patient, and use the psychopath laws only when evidence is so weak that conviction under the criminal law is improbable. If this be the case, and there is cause to believe that it is partially true, then the administrator must be enlightened through the combined efforts of medical and legal experts. Open minded, intelligent administration by the members of the bar and the medical profession should make for some improvement over the anemic status quo; and in time, the errors and lack of foresight prevalent in any legislation will be corrected." Slough & Schwinn, The Sexual Psychopath, 19 U. Kan. City L. Rev. 131, 131 (1951).


64 Although it has been argued that they should be treated differently because they are recidivists, it appears that the weight of authority is to the contrary. In figures compiled by the F.B.I., sex offenders are shown to have a low rate of recidivism. Furthermore, it is not true that sex offenders progress from less serious sex offenses to those of a more serious nature. For studies in this area, see, Sutherland, The Sexual Psychopath Laws, 40 J. Crim. L. & C. 543, 547 (1950); Report of the Illinois Commission on Sex Offenders—To the 68th General Assembly of the State of Illinois (1953).
sign of the same basic mental "abnormality" or disturbance. Other groups of offenders, such as arsonists, murderers, or thieves, may manifest the same basic illness in their own peculiar way. Why are not they also given this special type of treatment? It seems wrong to limit the application of the statutes to those persons who have committed specified sex crimes.

If the sex offender belongs to the larger category of "persons with propensities to commit crimes," then it necessarily follows that the sexual psychopath laws are allowing classifications to be made on unreasonable and unjustifiable distinctions, and as a result are denying alleged sex offenders equal protection of the laws. Hence, the sex offender should be handled no differently than any other type of offender—or, better still, all types of offenders should be effectively "treated" in much the same fashion as sexual psychopaths are (or are supposed to be) treated.

Perhaps the treating of sexual psychopath will eventually pave the way to the treatment of all persons classified as "criminals." At present, however, one must realistically recognize the fact that with present medical and psychiatric knowledge such would not be feasible. Furthermore, because the public mind is not prepared to accept new ideas of correction rather than punishment, the citizenry as a whole would probably not subscribe to the idea.

**The Nature of the Sexual Psychopath Hearings**

A somewhat different but related problem is whether the hearings provided for by the sexual psychopath statutes deny the alleged offender due process of law.

An answer to this problem depends on whether the proceedings under the sexual psychopath acts are criminal or civil. Should they be considered criminal, then there may be a denial of due process if the accused is put in double jeopardy, or is forced to testify against himself, or is not guaran-
teed the rights of public hearing, notice, personal attendance, counsel, habeas corpus, jury trial, presentation of evidence, subpoenaing of witnesses, cross-examination, and appeal. To escape the double jeopardy argument, the courts have held that the proceedings are civil in nature and, therefore, the offender is not being "tried" for a criminal offense. The courts' strongest argument is that the end result of such proceedings is "treatment" rather than punishment. Nevertheless, even though the proceedings might be civil in nature, there can still be a denial of due process if the accused is not granted a fair hearing.

But it is submitted that the proceedings are neither criminal nor civil, but, rather, in the nature of an inquest conducted primarily for the benefit of the person whose mental state is in question. The purpose of the inquest is not to adjudge one party guilty or liable, as in criminal or civil proceedings, but is to constitute a means whereby the irresponsible sex offender may ultimately be committed to treatment. Nevertheless, regardless of whether the hearing is criminal, civil, or in the nature of an inquest, those statutes which do not grant the accused a fair hearing deny him due process of law. It is also to be noted that even though the statutes in and of themselves might be proceedings are not criminal, see: People v. Stice, 161 Cal. App. 2d 610, 327 P.2d 201 (1958); People v. Hymes, 161 Cal. App. 2d 608, 327 P.2d 219 (1958); State v. McDaniel, 307 S.W.2d 42 (Mo. App. 1957); McGoldrick v. Down, 184 Misc. 168, 53 N.Y.S.2d 333 (App. Ct. 1945).

68 E.g., People v. Levy, 151 Cal. App. 2d 460, 311 P.2d 897 (1957), where the court held that there was no double jeopardy because the sexual psychopath statute is essentially civil in nature and the double jeopardy clause is applicable only to two successive criminal proceedings for the same offense.

For cases holding that sexual psychopath proceedings are civil in nature, see: People v. Capoldi, 10 Ill.2d 261, 159 N.E.2d 776 (1957); State ex rel. Sweezer v. Green, 360 Mo. 1249, 232 S.W.2d 897 (1952); Ex parte Keddy, 105 Cal. App. 2d 215, 233 P.2d 159 (1951); But see notes 69 & 70, infra.

69 The courts frequently base their conclusions on the assumption that the legislatures were merely extending the laws concerning insanity proceedings to embrace sexual psychopath proceedings as well. The care, treatment, and indeterminate commitment of persons who are insane has been considered by some courts as a civil proceeding. Hirst v. Cramer, 195 S.W.2d 738 (Mo. 1946); Mihm, A Re-Examination of the Validity of Our Sex Psychopath Statutes in the Light of Recent Appeal Cases and Experience, 44 J. CRIM. L., C. & P. S. 716, 718 (1954).

70 Welshofen & Overholser, Commitment of the Mentally Ill, 24 TEXAS L. REV. 307, 344 (1946).

For cases holding that insanity proceedings are neither civil nor criminal, but in the nature of an inquest, see: In re Cook, 218 N.C. 384, 11 S.E.2d 142 (1940); Hultquist v. People, 77 Colo, 310, 236 Pac. 995 (1925); State v. Linderholm, 84 Kan. 635, 114 Pac. 857 (1911); In re Breeze, 82 Ia. 376, 48 N.W. 991 (1891).
constitutional, the manner in which the statutes are applied and the proceedings conducted pursuant to them may amount to a deprivation of due process.

