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DANGEROUS SEXUAL OFFENDER LEGISLATION IN CANADA

MONIKA J. RUHL

1986

Submitted to the School of Graduate Studies and Research,
University of Ottawa, in partial fulfillment of the
requirements for the degree of Master of Arts in Criminology

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ABSTRACT

Habitual Criminals and Dangerous Sex Offenders were two groups of offenders targeted by preventive detention measures, proclaimed into the Canadian Criminal Code (Part XXI) in 1947 and 1948 respectively. These provisions were repealed in 1977, and replaced by the Dangerous Offender provision. Although at the time of the proclamation of the new legislation it was stated that those offenders sentenced under the previous legislation would be reviewed against the new criteria, no such review was in fact conducted. In response to the findings of a study of incarcerated Habitual Criminals that none of the men could be regarded as dangerous within the new definition, a Judicial Review of these offenders was conducted, with the result that most of the Habitual Criminals were granted relief from their sentence of preventive detention. No comparable review has been conducted on those offenders sentenced as Dangerous Sex Offenders.

The present study was designed to provide information for those who must contemplate whether such a review is in order. Accordingly, the National Parole Board files of the 97 offenders identified as having been sentenced under the legislation were reviewed. A protocol was formulated to glean detailed information on the offenders' history and current circumstances.

It was found that while the majority of offenders had a previous offence history, 20 percent had no prior sex-related conviction. Pedophilic offenders were clearly the target of the legislation, as 70 percent of victims were under 16 years of age. Nineteen of the DSOs could not have been sentenced under the new DSO legislation, as several of the offences which were part of the old DSO legislation (gross indecency and buggery) were not carried over. Seventy-one percent of offenders were sentenced in the combined provinces of British Columbia and Ontario. The majority of offenders (75%) have been granted at least one conditional release since incarceration, and 73 percent of these have been re-incarcerated. Violation of the Parole agreement was the most common single reason for Parole Board action. Twenty-four offenders have been convicted of a subsequent offence, 37 percent of which were sexually-related. At the time of data collection (as of September 1, 1985), 43 offenders were incarcerated, 39 were on some form of conditional release, and 15 were deceased.

The focus of the discussion is on those results that raise the most striking concerns regarding the legislation, including the disparity and inequity in its operation, the "dangerousness" of offenders sentenced under the legislation, and its constitutionality.

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CHAPTER 1 INTRODUCTION: THE PROBLEM

Preventive detention is a sentencing practice that takes the form of indeterminate penal confinement, the purpose of which is to prevent the commission of further crimes. A secondary objective is the detention of the offender until "treated", and thus safe to release. Habitual or recidivist, dangerous and sexual offenders are three major groups of offenders targeted by this type of disposition.

Preventive detention has long been criticized on a number of grounds. That the offender is in effect confined for "'evils' they have not yet committed" (Schiffer, 1979) constitutes the thrust of the civil libertarian criticism. In this regard it was stated by Von Hirsch (1976): "it is a basic rule of criminal justice in a free society that a sane adult may not be deprived of his liberty except as a punishment for a crime of which he has been convicted". It has also been argued that the indeterminate sentence precludes any possibility of reform, "if the prisoner is confronted with the fact that he is never to be a completely free person again" (Mewett, 1956).

The first preventive confinement measure to be given statutory form was the 'relegation' adopted in the French statute of 1885 (Rennie, 1978). It was a banishment to the French colony Guyana for recidivistic offenders. Other countries followed with similar measures, Portugal in 1892 and Argentina in 1903. Australia in 1905 introduced the concept of preventive detention into the British Empire. The Prevention of Crime Act (1908) was enacted in England to be used for habitual offenders. In the United States, the first preventive confinement legislation to be enacted was in Massachusetts, implemented in 1911. Its purpose was to detain 'defective delinquents' as a separate class of offenders (Brakel and Rock, 1971). Illinois in 1938 enacted the first sexual psychopath law to be judicially upheld in the United States.

The first provision in the Canadian Criminal Code for the preventive detention of a separate category of offenders 'Habitual Criminals', was enacted by Parliament in 1947. It was a provision modelled after the English law. A second provision, modelled after the Massachusetts law, was added a year later for the detention of 'Criminal Sexual Psychopaths'. It was later changed to 'Dangerous Sexual Offenders'.

Canada repealed both the Habitual Criminal and Dangerous Sex Offender legislation in 1977, only to replace

it with the more generic 'Dangerous Offender' provision, the aim of which was to target other, not just sexually dangerous, persons.

Although at the time of the enactment of the new legislation it was stated that those offenders sentenced under the previous legislation would be reviewed against the new criteria, no such review took place.

A study was conducted by lawyer Michael Jackson (1982) in which the cases of 18 Habitual Criminals incarcerated in British Columbia were reviewed. According to Jackson, none of the men in the study could be regarded as dangerous either in terms of their propensity to commit violence or within the definition of the 1977 legislation.

In response to these findings, a Judicial Inquiry headed by Judge Stuart M. Leggatt was appointed in 1983 to inquire into the cases of the Habitual Criminals. He concluded that as a whole, these offenders did not represent a serious risk to society and furthermore, the sentence of preventive detention went far beyond the retributive expectation of the law that even the prosecutors envisioned. As a result of the Leggatt Inquiry (1984), the majority of the Habitual Criminals were granted relief from their sentence of preventive detention.

To date, no comparable Judicial review has been conducted on the other group of offenders sentenced to preventive detention: the Dangerous Sex Offenders (DSOs). The purpose of this study was to examine all offenders sentenced under the legislation, addressing those issues that would be considered important for those required to ponder whether such a review is warranted.

The present study identified all those offenders sentenced as Dangerous Sex Offenders since the inception of the legislation in 1948. A protocol was formulated, the aim of which was to glean detailed information on the history and current circumstance of each offender. The National Parole Board files constituted the sole data source of the study.

Before describing the present study and its results, the history of special sex offender laws in the United States is reviewed. The understanding of the origins of these laws is important for two reasons. First, the United States is the pioneer of special dispositional procedures for sex offenders. Second, as noted, Canada's own Criminal Sexual Psychopath law was modelled after an American law. The research done to date on the operation of these provisions is reviewed in Chapter 3. In order to provide a historical perspective on the Canadian law, the history of the development of the sexual offender special provision in the Criminal Code is traced in detail in Chapter 4, through

the various commissions that reported on its operation. Finally in Chapter 5, the research on the Canadian Dangerous Sex Offender law is reviewed, providing the reader with an understanding of our knowledge of these offenders until the current study was conducted.

CHAPTER 2 HISTORY OF THE AMERICAN SEX PSYCHOPATH LEGISLATION

INTRODUCTION

The following chapter will outline the history of sexual psychopath laws in the United States. While the legislation and operation of these laws differ in many respects from Canada, it was in the United States that special dispositional procedures were developed for sex offenders. In addition, Canada modelled its own provision after the Massachusetts (1947) law. For these reasons it would seem appropriate to trace their development.

