

# SEX OFFENDERS

A Report

of the

JOINT STATE GOVERNMENT COMMISSION



to the

GENERAL ASSEMBLY

of the

COMMONWEALTH OF PENNSYLVANIA

SESSION OF 1951

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended 1939, June 26, P. L. 1084; 1943, March 8, P. L. 13, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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## LETTER OF TRANSMITTAL

*To the Members of the General Assembly of the Commonwealth of Pennsylvania:*

The survey of the sex crime problem was initiated by the Joint State Government Commission under the authority granted by Act of 1937, July 1, P. L. 2460, as amended 1939, June 26, P. L. 1084, Section 2.

To facilitate the survey, the Commission, in accordance with Act of 1943, March 8, P. L. 13, Section 1, created a subcommittee on sex offenders. The cooperation of the members of the subcommittee is gratefully acknowledged by the Commission.

Herewith is reported a review of the experience of other states which have experimented with new legislation in this field; a summary of the sex offender studies published in 1950 by the states of New Jersey and New York; and relevant Pennsylvania facts.

BAKER ROYER, *Chairman.*

*Joint State Government Commission  
Capitol Building  
Harrisburg, Pennsylvania*

# CONTENTS

|   | <i>Page</i> |
|---|-------------|
| SUMMARY OF FINDINGS .....   | 1           |
| RECOMMENDATION .....  | 2           |
| SECTION I. INTRODUCTION .....   | 3           |
| SECTION II. PENNSYLVANIA: STATUTORY PROVISIONS<br>AND CRIME RATES .....       | 7           |
| A. Statutory Provisions Relating to Sex<br>Crimes or Sex Criminals .....      | 8           |
| B. Arrest and Conviction Rates .....  | 12          |
| SECTION III. NEW YORK AND NEW JERSEY: SUM-<br>MARY OF COMMISSION REPORTS .... | 15          |
| A. Extent of Sex Crimes .....   | 15          |
| B. Characteristics of Sex Offenders ...                                       | 16          |
| C. Possibility of Curing Sex Offenders .                                      | 18          |
| D. Administrative Experience Under<br>State Sex Offender Laws .....           | 19          |
| E. Recommendations .....  | 22          |

## LIST OF TABLES

|  | <i>Page</i> |
|--|-------------|
| Table I. Conviction Rates Per 100,000 Population for All Crimes Collectively, Sex Crimes, and Rape in Pennsylvania, 1939-49 . . . . .        | 12          |
| Table II. Convictions for Sex Crimes Collectively and for Rape as a Percentage of All Criminal Convictions in Pennsylvania, 1939-49 . . . .  | 13          |
| Table III. Conviction Rates Per 100,000 Population for All Crimes Collectively, Sex Crimes, and Rape in Pennsylvania by Region, 1949 . . . . | 14          |
| Table IV. Recidivism in Relation to Indictable Crimes  | 17          |

## SUMMARY OF FINDINGS

I. A survey discloses more than a dozen states which have recently experimented with new legislation aimed at the sex offender. In 1950, the state of New Jersey published a comprehensive study, "The Habitual Sex Offender." Also, in 1950, the state of New York published its "Report on Study of 102 Sex Offenders in Sing Sing Prison."

II. Generally, (a) statutes which authorize commitment of persons not charged with, or convicted of, crime are ineffectual; (b) the New Jersey and New York recommendations contemplate confinement only after conviction for a criminal offense.

III. In Pennsylvania, the conviction rate for all sex crimes combined, per 100,000 population, has decreased from 20.2 in 1939 to 17.0 in 1949; the conviction rate for rape, both common law and statutory, has decreased from 3.7 in 1939 to 1.8 in 1949.

IV. Five Pennsylvania statutes deal specifically with the problem of sex offenders and potential sex offenders. These statutes are:

A. The School Code (1949, March 10, P. L. 30, as amended), which provides for sex instruction in the public schools, examination and the establishment of special classes for exceptional children;

B. The Mental Health Act (1923, July 11, P. L. 998, as amended), which provides for confinement and treatment of the mentally ill, including sex offenders;



C. The Penal Code (1939, June 24, P. L. 872, as amended), which provides for the punishment of those found guilty of specified sex crimes;

D. The Greenstein Act (1933, May 2, P. L. 224, as amended), which permits judges to defer sentence of any person until such person has been examined by psychiatrists and permits commitment of a person not insane but mentally ill to State or county institutions established for the purpose;

E. The Classification Act (1945, May 15, P. L. 570), which permits the Department of Welfare, with the approval of the Governor, to set up a Correctional, Diagnostic and Classification Center. Although authorized by the General Assembly in 1945, the classification center has not yet been established. If and when such classification center is established, Pennsylvania institutions will be adequate to deal with the problem of the sex offender.

