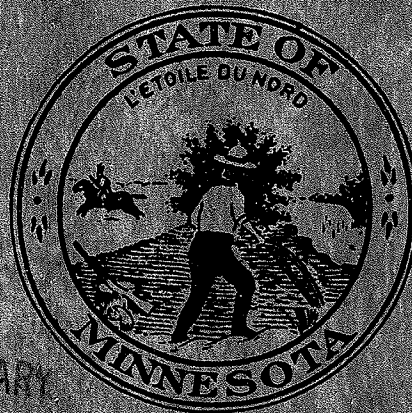




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REPORT
of the
MINNESOTA LEGISLATIVE
INTERIM COMMISSION
on
PUBLIC WELFARE LAWS
Sex Psychopath Laws



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STATE OF MINNESOTA

Submitted to the Legislature of the State of Minnesota
January, 1959

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I. ESTABLISHMENT AND ACTIVITIES OF THE PUBLIC WELFARE LAWS COMMISSION.

The 1957 Session of the Minnesota Legislature created an interim commission on Public Welfare Laws with authority to study the laws relating to programs administered by the Department of Public Welfare, except correction programs, with a view toward revising and codifying existing laws and recommending improvements requiring legislation (Laws 1957, Chapter 817; appendix 1). Five senators and five representatives were selected to serve on this commission (Membership list; appendix 2).

At a joint meeting held for the purpose of eliminating overlap, the chairmen of the Public Welfare Laws Commission, Lower Courts Commission, and the Commission on Juvenile Delinquency, Adult Crimes and Corrections decided that the Public Welfare Laws Commission should study the laws relating to sex offenders and the laws relating to children and juvenile courts. Pursuant to statutory authority, the Public Welfare Laws Commission then created citizens' advisory committees to assist it with these problems. Some of the members of these advisory committees were invited to membership directly by the commission, others were chosen by groups invited by the commission to have representation on the advisory committees. This report relates to the work of the Advisory Committee on Sex Psychopath Laws (Membership list; appendix 3). A supplemental report on the work of the Advisory Committee on Laws Relating to Children and Juvenile Courts will be issued by the commission.

The Advisory Committee on Sex Psychopath Laws and its consultants met six times. The committee studied the laws and experience of Minnesota and the laws and experience of other states, particularly Wisconsin. The committee heard and questioned Dr. Bernard C. Glueck, Jr., M.D., former director of New York State's Sex Delinquency Research Project and presently an associate professor of psychiatry at the University of Minnesota Medical School; Sanger Powers, director of the Division of Corrections for Wisconsin; and persons working in the fields of correction and mental health in Minnesota. At its third meeting the advisory committee created a drafting subcommittee to draft proposals for full advisory committee consideration (Membership list; appendix 4). The report of the Advisory Committee on Sex Psychopath Laws, which was unanimously approved by the advisory committee, has been adopted by the Public Welfare Laws Commission with only minor changes in wording. The recommendations of the commission are outlined and discussed in Part II of this report, and are found in bill form in Part III. The Public Welfare Laws Commission recognizes that these recommendations could not have been made without the efforts of the members of the advisory committee and its consultants. The commission is indebted to them for giving so generously of their time and abilities.

II. RECOMMENDATIONS OF THE PUBLIC WELFARE LAWS COMMISSION IN REGARD TO LAWS RELATING TO SEX PSYCHOPATHS.

The Public Welfare Laws Commission makes the following recommendations:

- A. That the 1953 "sex offender" law, Minnesota Statutes, 1957, section 246.43, be amended to serve as the basic Minnesota law relating to persons who are sexually deviated (see Part III, Proposed Legislation, sections 1 through 16);
- B. That the 1939 "psychopathic personality" law, Minnesota Statutes, 1957, sections 526.09, 526.10 and 526.11, be repealed (see Part III, Proposed Legislation, section 23), and that a new release procedure be enacted for persons presently committed as "psychopathic personalities" (see Part III, Proposed Legislation, section 18);
- C. That related laws be amended to conform to the proposed changes (see Part III, Proposed Legislation, sections 17, 19, 20, 21 and 22); and
- D. That the legislature appropriate money to adequately carry out the purposes of the above proposals.

(These proposals were presented by Prof. Allan McCoid to the judges of the district courts of Minnesota at their annual meeting, June 18, 1958. The judges endorsed these proposals in principle at this meeting.)

DISCUSSION OF RECOMMENDATION "A"

The Public Welfare Laws Commission recommends that the 1953 "sex offender" law, Minnesota Statutes, 1957, section 246.43, be amended to serve as the basic Minnesota law relating to persons who are sexually deviated (see Part III, Proposed Legislation, sections 1 through 16).

The commission makes the above recommendation on the basis of careful study of Minnesota law and experience, Wisconsin law and experience, and reference to the law and experience of 28 other states and the District of Columbia. It was the opinion of the commission that an amended and implemented version of the 1953 "sex offender" law would protect society through the treatment of the sex deviate who had a condition which would respond to treatment or protect society through the continued confinement of the deviated sex offender who would not respond to treatment and remained a threat to society. This, essentially, was the opinion of Sanger Powers, Wisconsin's Director of Corrections, as he described to the commission nearly seven years of successful operation of Wisconsin's sex deviate law, the law from which Minnesota's 1953 "sex offender" law was copied almost word for word, and which Wisconsin, as contrasted with Minnesota, has adequately implemented.

One of the reasons for the study of Minnesota laws relating to "sex psychopaths" is the existence of two Minnesota laws on the subject. The provisions of these two laws were contrasted throughout the study period. The two laws are the 1939 "psychopathic personality" law (Minnesota Statutes, 1957, section 526.09 - 526.11), and the 1953 "sex offender" law (Minnesota Statutes, 1957, section 246.43).

Discussion of the 1939 "psychopathic personality" law; Minnesota Statutes, 1957, sections 526.09 - 526.11:

The 1939 "psychopathic personality" law is a commitment proceeding administered by the probate court. Conviction of a crime is not necessary before the probate court invokes the provisions of this law.

Prior to the enactment of the 1939 "psychopathic personality" law, the only Minnesota laws specifically dealing with sex offenders were the applicable criminal laws. The '39 law arose out of a desire both to protect the public and provide treatment for habitual sex offenders by means of additional commitment proceedings, where existing commitment proceedings were inadequate for the job.

The text of the law defines "psychopathic personality" to mean "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons" (Minnesota Statutes, 1957, section 526.09). The Minnesota Supreme Court in upholding the constitutionality of this law, stated that the language of the definition "is intended to include those persons who, by an habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled or uncontrollable desire." (State ex rel. Pearson v. Probate Court of Ramsey County, 1939, 205 Minn. 545, 555; 287 N.W. 297, 302) This construction of the act by the Minnesota Supreme Court was upheld in 1940 by the U.S. Supreme Court in the first federal constitutional test made of a "psychopathic personality" law (State of Minn. ex rel. Pearson v. Probate Court of Ramsey County et al, 1940, 60 S.Ct. 523, 309 U.S. 270, 84 L.Ed. 744, 126 A.L.R. 530). The U.S. Supreme Court stated in this opinion that "it would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impractical of enforcement and perhaps unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined".

While this judicial interpretation has provided the psychopathic personality act with a legal foundation, it apparently has done nothing to facilitate the uniform application of the law. For example, the Hennepin County Attorney's office does not seek commitment of a person as a "psychopathic personality" unless the person has made actual physical contact with his victim. It is their belief that the framers of the law intended the law to provide treatment for the repeater and did not intend the law to be used to commit a first or minor offender. Contrasting with this view is the commitment of a person on the basis of the person's masturbation, with no evidence of harm to any other person. Such a commitment was upheld by the Minnesota Supreme Court in Dittrich v. Brown County, 1943, 215 Minn. 243, 9 N.W. 2d 510.

Evidence presented to the probate judge in a "psychopathic personality" commitment proceeding is developed by the county attorney, who represents the person having knowledge of the facts when he, the county attorney, is satisfied there is good cause for the petition (Minnesota Statutes, 1957, section 526.10). The probate judge is required to appoint two licensed doctors of medicine to assist in the examination of the "patient". Neither of these two examiners need be psychiatrists, under the words of the statute, and the testimony of one of them is sufficient to support a finding of "psychopathic personality" (Dittrich v. Brown County, 1943, 215 Minn. 234, 9 N.W. 2d 510). In contrast with this procedure is the statutory procedure established for the commitment of a person as mentally ill, senile, inebriate, mentally deficient or epileptic, which expressly states that the committing court may require an examination by a psychiatrist in addition to an examination by two physicians (Minnesota Statutes, 1957, section 525.752, Subd. 1). Under the '39 law the "patient" has the right to employ counsel and subpoena witnesses, but if he is financially unable to obtain counsel, the judge is permitted, not required, to employ counsel for him. In other commitment proceedings the court is required to employ counsel for the indigent, and may appoint counsel in all other cases if the best interests of the patient require it (Minnesota Statutes, 1957, section 525.751, Subd. 4). The hearing under the '39 law may be closed to the public at the judge's discretion, and the patient has the right to appeal the decision of the probate judge to the district court as provided by law.