The fact that sexual psychopath proceedings may lead to criminal prosecution, to involuntary hospitalization, or even to placement in a penal institution leaves little doubt that they have all the possible consequences of a criminal trial. One court has explicitly recognized the fact that many elements in such proceedings are criminal in nature. Furthermore, the sexual psychopath statutes are frequently found in the state criminal codes. This was one of the reasons the Michigan Court in People v. Frontczak invalidated the first Michigan sexual psychopath statute. Perhaps this evidences the legislatures' real thoughts that such statutes are more criminal in nature than civil.

It must be realized that in order for the proceedings to be civil in nature, they must provide for "treatment" and not for punishment. If punishment is the end result, then in those states where the offender must be convicted of certain criminal charges before proceedings for commitment as a mentally abnormal sex offender may be initiated, the offender is put in double jeopardy since he is in a sense tried a second time for the same crime with the possibility of his receiving a longer sentence under the sexual psychopath statute than he already received in the regular criminal trial. Similarly, in those states which would allow criminal procedures to commence upon the release of the offender from "treatment", it would appear that these subsequent proceedings would possibly result in an added penalty for the crime for which the offender had already been punished.

If it can be shown, however, that the purposes of commitment are curative and not punitive, then the claim of double jeopardy may be rebutted. Furthermore, where the accused need not be convicted of a criminal offense before the proceedings may be initiated or where he is not subject to criminal proceedings upon his release from "treatment", the double jeopardy problem does not exist. The problem remains, however, whether one, upon commitment, is punished for his "abnormality".

It may well be contended that the privilege against self-incrimination should extend to the sexual psychopath proceedings. It is self-evident, on the other hand, that in order for a psychiatrist to make a correct diagnosis of a person's mental condition, such person must be subjected to examination. Furthermore, perhaps the usual evidentiary privileges should not apply since the proceedings are supposedly for the benefit of the alleged offender. The more delicate problem, however, is to determine how far an alleged sex offender can be compelled to disclose facts which might lead to the discovery of past crimes. Clearly, any information might validly be used by the psychiatrist in forming his opinion of the mental abnormality of the alleged sex offender. However, in the hands of a state prosecutor it might easily lead to conviction of the individual for any past crimes he may have committed. Thus, the privilege against self-incrimination is, in effect, infringed upon, since the information the person is ordered to disclose might well tend to incriminate him for his past crimes if such information is used in subsequent criminal proceedings.

Another objection made to the sexual psycho-
path proceedings is that the right to a jury trial is not always guaranteed. In reply to this objection, it has been explained by a number of courts that a trial by jury is not a constitutional requirement for the proceedings under consideration because the sexual psychopath statutes prescribe special proceedings which are not criminal in nature, nor are they civil in the sense that damages are to be awarded, but instead, are designed to ultimately benefit the alleged offender, much like the proceedings for the insane and juvenile delinquents. 76

As previously mentioned, some statutes prohibit a jury from hearing sexual psychopath cases, while others leave it to the judge's or alleged offender's discretion. 74 Leaving the decision of having a jury up to the accused is by far the wisest thing to do regardless of whether doing otherwise is constitutional. There would be many occasions when it would be advisable to have only the court hear a particular case, especially when prejudice is likely to run high (e.g., when the accused is suspected of having committed a nefarious crime). In such instances a private hearing, without a

The Indiana Statute clearly protects the alleged offender and at the same time enables the examining psychiatrists to obtain sufficient information upon which to make a useful report to the court. Furthermore, should the person be determined a sexual psychopath, knowledge that he will not have to face criminal proceedings upon release gives him incentive to cooperate and reform under "treatment". Objection has been made to this approach, however, in that the person may not be adjudicated a sexual psychopath, but having confessed all his past crimes, he has assured himself of immunity from subsequent prosecution. This has discouraged many prosecutors from proceeding under the statutes.

Closely related to the matter of self-incrimination is the problem as to what may be admitted in evidence during the sexual psychopath hearings. Many statutes explicitly provide that past acts may be admitted in evidence in order to determine whether one comes within their provisions or not. See note 30 supra. The courts have generally sustained these statutes, though usually with reservations. The possibility of prejudicing the jury is an important factor to be recognized. See People v. Capoldi, 10 Ill.2d 261, 139 N.E.2d 776 (1957) (court held that it was prejudicial error to admit confessions of defendant in a sexual psychopath proceeding without preliminary showing of voluntary nature of such confessions); People v. Wasker, 353 Mich. 447, 91 N.W.2d 866 (1958) (court held it was prejudicial error to receive testimony of three examining psychiatrists in sexual psychopath proceeding, whose evidence had necessarily been tainted by their reception of information gained by one of them in his confidential relationship as defendant's personal psychiatrist).

17 In re Moulton, 96 N.H. 370, 77 A.2d 26 (1950) (court held that trial by jury is not a constitutional requirement in special statutory proceedings).