## RECOMMENDATION

The Joint State Government Commission recommends the immediate establishment of the Pennsylvania Correctional, Diagnostic and Classification Center authorized by the General Assembly in 1945 (1945, May 15, P. L. 570), and reorganization of institutional facilities for the purpose of segregating sex offenders.

## Section I

# INTRODUCTION

In the past decade, public opinion, aroused by crimes which allegedly had sex motives, has insisted upon the review of existing law covering such crimes.

Historically, sex offenders were dealt with under the penal laws which provided punishment and made no attempt at rehabilitation or treatment of convicted offenders. More recently, statutes providing for clinical treatment of convicted sex offenders have been passed. In some states, legislation, which permits a sex offender's commitment to an institution without charge or conviction, has been adopted.

Legislation dealing with sex offenders is, then, of the following three major types:

- (1) statutes which provide for punishment, without treatment, of convicted sex offenders;
- (2) laws which provide for clinical treatment and rehabilitation of persons convicted of certain crimes, including sex offenses;
- (3) legislation which permits institutionalization of persons with abnormal sexual tendencies, whether or not they have been charged with or convicted of a crime.

The first type of legislation makes certain sex offenses crimes and provides for the payment of a fine by and/or imprisonment of one convicted of the crime. An example of this type of legislation is Pennsylvania's Penal Code (1939, June 24, P. L. 872, as amended).

A New York law which became effective April 1, 1950, illustrates the second category of legislation. It provides for clinics to which would be sent for study and treatment all criminals who had been given an "indeterminate sentence," which may run from a minimum of one day to a maximum of life confinement. The laws concerning certain crimes, including certain sex offenses, were amended to give the judge the discretion of sentencing the convicted person as heretofore or to an indeterminate sentence. Any person convicted of one of the enumerated crimes is to be sentenced only after a psychiatric examination, the results of which are to aid the judge in passing sentence.

Pennsylvania's Greenstein or Psychiatrists' Act (1933, May 2, P. L. 224, as amended) and the Classification Act (1945, May 15, P. L. 570) are also examples of this type of legislation.

Four states (Massachusetts, Minnesota, New Hampshire, Wisconsin) and the District of Columbia have sex offender legislation of the third type, which permits institutionalizing a person who fits into the definition of "sexual psychopath," whether or not he has been charged with a crime. According to the Wisconsin definition a "sexual psychopath" is a person who is

"Irresponsible for sexual conduct and thereby dangerous to himself and others because of:

1. Emotional instability; or
  2. Impulsiveness of behavior; or
  3. Lack of customary standards of good judgment;
- or
4. Failure to appreciate consequences of acts; or
  5. Combination of the above."<sup>1</sup>

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<sup>1</sup> From chart facing page 68, New Jersey Commission, *The Habitual Sex Offender*, 1950.

Proceedings against the person, under these statutes, are instituted by the District Attorney, or comparable official, who, acting on information received by him, at his discretion files a petition with the county court. The petition must be executed and verified by an individual with personal knowledge of the facts. The court then holds an inquiry, at which the accused may offer evidence in his own behalf, orders the accused to be examined by two physicians, and, if justified by the findings, orders commitment to a mental hospital.

In this connection, it may be noted that, although Pennsylvania's Mental Health Act<sup>2</sup> contains comparable provisions relating to the confinement of the insane, both definition and diagnosis of insanity are on a more secure foundation than the definitions and diagnoses of the so-called "sexual psychopath." At the present state of knowledge "sexual psychopathy" is but a vague concept. In addition, it should be observed that precedent established in connection with the confinement of the insane has developed in a climate of opinion that placed a high value upon the civil liberties of the individual.

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<sup>2</sup> A proposed codification of the Mental Health Laws will be submitted by the Joint State Government Commission to the General Assembly of 1951.