If the probate judge commits the "patient" to an institution, the "psychopathic personality" law does not require that any of the committing court's records accompany the patient to the institution. In some instances this has meant that the medical examination report and social study, if any, have not been made available to the staff of the receiving institution, a distinct handicap to whatever treatment efforts might be attempted. (However, except as otherwise provided, the psychopathic personality law incorporates by reference, laws relating to insane persons. Minnesota Statutes, 1957, section 525.752, Subd. 3, requires the court and examiners to report their findings to the superintendent of the institution of commitment.) Once institutionalized, the "patient" receives only whatever treatment is available to patients generally at the particular institution, because no funds have ever been specifically earmarked for special treatment of the sexually deviated person in Minnesota.

A committed psychopathic personality cannot be released from the institution except upon an order of a court of competent jurisdiction (Minnesota Statutes, 1957, section 525.762, Subd. 1), which the Attorney General has said is the committing probate court (Op. Atty. Gen., 248-B-11, July 31, 1953). If the "patient's" behavior improves to the extent that the superintendent is fairly confident that the patient will make a safe, satisfactory readjustment to society, the superintendent may petition the committing court for his release. Because the patient is often a community undesirable, an order of discharge for a patient believed to be ready for release by the superintendent is sometimes hard to obtain from the committing court. Prior to petitioning for discharge, the superintendent has no power to provisionally discharge a person committed as a psychopathic personality (Op. Atty. Gen. 248-B-3, June 9, 1955). Because of the difficulty of obtaining a discharge, commitment as a "psychopathic personality" may result in commitment for life,

without any of the safeguards of a criminal proceeding.

The finding of a "psychopathic personality" is not a defense to a criminal charge, nor does it relieve a person from liability to be tried on a criminal charge (Minnesota Statutes, 1957, section 526.11). However, the statute of limitations on crimes continues to run while a person is committed, unless proceedings are instituted during his commitment (Op. Atty. Gen., 248-B-11, Aug. 10, 1940).

Discussion of the 1953 "sex offender" law; Minnesota Statutes, 1957, section 246.43:

This law, in contrast with the 1939 "psychopathic personality" law, requires the conviction of a crime before a district court judge may invoke the provisions of the act. In essence, it provides for commitment of the person to the Commissioner of Public Welfare if after examination, the person is found to be deviated and in need of treatment. It is derived from, and almost identical to, the 1951 "sex deviate" law of Wisconsin.

The Minnesota law states that a sentencing judge may commit a person who is 21 years of age or older, and who is convicted of certain sex crimes, to the care of the Commissioner of Public Welfare for a presentence social, physical and mental examination. Upon conviction of sex crimes other than rape, carnal knowledge, indecent assault or incest, the sentencing court also may follow this procedure if the commissioner certifies that he has adequate facilities and is willing to make such an examination. Wisconsin sets no age limit, and requires, rather than permits, the sentencing judge to commit a person for the presentence examination when the person has been convicted of rape, sexual intercourse without consent, indecent behavior with a child, or attempts at these crimes. In Wisconsin as in Minnesota, when a person is convicted of a sex crime other than those specifically enumerated, the sentencing judge has the discretion to commit the person for a presentence examination if the Department of Public Welfare has facilities and will accept. However, "any other sex crime" is defined in Wisconsin to mean "any other crime except homicide or attempted homicide if the court finds that the defendant was probably directly motivated by a desire for sexual excitement in the commission of the crime". This definition was added to the Wisconsin law in 1955.

Within sixty days after commitment for examination, the examiner's report must be sent to the court. If treatment is not recommended, the court is required to sentence the defendant as provided by law. (In Minnesota treatment has been recommended only twice because no treatment facilities are available other than those available to mentally ill, mentally deficient, epileptic, inebriate or senile persons generally.) If treatment is recommended, the court may require outpatient treatment during probation, commit to the Commissioner of Public Welfare for what amounts to an indefinite period, or sentence him as otherwise provided by law. In Wisconsin, when treatment is recommended, the court must either require outpatient treatment during probation or commit the person to the Department of Welfare.

A Wisconsin court cannot sentence the person as otherwise provided by law at this stage of the proceedings. At the time of commitment for examination the court and all other public officials are required to make available to the commissioner, upon his request, all pertinent data in their possession concerning the individual involved. Therefore, when a person is finally committed to the commissioner, background information is already available to him for use in treatment and care. The defendant has the right to appeal both a judgment of conviction and also a commitment to the commissioner.

The person committed to the care of the commissioner remains under his care until release is recommended by the superintendent of the hospital and by a special review board. This recommendation arises from the results of a mandatory annual review of the committed person by the commissioner. Failure to make this review is the basis for a petition for release. Release may be in the nature of a parole, or if the person can be given full liberty without danger to the public, complete discharge. Sex felons, however, must serve at least a two year commitment. Discharge is mandatory at the expiration of the sentence imposed for the offense unless the commissioner has asked for and been granted a continuance. The commissioner is required to order a continuance of commitment at the expiration of the sentence imposed if the person is still considered dangerous to the public. The commissioner's order must be confirmed by the committing court in open hearing, where the defendant is represented by counsel, has the right to compel witnesses, and may have a doctor or psychiatrist of his own choosing. A continuance may be appealed and must be reinstated every five years. Wisconsin permits an inmate to apply for a re-examination every six months during a continuance.

Anyone believing himself afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply to the commissioner for voluntary admission to an institution. Voluntary patients may be required to pay all or part of their costs.

There are no Minnesota Supreme Court decisions interpreting the 1953 "sex offender" law. However, Wisconsin's law was upheld as a proper sentencing procedure in Volden v. Haas, 264 Wis. 127, 58 N.W. 2d 577, where State v. Meyer, 228 Minn. 286, 37 N.W. 2d 3, was cited. The later decision declared the Youth Conservation Act to be constitutional.

The 1953 "sex offender" law has had little application in Minnesota because there is no staff available for treatment as required by the law for its adequate operation. A few judges have made use of the presentence examination provisions to get background for their sentence decision.

Commission conclusions:

As previously mentioned, on the basis of careful study of the two Minnesota laws and the experience of the state under these laws, the Wisconsin law and their experience under their law, and reference to the law and experience of other states, the commission recommends the repeal of the 1939

"psychopathic personality" law, and the amendment of the 1953 "sex offender" law to serve as the basic Minnesota law on the subject. (Amendments to the 1953 law are described in detail in Part III, Proposed Legislation, Sections 1 through 16.) It was the opinion of the commission that an amended and implemented 1953 law would adequately protect the public because of its provision for continuing in the control of the commissioner the person who is still considered dangerous at the expiration of his term of commitment, which is the maximum term provided by law for the offense of which he has been convicted, and by providing supervised release in the form of parole to the state board of parole and probation. By amending the 1953 law to include Wisconsin's definition of "any other sex crime", the commission was of the opinion that most of the persons who have been committed as "sex psychopaths" under the 1939 law would be covered by the 1953 law, because most of these people have committed crimes. (A person who has not committed a crime but who evidences sexual deviancy could be committed as mentally ill, under existing commitment laws.) It was also the commission's opinion that an amended and implemented 1953 law would bring about greater uniformity in the handling of "sex offenders" throughout the state because conviction of a crime, with its procedural safeguards, is a prerequisite to commitment, and because the examination would be made by persons who would be specialists in this field.

Finally, the commission was of the opinion that the rights of the individual involved would be more adequately protected under an amended and implemented 1953 law because as mentioned, the person would have the safeguards of a district court criminal trial before his initial commitment, would be examined yearly during his commitment, and would have a complete district court hearing on the question of his continuance in the control of the commissioner if this was sought by the commissioner at the expiration of the person's maximum term of commitment. If a court ordered the person continued in the control of the commissioner, the person would be protected by his right to apply annually for a re-examination of his condition, and through his automatic release at the end of five years unless a court again ordered the person continued in the control of the commissioner at another court hearing. Most important, the treatment given to the person under an implemented 1953 law would enable him to be returned to society when he is no longer considered dangerous to society.