18 See note 31 supra.

76 See note 24 supra.

77 See notes 20 through 29, & 66 supra.

It is evident that the courts have recognized the various objections made concerning the sexual psychopath proceedings, for if the statutes do not explicitly provide for certain rights and protections the courts themselves frequently read such rights and protections into the various statutes. Thus, the courts have held that the right to a writ of habeas corpus, which is available to the insane and mentally defectives, is available also to persons who have come within the provisions of the sexual psychopath statutes. 77 Furthermore, some courts, and often the statutes explicitly, will allow the rights of notice, personal attendance, counsel, bail, presentation of evidence, subpoenaing of witnesses, cross-examination, and appeal. 78 In light of all the attacks leveled at the sexual psychopath acts, it is fairly apparent why the accused sex offenders especially should be entitled to each of these protections.

Treatment of Sexual Psychopaths

It is clear that the sexual psychopath statutes must make provision for a fair hearing with the ultimate result of such hearing being either release or treatment. But, where because of the lack of adequate treatment facilities a sex deviate is incarcerated for a period of time not in proportion to the actual offense complained of, and under conditions that amount to little or complete absence of treatment, very serious doubts arise as to whether such unwarranted, prolonged incarceration might not be considered punishment—indeed, even cruel and unusual punishment.

In any case, it seems that if the treatment given to certain sex offenders contributes little to their rehabilitation, it is equivalent to punishment. There is no justification for continued "treatment" if it is ineffective, especially in the cases where conviction of a crime is not necessary for adjudication as a sexual psychopath. The remedial aspect of confinement must have foundation in fact and it is not sufficient that the legislature announce a
remedial purpose if the consequences to such
person are punitive.\(^7^9\)

Many states, realizing that it is sometimes
difficult to provide adequate treatment facilities,
have provided that the period for treatment is not
to exceed the criminal sentence the patient could
receive or has already received for the crime he
committed.\(^6^0\) However noble this may seem, there
may be situations in these states where the avowed
purpose of the statutes (i.e., curing the offender and
protecting society) will fail to be carried out, as
where an offender is not fully recovered by the
time his criminal sentence expires. These same
states, on the other hand, admittedly are realizing
that the methods of treatment and rehabilitation
of sex offenders are not adequate. Perhaps the only
partial solution to this dilemma at present is for
the states to provide the best treatment facilities
available, and for those persons who may be
effectively cured thereby to be committed for an
indeterminate period of time (i.e., until sufficient
recovery is achieved). Those who would not benefit
from the treatment facilities available should not
be brought under the sexual psychopath acts.

The question is frequently raised: Has the
patient any assurance of being released upon his
recovery? It has already been mentioned that he
might have the rights of appeal and habeas corpus.
Mandamus would also possibly lie against the
person in charge of him if such person has ca-
priciously or arbitrarily refused to form opinion
and make certification.\(^8^1\) Nevertheless, this is
another instance where abuse is likely to be found
especially in light of the fact that one can never be
quite sure when a sexual psychopath is cured.

The problem of release is equally as troublesome
as the problem of commitment, for in the case of
release the person or staff in charge of the offender
must determine upon similar subjective notions
when such offender is no longer a “menace to
society.” Once again, argument can be made that
the sexual psychopath statutes deny due process
because they do not establish objective standards
and criteria, but, on the other hand, give the force
of law to human error and mere opinion.

**Conclusions and Recommendations**

Many people would deem it advisable to repeal
the sexual psychopath statutes.\(^8^2\) With a few
exceptions, such as the California statute, they
have not been widely used. Several reasons have
been suggested for the failure to use these laws:

One is that the laws were passed in a period of
panic and were forgotten after the emotion was
relieved by this action. A second reason is that
the state has no facilities for the care and
custody of sexual psychopaths; the state hos-
pitals are already crowded with psychotic
patients. A third reason is that the prosecutor
and judge, anxious to make records as vigorous
and aggressive defenders of the community,
favor the most severe penalty available and are
unwilling to look upon serious sex criminals as
patients. . . . Finally, it is reported that defense
attorneys have learned that they can stop the
proceedings under this law by advising their
clients to refuse to talk to the psychiatrists.\(^8^3\)

Some people will contend that even if the sexual
psychopath statutes are extensively used, they will
not effectively deter other potential sex offenders
from committing sex crimes since by analogy
similar proceedings provided for juvenile delin-
quents have not significantly reduced juvenile
delinquency.

Nevertheless, the proposal to do away with the
sexual psychopath statutes is unrealistic. The
reasons for their enactment (i.e., to protect
society and to rehabilitate the offender) are highly

\(^7^9\) A number of recent cases have indicated the courts’
picular concern over the problem of “treatment
versus punishment.” In Commonwealth v. Page, 159
N.E.2d 82 (Mass. 1959), the court said nothing to
invalidate the Massachusetts Sexual Psychopath Stat-
ute, but it did invalidate a commitment made pursuant
thereto, when in fact no treatment facilities were to be
had. The court viewed this as punishment and con-
trary to the patient’s right of due process of law.

\(^8^0\) Also see State v. Wingler, 25 N.J. 161, 135 A.2d
468 (1957), where Judge Heher wrote a vigorous dissent
wherein he maintained that the sexual psychopath was
denied due process and equal protection when he was
put in prison because he rebelled against “treatment”.

\(^8^1\) See note 42 supra.

\(^8^2\) People v. Albin, 111 Cal. App. 2d 800, 245 P.2d
660 (1952) (court held that mandamus would lie if
officials have capriciously or arbitrarily refused to form
opinions and to make certification of the patient’s
recovery or failure to respond to treatment). As one
court has said, “[D]efendant’s right to . . . a fair hearing
on the issue of whether or not he has recovered from his
sex psychopathy, is not to be denied at any time.”

\(^8^3\) Thus, in New York, the Governor vetoed the
1947 bill providing for such procedures.