## Section II

### PENNSYLVANIA: STATUTORY PROVISIONS AND CRIME RATES

In Pennsylvania, the legislative attitude toward offenders, including sex offenders, has changed over the years. Increasingly the emphasis has shifted from simple confinement of a convicted offender to confinement supplemented by treatment. However, unlike some few other states—Massachusetts, Minnesota, New Hampshire, Wisconsin—whose experiences to date are not encouraging, Pennsylvania statutes, except in the case of the insane, do not provide for the confinement and treatment of a person on the mere suspicion that he may at some time in the future commit an indictable offense.

Pennsylvania statutes which deal with sex offenders are:

1. The Penal Code (1939, June 24, P. L. 872, as amended)—revision of the Penal Code is currently being prepared by the Joint State Government Commission; this revision, The Crimes Act, will be submitted to the General Assembly in 1951.

2. The Greenstein or Psychiatrists' Act (1933, May 2, P. L. 224, as amended).

3. The Mental Health Act (1923, July 11, P. L. 998, as amended)—the mental health laws are currently being codified by the Joint State Government Commission for submission to the General Assembly of 1951.

4. The Classification Act (1945, May 15, P. L. 570).

5. The School Code (1949, March 10, P. L. 30, as amended).

### **A. *Statutory Provisions Relating to Sex Crimes or Sex Criminals***

The Penal Code of Pennsylvania defines sex offenses and provides for terms and fines for sex offenders which range from six months for the offense of advertising an indecent show to life imprisonment or death for rape which results in murder, and fines of from \$300 to \$10,000.

The proposed Crimes Act, to be submitted to the General Assembly of 1951, increases penalties for sex crimes in a uniform manner. Under this act, fines are increased, to a maximum of \$20,000, and prison terms, aside from those for offenses which carry a life imprisonment or death penalty, range to a maximum of twenty years; in all cases, either a fine or prison term, or both, may be imposed. In addition, the proposed Crimes Act of 1951 provides penalties for offenses not included in the present Penal Code. For example, it recognizes as crimes indecent assault and contributing to the delinquency of a minor, and provides in either case a maximum penalty of \$3,000 or a prison term of three years, or both.

The Greenstein or Psychiatrists' Act gives the judge the power to defer the sentence of a person convicted of any offense until the report of a mental examination of the defendant has been secured. If the psychiatrists' report shows that the defendant "though not insane is so mentally ill or mentally defective as to make it advisable for the welfare of the defendant or the protection of the community that he or she be committed to some institution other than the county prison, workhouse or a penitentiary" the judge may commit the defendant to "a state or county institution . . . until further order of the court." An appeal from an order of commitment may be made in the same manner as if the defendant had been sentenced.

The Classification Act authorized the Department of Welfare, with the approval of the Governor, to establish a correctional, diagnostic and classification center to aid in determining the mental condition of persons sentenced by the courts of the state. Every person sentenced to a "state institution," except those condemned to death and those committed as defective delinquents, would be sent to the center. Every person sent to the classification center would be diagnosed, classified and transferred to the appropriate institution either for service of sentence or for custody as a defective delinquent, which is defined as a person "mentally defective who has criminal tendencies, which may or may not be coupled with mental instability." To date such a center has not yet been established. The Secretary of Welfare, under date of April 25, 1950, has advised the Joint State Government Commission that "It is the hope of this Department that before long we may be able to activate the program in our penal division along the lines laid out by the last [sic] legislature, i.e., the establishment of a receiving and classification center to which all adult prisoners would be sent."

The Mental Health Act<sup>3</sup> provides for commitment to a mental institution of a person acquitted of crime because of insanity, a person charged with a crime who, upon appearance before the court, appears to be "in such condition as to make it necessary that he be observed or cared for in a hospital for mental diseases," and of any person detained in any penal or correctional institution for any reason who, in the opinion of a responsible person, is in such a condition as to make it necessary that he be cared for in a mental hospital. The Act provides further that "any person who is mentally ill may be placed and detained in a hospital for

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<sup>3</sup> 1923, July 11, P. L. 998, amended 1937, May 28, P. L. 973 and 1938, Spec. Ses., October 11, P. L. 63.

mental diseases by order of the court of common pleas or other court of record of the county in which the said person resides, or of any law judge of said courts, upon a sworn or affirmed application by any responsible person addressed to said courts or judge, which application shall be accompanied by a sworn or affirmed certificate of two qualified physicians.”

