

ADMINISTRATION OF THE CRIMINAL SEXUAL PSYCHOPATH STATUTE IN INDIANA¹

ELIAS S. COHEN†

The principal objectives in the laws dealing with sexual offenders have been the protection of society through the removal of persons who cannot refrain from certain acts of behavior, and treatment leading to their restoration to society as healthy contributing members. In this respect such laws are in perfect consonance with the basic objectives of our legal system. More specifically, these laws are aimed at certain dangers which inhere in sexual offenses (but not all sexual offenses). These involve cases of physical violence, either actually consummated or attempted, or those cases which involve a considerable disparity in age between the parties involved in the sex crime.²

The special statute calling for a different procedure in the handling of the sexual offender arose out of dissatisfaction with the provisions of the criminal law, and with the administration of our penal system. At the same time, it was recognized that the procedure for commitment of mentally ill persons was, more often than not, inadequate to require hospitalization or treatment of the sex offender who came to the attention of law enforcement or health authorities.

The alternatives which have been available in the past have been twofold: First, a proceeding could be held under the criminal law governing the sex crime which had been committed, and if found guilty of the crime the person could be remanded to the custody of a penal institution. This would remove the individual from society for a stated period of time. Once incarcerated there is no assurance that the individual will be exposed to any treatment, although there should certainly be no bar to the provision of treatment.

† Assistant to the Indiana Mental Health Commissioner, January, 1954 to August, 1956.

1. This survey utilized data beginning April 25, 1949 and ending July 1, 1956.

2. There are a host of crimes, however, classified as sex crimes in many states which do not do violence to persons, property, and which do not involve minors, or others held to be legally incompetent. These crimes are crimes against "taste," or "morality" conceived in a Victorian sense. Public indecency, indecent exposure, committing a public nuisance, window peeping, being an inmate of a house of ill fame, exhibiting publications portraying depravity, criminality, unchastity, etc. are all examples of such crimes. In the eyes of the law, so far as a pleading under many of the sexual psychopath statutes is concerned, there is no distinction in many states between these crimes and those of rape, assault and battery with intent to commit rape, sexual crimes against children; immoral, improper or indecent liberties with children, and so on.

Second, if there was indication that the individual was legally insane or feeble-minded, the court could, generally on its own motion, request an examination to make a determination as to whether or not the individual was responsible for his acts, or whether he had sufficient comprehension to understand the nature of the proceedings against him and make a defense therefor. In the event the individual was found to be committable, he could be removed to an institution for the mentally ill or for the mentally defective. Whether insanity constituted a defense or merely acted as a bar to further trial would govern whether the individual would have to stand trial for the criminal offense.

The enactment of legislation dealing with the criminal sexual psychopath in Indiana was the direct result of almost a mass hysteria following a series of murders which occurred in the summer and fall of 1947.³ The newspapers and radio kept the public fully informed through lurid and sometimes sensational accounts of the killings, providing the impression that sex fiends lurked in every doorway. In response to the mounting public pressure, the governor took drastic action in suspending the paroles of all criminals who were second offenders.

In the meantime the Attorney-General organized a conference group to study the problem of the sex offender and develop legislation. The committee met throughout the spring and summer studying legislation in effect in other states. Their preliminary thinking established a number of basic principles to guide the drafting of legislation:

(1) Bargain penalties for sex offenders were to be avoided, reducing the possibility of premature release; (2) imposition of indeterminate sentences to prevent release prior to certification by psychiatrists; (3) confinement before and after trial for persons charged with a sex offense; (4) gathering information on youthful sex offenders to aid preventive action; (5) pre-trial examinations by psychiatrists for persons suspected of being sexually maladjusted.

In March, 1949, the Criminal Sexual Psychopath Statute was enacted into law.⁴ From April 25, 1949 when the first person entered the

3. Indianapolis Star, June 11, 1947, p. 1; Indianapolis Star, June 15, 1947, p. 1; Indianapolis Star, Nov. 12-21, 1947, p. 1.

4. A criminal sexual psychopathic person is declared to be, "Any person over the age of sixteen (16) years who is suffering from a mental disorder and is not insane or feeble-minded, which mental disorder is coupled with criminal propensities to the commission of sex offenses. . . ." IND. ANN. STAT. § 9-3401 (Burns 1955).

Jurisdiction over such persons is vested with the courts having jurisdiction over criminal cases. IND. ANN. STAT. § 9-3402 (Burns 1955). Jurisdiction of the statute is obtained in the following manner:

"When any person is charged with a criminal offense, except the crime of murder or manslaughter, or rape on a female child under the age of twelve or has been convicted of or has pleaded guilty to such offense and has been placed on probation, or has been convicted of or has pleaded guilty to such offense but has not yet been sentenced,

Indiana Hospital for Insane Criminals as a criminal sexual psychopathic person, until May 29, 1956, there were a total of 160 individuals in the state who were committed under the act.⁵

How the law has been utilized during the period of its life can, perhaps best be seen by examining the circumstances under which the law has been invoked, who has been involved, the methods of determination, the factors surrounding custody, and the efficacy of the statute in meeting the twin motives of society's safety and the offender's rehabilitation.

The law provides that "any person charged with a criminal offense, except the crime of murder or manslaughter, or rape on a female child under the age of twelve . . ." may plead under the act.⁶ Thus the law does not require that the crime with which the person stands charged be a sex crime.⁷

and it shall appear that such person is a criminal sexual psychopathic person, then the prosecuting attorney of such county, or someone on behalf of the person charged, may file with the clerk of the court in the same proceeding wherein such person stands charged with, or has been convicted of, or has pleaded guilty to, such criminal offense, a statement in writing setting forth facts tending to show that such person is a criminal sexual psychopath." IND. ANN. STAT. § 9-3403 (Burns 1955).