DISCUSSION OF RECOMMENDATION "B"

The Public Welfare Laws Commission recommends that the 1939 "psychopathic personality" law, Minnesota Statutes 1957, sections 526.09, 526.10 and 526.11, be repealed (see Part III, Proposed Legislation, section 23), and that a new release procedure be enacted for persons presently committed as "psychopathic personalities" (see Part III, Proposed Legislation, section 18).

There are three basic reasons for repealing the 1939 "psychopathic personality" law. The first reason is the lack of uniformity of application of the law throughout the state. As one person put it, there are 87 interpretations

of this law in Minnesota, one for each county in the state. The second reason is the inadequacy of the commitment procedures established by this law. The third reason is the difficulty of releasing a "psychopathic personality" who in the opinion of the superintendent, is ready to be returned to society. (For further discussion of these reasons, see "Discussion of the 1939 'psychopathic personality' law" under Recommendation "A".) The commission recommends that section 526.11 of the "psychopathic personality" law, which states that commitment as a "psychopathic personality" is not a defense to a crime, be re-enacted as subdivision 4 of the new section dealing with the release of persons presently committed as "psychopathic personalities". The reason for this recommendation is to prevent a released "psychopathic personality" from using the repeal of this section as a defense to a crime, a possibility which could be implied from repeal of this section. (For further discussion of this recommendation, see Sections 18 and 23 of Part III, Proposed Legislation.)

The commission recommends that persons committed as "psychopathic personalities" at the time the recommendations of the commission become law be released in the manner proposed in Section 18 of Part III, Proposed Legislation. This proposal, in essence, requires the Commissioner of Public Welfare, within two years after repeal of the 1939 law, either to release these persons or seek their continuance in his control under the provisions of the amended 1953 "sex offender" law, subdivision 13 (Minnesota Statutes, 1957, section 246.43, subdivision 13). The proposal also requires persons under the control of the Youth Conservation Commission prior to their commitment as "psychopathic personalities" to be discharged to the Y.C.C. if their period of commitment to Y.C.C. has not expired at the time of their discharge. The proposal further requires that the probate court and county attorney of the committing county be notified of the discharge or the hearing on continuance of control of the "psychopathic personality".

The commission is of the opinion that this release procedure not only will solve the difficult release problem existing under the 1939 law but also will protect the public by providing a method of continuing the commissioner's control over those persons who are considered dangerous to the public. Under the provisions of section 246.43, the "psychopathic personality" sought to be continued in the commissioner's control would be given a hearing in district court, with the right to counsel, the right to compel witnesses, and the right to be examined by a doctor of his own choosing. If the court orders his continuance, the person would not be confined in Stillwater, which the Department of Welfare proposes as the "sex deviate" facility for Minnesota, because of the language of Section 19 of Part III, Proposed Legislation. (The amendment proposed by that section would restrict the use of Stillwater as a "sex deviate" facility to the confinement and treatment of persons convicted of a crime.) During the person's continuance, he would have all of the rights afforded by section 246.43, including the right to petition the court for his release if he is not examined at least yearly, the right to apply to a court annually for a re-examination of his condition, and the right to be released at the end of five years of continuance, unless the commissioner seeks and obtains another five year continuance in district

court. Section 246.43, as mentioned in "Discussion of the 1953 'sex offender' law", Recommendation "A", also provides for the supervised release and discharge of the person.

DISCUSSION OF RECOMMENDATION "C"

The Public Welfare Laws Commission recommends that laws related to the 1939 and 1953 laws be amended to conform to the commission's proposals.

The amendments proposed are set forth and discussed under Part III, Proposed Legislation, Sections 17, 19, 20, 21 and 22. These amendments, briefly, are as follows. Section 17 amends the Youth Conservation Act and enables Y.C.C. to utilize the provisions of the 1953 "sex offender" law. The Youth Conservation Commission unanimously endorses this amendment. Section 19 amends the statutory provisions relating to the establishment of the state prison at Stillwater and enables the Commissioner of Public Welfare to designate it as the state's "sex deviate" facility. Section 20 amends the probate code provisions relating to the release of "psychopathic personalities". Section 21 amends that portion of the mental health law dealing with standards of care for mental patients by rewording the reference to "psychopathic personalities" and by adding a reference to persons committed to the commissioner under the provisions of the 1953 "sex offender" law. Section 22 amends the poor relief laws relating to interstate reciprocity for purposes of legal settlement by deleting the reference to "psychopathic personalities".

DISCUSSION OF RECOMMENDATION "D"

The Public Welfare Laws Commission strongly recommends that the legislature appropriate money to adequately carry out the purposes of the commission's proposals.

The importance of adequately implementing a good law with staff and facilities was repeatedly pointed up in advisory committee discussion. Dr. Glueck; Morris Hursh, Minnesota's Commissioner of Public Welfare; Dr. Dale Cameron, Director of Medical Services-Department of Public Welfare; Sanger Powers; certain of the judges of the district courts; and others, emphasized this fact.

The commission realizes that presently the complete cure of the sexual deviate is very difficult and in some cases nearly impossible. However, the commission is strongly of the opinion that a middle ground between doing nothing and seeking a complete cure is not only worth seeking but is essential to its recommendations.

The goal of rehabilitating a "sex psychopath" is not a hopeless one. Dr. Glueck reported that his study of men imprisoned in Sing Sing for sex crimes showed roughly that 30 per cent were insane from a medical view and another 40 per cent evidenced some sort of psychosis. About one-half of

the men committed their crime while intoxicated, and most of them showed a high degree of tension. In spite of this dark picture and psychiatric opinion to the contrary, Dr. Glueck felt that the use of modern techniques such as tranquilizing drugs and electro and insulin shock, and education hold promise and should be tried.

Sanger Powers gave reinforcement to the practicality of a middle ground in the rehabilitation of persons convicted of sex crimes. Operating under the law from which Minnesota's 1953 "sex offender" law was copied, Wisconsin has had the following experience. From July 27, 1951, through February 1, 1957, a total of 1,132 persons were committed for the 60 day diagnosis, study and report. Of these 1,132 persons, 520 or roughly one-half were determined to be sexually deviated, 38 were determined to be psychotic or mentally deficient, and 574 were determined to be non-deviated and were returned to the court for disposition under the criminal laws. Of the 520 persons found to be deviated and returned to the court with that finding, 94 were placed on probation by the court with the requirement that they undergo out-patient treatment. The remaining 426 were recommitted to the Department of Public Welfare for treatment as deviates at the state prison, which presently serves as Wisconsin's sex deviate facility. Of the 426 committed to the department and sent to the prison for treatment, 291 were released on parole after being determined to be safe to be returned to society. Of these 291 parolees, only 43, or less than 15 per cent violated the conditions of their parole. These violators broke their parole in the following ways: 22 or less than 8 per cent committed another sex offense; 18 violated the rules of parole by drinking, failing to hold a job, absconding, or some other similar reason; 3 committed a criminal offense other than a sex offense. The department completely discharged 259 men who were considered to have responded to treatment to the point where they no longer constituted a threat to society. Of these 259, a total of 12 have committed new offenses. The department has sought to continue 52 men in their control beyond the maximum sentence which could have been imposed under the criminal law. The courts agreed that 50 of these men were threats to society and ordered them continued in the control of the department. The other two were released by the courts.

Wisconsin has implemented its law with a professional staff consisting of one full time and two part time psychiatrists, four psychologists, and two psychiatric social workers. The cost of this professional staff is approximately \$80,000 annually. As mentioned above, the state prison presently serves as Wisconsin's sex deviate facility.

Commission conclusions:

On the basis of Wisconsin's experience under the law from which our 1953 "sex offender" law is copied, the commission strongly recommends that the legislature appropriate enough money to employ the following staff to carry out the examination, care and treatment required by the 1953 law: two full time psychiatrists, four psychologists, two social workers, and two to four additional guards. The Department of Public Welfare proposed this staff to the advisory committee on the basis of an estimated "sex deviate" population

of 170 men. The population estimate is derived from a present rate of commitment of "psychopathic personalities" of about 21 persons annually plus an estimate, based on Wisconsin's experience, of the number of persons convicted of sex crimes who would be under commitment to the commissioner for examination or treatment annually. Because the department will need time to recruit this staff and organize its program, the commission recommends that its legislative proposals take effect on January 1, 1960. (See Part III, Proposed Legislation, Section 24)

The commission endorses the Department of Public Welfare's decision to locate the "sex deviate" facility at the state prison at Stillwater (see Part III, Proposed Legislation, Section 19). The department intends to incorporate "sex deviates" into the general prison population, as is done in Wisconsin, because it is of the opinion that the prison offers definite treatment advantages not found in any mental hospital in the state. The prison has educational and vocational training programs, prison industry work programs and a recreational program, each of which is essential to the treatment process. Although the department does not plan to build a separate "sex deviate" unit at the prison, it does recommend the addition of 150 beds within the prison walls and 50 beds at the work farm. This recommendation is based upon both a general prison population increase due to the increase in the state's population and the location of the "sex deviate" facility at the prison. The department recognizes that the "sex deviate" facility could be established at the prison at present without the addition of the 200 beds, but is of the opinion that the prison shortly would be in danger of overcrowding.