The Pennsylvania School Code<sup>4</sup> provides for the teaching of health and physical education and of physiology and hygiene in the public schools of the Commonwealth. The Code further provides for examination of children of compulsory school age of apparent exceptional mental or physical condition by mental clinics, psychiatrists, psychologists or psychological examiners and other experts which the child's condition may necessitate and provides for the education of such children in special classes or special institutions. Reimbursements are provided for school districts which provide such special education as long as it is approved by the State Council of Education. Under the School Code, the appointment of supervisors of special education is provided. It is the duty of these supervisors to examine and investigate the abilities, disabilities and needs of the exceptional children in the schools and to make recommendations concerning the instruction of such children and to supervise their instruction.

At present, sex education is offered in many school districts in the form of lectures and films. To date some twenty mental clinics have been approved by the State Council of Education.

In addition, the Administrative Code, in Section 1307(f) places upon the State Council of Education the power and duty of taking such action as it may deem necessary and ex-

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<sup>4</sup> 1949, March 10, P. L. 30, as amended.



pedient to promote the physical and moral welfare of the children in the public schools.

It may be noted that Pennsylvania statutes, except the School Code and the Mental Health Act, which have a bearing upon the problem under review, provide for confinement and/or treatment of sex deviates only if and when such deviates have been charged with or found guilty of a crime. None of the statutes contemplate the confinement and/or compulsory treatment of sex deviates on the theory that they, at some future date, may commit a sex crime or a sex-motivated crime.

It requires no labored demonstration to show that any statute which restricts a citizen because he does not conform constitutes an impingement of his civil liberties and an abrogation of constitutional guarantees.

However, all basic political precepts aside, the evidence strongly indicates that any statute which contemplates the observation, confinement and treatment of sex deviates on the theory that they are predisposed to commit sex crimes or sex-motivated crimes cannot be administered. Some states—Massachusetts, Minnesota, New Hampshire, Wisconsin—have made the attempt and failed. The experience of others aside, the dimensions of the administrative problem that would have to be faced should the Commonwealth contemplate systematic identification, confinement or compulsory treatment of a person who may at some future date commit a sex crime or sex-motivated crime can be approximated on the basis of the following data.

According to the Kinsey estimate (see page 15), at least two-thirds of all American males engage in "perverse" sexual behavior at some time between adolescence and old age. Of Pennsylvania's total population of 9,900,180 in 1940, there were 3,413,655 males from 15 to 64 years of age. According

to Kinsey's estimate, therefore, there were at least 2,275,760 male sexual deviates in Pennsylvania in 1940. As of August, 1949, there were 202 psychiatrists in this state who were members of the American Board of Psychiatry and Neurology.

## B. Arrest and Conviction Rates

TABLE I

Conviction Rates Per 100,000 Population<sup>1</sup> for All Crimes Collectively, Sex Crimes, and Rape<sup>2</sup> in Pennsylvania, 1939-1949

| <i>Year</i>             | <i>All Crimes</i> | <i>All Sex Crimes</i> | <i>Rape</i> <sup>2</sup> |
|-------------------------|-------------------|-----------------------|--------------------------|
| 1939 .....              | 276               | 20.2                  | 3.7                      |
| 1940 .....              | 270               | 20.3                  | 3.2                      |
| 1941 .....              | 242               | 19.1                  | 3.0                      |
| 1942 .....              | 219               | 18.8                  | 3.0                      |
| 1943 .....              | 159               | 15.7                  | 2.3                      |
| 1944 .....              | 155               | 13.0                  | 2.1                      |
| 1945 .....              | 176               | 14.1                  | 2.0                      |
| 1946 .....              | 202               | 16.8                  | 2.2                      |
| 1947 .....              | 215               | 17.1                  | 2.2                      |
| 1948 .....              | 213               | 17.1                  | 2.3                      |
| 1949 <sup>3</sup> ..... | 220               | 17.0                  | 1.8                      |

<sup>1</sup> U. S. Census, 1940.

<sup>2</sup> Includes both common law and statutory rape.

<sup>3</sup> Eight counties not reporting; rates based on population of remainder of state as estimated August 1, 1948, State Planning Board of Pennsylvania, Department of Commerce.