\(^8^4\) Sutherland, The Sexual Psychopath Laws, 40
commendable. Furthermore, with the advancement of medical science, these statutes may pave the way for laws which will provide for treatment of all criminals. But, for the present, realizing the limitations of medical science, as well as public reluctance to "coddle the offender," it would perhaps be more realistic to advise a conservative revision, rather than an abolition, of certain sexual psychopath laws in order that constitutional objections might be eliminated.  

Hence, the following points are submitted for consideration. The statutes should change the designation of condition to "Sexually Dangerous Persons", the reader realizing of course that what the offender is called is not nearly so crucial as what class of persons the statute shall include. "Sexually Dangerous Persons" would include any person reflecting the existence of a mental disorder or personality disturbance coupled with propensities to commit any kind of sex crime which physically threatens others. The term "Sexually Dangerous Persons" would thus include only those persons constituting a physical threat to other persons, hence leaving the less harmful offenders (e.g., exhibitionists, voyeurs, frotteurs, and fetishists) who do not constitute such a threat, to be dealt with by different legislation.  

If probable cause is shown by a state prosecutor that someone is a "Sexually Dangerous Person", and a trial judge agrees with the allegation on the basis of the facts shown, the court should conduct a hearing to determine if such person is indeed a "Sexually Dangerous Person" and if so, whether he can be cured by treatment. If a criminal trial has commenced, the trial judge should have the power to arrest the proceedings at any point and likewise order a similar hearing. Furthermore, every person convicted of a sex crime which physically threatens others should automatically be given a hearing to determine whether such person is a "Sexually Dangerous Person".

At this point, two criticisms will immediately be noticed. First, the objections of vagueness and improper classification have not been fully met. But due to the limitations of medical science and the English language, as well as existing public opinion, perhaps this is as far as one can go at present. Second, the problem of harassment has not been fully met. This objection has been somewhat lessened under these proposals by placing the ultimate discretion in the trial judge as to whether a special hearing shall be held. A more lasting and effective way to handle the problem, however, would be through further education of those who come in contact with sex offenders and whose duty it is to effectuate the purposes of the sexual psychopath statutes. Of course the public should also be enlightened as to the problems involved in this area.

"Sexually Dangerous Persons" statutes should explicitly provide for the procedural rights of public or private hearing (at the alleged offender's discretion), notice, personal attendance, habeas corpus, bail, counsel, trial by jury (at the alleged offender's discretion), cross-examination, presentation of evidence, subpoenaing of witnesses, and appeal.

These statutes should also provide for mental examinations of the alleged offenders, with the results thereof being submitted to the judge (and jury if one is requested by the alleged offender). The offender should be granted immunity from any subsequent proceedings which may arise out of evidence originally obtained at the hearing. The examiners should be reputable and licensed psychiatrists with a minimum of five years training in psychiatric work.

In assuring that the proceedings do not become criminal in nature, the end result of such proceedings must always be "effective treatment" and not "effective punishment". The statutes must provide for adequate treatment facilities. Furthermore, if it is known that effective treatment is not available for certain "Sexually Dangerous Persons", such individuals should be released on a probation basis, or committed to other authorities if already convicted of a crime.

If the accused has not been convicted of a crime he should not be held for treatment beyond a reasonable period of time. If he has been convicted, it is advisable that he be detained no longer than the maximum period of his criminal sentence provided by law. If he recovers earlier, he should be released on condition (i.e., parole, probation, or out-patient treatment). If he has not recovered at the end of the maximum period of his sentence  

84 Also see suggestions in Report of the Illinois Commission on Sex Offenders—To the 68th General Assembly of the State of Illinois (1953).

86 It is submitted that legislation for "less harmful offenders" may very well follow the same framework as is now proposed for "Sexually Dangerous Persons". See, for example, California's two statutes, one dealing with sexual psychopaths and the other with mentally abnormal sex offenders.

86 See note 60 supra.
as provided by law for the crime he committed, and if he has received the best treatment available, to detain him any longer would amount to a cruel and unusual punishment out of proportion to the seriousness of his offense. Thus, he too should be released on a conditional basis for an indefinite length of time. Upon any infraction of the rules governing such conditional release, the offender should be subject to recommitment, if only to protect society (even though no effective treatment for him is known).

To alleviate the fears of indefinite confinement, the committing court should be required to consider each particular case at regular intervals, say once a year, and upon request by the patient, his custodian, or his friends and relatives at any time within reason during such interval.

Where the patient has been convicted of a crime which gave rise to these proceedings, the treatment (provided it is effective) should be in lieu of any sentence conferred upon such person. Whether he has been convicted of any crime or not, he should not be punished for any crime he did commit which presumably was a product of his mental disorder. If effective treatment is unavailable for him, however, he may have to suffer incarceration in order that society may be protected.

Obviously, the feasibility of any proposals made are limited by medical science. The advancements in the legal sphere necessarily must comport with those made in the medical world. Thus, it may take many decades before the idea of "mental treatment" supplants that of punishment. Eventually, perhaps, the classification can be expanded to include any person reflecting the existence of a mental disorder or personality disturbance coupled with propensities to commit any kind of crime which physically threatens others.