In 1935 the first of the so-called sex psychopath laws was enacted in Michigan (Shah, 1975). This statute was soon declared unconstitutional however, mainly on the grounds of what has been defined as "double jeopardy" (being twice sentenced for one offence) and the lack of a jury trial (People v. Frotczak, 286 Mich., 51,281 N.W. 534 (1938)). As noted by Brakel and Rock (1971), the finding of unconstitutionality was primarily based on the fact that the provision was an amendment to the Michigan Criminal Code.

The Illinois Sexual Psychopath statute was the first to pass judicial scrutiny by declaring it a civil, not criminal measure. Importantly, the use of civil procedures circumvented the criminal law requirement of due process (Petrunik, 1982). In the years to follow, the majority of U.S. states instituted similar legislation (28 states enacted sex offender laws between 1945 and 1966), which for the most part allowed for the civil commitment of offenders (to be confined until "treated"), who fit the legal criteria of sexual psychopathy.

It is beyond the scope of this thesis to assess the relevant legislation in all American jurisdiction. It is enough to note that while the statutes vary with respect to administration, their commonality lies in their purpose which has been described as being "to provide special disposition procedures for people who have shown a tendency to commit sex offences" (Favole, 1983). Though hailed at the time as a tremendous step forward, for reasons to be subsequently discussed, the somewhat hasty implementation of these legal controls resulted in what some in retrospect have called ill-considered legislation. The recent trend toward repeal is therefore not surprising.

ORIGINS OF SEX PSYCHOPATH LEGISLATION

As Tenney (1962) reported, sex psychopath laws were a response to concern over an apparent increase in both the number and seriousness of sexual offences. The late 1940's

saw popular magazine articles warning of "an alarming increase in the frequency of sex crimes" (Gould and Herwitz, 1965). The public clamour for special legal controls for sexual offenders did not, it must be stressed, stem from a "true" increase in these crimes, but was rather a response to the commission of a few serious or particularly heinous sex crimes. Petrunik (1982) tells us that in several jurisdictions "a single sexual assault or child murder sparked the process" leading to the enactment of special confinement measures. In fact, the former sex psychopath statute in the state of Michigan was commonly called the Martin Goodrich Act, named after an offender convicted of a horrible sexual crime (Brakel and Rock, 1971).

In assessing the administration of these measures becomes evident that other sentiments (particularly political), in addition to heightened fear, were at work. This is elucidated when one analyses the types of offenders committed under this form of legislation. A more detailed such analysis will be done in a subsequent section, though it should be noted here that persons who were guilty of sexually deviant (though also illegal, but not necessarily "dangerous") behaviour were confined along with those more universally considered dangerous.

This is understandable when one considers the strong social reaction to sexual deviancy at this time (end of the Second World war). As noted by Oliver (1982): "few forms of human conduct were held in greater social abhorrence than deviant sexual activity, which at that time, included homosexuality". Consider, for example, the fact that homosexuality was considered to be an "expression of mental disturbance, and the perpetrator, a sexual psychopath" (Oliver, 1982). In Canada, it was not until 1966 that homosexuality was taken out of the Criminal Code, and thus no longer considered a criminal offence.

ASSUMPTIONS

The targeting of sexual offenders as a group for special dispositional procedures rests on a number of assumptions, for the most part erroneous. Clearly, such attempts at defining a target group assume that those who belong in such a group possess certain identifiable characteristics that would allow them to be clearly isolated. This characteristic is often assumed to be "identifiable mental disturbance" (Oliver, 1982). The literature on sexual deviancy does not today, for the most part, hold this assumption any longer. Amenability to treatment is, however, one of the bases upon which this type of commitment decision is made. The legislated assumption that psychiatry has effective remedies for the treatment of individuals so committed is evident in the wording of the

majority of the American statutes. Though the last twenty years have seen a refinement of methods to assess sexual arousal, treatment methods (though they exist in great frequency and types), are still in the experimental stages.

Finally it is assumed that sexual offenders are more dangerous and recidivistic than other types of offenders (Shah, 1975). Sexual offenders, like other offenders (if in fact they can be grouped into offence type) commit violent (rape) as well as nonviolent (exhibitionism) offences. Shah (1975) cites the finding that no greater than 5 percent of convicted sex offenders are of the violent and dangerous type. There is no reason to suppose that no other offenders may commit as dangerous if not more dangerous offences than these offenders. Moreover, there are no data to support the notion that there is a higher rate of recidivism among sex offenders that would require preventive confinement procedures, than among other groups of offenders. Sutherland (1950) provides evidence to demonstrate the lack of empirical support for this contention, and stated: "if specialized procedures are based on recidivism, sex offenders should be the last group for consideration".

PURPOSE AND FUNCTIONS.

Behind these erroneous assumptions lies the purpose of the inception of sexual psychopath laws in the United States. The public's particular concern with the sex offender, coupled with a positivistic theoretical orientation towards criminality, could be said to be the more important influences in the creation of such laws. As Petrunik (1982) notes, in comparison to the inception of preventive detention measure in Europe whose orientation for social control, in the United States preventive detention was legitimized in the psychiatric approach to explaining and controlling crime.

The origins of sexual psychopath laws point clearly to its two main functions: community protection and offender rehabilitation. (As Hacler and Frym (1955) note, the treatment aspect of the law is less obvious to the offender!) Simply put, it was felt that the identification and isolation of this group would be followed by treatment, to cure them of their sexual deviancy while at the same time protecting the community from further sexual crimes.

ADMINISTRATION

The various statutes that have been enacted differ on a number of procedural points, one of the important being whether the sex psychopath determination operates at the pre- or post- conviction stage. The Illinois statute, described here in its original form, presented an example of a pre-indictment hearing. The Attorney General of the State

files a petition if it is felt that a person charged with an offence is a psychopathic personality. Before the trial for the criminal offence a jury hearing is held. If the jury finds the offender to be a criminal sexual psychopath, the court commits him to treatment. After the commitment period to follow, an application must then be made out for a jury to decide whether recovery has taken place. If it is found the offender is indeed recovered, he is then committed to trial.

Brakel and Rock (1971) note that since 1950, the post-conviction type of process has been adopted most often. This is not surprising, for as Minnow (1950) stated, a law that can detain a person indefinitely without a conviction for a criminal offence is obviously subject to abuse.