As previously mentioned, the commission feels that it is imperative that the legislature appropriate sufficient money to adequately carry out the commission's legislative proposals. The reason for this is that the amendments proposed to the 1953 "sex offender" law require a 60 day psychiatric evaluation by the Department of Public Welfare for almost every person convicted of rape, carnal knowledge of a child under 14 years of age, indecent assault, incest or sodomy, except where the act of sodomy is committed between consenting adults. If the department is not given additional staff for this purpose, it will be forced to neglect its responsibilities elsewhere to fulfill the obligations imposed by the amended 1953 law. The 1953 "sex offender" law also provides that a person committed for treatment may petition for his release if he is not examined annually.

Because the commission is of the opinion that the legislature does not want the situation existing under the present laws to continue, the commission strongly recommends that the legislature appropriate enough money to adequately implement the commission's legislative proposals. As stated by Dr. Glueck, the commission feels that a tremendous forward step will be taken if the legislature adopts these proposals.

III. PROPOSED LEGISLATION*

A BILL

FOR AN ACT RELATING TO PERSONS WITH ABNORMAL SEXUAL TENDENCIES; AMENDING MINNESOTA STATUTES 1957, SECTIONS 246.43, SUBDIVISIONS 1 TO 16 INCLUSIVE; 242.29; 640.01; 525.762, SUBDIVISION 1; 246.014; 261.07, SUBDIVISION 4; AND REPEALING MINNESOTA STATUTES 1957, SECTIONS 526.09, 526.10 AND 526.11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1957, section 246.43, subdivision 1, is amended to read:

246.43 Subdivision 1. [CONVICTION OF CERTAIN SEX CRIMES; PRESENTENCE INVESTIGATION, EXAMINATION] (a) If a person who is 21 years of age or older at the time of his apprehension is convicted under sections 617.01, 617.02, subdivision 1 or 2, 617.08, or 617.13, or 617.14, except where the act of sodomy is committed between consenting adults, the court may shall order a presentence investigation and report by the probation officer of the court or by the state board of parole and probation and, after the presentence investigation report is submitted to the court, shall either sentence him in the manner provided by law and place him on probation or commit him to the commissioner of public welfare of the department of public welfare for a presentence social, physical, and mental examination. The court and all public officials shall make available to the commissioner upon his request all pertinent data in their possession in respect to the case. At the time of commitment the court shall make available to the commissioner all pertinent data in its possession, including the presentence investigation report

* New matter is underlined, deleted matter is crossed out.

submitted to the court by the probation officer of the court or the state board of parole and probation.

(b) If the person is sentenced in the manner provided by law and placed on probation, under the provisions of subdivisions 1, 2, 5, or 6, and probation is subsequently revoked, the court, after stating the reasons for revocation, may recommend in the official transcript that the person be confined in the facility approved or established by the commissioner for the treatment of persons committed to him under the provisions of this section.

(c) Except where otherwise provided, "court" for the purposes of this section means district court.

Comment: This subdivision is changed from the existing law in the following ways:

Clause (a) is changed to require a court to do one of two things after a person has been convicted of one of the enumerated sex crimes. First, after a mandatory presentence investigation and report by a probation officer, the court may sentence the person in the manner provided by law and place him on probation, without getting a full psychiatric evaluation by the commissioner of public welfare. The commission felt that a court should not be required to send a person to the commissioner for evaluation in those relatively few cases where the facts brought out by the presentence investigation and report indicate no deviation and a need for clemency. (The requirement of a presentence investigation by a probation officer follows the procedure outlined in the Youth Conservation Act, M.S. 242.13, where the court, on the basis of such a report, may place a person on probation instead of committing him to the Youth Conservation Commission.) Second, after a presentence investigation and report by a probation officer, the court is required to commit the person to the commissioner of public welfare for psychiatric evaluation and recommendation if the person is not placed on probation. (Existing law permits, but does not require, the court to commit a person to the commissioner for psychiatric evaluation after the conviction of certain sex crimes. Under existing law the court may also place the person on probation or sentence him to the state prison or reformatory. Wisconsin, on the other hand, requires a psychiatric evaluation in all cases of conviction of one of the specified sex crimes,

with no provision for probation at this stage of proceedings.) Neither of the two alternatives proposed by clause (a) allows the court to sentence a person directly to the prison or reformatory at this stage of proceedings.

Other changes in clause (a) are as follows: First, subdivision 3 of 617.02, commonly known as "statutory rape" is excluded from the mandatory operation of this law. ("Statutory rape" is carnal knowledge of a girl of over 14 years of age but under 18.) Because relatively few persons convicted of "statutory rape" evidence any sexual deviancy, the commission decided that the time of the psychiatric team would be largely wasted evaluating these persons. A court could bring a person convicted of "statutory rape" within the coverage of this law, M.S. 246.43, under the discretionary provisions of subdivision 2. Wisconsin dropped "statutory rape" from the equivalent subsection of their law in 1955. Dr. Glueck specifically endorsed this change in the Minnesota law.

Secondly, the commission added section 617.14 (Sodomy), except where committed between consenting adults, to the list of crimes for which a court is required to follow the procedures outlined by subdivision 1 of section 246.43. The commission felt that conviction of the crime of sodomy was sufficient indication of deviancy to include it within the provisions of subdivision 1. However, the commission felt that consenting adult sodomists, which includes homosexuals, should come within the provisions of the act at the discretion of the court under subdivision 2. The commission felt it undesirable to possibly overburden the psychiatric team with those persons who, at present, are relatively unresponsive to treatment and who, although objectionable to society, are no immediate threat to the safety of society.

Third, the commission felt it desirable to require the court to make available to the commissioner, as a matter of course, all of the court's data concerning the offender. The presentence investigation report contains background information valuable to the diagnostic and treatment processes.

Clause (b) is new and is added to permit a judge to recommend treatment, in cases where the judge feels it is appropriate, for a person whose probation is revoked because of violation of the terms of his probation. The language suggested in subdivision 1 (b) includes any person sentenced in the manner provided by law and placed on probation under the provisions of this act, a disposition which a judge may make under the provisions of subdivisions 1, 2, 5, or 6. This proposal would not allow the person to be continued in the control of the commissioner beyond the length of the sentence imposed by the court.

Clause (c) is new and is added to designate the district court as the court which will apply this law. The commission added this clause to avoid any question of the court having jurisdiction over the application of this law.

The judges of the district courts, at their June 18, 1958 meeting, endorsed in principle the proposed amendments to section 246.43.

Sec. 2. Minnesota Statutes 1957, section 246.43, subdivision 2, is amended to read:

Subd. 2. [OTHER SEX CRIMES; PRESENTENCE INVESTIGATION, EXAMINATION]

If a person who is 21 years of age or older at the time of his apprehension is convicted of any sex crime other than those specified in subdivision 1, the court may commit him to the commissioner for ~~such-a-presentence~~ a social, physical, and mental examination, if the commissioner certifies that he has adequate facilities for making such examination and is willing to accept such commitment. ~~The court and all public officials shall make available to the commissioner upon his request all pertinent data in their possession in respect to the case.~~ Before committing the person to the commissioner, the court shall order a presentence investigation and report by the probation officer of the court or by the state board of parole and probation. At the time of commitment the court shall make available to the commissioner all pertinent data in its possession, including the presentence investigation report submitted to the court by the probation officer of the court or the state board of parole and probation. "Sex crime" as used in this subdivision includes any crime not a misdemeanor except homicide or attempted homicide if the court finds that the defendant was probably directly motivated by a desire for sexual excitement in the commission of the crime, and

for that purpose the court may in its discretion take testimony after conviction, if necessary, to determine that issue.

Comment: Changes in this subdivision are as follows:

Except for the exclusion of misdemeanors, subdivision 2 defines "sex crime" as defined in the equivalent subdivision of Wisconsin's sex offender law. This definition broadens the application of the law and enables a court to utilize this law for sex deviates such as some arsonists, who would otherwise be excluded from the application of the law. The commission decided that this broad definition will serve to protect the public as well as it is protected under the "psychopathic personality" law, which will be repealed by section 23 of this bill.