SOURCE: Department of Welfare: Annual Statistical Reports.

The Pennsylvania conviction rates presented in Table I show:

1. Conviction rates for "All Crimes" "All Sex Crimes" and "Rape" were lower in 1949 than in 1939.
2. Conviction rates for rape have decreased through-

out the period 1939-1949; the rate for 1949 was about 51% of the rate for 1939.

3. Conviction rates for "all sex crimes" have increased about 22% since the termination of World War II in 1945, but the 1949 rate was still 17% below the 1939 rate.

In view of the fact that public attention has been increasingly focused upon sex crimes during recent years, it seems reasonable to infer that the decreases in conviction rates reflect decreases in offenses.

**TABLE II**  
**Convictions for Sex Crimes Collectively and for Rape**  
**as a Percentage of All Criminal Convictions**  
**in Pennsylvania, 1939-1949**

| <i>Year</i>             | <i>All Sex Crimes</i> | <i>Rape<sup>1</sup></i> |
|-------------------------|-----------------------|-------------------------|
| 1939 .....              | 7.3                   | 1.4                     |
| 1940 .....              | 7.5                   | 1.2                     |
| 1941 .....              | 7.9                   | 1.2                     |
| 1942 .....              | 8.6                   | 1.4                     |
| 1943 .....              | 9.8                   | 1.4                     |
| 1944 .....              | 8.4                   | 1.4                     |
| 1945 .....              | 8.0                   | 1.2                     |
| 1946 .....              | 8.3                   | 1.1                     |
| 1947 .....              | 7.9                   | 1.0                     |
| 1948 .....              | 8.0                   | 1.0                     |
| 1949 <sup>2</sup> ..... | 7.7                   | 0.7                     |

<sup>1</sup> Includes both common law and statutory rape.

<sup>2</sup> 8 counties not reporting.

SOURCE: Department of Welfare: Annual Statistical Reports.

Table II shows that the proportion of all convictions consisting of sex crime convictions reached a peak in 1943 and has fluctuated about eight per cent since that year. The

ratio of rape convictions to all convictions has been decreasing since 1944.

**TABLE III**  
**Conviction Rates Per 100,000 Population<sup>1</sup> for All Crimes Collectively, Sex Crimes, and Rape<sup>2</sup> in Pennsylvania, by Region, 1949**

| <i>Region</i>                         | <i>All Crimes</i> | <i>All Sex Crimes</i> | <i>Rape<sup>2</sup></i> |
|---------------------------------------|-------------------|-----------------------|-------------------------|
| Allegheny County .....                | 151               | 22.2                  | 2.0                     |
| Philadelphia County .....             | 218               | 17.6                  | 1.0                     |
| Remainder of State <sup>3</sup> ..... | 236               | 10.6                  | 2.0                     |
| Whole State <sup>3</sup> .....        | 220               | 17.0                  | 1.8                     |

<sup>1</sup> Population as estimated August 1, 1948, State Planning Board of Pennsylvania, Department of Commerce.

<sup>2</sup> Includes both forcible and statutory rape.

<sup>3</sup> Eight counties not reporting; rates based on population of remaining counties.

SOURCE: Department of Welfare, Division of Research and Statistics: Judicial Criminal Statistics from Courts of Quarter Sessions.

Table III gives conviction rates for various regions within the state during 1949. The rate of convictions for sex crimes was highest, both with respect to other regions and with respect to all convictions in the same region, in Allegheny County, and lowest in the less densely populated regions. The high sex crime conviction rate in Allegheny County may be due either to a relatively greater prevalence of sex crimes there or to a relatively greater emphasis on the enforcement of sex crime laws.

### Section III

## NEW YORK<sup>5</sup> AND NEW JERSEY:<sup>6</sup> SUMMARY OF COMMISSION REPORTS

### A. *Extent of Sex Crimes*

The frequency of sex crimes, particularly violent sex-motivated crimes, is difficult to determine due to the nonreporting of some sex crimes and to the failure to make necessary distinctions when classifying the crimes.

The New Jersey report quotes Dr. Alfred C. Kinsey as follows:

“ . . . The specific data show that *two-thirds to three-quarters of the males* in our American culture, and some lesser number of the females, engage in at least some ‘perverse’ sexual behavior at some time between adolescence and old age. One-half to two-thirds of the males engage in such behavior with appreciable frequency during some period of their lives and a fair number engage in such behavior throughout their lives.”  
(Italics supplied.)