The procedure for examination and inquiry into the matter of alleged criminal sexual psychopathy is detailed to provide that, "Upon the filing of such statement by the prosecuting attorney the court shall, or if filed on behalf of the accused may, appoint two (2) qualified physicians to make a personal examination of such alleged criminal sexual psychopathic person who shall file with the court a report in writing of the results of their examination together with their conclusions. Said report shall be open to the inspection of the counsel for the accused, but shall not be competent evidence in any other proceeding against accused except the hearing to inquire into his alleged psychopath. Said alleged psychopath shall be required to answer the questions propounded by such physicians under penalty of contempt of court. In the event that both of such physicians in such report state their conclusions to the effect that such person is a criminal sexual psychopathic person, then proceedings shall be had as provided in this act prior to a trial of such person upon the criminal offense with which he then stands charged, or prior to sentence if he then stands convicted and has not been placed on probation, or prior to completion of probation sentence." (Emphasis added.) IND. ANN. STAT. § 9-3404 (Burns 1955).

Commitment and Confinement are provided for as follows:

"If such person is determined to be a criminal sexual psychopathic person, then the court shall commit such person to the Indiana Council for Mental Health, to be confined in any appropriate state institution under their jurisdiction until such person shall have fully and permanently recovered from such criminal psychopathy." (Emphasis added.) IND. ANN. STAT. § 9-3405 (Burns 1955).

A finding of criminal sexual psychopathy under this statute has the effect of abating the criminal proceeding for the crime with which the person was originally charged, or convicted. IND. ANN. STAT. § 9-3409 (Burns 1955).

5. The material in the following sections was derived from the individual case folders maintained on all persons found to be criminal sexual psychopaths and committed to the custody of the "Council for Mental Health." These records are currently maintained in the offices of the Division of Mental Health, 1315 W. 10th St., Indianapolis, Ind.

6. IND. ANN. STAT. § 9-3403 (Burns 1955).

7. IND. ANN. STAT. § 9-3403 (Burns 1955). Some guidance is provided, however, by IND. ANN. STAT. § 9-3401 (Burns 1955) which defines a criminal sexual psychopathic person. See note 4 *supra*. In State *ex rel.* Savery v. Criminal Court, 234 Ind. 632, 130

A total of 180 "charges" were noted in the records of the 160 individuals committed under the act. Table 1 indicates the variety of crimes or complaints which brought these individuals to the attention of the court.

TABLE 1

Complaints, Offenses and/or Crimes with Which Persons Committed as Criminal Sexual Psychopaths Stood Charged—4/25/49-5/29/56

Assault and Battery with Intent to Commit a Felony (Rape).....	21
Assault and Battery with Intent to Commit a Felony.....	12
Assault and Battery with Intent to Gratify Sexual Desires.....	5
Assault and Battery	13
Rape	4
Molesting	4
Breaking and Entering	2
Petit Larceny	3
Arson	1
Kidnapping	1
Burglary	6
Sodomy	60
Public Indecency	23
Disorderly Conduct	1
Window Peeping	7
Contributing to the Delinquency of Minors	13
Incest	3
Unnatural Acts with Wife	1

In analyzing these offenses, four principal breakdowns may be utilized, viz., crimes of violence against persons, crimes involving a substantial disparity in age and involving children, crimes which are non-violent but which offend society's morality and taste, and finally, crimes which have (from the record, at any rate) little connection with sex.

As crimes of violence against persons we would include assault and battery, rape, molesting, and kidnapping, which would account for 60 or

N.E.2d 128 (1955), the defendant was charged with robbery. The defendant entered a plea of insanity and was examined by physicians. In accordance with their findings, the defendant filed an application requesting the trial court to hold a hearing for the purpose of declaring the defendant a criminal sexual psychopath. The trial judge denied the petition. The Supreme Court held that the trial judge has almost unlimited discretion in granting or denying a hearing when a non-sexual offense was involved, and when the defendant requests the criminal sexual psychopath hearing. The limits of the discretion are reasonableness; i.e., as long as the decision is not arbitrary or capricious. But when the prosecutor requests such a hearing, the trial judge has no discretion and must grant the hearing. This reasoning is based on the wording of the statute which says that when a request is filed by the prosecutor, "the court *shall*, or if filed on behalf of the accused *may*, appoint two (2) qualified physicians to make a personal examination. . . ." This aspect of the opinion appears valid, but the court also held that criminal sexual psychopath proceedings are improper for other than sexual offenses. The court used the word "may" to support their conclusion, saying that this allowed for consideration of the nature of the offense. But if this were true, why was the word "shall" used when proceedings are instituted by the prosecutor? It is submitted that a more logical explanation of the use of the permissive language is that it was intended to prevent dilatory tactics on the part of criminal defendants.

exactly one-third of the charges noted.

The crimes involving children would include the following:

TABLE 2

Complaints, Offenses, and/or Crimes Involving Children with Which Persons Committed as Criminal Sexual Psychopaths Stood Charged—4/25/49-5/29/56

	<i>Total</i>	<i>Children</i>
Assault and Battery with Intent to Commit a Felony (Rape).....	21	14
Assault and Battery with Intent to Gratify Sexual Desires.....	5	3
Assault and Battery	13	11
Rape	4	2
Contributing to the Delinquency of Minors.....	13	13
Sodomy	60	28*

* This figure represents Sodomy perpetrated on children under the age of 16. In the total of 60 charges of sodomy there were in addition to those which specified the age of the individual not prosecuted, 21 charges which did not indicate age.

From Table 2 it is seen that of the total 180 charges, 71 involved children. Of these 71, 30 were included in the list comprising crimes of violence.

Public indecency, disorderly conduct, window-peeping, incest, unnatural acts with wife, and sodomy (where no violence or disparity in age is concerned, and where the relationship is one of mutual consent) are among those crimes classified as being morally offensive and distasteful. This group of offenses accounts for 35 of the charges plus a portion, at least, of the 32 charges of sodomy in which the age of the individual not prosecuted was 16 or over, or was not specified. This group might approach a proportion of as high as one-third of all the charges made.

Of the remaining 18 charges of burglary, breaking and entering, arson and petit larceny, it is difficult from the available records to establish the relationship between the charge and the ". . . propensity toward the commission of sex crimes."⁸ However, this is not to say that these crimes might not have sexual significance. Arson is often considered from a psycho-sexual standpoint to represent a sexual experience for the arsonist, while petit larceny and burglary may be the means toward acquiring the fetish objects of the fetishist.