Other changes to subdivision 2 include a requirement that the court order a presentence investigation and report by a probation officer in the situation where commitment to the commissioner for psychiatric evaluation is contemplated, and the additional requirement that the court make this information available to the commissioner as is required in subdivision 1.

Sec. 3. Minnesota Statutes 1957, section 246.43, subdivision 3, is amended to read:

Subd. 3. When the court commits a person to the commissioner in accordance with subdivision 1 or 2 for ^{presentence} a social, physical, and mental examination, the court shall order ~~him~~ the person conveyed by the proper county authorities at the sole expense of the county, to some place of detention approved or established by the commissioner.

Comment: The change from existing law is a change in wording.

Sec. 4. Minnesota Statutes 1957, section 246.43, subdivision 4, is amended to read:

Subd. 4. Upon completion of the examination, but not later than 60 days after the date of ~~the commitment order~~ admission of the person to the

place of examination, a report of the results of the examination and the recommendations of the commissioner shall be sent to the court.

Comment: This subdivision is changed to provide that the 60 day period starts after the date of admission of the person to the place of examination instead of after the date of commitment. This change makes certain that the psychiatric team will have a full 60 day period for its examination.

Sec. 5. Minnesota Statutes 1957, section 246.43, subdivision 5, is amended to read:

Subd. 5. If it appears from such report that the commissioner does not recommend specialized treatment for ~~his~~ the person's mental and physical aberrations, the court shall order the proper county authorities to bring him before the court at county expense and shall sentence him in the manner provided by law.

Comment: The change from existing law is a change in wording.

Sec. 6. Minnesota Statutes 1957, section 246.43, subdivision 6, is amended to read:

Subd. 6. If it appears from said report that the commissioner recommends specialized treatment for ~~his~~ the person's mental and physical aberrations, the court ~~may~~ shall order the proper county authorities to bring him before the court at county expense and shall either place him on probation with the requirement as a condition of such probation that he receive outpatient treatment in such manner as the court shall prescribe, or commit him to the commissioner under this section. If he is committed to the commissioner, the court shall order him conveyed by the proper county authorities, at the expense of the county, to an institution or facility approved or established by the commissioner.

Comment: This subdivision is changed to require the court to either commit the person to the commissioner or place him on probation with the requirement that he receive outpatient treatment, when the commissioner finds the person deviated and recommends treatment. This subdivision is also changed to place upon the county the responsibility for transporting these persons. Both of these provisions are present in Wisconsin's law. Wisconsin judges, law enforcement people, and the department of corrections are in favor of the mandatory provisions of this section and have successfully proceeded under these provisions for seven years.

Sec. 7, Minnesota Statutes 1957, section 246.43, subdivision 7, is amended to read:

Subd. 7. (a) The right of a convict to appeal from the judgment of conviction is not affected by this section.

(b) If a person who has been convicted and committed to the commissioner appeals from a conviction, the execution of the commitment to the commissioner shall not be stayed by the appeal except as provided in paragraph clause (c).

(c) If the committing court is of the opinion that the appeal was taken in good faith and ~~that-the-question-raised~~ merits review by the ~~appellate~~ supreme court, or when there has been filed with the court a certificate that a judge of ~~an-appellate~~ the supreme court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of his incapacity to act, the judge by whom the certificate was filed, may direct that such person be left at liberty under such conditions as in the judge's opinion will insure his submission to the control of the commissioner at the proper time if it is determined on the appeal that the commissioner is entitled to custody.

Comment: Changes made from existing law are changes in wording and in the designation of the supreme court as the appellate court.

Sec. 8. Minnesota Statutes 1957, section 246.43, subdivision 8, is amended to read:

Subd. 8. (a) If a court commits a person to the commissioner it shall at once notify ~~him~~ the commissioner of such action in writing.

(b) The commissioner shall then arrange for ~~his~~ his treatment for the person in the institution which in the judgment of the commissioner is best suited ~~in his judgment~~ to care for him. ~~He~~ The commissioner may transfer him to or from any institution to provide for him according to his needs and to protect the public. The commissioner may, irrespective of ~~his consent~~ the consent of the person, require participation by him in vocational, physical, educational and correctional training and activities; and may require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public, and The commissioner may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him.

(c) The commissioner may make use of law enforcement, detention, parole, medical psychiatry, education, correctional, segregative and other facilities, institutions and agencies, public or private, within the state. The commissioner may enter into agreements with public officials for separate care and special treatment (in existing institutions) of persons subject to the control of the commissioner under this section. Nothing herein contained shall give the commissioner control over existing institutions or agencies not already under his control, or give him power to make use of any private agency or institution without ~~his~~ its consent.

(d) Placement of a person by the commissioner in any institution or agency not operated by the commissioner, or his discharge of the person by such institution or agency, shall not terminate the control of the commissioner over him. No person placed in such institution or agency may be released therefrom except to the commissioner or after approval of such release by the commissioner.

Comment: Changes made from existing law are changes in wording.

Sec. 9. Minnesota Statutes 1957, section 246.43, subdivision 9, is amended to read:

Subd. 9. The commissioner shall make periodic examinations of all persons within his control under this section for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as he considers desirable and shall be made with respect to every person at intervals not exceeding one year. ~~He~~ The commissioner shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under his control. Failure of the commissioner to examine a person committed to him or to make periodic examination shall not entitle ~~him~~ the person to a discharge from the control of the commissioner, but shall entitle ~~him~~ the person to petition the committing court for an order of discharge and the court shall discharge him unless it appears in accordance with subdivision 13 that there is necessity for further control.

Comment: Changes made from existing law are changes in wording.

Sec. 10. Minnesota Statutes 1957, section 246.43, subdivision 10, is amended to read:

Subd. 10. Any person committed as provided in this section may be paroled by the commissioner if it appears to the satisfaction of the commissioner after recommendation by a special three member review board, appointed by the commissioner, a majority of whose members shall not be connected with the department of public welfare, that ~~he~~ the person is capable of making an acceptable adjustment in society. The chief officer of the institution wherein ~~he~~ the person is confined shall report in writing at least annually to the commissioner concerning ~~his~~ the condition of the person with a recommendation as to continued confinement or parole. The state board of parole and probation shall supervise persons paroled under the provisions of this section and may recommend revocation of parole and discharge from parole to the commissioner, who has the authority to revoke parole and to discharge from parole. The commissioner, may in cooperation with the state board of parole and probation, shall promulgate regulations for parole, revocation of parole, and the supervision of parolees, and discharge from parole.

Comment: This subdivision is changed to specify that the special review board shall consist of three members. It is also changed to place the authority for supervision of parolees upon the state board of parole and probation, and to define the responsibilities of the commissioner and the parole board.

Sec. 11. Minnesota Statutes 1957, section 246.43, subdivision 11, is amended to read:

Subd. 11. The commissioner shall keep every person committed to him under this section under his control and shall retain him, subject to the limitations of subdivision 12, under supervision and control, so long as in ~~his~~ the judgment of the commissioner such control is necessary for the

protection of the public. The commissioner, after consultation with the special review board or upon recommendation of the special review board, shall discharge any such person ~~as seen as~~ when, in his the opinion of the commissioner, there is reasonable probability that ~~he~~ the person can be given full liberty without danger to the public, ~~but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to two years after the date of his commitment.~~

Comment: This subdivision is changed to require the commissioner to consult with the special review board or to take some action after recommendation by the special review board when the question of discharge arises. This subdivision is also changed to drop the requirement that the committing court approve of the release of a felon who is released within two years after the date of his commitment. It was the opinion of the commission that this is more properly a function of the parole authority, which knows the condition of the person and the desirability of releasing him.

Sec. 12. Minnesota Statutes 1957, section 246.43, subdivision 12, is amended to read:

Subd. 12. Every person committed to the commissioner who has not been discharged ~~from his control~~ as provided in subdivision 11 shall be discharged at the expiration of the maximum term prescribed by law for the offense for which he was convicted, subject to the provisions of section 640.53, unless the commissioner has previously thereunto made an order directing that ~~he~~ the person remain subject to his control for a longer period and has applied to the ~~committing~~ appropriate court for a review of said order as provided in subdivision 13. ~~shall be discharged at the expiration of any sentence imposed, subject to the provisions of section 640.53, or at the expiration of one year, whichever is the greater.~~ For the purposes of this subdivision, the term shall begin at noon of the day of commitment ~~by the court to the commissioner, for treatment.~~

Comment: This subdivision is changed to clarify the maximum duration of the initial commitment. The maximum term adopted is derived from the equivalent provision of Wisconsin's law. The one year minimum was eliminated because of the inclusion of gross misdemeanors in the definition of a sex crime in subdivision 2. (A gross misdemeanor is punishable by a fine of over \$100 but less than \$1000, or imprisonment in a jail for more than 90 days but less than one year, M.S. 610.01 and 610.20.) It was felt that any continuance in the control of the commissioner beyond the maximum term provided by law for an offense should be accomplished in the manner provided by subdivision 13.