A second issue of relevance in terms of procedural differences between states is the length of confinement for the offender. Many specify a "commitment until cured" approach. Florida's MDSO law states for example, that the sex offender is to be committed "until reasonable grounds to believe such person has recovered" (Brakel and Rock, 1971). Others, and with increasing frequency, have adopted a fixed term approach wherein the treatable offender can be hospitalized no longer than a maximum prison term would have allowed. It could be stated that this latter procedure is an acknowledgement of the lengthy confinement that may result from a psychiatrist approaching the release decision cautiously. Many years ago it was noted by Tenney (1962) that: "psychiatrists in all candor admit that they have nothing upon which to base judgements about dangerousness...it would seem that until they have, simple justice demands some definiteness in length of commitment based on the criminal act itself".

Furthermore, whereas some states (e.g. Illinois), once an offender is deemed "cured" will then commit him to trial for the original offence, others (e.g. Indiana) state "no person adjudged a psychopath shall thereafter be tried or convicted" (Brakel and Rock, 1971).

CRITICISMS

Both the form and administration of the sexual psychopath laws in the United States have been criticized. Perhaps the most notable in critics was The Group for the Advancement of Psychiatry, which published a document in 1977 entitled Psychiatry and Sex Psychopath Legislation: The 30's to the 80's.

As The Group for the Advancement of Psychiatry noted, sexual psychopathy is not a psychiatric term or diagnosis. In fact, exception to this term has been raised by many others, mainly on the objection that the term psychopathy was in fact a "wastepaper diagnosis" which had lost all

meaning. As a result of the medical ambiguity of the term, inconsistencies and wide variations in interpretation occur between psychiatrists (Hacker and Frym, 1955). As these authors note, it lumps together in one category such diverse offences as rape and exhibitionism.

The criteria for adjudication of offenders under this legislation have always been defined legally, although the statutes utilise psychiatric, social, and legal criteria. This has resulted in the amalgamation of a heterogeneous group of individuals who vary widely with respect to offence, diagnosis, treatability and dangerousness. There is a lack of general consensus as to what behaviour one defines as "dangerous", which has been stated like beauty, lies in the eye of the beholder. Furthermore, as stated by Rennie (1978) "'dangerous offender' is only a concept that changes to suit the fears, interests, prejudices and needs of a society. It is an idea, not a person".

The two major problems in this regard are: 1) the form of behaviour to be considered dangerous, and 2) the ability of clinicians to assess what is assumed to be an inherent dangerousness factor within individuals. First, the disagreement between legislators as to what constitutes dangerous behaviour has resulted in laws that are broad in base and which therefore capture a variety of types of offenders. Tenney (1962) notes that such a disagreement would be less tragic if there were positive means of rehabilitation for the sex offender.

Second, the ability of clinicians to assess dangerousness has been decried as being less than satisfactory. Sturup (1968) noted "intuitive feelings and very general statistics covering wide ranges of offenders are the sole foundations of psychiatric assessments of dangerousness". Mental health professionals, particularly psychiatrists, play an important role in the sex psychopath determination process, as most states require a psychiatric examination as part of the hearing. Furthermore, very often the Judge simply "rubber stamps" the psychiatric opinion. The psychiatrist's role is no less crucial at the release stage. Cognizant of the consequences of a mistaken release decision, they often act very conservatively (i.e. overestimate the dangerousness or potential for dangerous behaviour). The ramification is that many offenders remain incarcerated for an unnecessary period of time. These prediction errors are called 'false positives', meaning persons who are predicted to engage in dangerous behaviour will not. The reality of the situation in defence of the psychiatrist was aptly stated by Shah (1975) when he said "...it must be noted, however, that in these decision-making situations there exists strong social and political

pressures that demand certain types of decisions, namely 'better safe than sorry'".

Lack of effective available treatment is, as stated by Brakel and Rock (1971), "a basic condemnation of sex psychopathy laws, since the very philosophy behind, and justification for, such legislation is that sex offenders should be treated rather than punished".

USE

In assessing the general administrative history of the laws, it can be seen that overall they have not been widely used. For example, only 16 persons were sentenced in 10 years in Illinois (Minnow, 1950), while in Massachusetts only 1 or 2 cases were processed in the first 7 years of the law's existence (Powers, 1968). Sutherland (1950) stated that although such laws are dangerous in principle, in practice they are of little import because of their infrequent use. The reason he offers for this is that the laws were passed in a "period of panic" which once over, meant the law was forgotten about. Others have argued that this low rate of commitment reflects the hesitancy of judges to sentence an offender for an indefinite period of time for treatment when treatment, as noted above, generally does not exist. Powers (1968) cites a third factor influencing the low rate of commitment in relation to the Massachusetts law. He states that the District Attorneys were wary of a law that was so vague that it was possible for the courts to "deprive persons of their liberty for life merely over the probability that they were 'likely' to attack".

CONSTITUTIONALITY

The constitutionality of special dispositional procedures for sex offenders has been challenged in the American Courts on a number of grounds. The issue of treatment and treatability arose in a number of cases. In *Ohlinger v. Watson* (28 CrL 2329), two Oregon prisoners sentenced to indeterminate terms as sex offenders won their right to treatment that "affords them a reasonable opportunity to be cured or to improve their mental condition". The Court determined that as they would be held indefinitely as a result of their mental illness, while those convicted and sentenced to prison for the same substantive offence need only serve the 15 year maximum, "adequate and effective treatment is constitutionally required".

A similar decision was handed down in *People v. Feagley* (17 CrL 2166) and *People v. Burnick* (17 CrL 2164). A majority opinion of the California Supreme Court, in interpreting the MDSO law, decided that detaining an MDSO on the rationale that they are "untreatable" is cruel and

unusual punishment. This judgement reflects the opinion that detaining an offender solely on the grounds that he is dangerous to the community is unconstitutional.

Because of the implications of an indeterminate sentence, Schreiber (1970) stated that safeguards necessary in criminal cases "should be statutorily mandated for indeterminate confinement as a matter of policy". The California experience with special sex offender laws is an example of the trend away from civil towards criminal proceedings, as is evidenced by the addition of due process safeguards. *Specht v. Patterson* (3286 US 605 (1967)) was an important case in this regard. It was held by the court that an offender committed under the Colorado Sex Offences Act had a due process right to counsel, confrontation and the exclusion of hearsay evidence, as detaining persons as sexual psychopaths was indeed criminal punishment and therefore subject to criminal proceedings. Another important decision was a California Supreme Court ruling in 1976 that MDSO patients may not be kept longer in state hospitals than they would be held in prison for the offence.

In limiting the power of the courts to indefinitely incarcerate any offender, a Supreme Court of New Jersey ruling stated "persons are not to be indefinitely incarcerated because they present a risk of future conduct which is merely socially undesirable" (*State v. Knol*, 344 A.2d 289 (1975)).

CONCLUSION

There is agreement among critics regarding the failure of this type of legislation. Oliver (1982) commenting with regard to the California MDSO statute stated: "have proved to be ineffectual-have failed in their objectives not only to protect the community but also to rehabilitate the offender". The Group for the Advancement of Psychiatry (1977) stated: "in retrospect, we view the sex psychopath statutes as social experiments that have failed and that lack redeeming social value".