In summary, it might be said that at least 55% of the charges involved violence or children and 16 to 33% of the violations were offensive to morals. In the remaining 18 cases, we do not have sufficient information.

It is interesting to note the number of persons sentenced to adult penal institutions following convictions of sex crimes. Table 3 points out that in 3 years there have been a total of 522 convictions for sex offenses resulting in sentences to state penal institutions, exclusive of that portion of the 929 convictions for assault and battery, some of which represented lesser charges from original charges of assault and battery with intent to commit rape, rape, sodomy, etc.

TABLE 3

Sex Offenses Resulting in Commitment to Adult Penal Institutions 1953-54 to 1955-56 by Institutions

Offense	Prison			Reformatory			State Farm			Women's Prison			Total
	1953-54	1954-55	1955-56	1953-54	1954-55	1955-56	1953-54	1954-55	1955-56	1953-54	1954-55	1955-56	
1. A & B with Intent to Commit Felony—Rape....	9	6	8	39	44	28				NA	NA	2	136
2. Sodomy	11	7	6	3	4	5				NA	NA	3	39
3. Public Indecency										NA	NA	1	1
4. A & B to Gratify Sex Desires	3	4	3										10
5. Contr. to Delinq. of Minor							51	65	47	4	11	7	181
6. Window Peeping													0
7. Incest	6	8	7										21
8. Obscene Conduct										7	11	12	30
9. Rape	9	9	8	10	14	20							70
10. Prostitution										9	3	5	17
11. Entering Room of Opposite Sex										6	4	7	17
Total Sex Offenses	38	34	32	52	62	53	51	65	47	26	19	37	522

The two most striking characteristics of the group who have been committed under the Criminal Sexual Psychopath Statute are race and sex. Of the total 160 persons all are men. This is striking because it is now fairly well established that sex acts which break the law are committed by women as well. There is no doubt that there is homosexuality among women. Overt transvestism occurs more frequently in women principally because our society accepts women in men's clothes more readily than it accepts men in women's clothes. Thus the sexual aberrations which lead males to brushes with the law ought to be present in the case of women as well. It is also logical to assume that there are women with strong sex drives who prefer young boys to men and who might find themselves at odds with the laws concerning contribution to the delinquency of minors. One has only to look at Table 3 to see that there have been 92 women in just the last 3 years convicted of sex crimes. It would seem that certainly some might have qualified as criminal sexual

psychopaths. Despite this, there has not been a single commitment of a female under the statute. A partial explanation may be the more ready acceptance of aberrant sexual behavior in women by society. Two women dancing or holding hands arouses little comment. A second cause might be the reluctance of police officials and courts to bring women before the bar.

As to race, it is interesting to note that of the 160 individuals involved, 7, or less than 5% of the total, were Negroes. What makes this so unusual is the fact that over the same period of time, roughly 23% of all adult male criminals sent to the institutions of the Indiana penal system were Negroes. Again, one can only speculate concerning the causes of this disparity. One suggestion might be that Negroes coming from a typically depressed economic group would be less likely to have counsel, and hence less likely to be advised of the possibility of entering a plea under the statute. Another might be that Negroes do not commit sex crimes as frequently as white people do. Still another might be that the Negro sexual mores are such that fewer complaints are lodged against Negroes by Negroes than would be the case among white persons.

Marital status of criminal sexual psychopathic persons in Indiana may be seen from following Table 4.

TABLE 4

Marital Status of Persons Committed as Criminal Sexual Psychopaths—4/25/49-5/29/56

	<i>No.</i>	<i>Percent</i>
Single	76	48%
Married	49	31
Separated	3	2
Divorced	15	9
Widowed	0	
No Record or Unknown	17	10

There is a remarkable similarity between these findings and those of a New Jersey investigator.⁹ A study of 250 sexual offenders made in 1950 disclosed that 48.8% were single, 33.2% were married, and 13.2% were either separated or divorced.

The age of persons at the time of admission to custody of the Council for Mental Health ranged from 16 to 77 years of age. Three boys under the age of 18 have been committed under the statute. One of these was charged with burglary (stealing women's underwear) while a second was charged with assault and battery, having been found fondling

9. DEP'T OF INSTITUTIONS AND AGENCIES, *PSYCHIATRIC CHARACTERISTICS OF SEX OFFENDERS: A STATISTICAL ANALYSIS OF 250 SEX OFFENDERS EXAMINED AT NEW JERSEY STATE DIAGNOSTIC CENTER AT MENLO PARK*. 5 (State of New Jersey, Sept. 1950).

in a sexual manner two 9 year old girls and one 5 year old girl. The third was charged with burglary (housebreaking and attempted rape).

TABLE 5

Distribution by Age at Time of First Admission to Custody of Council of Persons Committed as Criminal Sexual Psychopaths—4/25/49-5/29/56

Under 18	3
18-21	15
22-25	31
26-30	34
31-35	29
36-40	19
41-45	5
46-50	8
51-60	10
61-70	4
71 and over	2

Where the upper end of the age bracket is concerned one might wonder whether the use of the statute was proper, since an insanity inquest might be more appropriate.¹⁰

Because the law is specific in excluding from the definition those persons who are insane or feebleminded, it is of the utmost importance to look at the diagnoses given to those persons committed under the statute. This consideration, as much as any other, will provide some clues as to the propriety of the use of the statute during its first seven years of existence. A breakdown showing diagnoses in broad general categories may be seen from Table 6.

While it may be an over-simplification to equate the terms "psychosis" and "insanity," for purposes of examining the use of the statute, this must be done, since we have judicial findings made prior to *psychiatric* evaluation in most instances. Now, having the psychiatric evaluation at hand, it is possible to look at the use of the law from the standpoint of its stated purpose. Whether or not this equation is acceptable, it must be recognized that a diagnosis of a psychotic condition represents the presence of a serious mental disorder which certainly might more often than not be regarded as insanity for purposes of commitment to a mental hospital.

10. In the two cases of individuals 71 and over, the psychiatric diagnoses reached in the hospitals to which these men were sent were Chronic Brain Syndrome, Cerebral Arteriosclerosis, Behavioral Reaction (Hardening of the Arteries of the Brain); and Chronic Brain Syndrome, Cerebral Arteriosclerosis with additional diagnoses of mental deficiency and sexual deviation. From these diagnoses alone there is serious question as to whether these men could plead under the statute's definition of a criminal sexual psychopathic person.