Sec. 13. Minnesota Statutes 1957, section 246.43, subdivision 13, is amended to read:

Subd. 13. If the commissioner is of the opinion that discharge of a person from his control at the time provided in subdivision 12 would be dangerous to the public for reasons set forth in subdivision 14, he shall make an order directing that he the person remain subject to his control beyond that period, and shall make application ~~to the committing court~~ for a review of that order to the committing court or the court of the county in which the person is held for treatment at least 90 days before the time of discharge stated. The reviewing court shall deny or affirm the order of the commissioner before the time of discharge provided in subdivision 12.

Comment: This subdivision is changed to provide alternative forums for the hearing on continuance of control and to require the court hearing the review to affirm or deny the commissioner's order before the expiration of the person's maximum period of commitment.

Sec. 14. Minnesota Statutes 1957, section 246.43, subdivision 14, is amended to read:

Subd. 14. (a) If the commissioner ~~applies to the committing court~~ makes application for the review of an order as provided in subdivision 13, the court shall notify the person whose liberty is involved of the application, and, if he be not sui juris, his parent or guardian as practicable,

~~of-the-application,~~ and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the production of evidence. He may have a licensed doctor ~~or-psychiatrist~~ of medicine of his own choosing, examine him in the institution to which he is confined or some suitable place designated by the commissioner. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. If he is unable to provide his own doctor, the court may appoint a doctor to examine him. He shall not be entitled to a trial by jury.

(b) If, after a hearing, the court finds that discharge from the control of the commissioner of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, or because of the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons, the court shall confirm the order. If the court finds that discharge from the control of the commissioner would not be dangerous to the public for the causes stated, the court shall order that he be discharged from the control of the commissioner at the time stated in the original commitment.

Comment: (14a) This subdivision is changed to give the court the authority to provide the person with a licensed doctor of medicine when the person is unable to provide his own. When necessary the court may appoint a psychiatrist to examine him, under the new wording of this subdivision, because psychiatrists are doctors of medicine. The word "psychiatrist" is deleted because the commission

decided that the court should not be required in all cases to appoint a psychiatrist, especially in those counties remote from psychiatric services.

(14b) This part of subdivision 14, which relates to continuance of control, is changed to include the definition of a sex psychopath as defined in the 1939 "psychopathic personality" law (M.S. 526.09-526.11; Laws 1939, ch. 369). A commitment under the provisions of this law was tested and declared constitutional by the Supreme Court of Minnesota in State ex rel. Pearson v. Probate Court of Ramsey County, 1939, 205 Minn. 545, 287 N.W. 297. This decision was affirmed by the United States Supreme Court in State of Minnesota ex rel. Pearson v. Probate Court of Ramsey County, Minn., 1940, 60 S.Ct. 523, 309 U.S. 270, 84 L.Ed. 744, 126 A.L.R. 530.

Sec. 15. Minnesota Statutes 1957, section 246.43, subdivision 15, is amended to read:

Subd. 15. (a) When an order of the commissioner is confirmed as provided in subdivision 14, the control of the commissioner over the person shall continue, but unless he is previously discharged, the commissioner shall within 5 years after the date of such confirmation make a new order and a new application for review thereof in accordance with this section. Such orders and applications may be repeated as often as in the opinion of the commissioner it may be necessary for the protection of the public.

(b) Every person shall be discharged from the control of the commissioner at the termination of the period stated in ~~paragraph~~ clause (a) unless the commissioner has previously acted therein as required, and shall be discharged if the court fails to confirm the order as provided in subdivision 14.

(c) During any such period of extended control, but not oftener than annually, the person may apply to the court for a re-examination of his mental condition and the court shall fix a time for hearing the same. The proceeding shall be as provided in subdivision 14.

Comment: The only substantial change to this subdivision is the addition of clause (c), which gives the committed person the right to apply for a re-examination not oftener than annually during the period of his continuance in control. Wisconsin's equivalent provision gives the person this right not oftener than semi-annually. (The commissioner, in accordance with the provisions of subdivisions 10 and 11, may parole or discharge the person at any time.)

Sec. 16. Minnesota Statutes 1957, section 246.43, subdivision 16, is amended to read:

Subd. 16. (a) If under the provisions of this section the court affirms an order of the commissioner, the person whose liberty is involved may appeal to the ~~proper-appellate~~ supreme court for reversal or modification of the order. The appeal shall be taken in the manner provided by law for appeals to ~~said the supreme~~ court from the order or judgment of ~~an-inferior~~ the district court.

(b) At the hearing of an appeal the ~~appellate~~ supreme court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the commissioner refer the matter back for the taking of additional evidence.

(c) The ~~appellate~~ supreme court may confirm the order of the ~~lower~~ district court, or modify it, or reverse it and order the appellant to be discharged.

(d) Pending appeal the appellant shall remain under the control of the commissioner.

Comment: Changes made from existing law are changes in wording and in the designation of the appellate court.

Sec. 17. Minnesota Statutes 1957, section 242.29, is amended to read:

242.29 [PROBATE COURT PROCEEDINGS, INSANITY; DISTRICT COURT PROCEEDINGS,

SEX OFFENDER] Subdivision 1. Whenever the director is of the opinion that there are grounds for believing that a person committed to the commission is insane, ~~ex-a-psycheopathic-personality,-as-defined-in-Minnesota-Statutes 1945,-Section-526.09,~~ the director may institute proceedings in the probate court of the county in which such person then resides or is confined to determine whether he is insane, ~~ex-a-psycheopathic-personality.~~ If the court shall so find, he shall be transferred by the order of the court to the Minnesota Security Hospital or to a state hospital for the insane at the discretion of the court, there to be kept and maintained as in the case of other insane persons. If in the judgment of the superintendent of the asylum or hospital, his sanity is restored before the period of his commitment to the commission has expired, he shall be returned by the commissioner of public welfare to the commission for further disposition or treatment under sections 242.01 to 242.38.

Subd. 2. Where a person committed to the commission, except for his age, would have come within the provisions of section 246.43, the director may transfer the person to the commissioner of public welfare, who shall examine him in the manner provided by section 246.43, subdivision 1 or 2, and shall report to the director within 60 days after the admission of the person to the place of examination. At the time of transfer the director shall make available to the commissioner of public welfare all pertinent data in his possession, including any presentence investigation report. If the commissioner of public welfare does not recommend specialized treatment, the person shall be returned to the director for further disposition or

treatment under the provisions of laws relating to the youth conservation commission. If the commissioner of public welfare recommends specialized treatment, the commission may make a disposition of the person under the provisions of laws relating to the youth conservation commission, or may return the person to the court in which he was convicted, with the recommendation that the person be committed to the commissioner of public welfare under the provisions of section 246.43, subdivision 6. If the court does not commit the person to the commissioner of public welfare, the person shall be returned to the commission. If the person is committed to the commissioner of public welfare, the person shall be under the control of the commissioner of public welfare in the same manner as any other person committed to him under the provisions of section 246.43. However, if the person is discharged or paroled before the period of his commitment to the youth conservation commission would normally have expired, he shall be discharged or paroled to the commission.

Comment: These amendments relate to the laws governing the Youth Conservation Commission and are unanimously endorsed by the commission.

Subdivision 1 is changed by eliminating reference to the "psychopathic personality" law, which will be repealed by section 23 of this bill.

Subdivision 2, which is new, authorizes the director of Y.C.C. to utilize the provisions of section 246.43 for the treatment of persons committed to the Y.C.C. who, except for their age, would have come within the provisions of 246.43. A person fitting this description may be transferred by the director of Y.C.C. to the commissioner of public welfare, who is then required to examine the person and make a recommendation. If the treatment is not recommended, the person is returned to Y.C.C. for disposition under their laws. If treatment is recommended, the Y.C.C. may make a disposition under their laws or return the person to the

court in which he was convicted with a recommendation that the person be committed to the commissioner of public welfare under the provisions of 246.43, subd. 6. If the court does not commit the person as recommended, he is returned to the Y.C.C. If the court commits the person to the commissioner, the person is then under the control of the commissioner in accordance with the provisions of 246.43. However, if the commissioner discharges the person before the period of the person's commitment to Y.C.C. would normally have expired, the person is returned to the Y.C.C.