As earlier noted, recent years have seen a repeal of the special sex offender provisions in many states. As of January 1, 1980, 20 states still had sex offender statutes. Seven additional states had such statutes in 1978 that were repealed by 1980 (Monahan and Kantorowski Davis, 1983).

The aforementioned trend towards determinate sentencing practices has important ramifications for preventive confinement laws, although, as stated by Monahan et al. these may still be too early to determine. The promises of both community protection and offender rehabilitation held out by special sex offender laws it is felt have generally not been met, and thus the reason for the continued existence of these provisions becomes less clear upon close

11.

scrutiny. Future years, it may be predicted, will see a continued decline in the number of special confinement measures for sex offenders in the United States.

CHAPTER 3 RESEARCH ON THE AMERICAN SEX PSYCHOPATH LEGISLATION

INTRODUCTION

This chapter reviews those studies examining the operation of the sex psychopath statutes in the United States. Such studies are relatively scarce, and have focused on a small number of jurisdictions. California's MDSO statute has been the most extensively studied and is therefore the focus of the following discussion, although research on the legislation of other jurisdictions is incorporated where appropriate.

Generally two types of research in this area may be identified: 1) descriptions of the relevant legislation and the offenders sentenced thereunder and 2) a comparative analysis of sex offenders recommended v. not recommended for processing under the special sex offender legislation. This latter type of study is of particular interest in an assessment of what type of offender is successfully processed, since by comparing the two groups, those factors that are important in the decision-making process are elucidated.

Konecni, Mulcahy and Ebbesen (1980) produced a thorough report examining the Californian Mentally Disordered Sex Offender (MDSO) (now repealed) adjudication process by following the cases of 113 offenders suspected of being an MDSO, not all of whom were so adjudicated. Sturgeon and Taylor (1980) conducted a 5 year follow-up study of 260 MDSOs released in 1973 from the California State Treatment Hospital, Atascadero. This group was compared to a prison cohort of 122 (persons found not to be MDSOs) paroled in the same year. They were compared on a number of variables such as offence, diagnosis and length of commitment. Dix (1976) studied a random sample of offenders found to be MDSOs and committed in the years 1967, 1972 and 1974. Finally, Pacht and Cowden (1974) reviewed the cases of 501 sex offenders who were considered for adjudication as Sex Deviates under the Wisconsin Sex Crimes law, only a portion of whom were so sentenced.

MENTAL DISORDER AND THE SEXUAL PSYCHOPATH

These studies examined the question of the presence or absence of diagnosed mental disorder in this group of offenders. It is an important issue in the study of the legislation, for as discussed, the link between mental disorder and deviant behaviour is implicit in most statutes, and is reflected in the terms used to designate these offenders.

In this regard, it was found that the label Sexual Deviation was assigned to 58 percent of the MDSO group, but to only 12 percent of the non-MDSO group (Konecni et al., 1980). Conversely, the diagnosis "antisocial personality" was assigned to 39 percent of the non-MDSO group but to none of the MDSO group. Furthermore, it was found that while a full 43 percent of the non-MDSO group were given no psychiatric diagnosis, all the offenders in the MDSO group were assigned a diagnosis.

A number of studies (Konecni et al., 1980; Sturgeon and Taylor, 1980) found that in a majority of cases, the psychiatric diagnosis assigned simply labels the deviant sexuality (ie Sexual Deviation in the American Psychiatric Association's Diagnostic and Statistical Manual:DSM). Within this broad category, Sturgeon and Taylor (1980) found that the specific diagnosis of the offender more closely resembled the offence for which they were committed, than a diagnosis. Thus, for example, rapists were diagnosed most frequently as "aggressive sexuality" (DSM 302.80), while offenders with female children as victims were most often diagnosed as "female pedophilia" (DSM 302.20). Dix (1976) found the broad category of Personality Disorder (including antisocial personality and passive-aggressive personality) to be another diagnostic category in which a substantial portion of sex offenders (particularly child molesters) were put (see also Sturgeon and Taylor, 1980). These findings appear to confirm the charge of circularity in the relationship between crime and mental illness in MDSO cases (The Group for the Advancement of Psychiatry, 1977).

The main point to be made by these findings is the demonstration that any major pathology that is usually found among mental hospital patients is conspicuously absent in this population. As stated by Dix (1976) "...persons examined evidenced very few of the traditional clinical symptoms associated with serious mental illness". Sturgeon and Taylor (1980) state "significant pathology such as psychosis, retardation, and major affective disorders, usually found among mental hospital patients, is uniformly lacking within the sex offender population". This is not to argue that mental disorder is not present in some sexual offenders, it clearly is. However, it is not present in all and, therefore, is not a direct cause of their behaviour. Furthermore, some offenders who do not commit sexually deviant acts are suffering from mental illness, and little legislation is directed towards them to accord them differential treatment. For this reason, Monahan and Kantorowski Davis (1983) have called this type of legislation discriminatory for "excluding mentally disordered persons charged with other crimes".

OFFENCE TYPE

The second area of importance in an examination of the legislation is the type of offence which results in a legal finding of sexual deviation. In the studies that were reviewed, by far the largest offence group was comprised of child molesters (including incest and male and female pedophilia). This fact appears to have remained consistent across time in the history of the legislation. In two studies of the California law, one found that 78 percent of the MDSOs were child molesters and the remainder rapists (Sturgeon and Taylor, 1980), while a second study (Dix, 1976) found 66 percent of the group to be child molesters and 22 percent rapists; the remainder were various other sexual offenders. This large representation of offenders who commit sexual offences against children within this type of special legislation was also found by Tenney (1962) in a study of the Massachusetts statute.

In a comparison of successfully v. unsuccessfully charged MDSOs, Sturgeon and Taylor (1980) found that sex offences involving children comprised 78 percent of the MDSO group, but only 44 percent of the non-MDSO group.

Child molesters appear to be a heterogeneous group. Among MDSO pedophiles, Dix (1976) found that in 24 percent of the cases physical force was used or injury caused; in 26 percent, threats of such were used; in 40 percent neither were used. Furthermore, in terms of the actual activity involved, this same study reported that in 40 percent of cases there was physical touching, in 24 percent of cases there was oral-genital contact, and in the remaining 36 percent there was penetration. In response to these findings Dix stated "it is clear that in large part the program is directed at non-violent persons who engage in relatively innocuous sexually motivated behaviour with children".