TABLE 6

Diagnostic Groupings of Persons Committed as Criminal Sexual Psychopaths 4/25/49-5/29/56		
<i>Category</i>	<i>Diagnosis</i>	<i>No.</i>
Mental Defectives (Feeble-minded)	Mental Deficiency	9
Psychotic Disorders (Insanity)	Chronic Brain Syndrome	4
	Schizophrenic Reaction (Paranoid Type)	7
	Schizophrenic Reaction (Simple Type)	5
	Schizophrenic Reaction (Catatonic Type)	1
	Schizophrenic Reaction (Chronic Undifferentiated Type)	5
	Central Nervous System Syphillis	1
	Other Psychosis	1
	No Mental Disorder	No Mental Illness
Personality Disorders and Reactive Disorders	Personality Disorder	5
	Psychopathic Personality	50
	Sexual Deviate	39
	Psychoneurotic Reaction	4
	Schizoid Personality	9
	Alcoholism	2
	Passive-Aggressive Personality	3
	Other Reactions	3
	Undiagnosed	8

There is no problem, I believe, in equating the terms "mental deficiency" and "feeble-mindedness," and the finding of no mental illness can be considered equivalent to a finding of no mental disorder.

If the foregoing is accepted, then it must be conceded that 37, or 23%, of the total 160 persons under consideration were by definition either "insane," "feeble-minded," or not "suffering from a mental disorder," and therefore ineligible to be declared a criminal sexual psychopathic person.

It should be pointed out that this is a very conservative approach utilizing only the extreme end of the continuum of mental illness. Therefore it is likely that some portion of the remaining 123 would be found insane at an insanity inquest.

In examining the administration of the statute, it is interesting to note the geographical distribution of counties from which persons have been committed. Table 7 indicates that the pattern of commitment has not followed population lines too closely. Whether this is due to lower incidence of sexual psychopathy in certain areas or a reluctance to use the statute either because of ignorance or prejudice can only be a matter of conjecture. What is clear, however, is that in some areas there is a de-

TABLE 7

Number of Persons Committed under the Criminal Sexual Psychopath Statute
4/25/49 to 5/29/56 by County of Commitment

<i>County</i>	<i>Population '000's</i>	<i>CSP's Committed</i>	<i>County</i>	<i>Population '000's</i>	<i>CSP's Committed</i>
Adams	22.3	3	Lawrence	34.3	1
Allen	183.7	6	Madison	103.9	3
Bartholomew	36.1	3	Marion	551.7	21
Benton	11.4	0	Marshall	29.4	0
Blackford	14	2	Martin	10.6	0
Boone	23.9	1	Miami	28.2	8
Brown	6.2	0	Monroe	50.0	0
Carroll	16	2	Montgomery	29.1	4
Cass	38.7	0	Morgan	23.1	1
Clark	48.3	2	Newton	11.0	0
Clay	23.9	0	Noble	25	0
Clinton	29.7	1	Ohio	4.2	0
Crawford	9.2	0	Orange	16.8	1
Daviess	26.7	1	Owen	11.7	0
Dearborn	25.1	0	Parke	15.6	0
Decatur	18.2	0	Perry	17.3	0
DeKalb	26.0	1	Pike	14.9	0
Delaware	90.2	1	Porter	40.0	5
Dubois	23.7	0	Posey	19.8	1
Elkhart	84.5	13	Pulaski	12.4	1
Fayette	23.2	1	Putnam	22.9	0
Floyd	43.9	2	Randolph	27.1	2
Fountain	17.8	0	Ripley	18.7	3
Franklin	16.0	1	Rush	19.7	1
Fulton	16.5	1	St. Joseph	205.0	2
Gibson	30.7	0	Scott	11.5	0
Grant	62.1	2	Shelby	28.0	1
Greene	27.8	0	Spencer	16.1	0
Hamilton	28.4	2	Starke	15.2	4
Hancock	20.3	0	Steuben	17.0	1
Harrison	17.8	0	Sullivan	23.6	1
Hendricks	24.5	3	Switzerland	7.5	0
Henry	45.5	1	Tippecanoe	74.5	3
Howard	54.5	3	Tipton	15.5	1
Huntington	31.4	0	Union	6.4	0
Jackson	28.2	6	Vanderburgh	106.4	1
Jasper	17	1	Vermillion	19.7	0
Jay	23.1	1	Vigo	105.0	0
Jefferson	21.6	0	Wabash	29.0	4
Jennings	15.2	0	Warren	8.5	0
Johnson	26.1	1	Warwick	21.5	0
Knox	43.4	5	Washington	16.5	0
Kosciusko	33.0	0	Wayne	68.5	5
LaGrange	15.3	0	Wells	19.5	1
Lake	368.1	13	White	18	0
La Porte	76.8	5	Whitley	18.8	0

cided discrepancy between population and commitments.¹¹

The determination of criminal sexual psychopathy is a finding by the court based upon examinations made by "two qualified physicians"¹² and such other evidence as the court may choose to hear.¹³ The determination is made by the court without a jury.¹⁴ While the issue has not been tested, it is assumed that this proceeding is equivalent to an insanity inquest, although the law provides that appeal may be taken from any final order or judgment in the manner provided by law for appeals in criminal cases.¹⁵

The reports that have been submitted to the courts have varied from highly detailed reports to those which quite obviously do little to aid the court in reaching a decision. Sometimes this has been due to the physicians' lack of understanding of the issue on which their opinion is sought. Frequently it appears that physicians equate this kind of hearing with an inquest into insanity, or presume they are being asked whether the individual should be punished for his alleged act. Other reports show a confusion between the legal term of criminal sexual psychopath and the medical term of "psychopathic personality."