Sec. 18. [PSYCHOPATHIC PERSONALITY] Subdivision 1. [DISCHARGE OR CONTINUED CONTROL] Any person committed before the effective date of this act as a psychopathic personality under the provisions of Laws 1939, Chapter 369, or transferred before the effective date of this act by order of a probate court from the control of the youth conservation commission to the Minnesota Security Hospital or to a state hospital for the insane because the person has been found to be a psychopathic personality under the provisions of Laws 1939, Chapter 369, shall be continued in the control of the commissioner and shall be discharged by the commissioner of public welfare within two years after the repeal of Laws 1939, Chapter 369, unless the commissioner issues an order in the same manner as provided in section 246.43, subdivision 13, directing that the person remain subject to his control, and makes application for review of that order to the district court of the county in which the person is held for treatment. The district court shall discharge the person or shall confirm the order of the commissioner. When the court confirms the order of the commissioner, control of the person by the commissioner continues in the same manner as provided for persons who are continued in his control under the provisions of section 246.43.

Subd. 2. [DISCHARGE TO YOUTH COMMISSION] A person transferred before the effective date of this act by order of a probate court from the control

of the youth conservation commission to the Minnesota Security Hospital or to a state hospital for the insane because the person has been found to be a psychopathic personality under the provisions of Laws 1939, Chapter 369, shall be discharged to the youth conservation commission if the person is discharged before the period of his commitment to the youth conservation commission has expired.

Subd. 3. [NOTICE TO COMMITTING COURT, COUNTY ATTORNEY] The probate court and county attorney of the county from which the person was committed as a psychopathic personality under the provisions of Laws 1939, Chapter 369, shall be notified of the discharge of the person or of the hearing on the continuance of the person in the control of the Commissioner. This notice need not be given if the person is discharged to the youth conservation commission.

Subd. 4. [NOT A DEFENSE] The existence in any person of a condition of psychopathic personality as determined pursuant to Laws 1939, Chapter 369, before the effective date of this act, shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure.

Comment: This section provides for the discharge or continued control of persons presently under the care of the commissioner under the provisions of the "psychopathic personality" law. The proposal provides that such a person shall be discharged within two years after the repeal of the "psychopathic personality" law unless the commissioner institutes proceedings under the provisions of 246.43, section 13, to continue the person in his control

in accordance with the provisions of 246.43. As discussed under Part II, Recommendations A and B, of this report, the commission decided that the release procedures of section 246.43 more adequately protect the committed individual's rights than the release procedure provided by the "psychopathic personality" law.

Subdivision 2 of this proposal is intended to place a Y.C.C. charge back under the control of Y.C.C. if their period of control over the person has not expired at the time of his discharge from the control of the commissioner of public welfare.

Subdivision 3 of this proposal is intended to provide a means of informing the county which committed a person as a "psychopathic personality" of the possibility of the person's discharge.

Subdivision 4 of this proposal is a re-enactment in modified form of section 526.11 of the "psychopathic personality" law, which will be repealed by section 23 of this bill. The substance of section 526.11 is retained in the law to avoid the implication that its repeal means that commitment under the 1939 "psychopathic personality" law is now a defense to a crime. The only change to the language of section 526.11 is the addition of the words "as determined pursuant to Laws 1939, Chapter 369, before the effective date of this act".

Sec. 19. Minnesota Statutes 1957, section 640.01, is amended to read:

640.01 The state prison shall be continued at its present site in Stillwater for the confinement and reformation of convicts and be under the general management of the commissioner of public welfare. The state prison may be designated by the commissioner as the facility for the examination, care, treatment, and confinement of persons committed to the commissioner under the provisions of section 246.43 after conviction of a crime, or transferred to him for examination under the provisions of 242.29, subdivision 2.

Comment: Until the time when a separate institution is available, the commission decided that the commissioner of public welfare should designate the place to be used for examination, care, treatment and confinement of persons committed to him under the provisions of section 246.43. The commissioner is given this authority by subdivision

8(c) of section 246.43. However, in order for the commissioner to designate the state prison at Stillwater as the state's sex deviate facility, it is necessary to amend the law relating to the purposes of the prison.

The commission is of the opinion that a person's rights would be violated if he were transferred from a mental hospital, where he had been committed as a "psychopathic personality", to the state prison. The amendatory language stating that the state prison may be designated for the care of persons committed to the commissioner under 246.43 "after conviction of a crime" is intended to prevent the transfer to the prison of a person originally committed as a "psychopathic personality" who is continued in the control of the commissioner under the provisions of the new section relating to the discharge or continuance of such a person.

Sec. 20. Minnesota Statutes 1957, section 525.762, subdivision 1, is amended to read:

525.762 Subdivision 1. Upon delivery of a patient to the state hospital to which committed, the superintendent thereof shall retain the duplicate warrant and endorse his receipt upon the original warrant which shall be filed in the court of commitment. After such delivery the patient is under the control of the director until discharged by him or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public ~~or to have a psychopathic personality~~ shall be released from custody, except upon an order of a court of competent jurisdiction. When a patient is discharged, provisionally discharged, ~~discharged~~, transferred to another institution, dies, escapes, or is returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Comment: This section relates to the control and release of committed persons. The deletion of the reference relating to "psychopathic personalities" is made for two reasons; first, the psychopathic personality law will be repealed by section

23 of this bill, and second, "psychopathic personalities" will be released under the new release procedure proposed by section 18 of this bill.

Sec. 21. Minnesota Statutes 1957, section 246.014, is amended to read:

246.014 The measure of services established and prescribed by section 246.012 are:

(1) There shall be served in state hospitals a single standard of food for patients and employees alike, which is nutritious and palatable together with special diets as prescribed by the medical staff thereof. There shall be a chief dietitian in the department of public welfare and at least one dietitian at each state hospital. There shall be adequate staff and equipment for processing, preparation, distribution and serving food.

(2) There shall be a staff of persons, professional and lay, sufficient in number, trained in the diagnosis, care and treatment of the mentally ill, physical illness, and including religious and spiritual counsel through qualified chaplains (who shall be in the unclassified service) adequate to take advantage of and put into practice modern methods of psychiatry, medicine and related field.

(3) There shall be a staff and facilities to provide occupational and recreational therapy, entertainment and other creative activities as are consistent with modern methods of treatment and well being.

(4) There shall be in each state hospital for the care and treatment of the mentally ill facilities for the segregation and treatment of patients who have communicable disease.

(5) The commissioner of public welfare shall provide modern and adequate psychiatric social case work service.

(6) The commissioner of public welfare shall make every effort to improve the accommodations for patients so that the same shall be comfortable and attractive with adequate furnishing, clothing, and supplies.

(7) The commissioner of public welfare shall establish training programs for the training of personnel and may require the participation of personnel in such programs. Within the limits of the appropriations available he may establish professional training programs in the forms of educational stipends for positions for which there is a scarcity of applicants.

(8) There shall be a separate hospital for the diagnosis, care and treatment of the mentally ill who have tuberculosis which shall conform to the standards established for the diagnosis, care and treatment of physical disease. Pending construction of such separate hospital, one of the present state hospitals, or so much thereof as may be necessary, shall be set apart for the diagnosis, care and treatment of the mentally ill who have tuberculosis and shall be staffed and equipped to meet the accepted requirements of modern medicine for the care and treatment of persons afflicted with tuberculosis.

(9) The standards herein established shall be adapted and applied to the diagnosis, care and treatment of senile persons, inebriate persons, mentally deficient persons and epileptic persons who come within those terms as defined in Minnesota Statutes 1945, section 525.749, subdivisions 4, 5, 6, and 7, respectively, ~~as amended by Laws 1947, Chapter 622,~~ and of persons who are have been committed as psychopathic personalities ~~within the definition thereof in Minnesota Statutes 1945, Section 526.09.~~

under the provisions of Laws 1939, Chapter 369, and of persons who are committed to the commissioner under the provisions of 246.43.

(10) The commissioner of public welfare shall establish a program of detection, diagnosis and treatment of mentally or nervously ill persons and persons described in paragraph (9), and within the limits of appropriations may establish clinics and staff the same with persons specially trained in psychiatry and related fields.

(11) The director of civil service and the civil service commission may reclassify employees of the mental institutions from time to time, and assign classifications to such salary brackets as will adequately compensate personnel and reasonably assure a continuity of adequate staff.

(12) In addition to the chaplaincy services, provided in section 246.014, subdivision 2, the commissioner of public welfare shall open said institutions to ministers of the Gospel to the end that religious and spiritual counsel and services are made available to the patients therein, and shall cooperate with all ministers of the Gospel in making said patients available for religious and spiritual counsel, and shall provide such ministers of the Gospel with meals and accommodations.