Importantly, the use of the legislation largely for child molesters has not meant a uniform perception among clinicians of the level of dangerousness this group represents. Dix (1976) found substantial discrepancy between clinicians regarding the dangerousness of both exhibitionism and child molesting. Even when an assessment of dangerousness was agreed upon, the reasons for this assessment were not. For example, while some consider the exhibitionist an offender likely to progress to more serious behaviour and therefore dangerous, others feel that the "nuisance and distress" aspects of the behaviour in itself is enough for the offender to be considered dangerous.

Also of importance is the fact that societal reactions to various sexual behaviours and activities is not inherently static. As discussed previously, homosexuality

was long thought to be not only a sexually deviant act, but one for which criminal sanctions should exist.

OTHER AREAS OF IMPORT

Pacht and Cowden (1974) looked at other non-offence-related variables that discriminated between successfully and unsuccessfully charged Sex Deviates in Wisconsin. The Sex Deviates were found to have a greater history of psychiatric treatment, were older, and had used less alcohol at the time of the offence.

Konecni et al. (1980) did a content analysis of the letters of psychiatrists which are written to give the judge their assessment of whether the defendant is suitable for an MDSO classification. The length of text devoted to a number of factors dealt with in the letter were found to significantly discriminate between the two groups. For example, those letters concluding with an MDSO recommendation were found to devote more space to a discussion of the defendant's physical appearance, family history, childhood experiences, prior sex-related criminal record, psychological interpretation of offence and feeling of indifference towards the offence. As these authors state, "there is considerable tendency to impute negative habits, intentions, and motives to the defendant classified as an MDSO and to evaluate his prior life-style, current status and future prospects negatively". Such data are important, for as Dix (1976) found, in making an assessment of a sex offender's status in this regard, examining clinicians put relatively more emphasis upon the social history than upon observations made during a clinical interview. Furthermore, the Courts were observed to have based their decision of MDSO determination largely on the social history.

LENGTH OF HOSPITALIZATION

How long do sexual psychopaths remain hospitalized? It was reported by Forst (1978) that both prosecuting and defence attorneys viewed an MDSO commitment as resulting in less time spent detained than had they received a prison term. In confirmation of this, Sturgeon and Taylor (1980) found that the prison group considered by individual offence category and as a whole, spent at least twice as long incarcerated than sex offenders hospitalized for the same offence. Dix (1976) looked at the length of hospitalization for MDSOs committed in 1967 and 1972. No MDSO was confined for a period greater than 2 years. This study also found that sentencing to imprisonment under the penal code would have resulted in a significantly longer period of detention for many of the MDSOs. A similar difference is reported in Wisconsin (Ransley, 1980; c.f. Monahan and Kantorowski Davis, 1983), where Sex Deviates were found to spend, on

average, 4 to 6 months less time institutionalized than those sex offenders incarcerated.

EFFECTIVENESS OF SEX PSYCHOPATH LEGISLATION

As Dix (1976) stated "probably the most important measure of the effectiveness of a sex offender program is the extent to which it reduces recidivism below what would otherwise have been the case". As the studies above have shown, commitment appears to be shorter for those sentenced under this special legislation. In the study of MDSOs by Dix, a follow-up period of 7 years after placement in the sex offender program was used. He found that the highest overall recidivism rate was for the MDSO treated and touted as cured. The lowering of recidivism rates for this group through confinement in comparison to prison groups is obviously not a factor, as they are released sooner than had they been sentenced to a traditional prison term. As the author points out, spending less time institutionalized affords more opportunity for criminal behavior. The argument could therefore be made that it is confinement length, and not treatment, that is the determining factor in recidivism; or, as Sturgeon and Taylor (1980) state "the initial discriminating process which channels offenders".

CONCLUSION

The foregoing discussion has attempted to illustrate some of the research issues that have been investigated in an analysis of sex offender provisions in the United States. First, the assumed existence of mental disorder in this population that is one of the bases upon which such legislation is made, does not appear to exist. Where diagnoses are made, evidence exists to suggest that these are descriptive and not aetiological in nature. Secondly, while the legislation appears largely directed towards offenders who commit offences against children, there is no universally agreed upon clinical definition of dangerousness, and thus offenders not overtly violent are included along with those demonstratively violent. The argument could be made that this was an unintended result of the legislation. Finally, we are still unclear as to the effectiveness of these laws in terms of lowering recidivism rates. Few studies examining this question have been conducted. However, if, as suggested, it is indeed length of confinement and not treatment that is the determining factor in recidivism, the usefulness of these special sex offender provisions is indeed questionable.

CHAPTER 4 HISTORY OF THE CANADIAN DANGEROUS SEX OFFENDER LEGISLATION

INTRODUCTION

This chapter will trace in detail the development of the Canadian sexual psychopath law from its inception to its repeal and to the enactment of the Dangerous Offender provision. A careful emphasis will be placed on the reports of two major studies commissioned to examine the law (McRuer Report, 1958; Quimet Report, 1969), the recommendations made, and the amendments that followed.

ENACTMENT OF THE LEGISLATION

On November 1, 1948 the Criminal Sexual Psychopath provision was proclaimed in force into the Canadian Criminal Code. It was a provision modelled after the Massachusetts (1947) law. Regarding the law's inception, Menzies (1977) noted "in many respects, the Canadian provisions were a hurriedly adopted application of the American laws, without appropriate reflection upon their pertinence to specifically Canadian exigencies".

The original Act (Section 1054a and b of the Criminal Code) defined a "Criminal Sexual Psychopath" as a person who:

"by a course of misconduct in sexual matters has evidenced a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, loss, pain or other evil on any person".

At that time, an application could be brought against an individual convicted of one of the following offences: indecent assault on a female, indecent assault on a male, rape, attempted rape, carnal knowledge of 1) a female under 14 years of age and 2) a female between 14 and 16 years of age of previously chaste character, and attempted carnal knowledge of a female under 14.

If an application was brought against a person so convicted, a hearing was held after the conviction and before sentencing, to hear evidence as to whether the convicted person fit the definitional criteria. Required at the hearing was the evidence of at least two psychiatrists, one of whom was to be appointed by the Crown. The decision as to whether the evidence warranted a Criminal Sexual Psychopath designation was made by a magistrate or

Provincial Court Judge. If a positive adjudication was made, a term of imprisonment of not less than two years for the offence was to be given. In addition, the sentence of preventive detention was imposed.

The first legislative revisions of the Act were proclaimed in force on April 1, 1955. At this time, the offences of buggery, bestiality and gross indecency were added as triggering offences, as well as a provision for the inclusion of 'attempt to commit' any of the above-noted offences. Also at this time the word 'loss' was deleted from the interpretive section of the Act.

MCRUER REPORT (1958)

A Royal Commission, headed by Judge J. C. McRuer, was appointed in 1954, with the mandate to assess the effectiveness of the law relating to Criminal Sexual Psychopaths, whether it should be amended and if so, in what respect. Interestingly, the type of professional that made representation to the Committee was heavily balanced on the side of medical/psychiatric professionals (93) as opposed to legal professionals (31). Perhaps not surprisingly, two distinct points of view were presented. Representations to the effect that the law should become more all-encompassing represented perspective. In contrast, other witnesses (10, legal) were in disagreement with the scope of the law and stressed procedural safeguards to protect the offender (McRuer, 1958).