Some physicians have not considered their assignment in terms of the objective sought, viz., to opine whether the individual is a criminal sexual psychopath within the definition of the statute. The following reports are examples of this:

(1) On March 10, 1955, I interviewed Mr. D. in the _____ County jail. His version of his arrest was at complete variance with the police record. He complained of a forced confes-

11. One must wonder why Elkhart county with 84,000 persons has used the statute the same number of times as has Lake County with more than four times the population. Conversely, it seems unusual that Vigo with more than 100,000 persons in the county has never used the statute and Vanderburg and Madison with roughly the same population have used the law one and three times respectively, while St. Joseph county with 205,000 has committed 2 persons as CSP's. Miami county, however, with less than 30,000 people has seen the statute invoked more times than any other county besides Elkhart, Lake and Marion.

It cannot be said that the law has been utilized most in the larger centers of population, for Table 7 indicates that the seven counties which have more than 100,000 population each (Allen, Lake, Madison, Marion, St. Joseph, Vanderburg and Vigo) have more than 40% of the population yet less than 30% of the commitments.

The examples cited above point out to this writer a disparity among the counties for which no ready explanation is available. It does seem to indicate that serious study ought to be given to the county-by-county understanding and use of the law by the courts and by the legal profession.

12. During the debate on the bill during the 1949 legislature an amendment was introduced to provide for one physician and one psychiatrist to be the examining doctors. This amendment failed and the bill passed with the provision noted above.

13. IND. ANN. STAT. § 9-3404 (Burns 1955).

14. IND. ANN. STAT. § 9-3405 (Burns 1955).

15. IND. ANN. STAT. § 9-3406 (Burns 1955).

sion and also maintained that he was completely innocent. He said that he left school in the 12th grade but never went to high school—an obvious lie. Also stated he was 21 when he quit school. Other statements of his were vague, contradictory and apparently false.

I also reviewed the signed statement he had made previously. It is my opinion that Mr. D is a confirmed sexual pervert of many years duration, a sexual psychopath, hardened liar and a high grade moron. He is a menace to society. However, since he has no desire to be helped or cured I doubt whether psychiatric treatment will be of any benefit. He is a misfit in society.

(2) I examined D at ——— County jail on 3/10/55. His statement to me was as follows:

While sitting on a toilet in the NYC depot at ———, Ind., he fell asleep at 7:30 p. m. He was arrested by NYC police while in the toilet. Three hours later while walking on the streets of ——— he was arrested by the ——— police, taken to the station and under force (by club and fist) forced to sign a confession of his guilt of sodomy.

He said there were no witnesses or no complaint filed to his knowledge and that he was railroaded into signing the paper.

He stated that he was 33 years old, unmarried and not regularly employed. He said he went to school for 12 grades but never went to high school and that he quit school when he was 22 years of age.

His whole story was fantastic and I considered him a chronic liar.

In my opinion there is no cure for this man and he should be sent to prison rather than a hospital for treatment.

It should be noted that in *neither* of the reports which have appeared above is there evidence that the examining physician administered psychological tests, projective techniques, neurological tests, or any of the factors which would ordinarily be considered in a psychiatric workup,¹⁶ yet it is on the basis of such reports that individuals are removed from society and deprived of their liberty.¹⁷

16. See DAVIDSON, FORENSIC PSYCHIATRY, Ronald Press Co. N.Y.C., N.Y., 1952, for an excellent outline of a psychiatric examination for use in providing expert testimony.

17. The statute does not fix the fees to be paid examining physicians in such cases, so it cannot be argued that this type of examination is all that can be expected for the fee established, as is frequently heard in the matter of insanity inquests.

While it is not suggested that the courts be bound by the recommendations of the examining physicians and give up their judicial prerogatives it does appear that there has been less than full understanding of the meaning of the reports by the courts. This is particularly true in relation to the statute's exclusion of feebleminded persons.

The following are the two exemplary physicians' reports.¹⁸

(1) V was given a mental examination at the county jail on this date. In my opinion V is FEEBLE-MINDED.

V attended school in an ungraded room until the age of sixteen. However, he did not learn to read or write. He can barely write his name, and other efforts in this direction are ineffectual. His factual knowledge is extremely limited; judgment and reasoning are nil. He does not have a clear concept of the charge against him and it would not be possible for him to assist in his own defense with good judgment. It is impossible for him to solve simple problems requiring any degree of reasoning.

I am informed that this man performs indecent sexual acts in public. In spite of having been sentenced twice previously for the same acts, he persists in his same satisfactions without having learned anything from his past punishments. This inability to learn is highly characteristic of feeble-mindedness. I do not believe this man is criminal or highly abnormal sexually. I believe that his feeble-mindedness precludes normal outlets for sexuality, unable to learn from past experiences, he persists in repeating acts stupidly that an intelligent person would realize to be wrong.

It is unfortunate that this man had not been committed to an institution for the feeble-minded in the past. Not having the intelligence to get along in society, he is bound to get into trouble. This man needs institutional supervision, and he does not deserve any punishment. In fact, punishment has been proved useless.

(2) A mental examination of V was made at the County jail under date of April 25, 1952. The findings in this examination were practically the same as those of the examination made for the Court on August 10, 1951.

This man is feebleminded with a mental age between an

18. Identification of courts, physicians, and patients has been removed. These can be identified for purposes of research by contact with the Division of Mental Health.

imbecile and a moron. He began school at the age of six and continued until the age of sixteen, never passing from the ungraded room. His fund of school and general knowledge is very poor. Comprehension and general performance is poor.

It is my opinion that he does not have sufficient comprehension to understand the court proceedings or enough will-power to control his sexual impulses, nor does he have any foresight of the consequences of his anti-social acts.

In spite of testimony to the effect that the defendant was feeble-minded, the court held him within the provisions of the statute.¹⁹

In another case, *three* physicians examined a man accused of masturbating in his car and all of them stated that the man was not a criminal sexual psychopath or that such psychopathy was not present. Two physicians, one of them a qualified psychiatrist, recommended that therapy be instituted on an out-patient basis. Despite these reports, the man was institutionalized at a state mental hospital where he remained for three months. At the end of that period he was discharged after a report to the court that the man had fully and permanently recovered from his criminal sexual psychopathy—a psychopathy from which he never suffered!