This quotation, together with the alleged reluctance of officials to apply some of the newer legislation, indicates substantial nonreporting of sex crimes.

There has been a failure in most crime statistics to distinguish between aggressive and nonaggressive sex offenses. For example, in cases of rape a significant distinction would be between common law and statutory rape. Of 2,366 cases of rape in New York City during the period 1930 to 1939, 418 or less than 18 per cent were cases of common law rape.

<sup>5</sup> *Report on Study of 102 Sex Offenders at Sing Sing Prison*, as submitted to Governor Thomas E. Dewey, March, 1950.

<sup>6</sup> The New Jersey Commission on Sex Offenders, *The Habitual Sex Offender*, 1950.

## **B. *Characteristics of Sex Offenders***

In New York's study of 102 sex offenders convicted of serious offenses, it was found that these sex offenders were of normal intelligence but they all suffered some mental disorder though, in most cases, not sufficiently pronounced for the offenders to be adjudged mentally ill. They characteristically suffered from emotional disturbances stemming from childhood experiences. In many cases they were found to have actually or potentially dangerous attitudes of hostility or resentment against authority. Their behavior involved conflicting, vague or unconscious motives as evidenced by the inability of many to explain their crimes. Alcoholism was found to be a contributing factor in more than 50 per cent of the cases.

Because of the way the cases studied by the New York group were chosen, they cannot be considered as representative of sex offenders as a whole. However, for purposes of classification into groups which were treatable and those which were not, they were divided as follows:

1. Offenders who are predisposed to crimes of violence, are likely to commit new attacks if released, and are not treatable by present known methods ..... 18
2. Offenders who, because of personality make-up, age or alcoholism are not suitable for treatment at present and who are likely after release to continue as a danger to public morals and to women and children ..... 32
3. Offenders who, because of their treatability, could be placed in a treatment center with a good prospect of improvement before release .. 44

4. Offenders who, because of their treatability, could be released on parole, and treated on an out-patient basis ..... 8

The New Jersey commission reports that, contrary to common belief, the sex offender is not characteristically over-sexed but usually under-sexed, passive and unaggressive. Psychiatrists find among sex offenders a wide variety of psychopathic types, including neurotics, psychotics, schizoids, feeble-minded epileptics, homo-sexuals, alcoholics and many who are normal.

Repeater rates of sex offenders in terms of whether or not the offender has a past record for any crime (sexual offense or otherwise) are given in the following table taken from the New Jersey report:

**TABLE IV**  
**Recidivism in Relation to Indictable Crimes**

| <i>Crime</i>         | <i>Cases</i> | <i>Offenders</i>              |                           | <i>Offenders</i>                 |                           |
|----------------------|--------------|-------------------------------|---------------------------|----------------------------------|---------------------------|
|                      |              | <i>With</i><br><i>Records</i> | <i>Per</i><br><i>Cent</i> | <i>Without</i><br><i>Records</i> | <i>Per</i><br><i>Cent</i> |
| Abduction .....      | 63           | 34                            | 54                        | 29                               | 46                        |
| Carnal Abuse .....   | 333          | 158                           | 47                        | 175                              | 53                        |
| Incest .....         | 98           | 42                            | 43                        | 56                               | 57                        |
| Rape—Forcible .....  | 418          | 215                           | 52                        | 203                              | 48                        |
| Rape—Statutory ..... | 1,948        | 666                           | 34                        | 1,282                            | 66                        |
| Seduction .....      | 21           | 6                             | 29                        | 15                               | 71                        |
| Sodomy .....         | 414          | 173                           | 42                        | 241                              | 58                        |
| Total .....          | 3,295        | 1,294                         | 39                        | 2,001                            | 61                        |

Only 9 per cent of the total of 3,295 offenders included in the above table had prior records of sex crimes. Comparable data is not given for other types of criminals.

### *C. Possibility of Curing Sex Offenders*

The New Jersey report states that "as compared with other types of psychological and constitutional abnormality, we are peculiarly at a loss in the handling of abnormal sex offenders. Methods of effective treatment have not yet been worked out. The states that have passed special laws on the sex deviate do not attempt treatment!"