The McRuer Report, as it came to be known, made numerous recommendations relating not only to the substantive law but also its application. The more important of these are discussed here.

The Commission came out strongly against the use of the term 'psychopath' as the legal designation for these offenders. As the report states "it introduces into the courtroom a discussion of a mental condition which many assume to be mental disease capable of exact clinical definition" (McRuer, 1958). Dangerous Sexual Offender, a more descriptive term, was recommended by the Commission and eventually adopted.

A number of criticisms were levelled at the wording of the definition. It was felt for example that the phrase "course of misconduct in sexual matters" signifying a history of criminal sexuality, should be changed so as to include the individual who commits a single horrific act demonstrating he is too dangerous to be at large. It was felt furthermore that the phrase "a lack of power to control his sexual impulses" was too imprecise. Psychiatrists making representation to the Commission described the difficulty in distinguishing between impulses that are uncontrollable and those that are not controlled.

The suggested phrase "failure to control" was eventually adopted.

The Commission examined the sexual offences covered by the definition as triggering offences. In preface to a discussion of their thoughts, it is interesting to note that of the 27 sexual offences in the Criminal Code at the time of the enactment of the original legislation, only 6 (and 3 added 7 years hence) were specified for inclusion in the legislation. Thus, for example, similar sexual offences against wards or biological children, criminalized in the Code and that had as a maximum punishment up to 14 years, were not included. The issue of what some may have termed the relatively narrow scope of triggering offences was raised in many of the representations to the Commission. However, the expansion of the definition to include such offences as incest, sexual intercourse with a step-daughter and the feeble-minded was rejected. It was the opinion of the Commission that in no specific case that had been brought to their attention in which a person had been convicted of any of the suggested offences had the Criminal law been insufficient in its penalty.

Whether or not the law under discussion should apply to homosexuals was addressed, and subject to a great difference of opinion. The Commission, while stating that a conviction of a homosexual act did not in their opinion warrant an indeterminate sentence, did state that it must be left up to the Courts to decide how homosexual offences fit within the law in question.

The Report presented further, far-reaching recommendations. It was suggested that money be granted to universities to study the causes and treatment of sexual abnormalities. It was also recommended that special facilities be created for the treatment of sexual offenders found guilty of a sex offence. The Commission felt that the offender who has been declared a Criminal Sexual Psychopath is, in theory at least, "one who suffers from some abnormality affecting his sexual impulses. If he does not suffer from any abnormality he does not come within the scheme of the law, and should be dealt with as any other convicted person". From this perspective, the offender so defined under this legislation is one who is deserving of treatment (because he is in need of it). It was recommended that treatment facilities be made available to offenders sentenced under this legislation.

Finally, a procedural safeguard was recommended to be added to the legislation. It was recommended that every person so convicted should have a right to have their case reviewed by a Judge every three years in order to determine whether they should remain detained. The recommendation was not adopted.

The Commission noted the following three factors in declaring the law a failure: 1) the phrasing of the law 2) the lack of proper enforcement and 3) the reluctance of the courts to commit a person to imprisonment for an indeterminate period of time, particularly without the benefit of treatment (McRuer, 1958). Clearly, the Commission was not in disagreement with the fundamental principles of the legislation.

The Report was tabled in Parliament in 1958, and on September 1, 1961, amendments to the legislation were proclaimed in force.

QUIMET REPORT (1969)

Concern with and criticism of the legislation did not end with these revisions. In 1965, a Committee was formed with the broad mandate of studying the Canadian Correctional system in order to recommend "what changes, if any, should be made in the law and practice relating to these matters." (Report of the Canadian Committee on Corrections, 1969; the Quimet Report). As the issue of the adequacy of the Criminal law to protect the public was addressed, necessarily included was the study of the Habitual and Dangerous Sex Offender legislation.

In addition to their concern regarding the adequacy of these laws to protect the public from the dangerous offender, one of the terms of reference for the investigation was the determination of whether these special provisions had been or were capable of being applied against persons not dangerous "in terms of representing a threat to personal safety" (Quimet Report, 1969). Three major criticisms of the operation of the Dangerous Sex Offender law were focused on.

First, the Committee addressed the problem of the uneven geographical application of the law. It was discovered that of the 57 DSOs so designated to that date, 20 were found each in British Columbia and Ontario. The unlikely scenario of a higher proportion of sex offenders deserving of the designation in these two provinces was therefore acknowledged.

The second major criticism of the operation of the legislation was that the procedure for the determination of the DSO designation, based as it was principally on the evidence of two psychiatrists, was inadequate. The Committee was told that the psychiatric testimony at the hearing is usually based upon one or two interviews with the defendant, supplemented by the evidence given at the trial and an examination of relevant documents. It was stated that "it is extremely difficult to determine on the basis of an interview with any degree of accuracy whether an offender is a DSO" (Quimet Report, 1969).

Third, the Committee dealt with the issue of the dangerousness of the offenders captured under the legislation. In confirmation of their suspicion that the law was capable of and had been applied to nondangerous offenders, Dr. G. Scott (consulting psychiatrist at Kingston Penitentiary) reported in his representation to the Committee that of the 20 DSOs confined in Kingston Penitentiary at that time, 9 had been diagnosed as clinically nondangerous according to the Quimet criterion.

With regard to the issue of the dangerousness of offenders sentenced under the law, the Supreme Court of Canada decision in the celebrated case of Klippert v. the Queen (1968) had important ramifications for the Act. It affirmed its application to sex offenders who were not necessarily physically violent. The appellant in this case had been convicted of 4 counts of gross indecency with consenting males. In the opinion of the psychiatrists making testimony at the hearing, there was no danger of him using coercion or violence on any person in the future. It was felt, however, there was a likelihood of further acts of gross indecency being committed with consenting adult males. Because the section allowed for a conviction as a Dangerous Sex Offender where the requirement "or is likely to commit a further sexual offence" was met, the Court of Appeal stated the following:

"the object of these provisions is not merely to protect persons from becoming the victim of those whose failure to control their sexual impulses render them a source of danger, since s. 659(b) provides an alternative constituent element involving the likelihood of committing a further sexual offence and several of the offences listed in s. 661 do not necessarily involve violence, nor in one case, the involvement of another human being".

The two major amendments to the Act resulting from the decision, and proclaimed in force on July 1, 1969, were: 1) the phrase "or is likely to commit a further sexual offence" was deleted and 2) the section relating to the offences of buggery (bestiality is included in this section) and gross indecency were amended so as to be legal between consenting adults of the age 21 years and over.