The statute provides for commitment to the Indiana Council for Mental Health for the purpose of confinement "in an appropriate state institution under their jurisdiction until such person shall have fully and permanently recovered from such criminal psychopathy."²⁰

Of the total 160 persons committed under the statute during the 7 years it has been in force, 56 are currently in Indiana's mental hospitals. Of the 104 who are not within the confines of such institutions eight remain on escape status.²¹ Two persons died at the institution, one by suicide, 38 have been discharged by the courts and 56 are on parole status. It should be pointed out that there are in the institutions at the time of the cutoff date of this study, 9 persons who had been paroled but who had been returned from such paroles to the institutions.

Of the 94 persons released from the institution, 40% received discharges from the courts. Of the total 103 persons released at one time

19. The hospital diagnosis of Mental Deficiency following his admission confirmed the results of these examinations.

20. This is somewhat modified, however, by section 7 of the law which gives the right to the Council to release such persons on parole under such conditions as the Council deems meritorious. IND. ANN. STAT. § 9-3405 (Burns 1955).

21. One is known to be serving a sentence of 1-10 years at the Indiana State Reformatory for assault and battery with intent to commit rape, one is serving a similar sentence at the Indiana State Prison, and a third is serving out two concurrent terms of 50-75 years in the Illinois State Penitentiary for armed robbery.

or another other than by death or escape, the total time spent under the jurisdiction of the Council ranged from 0 days²² to more than 6 years.

Table 8 sets out the periods spent under jurisdiction of the court and on parole for persons discharged and for persons released for reasons other than death or escape.

TABLE 8

Total Time under Jurisdiction of the Court, and Total Time Spent on Parole of Persons Discharged as Criminal Sexual Psychopaths and Total Time Spent in Institutions Prior to the Last Release other than Death or Escape—4-25-49 to 5-29-56

	0	1-30	31-60	61-90	91-180	181 d. 365 d.	366 d. 18 mo.	18m.+1 2 yrs.	2 y.+1 3 yrs.	3 y.+1 4 yrs.	4 + 1 5 yrs.	5 + 1 5 yrs.	6+
<i>Persons Discharged by the Court</i> (38)													
Total time under jurisdiction of Court	1	0	0	1	2	2	6	6	5	10	4	0	1
Total Time on Parole prior to Discharge	17	0	1	0	1	2	2	8	3	4	0	0	0
<i>Persons Released from Institutions for reasons other than Death or Discharge</i> (103)													
Time spent in institution prior to last release	1	0	0	2	7	16	28	18	15	13	2	0	1

Some facts that may be derived from this table present striking incongruities. For example, of the 38 persons discharged, 17 were discharged by the court directly from the institution with no trial or parole period of testing. Obviously, these discharges were granted upon the certification of the superintendent of the hospital that the patient had fully and permanently recovered from his psychopathy, which was ascertained, so it seems, without such trial period. Half were on parole six months or less. On the other hand, there seems to have been a very conservative view in granting a release from the hospital for in almost 80% of the cases ultimately released, the patient remained in the custody of the institution for a year or more.

22. The case of a man who had been found to be a CSP but for whom there was too great a delay in the issuance of a confinement authority with the result that the court discharged him.

It would appear from the discharge figures that the courts are more willing to grant an absolute discharge direct from the hospital than the hospital is willing to grant paroles after short stays.

Perhaps the most difficult function which is performed in the administration of the statute is that of discharging the patient from the jurisdiction of the court.²³ The criminal sexual psychopath is to be confined in an institution under the Council for Mental Health "until such person shall have *fully and permanently recovered*. . . ."²⁴ This means that the superintendent of the institution of confinement, or a responsible physician having knowledge of the case must certify to that effect. This is like asking a physician to certify that a patient has *fully and permanently recovered* from tuberculosis, cancer, or a common cold.

The net result of this requirement is either an invitation to ignore professional integrity and give an unequivocal answer where equivocation is deserved and proper, or deny discharge and keep the individual living under a cloud.

The 38 men discharged over this seven year period were originally charged with a wide variety of crimes. There seems to be no correlation between the discharge and the severity of the charge originally made. The charges and the number of discharges are as follows:

23. The right to release on parole persons adjudged under this statute is vested in the Council for Mental Health in its discretion, but the authority to discharge the patient or effect his final release remains with the court. Upon the filing of such petition, the court *shall* conduct a hearing to determine whether or not the patient's recovery has been effected. If the finding is positive, the court is obliged to discharge the person from the custody of the Indiana Council for Mental Health. If not, ". . . then the court shall order such person to be returned to the custody of the Indiana Council for Mental Health to be held under the previous commitment . . ."

A minimum of one examination each year by two physicians who must report their findings to the court is prescribed as long as the person remains in the custody of the Council. These examinations are available to either the committed person's attorney, the prosecutor or the court in any hearings in connection with a petition for discharge.

24. IND. ANN. STAT. § 9-3408 (Burns 1955). The statute is not altogether clear about where the burden falls for initiating discharge proceedings, requiring merely that a petition be filed with the Clerk of the court setting forth facts showing that recovery has taken place. It is not clear as to whether this petition is to be filed by the criminal sexual psychopath, the Mental Health Commissioner, the prosecutor, or some other person. This has been a problem in the case of indigent persons who do not have sufficient economic resources to have the necessary petition drawn and presented to the court in their behalf. Inasmuch as the finding of criminal sexual psychopathy acts as a bar to further trial on the original offense with which the individual stood charged, it is doubtful whether the Public Defender Statute would apply. IND. ANN. STAT. § 9-3501 (Burns 1955).

TABLE 9

Original Charges Against Criminal Sexual Psychopaths Committed between 4-25-49 and 5-29-56 Who Were Ultimately Discharged by the Court

Sodomy (Children under 16 Years)	9
Sodomy (Persons 16 Years and Older)	6
Public Indecency	6
Assault and Battery with Intent to Commit Rape	3
Assault and Battery with Intent to Commit a Felony	3
Molesting Children	2
Contributing to the Delinquency of Minors	2
Rape	1
Arson	1
Petit Larceny	1
Kidnapping	1
Unnatural Sex Acts with Wife	1
Incest	1
Burglary	1
Total	38

It has been shown that the Indiana statute has been applied sparingly in its 7 years of existence and has not been uniformly utilized by the courts. The courts' chief failure lies in their misuse of expert testimony submitted by physicians who examined alleged criminal sexual psychopaths. The physicians have made administration more difficult by failing to make full psychiatric and neurological examinations. Also, the discharge provision of the statute obliges physicians to make a prognosis of full and permanent recovery which is a psychiatric impossibility.