Meanwhile, however, with courts having upheld the existing sexual psychopath statutes, one can only implore those applying the laws to be constantly on guard for any possible infringement of an individual's constitutional rights. 87

87 Thus, for example, it is imperative that the courts make the utmost endeavor to be certain that any charges made against alleged sex offenders be entirely substantiated by fact. See In re Maddox, 351 Mich. 358, 88 N.W.2d 470 (1958), where the court held that the sex offender was denied due process when he was transferred from the state hospital for the criminally insane to the state prison largely because certain police officers and certain doctors believed that he was guilty of criminal offenses to which he had never admitted nor of which he had ever been convicted. The court found a flagrant abuse of the sexual psychopath statute since the offender was given in effect a life sentence in the state prison, based solely on medical diagnosis and without having been found guilty of any crime.
# APPENDIX

## COMPARISON OF STATUTES IN FORCE DURING 1959 DEALING WITH THE COMMITMENT OF "PSYCHOPATHIC" SEX OFFENDERS

<table>
<thead>
<tr>
<th>ALABAMA</th>
<th>CALIFORNIA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Citation</strong></td>
<td>ALA. CODE tit. 15, §§ 434-442 (Supp. 1956)</td>
</tr>
<tr>
<td><strong>2 Designation of Condition</strong></td>
<td>CAL. WELFARE &amp; INST'NS §§ 5600-5607</td>
</tr>
<tr>
<td><strong>3 Elements of Definition</strong></td>
<td>Mentally abnormal sex offender</td>
</tr>
<tr>
<td><strong>4 Discretion in Initiating Proceedings</strong></td>
<td>Habitual course of sexual misconduct evidencing utter lack of power to control sex impulses; likely to attack and injure others, but not mentally ill or defective.</td>
</tr>
<tr>
<td><strong>5 Basis of Jurisdiction</strong></td>
<td>Parent, spouse, child, or suspect himself. (Suspect must consent.)</td>
</tr>
<tr>
<td><strong>6 Medical Examination; Qualification of Examiners</strong></td>
<td>Petition in superior court; if charged with crime, it must be prosecuted to final judgment.</td>
</tr>
<tr>
<td><strong>7 Tribunal and Proceedings</strong></td>
<td>Proceedings as in case of sexual psychopath.</td>
</tr>
<tr>
<td><strong>8 Procedure for Release</strong></td>
<td>Proceedings as in case of sexual psychopath.</td>
</tr>
<tr>
<td><strong>9 Nature of Release; Whether Complete or Subject to Supervision</strong></td>
<td>Superintendent of state hospital may discharge or grant leave of absence on terms he deems proper.</td>
</tr>
<tr>
<td><strong>10 Effect of Commitment on Criminal Proceedings</strong></td>
<td>Superintendent of state hospital may discharge such person, or grant him a leave of absence upon conditions he deems proper.</td>
</tr>
</tbody>
</table>

**ALABAMA**

Criminal sexual psychopathic person

Mental disorder existing for one year accompanied with criminal propensities to commit sex offenses; not mentally ill or feebleminded so as to be criminally irresponsible.

Prosecuting attorney or attorney general

Conviction of criminal sex offense.

Two qualified psychiatrists being reputable licensed physicians who have exclusively limited practice to diagnosis and treatment of mental disorders.

Convicting court; evidence of past crimes admitted.

Petition by committed person to convicting court.

Probation for a reasonable time.

Completion of sentence not required unless parole is violated.

**CALIFORNIA**

Sexual psychopath

Predisposition to commit sex offenses dangerous to others plus any of the following: mental disorder, psychopathic personality, and/or marked departure from normal mentality.

Court, prosecuting attorney, defendant or someone on defendant's behalf.

Conviction of any crime, or sex offense with child under 14 and previous conviction for sex crime, or sex offense (felony) with child under 14.

Two or three psychiatrists, one from state or county hospital, who are holding certificates and whose practice has been directed to diagnosis and treatment of mental and nervous disorders for not less than 5 years.

Court; jury on demand; right to counsel, holding of witnesses, and cross-examination.

Superintendent of hospital to certify to committing court that person is no longer a menace to the health and safety of others.

Criminal proceedings resumed; possible probation.

Returned to court in which criminal charge was tried to await further action.

Nothing said explicitly; probably a defense.
<table>
<thead>
<tr>
<th>State</th>
<th>Statute/Code</th>
<th>Diagnosis</th>
<th>Criteria Description</th>
<th>Court/Jurisdiction</th>
<th>Conviction/Admission Requirement</th>
<th>Hearing Requirement</th>
<th>Parole Requirement</th>
<th>Statute/Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>Colo. Rev. Stat. Ann. §§ 39-19-1-39-19-10 (Supp. 1957)</td>
<td>Sex offender</td>
<td>One constituting a threat of bodily harm to others or an habitual offender and mentally ill.</td>
<td>District Court</td>
<td>Conviction of certain sex offenses.</td>
<td>No hearing.</td>
<td>Party must be examined within 6 months after commitment and at least one year thereafter, and state board of parole shall decide if person should be paroled based on reports of such examination.</td>
<td>Parole board to have power to issue an absolute or conditional release.</td>
</tr>
<tr>
<td>Dist. of Col.</td>
<td>D.C. Code Ann. §§22-301-22-3511 (1951)</td>
<td>Sexual psychopath</td>
<td>Not insane, but by a course of repeated misconduct has evidenced a lack of power to control his sexual impulses and is likely to attack or injure others.</td>
<td>Court or United States attorney for the District of Columbia.</td>
<td>No conviction or criminal charge necessary.</td>
<td>Two qualified psychiatrists.</td>
<td>Superintendent of hospital to certify to committing court that person is no longer dangerous to others.</td>
<td>Parole or complete, unless defendant must still face criminal proceedings.</td>
</tr>
<tr>
<td>Florida</td>
<td>Fla. Stat. Ann. §917.12 (Supp. 1958)</td>
<td>Criminal sexual psychopath</td>
<td>Mental disorder, not insane or feebleminded, existing for 4 months coupled with criminal propensities to the commission of sex offenses and being dangerous to others.</td>
<td>Judge or prosecuting attorney; also admission by or on behalf of defendant.</td>
<td>Charge or conviction of any crime.</td>
<td>Two or three qualified psychiatrists licenced with 5 years experience in the area of mental and nervous disorders.</td>
<td>Court; rights of appeal and counsel; evidence of past crimes admitted.</td>
<td>Superintendent of hospital to certify to committing court that person is no longer a menace to others. Periodic examinations required.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Ill. Ann. Stat. ch. 38, §§820-825 (Smith-Hurd Supp. 1958)</td>
<td>Sexually dangerous person</td>
<td>Persons suffering from a mental disorder not less than 1 year coupled with criminal propensities to the commission of sex offenses and propensities toward sexual assault or molestation of children.</td>
<td>Attorney general or state's attorney.</td>
<td>Charge of any crime.</td>
<td>Two qualified psychiatrists who are reputable physicians licenced to practice in Illinois with 5 years experience in diagnosis and treatment of mental and nervous disorders.</td>
<td>Court; right to counsel and jury; evidence of past crimes admitted.</td>
<td>Application indicating that person is no longer sexually dangerous filed before committing court.</td>
</tr>
</tbody>
</table>