The fact that the legislation dealt with only one type of potentially dangerous offender, the sexual offender, was addressed by the Committee. In recognition of the many types of dangerous nonsexual behaviour, it was felt that it would be preferable to enact legislation to encompass not

only sexually dangerous but all dangerous offenders. The following is an excerpt from their proposed definition and demonstrates their concern with offenders who represent a more serious risk than the group that had been sentenced thus far as Dangerous Sexual Offenders:

"an offender who has been convicted of an offence specified in this Part who by reason of a character disorder, or defect constitutes a continuing danger and who is likely to kill, inflict serious bodily injury, endanger the personal safety of others".

General criticism of the indeterminate sentence, were noted by the Committee, but were not sufficient to recommend its abolition. It was stated that any objection to the indeterminate sentence may be obviated with the existence of a procedural safeguard; a provision which would discharge these offenders from such a sentence, in certain cases, after a certain period of time had elapsed.

The Committee concluded that "the present legislation does not protect society against offenders from whom society requires maximum protection". Their major recommendation was the repeal of the DSO and HC provisions, and the enactment of the proposed legislation (as above), which would provide for the indeterminate commitment of a different class of offenders: the Dangerous Offender.

This new legislation was predicated on the availability of custodial and treatment facilities, suitable to this new class of offender. It will be remembered that the recommendation that treatment facilities be created was earlier made by the McRuer Commission. The recognition of the importance of research on both the causes and treatment was underlined by the Committee, a recommendation that also harks back to that put forth 10 years prior by the McRuer Commission.

LAW REFORM COMMISSION (1975, 1976)

In 1975 the Law Reform Commission published a document in which the law relating to Dangerous Sex Offenders is critically discussed. Their criticisms included the following:

1) There is a problem defining the type of offender at which the law is aimed, with the result that offenders have been sentenced under the legislation who probably should not have been.

2) Although we do not know how to predict dangerousness with accuracy, the law requires that it is nonetheless done.

3) Special laws for sex offenders should not be predicated on the notion that these offenders may be rehabilitated, as little is known about changing human nature.

4) Serious offenders, including sex offenders, should be dealt with under the regular sentencing structure.

The report states, in conclusion, that the Dangerous Sex Offender law should be abolished and "a judge should be appointed to inquire into the cases of the men ... with a view to establishing a release program, a periodic review of their cases and termination of their life sentence after a given period of successful living in the community".

In 1976, a second document was published by the LRC, in which the legislation of both the Habitual Criminals and Dangerous Sex Offenders is discussed. It would appear that a major impetus for the creation of the report was the uneasy realization that the proposed 'Dangerous Offender' provision (as proposed by the Ouimet Committee) was possibly going to be enacted. It is stated "it will become apparent that in our view the present code provisions are deplorable, and that the proposals of the Ouimet Committee are unsatisfactory and in important respects misguided".

Further criticisms noted included the fact of its inconsistent geographical application, the undesirability of the indeterminate sentence and the fact that the magistrate is saddled with too much power.

As in the previous report, also addressed are alternative sentencing options available for sentencing the dangerous offender. As they note, the argument best in favour of dealing with these offenders under the context of the ordinary sentencing structure is the difficulty in identifying this target group. That the normal sentencing structure appears adequate is demonstrated by the fact that a sentence of life imprisonment has been judicially upheld for dangerous offenders. As stated by Price and Gold (1976) "a life sentence may be appropriate where it is demonstrated, without anything further, that the record and evidence disclose a continuing danger to the public from the convicted person". They state in conclusion that "the criticisms made herein demonstrate that the present Part XXI of the Criminal Code has no place in a civilized law of criminal correction".

DANGEROUS OFFENDER LEGISLATION

Notwithstanding the above, on October 16, 1977, the Peace and Security Package, including the proposed Dangerous Offender provision, (Bill C-51) was proclaimed in force; (with, as Greenland (1981) noted "indecent haste and a minimum of debate"), upon repeal of both the Habitual Criminal and Dangerous Sex Offender provisions.

Importantly, neither the status nor the sentence of offenders sentenced under the previous legislation was repealed with the passing of the Dangerous Offender provision. In recognition of the new criteria to be used in the adjudication of Dangerous Offenders, it was stated by the then Minister of Justice in 1977, Mr. Ron Basford, that the cases of those sentenced under the previous legislation would be reviewed against the new criteria. He stated:

"It was undertaken that on passage of this bill the Parole Board would review all cases of those sexual offenders or habitual criminals now incarcerated, and review them in accordance with the proposed clause 695.1(2)".

HABITUAL CRIMINAL JUDICIAL REVIEW

In response to concerns by both the Habitual Criminals themselves as well as those involved in corrections that no such review was in fact being conducted, a review of the cases of 18 Habitual Criminals incarcerated in British Columbia was conducted by lawyer Michael Jackson. Using both the material gathered from individual interviews with the men, as well as case file data from the National Parole Board files, Jackson's (1982) report presented a number of interesting findings and powerful conclusions. They can be summarized by the following two points:

1)"the great majority of men in the study have always been regarded as no more than grave social nuisances, and have never been regarded as dangerous in terms of their propensity to commit violence " and

2)"none of the men in the study can properly be regarded as dangerous within the definitions of the 1977 Dangerous Offender legislation".

Response to the report was soon forthcoming. In July of 1983 the appointment of the Honourable Judge Stuart M. Leggatt was made to head an inquiry into the status of Habitual Criminals (Report of the Inquiry of Habitual Criminals, 1984).

The findings presented by the Inquiry echo those made by Jackson. The harshness and unfairness of the indeterminate sentence resulting in long years of incarceration for many is poignantly illustrated by the fact that persons convicted of murder were admitted and released while the Habitual Criminals were still under their sentence of preventive detention. Leggatt stated "there is no question that the retributive aspect of the law went beyond

even the expectations of those who prosecuted them". As a result of the Leggatt Inquiry, the majority of Habitual Criminals were granted relief from their sentence of preventive detention.

THE NEED FOR A REVIEW OF DSOs

To date, there has been no comparable review of the second group of offenders sentenced to preventive detention: the Dangerous Sex Offenders. While it is to be expected that these offenders are, as a whole, of considerably more risk and public concern than the Habitual Criminals, the factors enumerated below underline the need for an analysis of these cases in an effort to determine whether in fact a similar Judicial review is warranted.

Importantly, legislative changes to the Criminal Code since the conviction of these offenders has altered the 'serious personal injury' offences that form part of the Dangerous Offender provision. Not carried over with the 1977 amendments were the offences of, or attempt to commit buggery and bestiality, both of which had been grounds for the Dangerous Sexual Offender application. The 1983 Sexual Assault legislation further changed the threshold criteria by excluding unlawful sexual intercourse and gross indecency.