In light of these objections, it is suggested that the problem be re-evaluated by a legislative commission utilizing the services of an advisory board comprised of both psychiatrists and attorneys. The committee should address itself to the following questions: (1) Is commitment to a mental hospital, probation or confinement in a penal institution adequate to meet the problem, i.e., is there a need for a special statute? (2) If a special statute is necessary, careful consideration should be given to the types of offenses it should include. (3) The conditions underlying discharges should be examined so that the present unrealistic demand for full and permanent recovery will not obtain.

Because the entire problem of sexual deviation is so emotionally charged, there has been universal difficulty in attempts to deal with it under our legal framework. Of course, as in all crime, the best solution is prevention. Undoubtedly the attachment of psychiatrists to the courts, especially juvenile courts, or the provision of funds to provide adequate psychiatric diagnosis and, where necessary, treatment, would be of inestimable value. The provision of adequate probation services, including psychiatric treatment, would retain a substantial number of sex deviates

This chart represents a summary of the more important provisions of CSP laws in the various states.

State	Statute	Definition of Criminal Sexual Psychopath	Names of Offenses	When Imposed	Petition by	Qualifications of Examiners	Compulsory Answer to Examiners' Questions	Evidence Admissible in Hearing	Jury Trial at Hearing	Who Determines Cost
Ark.	Code Ann. § 9-3-201 et seq. (1937)	Over 16, it is sufficient from men- strual disorder, but which does not pre- vently to commit sex offenses	Criminal sex offense	Convicted, not sentenced	Attorney General or solicitor who prosecuted	2 psychiatrists, 3 years waiting experience	No opinion	Physician's report and record of any previous convictions	No	Court
Cal.	Welfare & Inst. Code § 2600 et seq. (1952)	Subject from mental disease, or has such personality or sex drive that he is likely to commit sex offenses	Sex offense	Convicted, sentenced or not sentenced, or no crime charged	Court, prosecuting attorney or someone on behalf of defendant	2 or 3 psychiatrists with related experience, including 1 from state hospital	No opinion	Psychiatrist's testimony at hearing and report of hospital or State (\$)	At 1st hearing on demand(s)	Court or jury
D.C.	Code Ann. § 22-203 et seq. (1933)	All crimes except rape or seduction with intent to marry	Convicted, sentenced or not sentenced, or no crime charged	U.S. Attorney for D.C. (f)	Mandatory unless sex psychiatrist reports del. if not CSP	2 qualified psychiatrists	Yes	Record of prior, conditions tending to have CSP reports at hospital	On demand	Court or jury
Fla.	Stat. Ann. § 817.01 et seq. (1955)	Mental disorder with criminal propensities to commit sex offenses	Sex offense	Convicted, sentenced or not sentenced, or no crime charged	State Attorney or someone on behalf of defendant	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of crime with sex motivation	On demand	Court or jury
Ill.	Ann. Stat. c. 38, § 282.01 et seq. (1956)	Mental disorder with criminal propensities to commit sex offenses	Sex offense	Convicted	County Attorney	2 psychiatrists licensed in Illinois with 5 years waiting ex- perience	No opinion	Physician's testimony and evi- dence of prior convictions of offenses	On demand	Court or jury
Iowa	Code Ann. § 223A.1 et seq. (1955)	Mental disorder, not feeble-minded or insane, having criminal propensities to commit sex offenses and confounded delin- quency to others	Sex offense	Convicted, not sentenced	County Attorney	Physician (No specific number mentioned)	No opinion	Physician's testimony and evi- dence of prior convictions of offenses	On demand	Court or jury
Kan.	Gen. Stat. § 62-1534 et seq. (1955)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists	No opinion	No hearing, report allowed for guidance of court	No	Court
Minn.	Ann. Stat. c. 261, § 118A et seq. (1954)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists	No opinion	No hearing, report allowed for guidance of court	No	Court
Miss.	Stat. Ann. § 24-69 et seq. (1957)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Mo.	Ann. Stat. § 557.01 et seq. (1954)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Neb.	Rev. Stat. § 39-201 et seq. (1956)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
N.H.	Rev. Stat. Ann. § 773.1 et seq. (1955)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
N.J.	Rev. Stat. § 26-10.1 et seq. (1956)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Ohio	Rev. Code § 5137.01 et seq. (1953)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Pa.	Stat. Ann. tit. 19 § 1105 et seq. (1955 Supp.)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Utah	Code Ann. § 77-6A.1 et seq. (1953)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Vt.	Rev. Stat. § 4999 et seq. (1957)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Wash.	Rev. Code § 31.65.010 et seq. (1953)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Wis.	Stat. § 99A.15 (1953)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury
Wyo.	Comp. Stat. Ann. § 10-301 et seq. (1955 Supp.)	Sexually ill or mentally deficient as to make it advisable to commit sex offenses	Sex offense	Convicted, not sentenced	County Attorney	2 psychiatrists with 5 years waiting experience	Yes, but no violation of rights against self incrimination	Psychiatrist's report and record of prior convictions of offenses	On demand	Court or jury

1. If the report from the Massachusetts treatment center bears, clearly that the defendant is a CSP under the act, the State, in Massachusetts, a psychiatric hospital, the treatment center, may be returned to custody by court which committed him under 22C, but only on petition after notice and hearing as provided by such article." Op. Atty. Gen. However, the New Hampshire Commission of Mental Health may parole with approval of the committing court, for one year at a time, any CSP committed to its custody upon a finding that the CSP is improved so as to be safer in the State. In Washington if a CSP, committed to a center, is certified by the Hospital Superintendent to be safe to be at large in a great institution. If the CSP is certified to be safe to be at large after the maximum sentence has been served, the Hospital Superintendent may parole him on such terms as he deems advisable. The Hospital Superintendent may also parole a CSP on such terms as he deems advisable, provided that the CSP has been convicted of a crime. However, upon request of the Department of Public Welfare, a court hearing will be held and the court may order further detention, if it is shown that discharge would be dangerous to the public. If

APPENDIX

It was compiled by William R. Pritchard and W. Gordon Iler II, students at the Indianapolis Division of the Indiana University Law School.