NOTE: The table above provides a summary of legislative provisions and criteria for the sexual offense laws in Colorado, District of Columbia, Florida, Illinois, and Indiana. The criteria include the diagnosis of the individual, the criteria for conviction or admission, and the requirements for hearing, parole, and other legal proceedings. The table is intended to provide a comparison of the various states' approaches to sexual offender legislation.
<table>
<thead>
<tr>
<th></th>
<th>Citation</th>
<th>1 Citation</th>
<th>2 Designation of Condition</th>
<th>3 Elements of Definition</th>
<th>4 Discretion in Initiating Proceedings</th>
<th>5 Basis of Jurisdiction</th>
<th>6 Medical Examination; Qualification of Examiners</th>
<th>7 Tribunal and Proceedings</th>
<th>8 Procedure for Release</th>
<th>9 Nature of Release: Whether Complete or Subject to Supervision</th>
<th>10 Effect of Commitment on Criminal Proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IOWA</strong></td>
<td>Iowa Code Annotated §§ 225A.1-225A.18 (Supp. 1958)</td>
<td>IOWA</td>
<td>Criminal sexual psychopath</td>
<td>Mental disorder, not insane or feebleminded, with criminal propensities toward committing sex offenses and dangerous to others.</td>
<td>Prosecuting attorney or any reputable person.</td>
<td>Charge of public offense.</td>
<td>Medical examination may be required.</td>
<td>Rights to jury, counsel, and appeal; court may conduct private hearings; evidence of past crimes admitted.</td>
<td>Periodic examinations by hospital; application for release.</td>
<td>Defendant is either put on probation for 3 years or returned to the hospital for probationary period.</td>
<td>Nothing said explicitly; probably a defense.</td>
</tr>
<tr>
<td><strong>KANSAS</strong></td>
<td>Kan. Gen. Stat. Ann. §§ 62-1534-62-1537 (Supp. 1959)</td>
<td>KANSAS</td>
<td>Person convicted for any offense against public morals and decency.</td>
<td>Perversion or mental aberration, or where defendant appears to be mentally ill.</td>
<td>Trial judge on own initiative or upon application of county attorney or by or on behalf of defendant.</td>
<td>Conviction of any offense against public morals and decency, as related to crimes pertaining to sex.</td>
<td>Mental examination and report (available to defendant and prosecutor) by psychiatrist at a state hospital.</td>
<td>No hearing; appeal allowed.</td>
<td>If, after commitment to any state or county institution, it appears that the defendant has been restored mentally, he shall be returned to the court where convicted, and be sentenced or paroled as the court deems best under the circumstances.</td>
<td>See 8.</td>
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<tr>
<td><strong>MASSACHUSETTS</strong></td>
<td>Mass. Ann. Laws ch. 123A, §§4-11 (Supp. 1958)</td>
<td>MASSACHUSETTS</td>
<td>Sexually dangerous person</td>
<td>One whose misconduct in sexual matters indicates a general lack of power to control sexual impulses as evidenced by repetitive or compulsive behavior and violence or aggression.</td>
<td>Clerk of district court.</td>
<td>Conviction of certain sex crimes.</td>
<td>Two psychiatrists.</td>
<td>Superior court; rights to counsel and subpoenaing of witnesses; court may conduct private hearings; evidence of past crimes admitted.</td>
<td>Entitled to hearing for examination at least once a year upon petition by defendant, spouse, relative, or friend.</td>
<td>Complete or conditional; possible outpatient treatment required.</td>
<td>Nothing said explicitly; probably a defense.</td>
</tr>
<tr>
<td>State</td>
<td>Statute References</td>
<td>Condition</td>
<td>Procedure</td>
<td>Outcome</td>
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<tr>
<td>Michigan</td>
<td>Mich. Stat. Ann. §§ 28.907(1)-28.907(9) (1954)</td>
<td>Criminal sexual psychopathic person</td>
<td>Mental disorder, not insane or feebleminded, existing for 1 year coupled with criminal propensities toward the commission of sex offenses.</td>
<td>County prosecutor, attorney general, or party on behalf of person charged. Three qualified psychiatrists chosen from list of 6 compiled by Department of Public Health. Court; jury on demand; evidence of past crimes admitted. Party must be examined once a year by 2 psychiatrists who shall write a report including evidence of recovery. The reports are available to parties as evidence in release hearings. Proceedings initiated by director of public institution, by committed person, or by other interested person.</td>
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<tr>
<td>Minnesota</td>
<td>Minn. Stat. §§ 536.06-526.11 (1957)</td>
<td>Psychopathic personality</td>
<td>Irresponsible in sexual conduct and dangerous to others by reason of emotional instability, impulsiveness of action, lack of customary standards of good judgment, or failure to understand consequences of one's acts.</td>
<td>County attorney. By petition; no crime or criminal charge necessary. Two duly licensed doctors of medicine. Court; private hearing at court's discretion; rights to counsel, subpoenaing of witnesses and appeal. Complete if by court; parole by state hospital commission.</td>
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<tr>
<td>Missouri</td>
<td>Mo. Ann. Stat. §§ 202.700-202.770 (1949)</td>
<td>Criminal sexual psychopath</td>
<td>Mental disorder, not insane or feebleminded, existing for 1 year coupled with criminal propensities for commission of sex offenses.</td>