The New York report suggests a somewhat more optimistic viewpoint. "Psychiatry cannot promise to 'cure' a patient, any more than any other discipline in medicine. Sometimes it can accomplish remarkable results in removing a disorder of the personality. Often it can help a person to recognize and understand his inadequate personality and to aid him in developing constructive attitudes and modes of behavior to counteract it.

"Psychiatric treatment is as complex as human emotion itself, but it is important here in simplified form to explain what we mean by it. It is a process of emotional growth induced by a therapist, who practically assumes the role of a substitute parent or advisor, enters into a most intimate confidential relationship with the subject, seeking for patterns of conduct and unrealized motivations.

"When emotional conflicts are left unresolved in childhood and youth, they continually seek emotional expression, or an outlet, later on. Thus an emotionally conflicted person unconsciously goes through life creating situations whereby he can act out his earlier unexpressed feelings. Then he lives not in terms of adult reactions to these situations, which have become the pattern of his life, but rather continually tries to find satisfaction for earlier frustrations through his immature, fixated, and unrealistic attitudes. . . .

"The aim of psychiatric treatment of offenders therefore is to assist them in: (1) freeing themselves from



being mastered by emotions they cannot comprehend; (2) developing a social life that is satisfactory to both them and society; (3) enabling themselves to work efficiently but not compulsively; (4) overcoming their sexual immaturity so they can function on an adult level.

"Psychiatric treatment of men in prison is relatively new. It is in the early experimental stage. Any certainty as to results must await study and evaluation a considerable time after the release of treated men."

It will be recalled that 52 out of the 102 cases studied by the New York group were considered treatable at the time that study was made.

#### **D. *Administrative Experience under State Sex Offender Laws.***

Specific sex offender laws have in general been unsuccessful due to (1) the use of ill-defined terms in the legislation; (2) inadequate facilities for the diagnosis and treatment of sex offenders; and (3) inherent dangers to civil liberties in such legislation.

The New Jersey report points out that "after careful inquiry into the administrative experience that has developed under the new sex offender laws, it is apparent that they are inoperative or nearly so in most of the jurisdictions. The statute appears to be completely nullified in four states.<sup>7</sup> It has been almost completely ineffective in at least six more.<sup>8</sup> California is apparently the only state that has used its statute fairly extensively throughout the ten years of its operation: they have usually found between thirty and forty cases a year to be sexual psychopaths."

<sup>7</sup> Wisconsin, Michigan, Massachusetts, Washington.

<sup>8</sup> Illinois, Indiana, Vermont, New Hampshire, Washington, D. C., Minnesota.

"The recent sex statutes enacted in fourteen jurisdictions have been directed with the exception of New Jersey, at 'sex psychopaths' or 'psychopathic personalities.' New Jersey is alone in providing in its 1949 law that sexual deviates whose offenses result from a condition of 'abnormal mental illness' of any sort should receive special treatment. The statutory definitions by which the several jurisdictions have attempted to define the coverage of their psychopath laws have in fact made even more vague what was already quite unclear concerning the types of cases to be included. The general reluctance observed in applying these laws may well result in part from uncertainty as to the sorts of cases that should be covered. The descriptive clauses in the enactments leave much to be desired either from the point of view of medical diagnosis or court application.

"One of the apparent reasons for the failure of recent laws on the sex offender lies in the lack of any effectual treatment program to handle these cases. The statutes have been formulated generally so as to secure the commitment of sex deviates to state mental hospitals for an indeterminate period of time, until 'cured.' However, since these cases do not belong in the psychotic classification ordinarily committable to psychiatric institutions and since, moreover, the traditional hospital offers neither treatment methods nor sufficient clinical staff to provide therapy, it is difficult to comprehend why this benign result should have been anticipated. A great majority of the sex deviates, even those who may be considered abnormal psychologically are not sick in the ordinary sense as applied to psychotic patients: psychiatric institutions are not presently suited in their space or methods to receive and treat the 'garden varieties' of psychopathic, neurotic, schizoid, and constitutional sex variant.