(13) Within the limits of the appropriations therefor, the commissioner of public welfare shall establish and provide facilities and equipment for research and study in the field of modern hospital management, the causes of mental and related illness and the treatment, diagnosis and care of the mentally ill and funds provided therefor may be used to make available services, abilities and advice of leaders in these and related field, and may provide them with meals and accommodations and compensate them for traveling expenses and services.

Comment: This section relates to the measure of services established as the goal of the State of Minnesota in its care and treatment of mentally ill people of the state. The amendments made to item (9) are intended to bring this section into conformity with the proposals of this bill.

Sec. 22. Minnesota Statutes 1957, section 261.07, subdivision 4, is amended to read:

261.07 Subd. 4. The legal settlement of persons under commitment as insane, feeble minded, epileptic, or inebriate, ~~or psychopathic personality~~ in so far as such persons are subject to the provisions of reciprocity agreements between the state and other states, shall be gained upon a residence of one-half of the time required for the gaining of legal settlement for poor relief purposes but shall otherwise be subject to the same conditions and exceptions.

Comment: This subdivision is part of a section dealing with poor relief settlement. If the "psychopathic personality" law is repealed, there will no longer be any persons of this classification who will be subject to reciprocity agreements.

Sec. 23. Minnesota Statutes 1957, sections 526.09, 526.10 and 526.11 are hereby repealed. Minnesota Statutes 1957, section 645.35, shall not be construed to apply to this act.

Comment: The sections repealed are commonly referred to as the "psychopathic personality" law. The reasons for repealing this law are discussed under Part II, Recommendation B, of this report. Section 526.11, which states that the existence of a condition of psychopathic personality is not a defense to a crime, is re-enacted in modified form as subdivision 4 of section 18 of this bill.

The second sentence is added to cut off any "psychopathic personality" commitment proceedings which have been commenced but not completed at the time the law is repealed. This cutoff procedure has been upheld by the Minnesota Supreme Court in Holen v. M.A.C., 1957, 250 Minn. 130, 84 N.W.2d 282, and State v. Chicago Great Western Railway Company, 1946, 222 Minn. 504, 25 N.W.2d 294.

Without this cutoff procedure, a "psychopathic personality" commitment proceeding commenced but not completed before the repeal of the law could be completed after repeal of the law under the rule of statutory construction set forth in section 645.35.

Sec. 24. This act takes effect on January 1, 1960.

Comment: The commission decided to set this day as the effective date of the act in order to give the commissioner time to recruit staff to implement the law.

APPENDIX 1

AN ACT

RELATING TO AN INTERIM COMMISSION ON PUBLIC WELFARE
LAWS; AND APPROPRIATING MONEY THEREFOR

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. A commission is created with authority to study all laws relating to programs administered by the department of public welfare, except corrections programs, with a view toward revising and codifying existing laws and recommending improvements requiring legislation.

Sec. 2. The commission shall consist of five senators to be appointed by the committee on committees in the senate, and five members of the house of representatives to be appointed by the speaker. Members of the commission shall serve without compensation.

Sec. 3. The commission is authorized to designate and appoint citizen advisory committees to give assistance, consultation and advice on matters relating to the study directed by this act. The size and number of such committees is left to the discretion of the commission. Members of the advisory committees shall serve without compensation.

Sec. 4. The commission has the power and authority to hold meetings at such times and places as it may designate and to conduct hearings. It shall select from its membership a chairman and such other officers as it deems necessary.

Sec. 5. The commission is authorized to act from the time its members are appointed until the commencement of the next regular session of the state legislature and shall report its findings and recommendations to the 1959 session of the legislature.

Sec. 6. Members of the commission and the advisory committees provided for in section 3, shall be reimbursed for all expenses incurred in the performance of commission duties, within the limit of the appropriation provided. The commission is authorized to purchase stationery and supplies and to employ a staff director, clerical assistance and such other experts and assistants as it considers necessary for carrying out the provisions of this act. The commission shall use the available facilities and personnel of the Legislative Research Committee unless the commission by resolution determines a special need or reason exists for the use of other facilities or personnel. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees.

Sec. 7. The sum of \$30,000 is hereby appropriated from moneys in the state treasury, not otherwise appropriated, to the commission for the purposes enumerated in this act. Abstracts for the payment of warrants shall be signed by the chairman and one other member.

Approved April 27, 1957.

APPENDIX 2

PUBLIC WELFARE LAWS COMMISSION

1957-1959

MEMBERSHIP

SENATORS

The Honorable Fay George Child
State Senator
Maynard, Minnesota

The Honorable Grover C. George
State Senator
Goodhue, Minnesota

The Honorable B. G. Novak
State Senator
747 Van Buren Avenue
St. Paul 4, Minnesota

The Honorable Henry Nycklemoe
State Senator
Fergus Falls, Minnesota

The Honorable Joseph Vadheim
Secretary
State Senator
Tyler, Minnesota

REPRESENTATIVES

The Honorable Moppy Anderson
State Representative
Preston, Minnesota

The Honorable Dr. J. J. Kelly
State Representative
Marshall, Minnesota

The Honorable Sally Luther
Vice Chairman
State Representative
1937 Kenwood Parkway
Minneapolis, Minnesota

The Honorable George E. Murk
State Representative
3357 Lincoln Street
Minneapolis, Minnesota

The Honorable Howard Ottinger
Chairman
State Representative
Chaska, Minnesota

APPENDIX 3

Committee Members
of the
Advisory Committee on Sex Psychopath Laws
as created by the
Public Welfare Laws Commission

T. F. Telander, Chairman of the Advisory Committee, Assistant Director, State Board of Parole and Probation. (Representative chosen by the State Board of Parole and Probation)

Roy L. Anderson, Mental Health Chairman, Minnesota Congress of Parents and Teachers, Fergus Falls, Minnesota. (Representative chosen by the Minnesota P.T.A.)

The Honorable A. M. Bullis, Probate Judge of Chisago County. (Representative chosen by the Minnesota Probate Judges' Association)

The Honorable Donald Burris, Judge of Edina Municipal Court. (Representative chosen by the Minnesota Association for Mental Health)

Willard Esau, Hennepin County Probation Office. (Representative chosen by the Minnesota Probation and Parole Association to represent county probation officers)

John P. Frank, Assistant County Attorney, Ramsey County.

John T. Gearty, Assistant County Attorney, Hennepin County.

The Honorable Grover C. George, State Senator, Goodhue, Minnesota. (Representing the Public Welfare Laws Commission)

Dr. B. P. Grimes, M.D., Superintendent, St. Peter State Hospital.

John R. Hawkinson, Chief Clinical Psychologist, Rochester State Hospital. (Former Supervisor, Bureau for Psychological Services, Department of Public Welfare)

Robert Jornlin, Executive Secretary, Aitkin County Welfare Board. (Representative chosen by the Association of County Welfare Executives)

Dr. Stanley Lindley, M.D., Manager, Veterans Administration Hospital, St. Cloud, Minnesota.

Lewis E. Lohmann, Minneapolis, Minnesota. (Representative chosen by the Minnesota State Bar Association)

Professor Allan McCoid, Law School, University of Minnesota. (Representative chosen by the Law School of the University of Minnesota)

Russell Olson, County Attorney, Freeborn County. (Representative chosen by the County Attorneys' Association)

APPENDIX 3 (cont.)

The Honorable James C. Otis, Judge of the Second Judicial District.
(Representative chosen by the District Court Judges' Association)

W. B. Schroeder, Sheriff of Scott County. (Representative chosen by
the State Sheriffs' Association)

Consultants:

Dr. Bernard C. Glueck, Jr., Associate Professor, Department of Psychiatry,
University of Minnesota Medical School. (Former Director of New York
State's Sex Delinquency Research Project)

Representative Moppy Anderson, Representative Howard Ottinger, Representa-
tive Sally Luther, Senator Joseph Vadheim; observers from the Public
Welfare Laws Commission.

Representative William Shovell, official representative from the Commission
on Juvenile Delinquency, Adult Crime and Corrections.

Morris Hursh, Commissioner of Public Welfare.

Dave Leslie, Assistant Attorney General attached to the Department of
Public Welfare.

Philip Olfelt, Executive Secretary, Public Welfare Laws Commission.

APPENDIX 4

Drafting Subcommittee of the Advisory Committee on Sex Psychopath Laws

Dave Leslie, Chairman

Professor Allan McCoid

Judge James C. Otis

John Hawkinson

John Gearty

Judge A. M. Bullis

Ex Officio:

T. F. Telander

Philip Olfelt