<td>Prosecuting or circuit attorney. Two qualified physicians. (Their report is to be filed in court but not made public.) Court; jury on demand; private hearing at court's discretion; rights to counsel, subpoenaing of witnesses, and appeal; evidence of past acts of sexual deviation admissible. Application to committing court. Complete unless convicted of or charged with a crime.</td>
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<p>| NEBRASKA | Nebraska Rev. Stat. §§ 29-2901-29-2907 (Supp. 1957) | Sexual psychopath | One who by a course of misconduct in sexual matters has evidenced a lack of power to control sexual impulses and as a result is likely to attack or injure others. | Petition to be executed by county attorney upon facts showing good cause, and executed by a person having knowledge of the facts upon which it is based. | Charge of crime not necessary—only facts showing good cause. | Two licensed physicians with two years training in mental diseases. | Court may hold private hearing; rights to counsel, appeal, and jury; prior conduct admissible in evidence; subpoenaing of witnesses allowed; state must prove beyond a reasonable doubt. | Superintendent of institution to make recommendation; court then to decide if person is cured. | Complete or probation. | Nothing said. |
| NEW HAMPSHIRE | New Hampshire Rev. Stat. Ann. §§ 173:1-173:16 (1955) | Sexual psychopath | Anyone 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, so as to render such person irresponsible with respect to sexual matters and thereby being dangerous to others. | County solicitor upon good cause. | Charge of certain sex offenses or upon good cause shown by anyone. | Two psychiatrists and one physician licensed in New Hampshire; one of the three to be connected with a state mental institution. | Court may hold private hearing; right to counsel; prior acts admissible; no right to trial by jury. | Doctors to examine defendant periodically and report to committing court. Patient and his attorney may petition for release at any time. | Complete or parole. | Complete defense |
| NEW JERSEY | New Jersey Rev. Stat. §§ 2:192-1.13-2:192-1.33 (Supp. 1951) | Sex offender | Pattern of repetitive compulsive behavior and either violence or age disparity. | Convicting court; voluntary admission. | Conviction of certain specified crimes. | Diagnostic center. | No hearing; convicting court to act upon report from diagnostic center. | Classification review board to recommend when maximum time of sentence has passed. | Complete discharge; parole or probation possible, but for no greater time than law provides for crime person was convicted of; possible outpatient treatment allowed. | Defense if treatment continues for length of sentence person received upon conviction. |</p>
<table>
<thead>
<tr>
<th>State</th>
<th>Statute/Code</th>
<th>Offender Type</th>
<th>Offense Description</th>
<th>Court Action</th>
<th>Psychiatric Evaluation</th>
<th>Hearings</th>
<th>Committee Action</th>
<th>Sentence Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>Ohio Rev. Code Ann. §§2947.24-2947.29 (Baldwin 1958)</td>
<td>Psychopathic offender</td>
<td>Emotional immaturity and instability, or impulsive, unruly, irresponsible, and reckless acts, or excessively self-centered attitude, or deficient powers of self discipline, or marked deficiency of moral sense or control, who exhibits criminal tendencies and is therefore a menace to the public.</td>
<td>Court after conviction.</td>
<td>Conviction of a felony.</td>
<td>Psychopathic clinie or three psychiatrists; report to become part of public record.</td>
<td>Court; rights to counsel, subpoenaing of witnesses, cross-examination, bail, and appeal.</td>
<td>Proceedings initiated by Commission of Mental Hygiene or person committed.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Ore. Rev. Stat. §§137.111-137.117 (1957)</td>
<td>Persons convicted of certain sex offenses</td>
<td>Whenever a person is guilty of an offense involving a child under 16 or has a mental or emotional disturbance, deficiency, or condition predisposing him to the commission of a sex crime to a degree rendering the person a menace to the health or safety of others.</td>
<td>Convicting court.</td>
<td>Conviction of certain sex offenses.</td>
<td>Qualified psychiatrist.</td>
<td>Court to set hearing.</td>
<td>Nothing said.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Pa. Stat. Ann. tit. 19, §§1166-1174 (1958)</td>
<td>Sex offender</td>
<td>Persons convicted of certain crimes and who if at large constitute a threat of bodily harm to members of the public or are habitual offenders and mentally ill.</td>
<td>Court after conviction.</td>
<td>Conviction of certain sex offenses.</td>
<td>By facilities of the Department of Welfare or by a psychiatrist whose report must be accepted by the Department.</td>
<td>No hearing.</td>
<td>Six months after sentence, and every six months thereafter, parole board shall review case.</td>
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<td>South Dakota</td>
<td>S.D. Code §13.1727 (Supp. 1952)</td>
<td>Nothing explicit</td>
<td>Nothing explicit.</td>
<td>Trial judge.</td>
<td>Conviction of indecent molestation of a minor child.</td>
<td>South Dakota State Hospital.</td>
<td>No hearing.</td>
<td>Hospitalization to continue for so long as the superintendent of the South Dakota State Hospital deems such treatment to be of medical value to such person.</td>
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<td>TENNESSEE</td>