"An extremely significant shift has suddenly occurred in

these states in the policy of the Criminal Law and the Mental Health Law. It appears improbable that the authorities are yet fully aware of the extent and meaning of the change . . . in five jurisdictions<sup>9</sup> a person may be adjudicated a psychopath for an indeterminate commitment to a mental hospital without the facts of a crime being shown or a charge placed against the patient. The analogy to the handling of the insane under our traditional law is apparent. But these sex cases are supposed under the law not *to be insane, psychoneurotic or feeble-minded*. They are committed as cases diagnosed simply as psychopaths by such loose, non-meaningful criteria as emotional instability, impulsiveness, lack of good judgment, habitual sexual misconduct, lack of self-control, etc. These are types of cases that have not gone to mental hospitals in the past. They are cases that a majority of psychiatrists believe do not belong with insane patients. Thus individuals who are non-psychotic and non-defective, against whom no criminal charge has been made, may be confined for long periods or permanently in hospitals that lack both the space and the treatment facilities to handle them. By the simple but legalistic expedient of shifting jurisdiction to civil courts, these legislators have made it possible to commit minor deviates who are not insane—many of whom are not upon the record even psychopathic—to psychiatric institutions where they do not belong. The hazards implicit in this sort of legislative encroachment upon traditional areas of personal freedom is suggested in the opinion of the U. S. Supreme Court which, while it held the Minnesota statute constitutional, pointed nevertheless to the dangers inherent in the administration of such laws. (*Minnesota ex rel Pearson v. Probate Court of Ramsey County*,

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<sup>9</sup> District of Columbia, Massachusetts, Minnesota, New Hampshire, and Wisconsin.

205 Minn. 545, 287 N. W. 297; 60 S. Ct. 523; 84 L. ed. 477, 309 U. S. 270.)”

### **E. Recommendations**

The New Jersey Commission made the following recommendations:

Following conviction of a crime and referral to the Diagnostic Center, “treatment, upon recommendation of the Diagnostic Center, may include one or more of the following measures:

- (a) Probation with out-patient psychiatric treatment.
- (b) Commitment to a specialized facility for intensive psychiatric treatment, followed by parole supervision upon release.
- (c) Commitment for care to a state mental hospital, followed by parole supervision upon release.
- (d) Commitment to a correctional institution, followed by parole supervision upon release.

“Provision should be made for the establishment of an institution with both medical, psychiatric and custodial features to carry on a program of intensive treatment and study designed to develop more effective rehabilitative measures for dangerous sex offenders. It will be the objective of this program to provide demonstrable results through the treatment and research developed there.

“Release from the institution under (b), (c) or (d) shall be when the offender is believed capable of making an acceptable social adjustment. Such release, however, must be on or before the expiration of the maximum term which the offender might have received for the crime of which he was convicted. It will be the duty of the institution of commitment to report to the Department of Institutions and

Agencies on each patient committed under this law at six month intervals.”

The New York Commission made the following recommendations:

(a) “. . . We recommend that legislation be enacted placing responsibility on the Commissioner of Mental Hygiene for providing psychiatric and psychological service to the State’s correctional agencies. . . .

(b) “The need exists for further research in this field, for further psychiatric work with offenders, and for training of personnel for this work; therefore we recommend the continuance and expansion of the present research project, with a view to the eventual establishment of a permanent Institute of Criminal Behavior to carry out these purposes. . . .

(c) “We recommend that legislation be enacted requiring that all persons convicted of sex felonies in New York State be examined, before the Court imposes sentence, by a team of publicly employed psychiatrists who shall make use of psychological testing and social work reports. . . .

(d) “The need exists for law to protect women and children from certain dangerous sex offenders who, under present law, are held in prison for limited periods and then must be released, regardless of whether there is any improvement of the mental or emotional condition which caused them to commit abnormal crimes against the person; therefore,

“We recommend legislation providing that when any offender be convicted of rape or sodomy involving the use of force or violence, or against small children, or convicted of felonious assault involving a sexual purpose, the Court after psychiatric examination of such offender may sentence such offender to serve an indeterminate sentence having a mini-

mum of one day and a maximum of the duration of his natural life;

“We recommend further that, whenever an offender shall be sentenced to such a term of from one day to life, the law shall impose upon the Department of Mental Hygiene, the Department of Correction and the Board of Parole the solemn duty of giving his case prompt and intensive study, to be followed where feasible by therapeutic treatment, to the end that such offender may be rehabilitated and released whenever it may appear that he is a good risk on parole. When serving under this form of sentence, it should be required that a prisoner receive thorough psychiatric examination not less than once every two years, and consideration by the Parole Board.”