Mandatory or Discretionary Hospitalization	Duration of Hospitalization	Reviews	Recovery Directed by	Recovery Hearing Initiated by	Jury Trial or Recovery	Subsequent Court Action
Mandatory	Until fully recovered	Yearly, by 2 qualified physicians	Court	Petition	No hearing	None
Mandatory	Until fully and permanently recovered or no benefit from treatment	No hearing	Court	Petition	No	Prohibition when recovered. Can be recommenced for public safety. If violation, return to court for appropriate action. Can parole or restore.
Mandatory if will benefit from treatment	Indefinite	Periodic reports on court motion or petition on behalf of defendant	Hospital Supt. & Court(s)	No hearing(s)	No	Return to court for appropriate action. Can parole or restore.
Mandatory	Until recovered	Yearly by 2 staff physicians who report to court	Court	Petition	On demand	Act opposite only at stay of any order on writs or motions
Mandatory	Until recovered	Yearly by 2 staff psychiatric physicians report to court	Court or jury	Petition	On demand	None
Mandatory	Until recovered	No hearing	Court	Petition	No hearing	No motion
At discretion of court may be parole or try on charge	Until release if not incompetent with public welfare	Yearly with report to court	Court or jury(s)	Petition	On demand	No motion
At discretion of court, if report shows it is advisable	Until further Court order and defendant appears recovered mandatorily	No hearing	Court	No motion	No	May be sequestered or paroled
Mandatory	Not in excess of sentence for the crime (f)	Yearly	Court or jury	Petition by CSP or someone in his behalf, mandatory near end of sentence	Yes	None if released, then sentence order, but recovery amount obviates sentence
Mandatory	Recovered	Yearly, by 2 psychiatrists	Court or jury	Petition	On demand	None
No motion	Until released by court and not dangerous	No hearing	(g)	(g)	No motion	Summary action on defense to criminal charge
Court may commit or try on charge	Until release and incompetent with public welfare	Periodic with report to court at least yearly	Court(s)	Petition	Court may grant request of attorney	Summary action on defense to criminal charge
Mandatory	Until release by court	No hearing	Court	Recommendation of Hospital Superintendent	No	None, where action under statute is not based upon criminal charge
Mandatory	Until recovered or no longer benefiting and not dangerous	Periodic with yearly report to court	Court(s)	Recommendation of Superintendent or petition by CSP or attorney	No	None
Court may commit or try on charge	In no event longer than period provided by law for such treatment	Statistical report to Commission of Institutions	Parole Board	No hearing, No Special Parole Board recommendation petition	No	None
Mandatory unless no facilities available	Indefinite period	No hearing	Director of Public Welfare or Court	Recommendation of Superintendent	No	If CSP has been in institution for 60 days, may be released for offense, may be paroled but if not, must be kept in period of parole
Discretionary	Indefinite, Minimum 1 day—Maximum life	Statistical examination of records by Parole Board	Director of Public Welfare or Court	No hearing	No hearing	None
Mandatory, if report shows CSP	Life unless paroled or paroled	No hearing	Parole or paroleing authority	Certificate of Hospital Superintendent	No hearing	None
Mandatory to commit to institution specified by commissioner	Until mental condition is no longer menace to public	No hearing	Court	No hearing	No hearing	Required to court of condition for sentencing upon release
Mandatory	Until safe to be at large	No hearing	Hospital Superintendent(s)	No hearing	No hearing	None except if no motion filed, see bill, there must be bill
Discretionary to commit or not on probation with outpatient treatment	Until no longer dangerous, but not before 2 years, if completed treatment	Periodic, but at least yearly	Department of Welfare(s)	(f)	No hearing	None
Discretionary to commit or not on probation with outpatient treatment	Indefinite, but in no event longer than maximum sentence for crime	Statistical with report to court	Court after affirmative recommendation by hospital	Recommendation of hospital in report	No hearing	None

Further control is ordered, there must be a new hearing on the question of release at least every five years and the Commission of Institutions must be notified. In the case of the State of Oregon, the Commission of Institutions, which has jurisdiction over the State Hospital, has made provisions for special handling of CSP's. The Oregon, South Dakota and Virginia, which provide a further hearing, listed set criteria for consideration of release by the court to order commitment of persons acquitted of any crime, when it believes the commitment was warranted by the conviction. See, for example, Oregon, § 127.113 et seq. (1953), and Virginia, Code § 1-1777 (1953), which provide for the commitment of persons convicted of an offense, who are found to be dangerous to the public. See also, Virginia, Code § 1-1777.2 et seq. (1955 Supp.)

in the community, under conditions which would oblige them to conform to the demands of society. These alternatives and suggestions would do far more toward meeting the original objectives than the present statute.

The conclusions drawn by Frederick J. Hacker and Marcel Frym concerning a similar statute seem appropriate.²⁵

“ . . . this legislation has neither in practice nor in theory lived up to the high expectations attached to it at its inception. This conclusion appears inevitable, notwithstanding the fact that in Southern California, where our observations have taken place, sex offenders have been interned in an excellent state institution administered by highly qualified psychiatrists under the guidance of an outstanding, unusually humane, and understanding superintendent. Even the high professional and human caliber of the medical administrators of this act has not significantly mitigated the shortcomings intrinsically contained in this legislation. . . .

The sexual psychopath legislation has actually only aggravated the existing hardships and made reform doubly necessary. Repeal of the act would at least have the advantage of discontinuing the deception of the community and ‘experts’ who believe that the long-needed reform in regard to sex crimes has already taken place. With such repeal, increased attention in the near future to new legislation concerning *all* mental diseases, aberrations, and defects is most earnestly urged.”

25. Hacker and Frym, *The Sexual Psychopath Act in Practice: A Critical Discussion*, 43 CALIF. L. REV. 766, 767, 780.