<td>TENN. CODE ANN. §§ 33-1301-33-1305 (Supp. 1959)</td>
<td>Sex offender</td>
<td>One who by a course of misconduct in sexual matters has evidenced a general lack of power to control his sexual impulses, and who, as a result, is likely to injure others.</td>
<td>Court after conviction of any sex crime. (mandatory)</td>
<td>Conviction of any sex crime.</td>
<td>By a psychiatrist or psychologists from the Department of Mental Health.</td>
<td>No hearing; examination by doctors and upon their recommendations treatment to be given.</td>
<td>Committed person, his next of kin, or any friend may petition once a year for a hearing by the court and a jury whenever the court has decided to detain prisoner beyond termination date of his criminal sentence.</td>
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<td>UTAH</td>
<td>UTAH CODE ANN. §§ 77-49-1-77-49-8 (1953)</td>
<td>Persons convicted of sex offenses</td>
<td>Abnormal or subnormal mental condition or mental illness.</td>
<td>Court after conviction. (mandatory)</td>
<td>Conviction of sex offense.</td>
<td>Two or more competent and reputable physicians recognized as specialists and experts in the field of psychiatry, to be appointed by the judge.</td>
<td>No hearing; judge to determine.</td>
<td>Superintendent of hospital to certify to the probation, parole, or pardoning authority that person has fully recovered.</td>
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<td>VERMONT</td>
<td>VT. STAT. ANN. tit. 16, §§ 2611-2616 (1958)</td>
<td>Psychopathic personality</td>
<td>Persons who by a habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulse and who as a result are likely to attack or injure.</td>
<td>The court upon its own motion or upon motion by the prosecutor or commissioner before sentence.</td>
<td>Conviction of felony or conviction of misdemeanor for the third time.</td>
<td>Adequate psychiatric examination.</td>
<td>Due hearing by court.</td>
<td>Examination from time to time as requested by the court; court may order discharge.</td>
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<td>VIRGINIA</td>
<td>VA. CODE ANN. §§ 53-278.2-53-278.4 (1950)</td>
<td>Person convicted of crime indicating sexual abnormality</td>
<td>See 2.</td>
<td>Court, commonwealth attorney, defendant, counsel for defendant, or other person acting for defendant.</td>
<td>Conviction of crime indicating sexual abnormality.</td>
<td>Trial judge to have power to require Department of Mental Hygiene and hospitals to examine and report—report to be made available to commonwealth's attorney and to defendant's counsel.</td>
<td>Court.</td>
<td>Probably the same as for any person committed to a hospital by reason of insanity.</td>
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<td>State</td>
<td>Code/Ann.</td>
<td>Category</td>
<td>Criteria</td>
<td>Action/Provision</td>
<td>Recommendation/Note</td>
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<td>Washington</td>
<td>Wash. Rev. Code §§ 71.06.010-71.06.060 (1957)</td>
<td>Sexual psychopath</td>
<td>One who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sex offenses in a degree constituting him a menace to the health or safety of others, and who is not mentally ill or deficient.</td>
<td>Prosecuting attorney; charge of sex offense.</td>
<td>Two duly licensed physicians. Court; jury on demand; rights to counsel and subpoenaing of witnesses. Sexual psychopath to be retained by the superintendent until in latter's opinion he is safe to be at large, whereupon: (1) If he has not been convicted and maximum sentence has not expired, superintendent shall certify his opinion to the board of prison terms and parole or to the committing court; (2) If the maximum sentence for the charge has expired, the superintendent shall parole him under conditions deemed advisable. See 8. See 8.</td>
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<td>Wisconsin</td>
<td>Wis. Stat. Ann. §§ 959.15 (1958)</td>
<td>Persons convicted of certain crimes</td>
<td>Mental and physical aberrations. Court; voluntary admission. (mandatory examination for certain serious sex crimes)</td>
<td>Conviction of any crime except for homicide or attempted homicide. Department of Public Welfare to examine and report to the court. No special hearing; court to decide without jury, though defendant has right of counsel and appeal.</td>
<td>Special review board to make recommendations to Department of Public Welfare. Complete, probation, or parole; discharge complete upon expiration of maximum term of sentence imposed by law. Nothing said explicitly; probably a defense.</td>
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<td>Wyoming</td>
<td>Wyo. Comp. Stat. Ann. §§ 7-348-7-362 (1957)</td>
<td>Persons convicted of certain sex crimes</td>
<td>Characterized by repetitive or compulsive behavior, accompanied by violence or age disparity between victim and defendant. District judge to direct prosecuting attorney to investigate; voluntary admission.</td>
<td>Conviction of certain sex crimes. Two disinterested, reputable, and legally qualified physicians (or one if only one is available) to be appointed by the district judge; one to be a psychiatrist if possible. No hearing.</td>
<td>Chief officer of hospital to report at least semi-annually with recommendations. Probation or parole; discharge complete upon expiration of maximum term of sentence imposed by law for crime committed. Nothing said explicitly; probably a defense.</td>
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