The dangerousness of the offenders sentenced as Dangerous Sexual Offenders is a second issue worthy of consideration. The application of the provision against offenders who were in fact not dangerous has been raised by a number of authors (see Ouimet Report, 1969; Greenland, 1984), and who would not now meet the interpretive criteria of dangerousness of the new legislation.

To be sure, there is no question that fewer calls of sympathy will be heard for this group. Irrespective of what justice and fairness may demand of legislators, the public's perceptions of political actions are a reality that cannot be forgotten. The sexual offence of but one Dangerous Sex Offender released, is one too many.

In the following chapter a review of the research that has been conducted to date on this population is presented, and underlines the need for an up to date analysis of this group of offenders in order to assist in the determination of whether a Judicial review is in order.

CHAPTER 5 CANADIAN RESEARCH AND THE CURRENT STUDY

THE RESEARCH OF C. GREENLAND

The most comprehensive and extensive research on DSOs in Canada done until the current study has been conducted by Cyril Greenland, who with the publication of his recent paper (1984) entitled "Dangerous Sexual Offender Legislation, 1948-1977: An Experiment that Failed", has ended more than a decade of research on this topic. The following section will review the highlights of these studies.

The first paper published by Greenland (1972) on the subject of Dangerous Sexual Offenders was taken from a presentation made at an interdisciplinary meeting of Law, Psychiatry and Corrections. In this paper he reported on initial findings of a study undertaken at the request of the Law Reform Commission on the population of DSOs. He specifically addressed the issue of the dangerousness of this group, and chose to examine the cases of 17 DSOs who were at the time, incarcerated. His assessment of dangerousness was made according to the level of physical assaultiveness of the offence for which they were sentenced as DSOs. He found he was able to divide the group into three categories: 1) three offenders who had been physically violent or seriously threatened violence in their index offence 2) nine offenders who had displayed indecent and offensive behaviour but not violent behaviour and 3) five offenders he considered to be "typically inoffensive homosexual pedophiles or exhibitionists".

It is only the former group that Greenland perceived as meriting the title dangerous, and the harshness of the indeterminate sentence. It was his conclusion that

"...the public are being cruelly deceived into believing that the law protects them and their children from assaults by vicious sex criminals. Dangerous Sexual Offender legislation does nothing of the kind. What it does-often in a mockery of justice-is to give the public a false sense of security by incarcerating virtually for life in conditions of appalling degradation, a pathetic group of socially and sexually inadequate individuals".

In 1976 the complete study of the population of DSOs was published. National Parole Board files were the source of case information, which was gleaned on the following topic areas: personal characteristics, criminal history,

index offence, victim data, trial information, institutional and treatment history, and release (parole) data. As the purpose of his research was to portray a descriptive picture of DSOs, only descriptive statistics were used.

He found that between 1949 and 1973, 98 offenders were convicted as Dangerous Sexual Offenders (or Criminal Sexual Psychopaths as the former provision was called), including 7 quashed cases. (It is unclear, however, why these quashed cases were included for analysis when their status was subsequently overturned).

The province with the greatest number of such convictions was British Columbia (accounting for 39% of designations), followed by Ontario, which accounted for 29 percent of designations. The majority (62%) of victims were female. The most frequent heterosexual offences were indecent assault on a female (33 cases) and rape and attempted rape (20 cases). Among the homosexual offences, the most frequent was indecent assault on a male (18 cases) and gross indecency (14 cases). It was found that heterosexual offenders were, as a group, younger than homosexual offenders, though it is unknown whether this difference was statistically significant.

As of 1973, 31 DSOs had at one time been paroled, after serving between 3 and 15 years. Over half had been imprisoned for 6 to 10 years prior to their first parole release. A little over half of the released group were successful in the community (no suspensions or revocations). Thirteen had had 1 suspension or revocation, and 2 had 2 paroles revoked. Therefore, approximately two-thirds of the population had never had a parole release as of 1973. At that time, over half had served between 6 and 15 years, and two had been incarcerated for more than 20 years.

An update on this study (as of 1977) was prepared by Greenland and published in 1984. In addition to the data already collected for the original study, the clinical and administrative records for the (34) British Columbia cases and the (28) Ontario cases were reviewed. It is important to keep in mind that the data presented below on victims, offenders, psychiatric history and parole information apply only to these two groups. Further statistical information on other variables up to 1980 was provided by the National Parole Board, and included in the study.

In this, unlike the former study, Greenland critically attacked the legislation and the manner in which it was been applied, noting specifically its arbitrariness. That the law has been applied in an arbitrary fashion he evidenced by the fact that less than 3 percent of sex offenders were convicted as DSOs and the great disparity between provinces in the number of adjudicated DSOs.

Much of the data presented in this study do not differ much from the former, particularly on variables such as type of offences (62% were heterosexual) or prior convictions (45% were not exclusively sex offenders). Other data are presented, however, that were not included in the former study, the results of which are presented here.

The offences committed by the DSOs (in the provinces of British Columbia and Ontario) were categorized in a fashion similar to the 1972 paper reported above. He found the categories almost equally divided in composition, containing 21 percent (no harm), 18 percent (moderate harm) and 21 percent (severe harm).

He compared the diagnoses given the group between the two provinces, and found substantial differences. Psychopathy as a diagnosis was given to only 3 percent of the Ontario cases, but to 29 percent of the B.C. cases. Mental retardation was not given in any Ontario cases, but in 12 percent of the B.C. cases. As Greenland states "it is impossible to determine whether the considerable differences in diagnoses between the B.C. and Ontario cohort reflect the character of the offenders or psychiatrists or a unique combination of both".

As of December 1980, 48 of the DSOs had never been granted a release. This can be compared to the figure of 67 reported in his earlier study (1972). Therefore, between 1972 and 1980, 19 new releases were made. It will be remembered that in the earlier study 2 DSOs had had their release revoked twice, which compares with 7 as of 1980. In neither study does Greenland cite reasons for the parole failures, either breach of parole condition v. new convictions or charges, for example. This is important, because using these figures (16 parole revocations) the conclusion he makes that the 'recidivism' rate of the group of 38 percent is questionable. Clearly he is using the term recidivism in the general sense to mean either parole failure of any type or reincarceration, but not in the sense of subsequent sexual offences. This is an important distinction, as an offender can have his parole revoked for any number of parole violations (eg. drinking, UAL), that say nothing of further criminal activity.

This concludes the section on prior research of Canada's Dangerous Sex Offender legislation. Greenland's research, which studied in detail the offenders sentenced in just two provinces, does not represent the population of Dangerous Sex Offenders. Clearly, a need existed for an up-to-date study that would collect and synthesize data on all DSOs sentenced from the inception of the legislation in 1948 until 1977 when the legislation was repealed.

PURPOSE OF PRESENT STUDY

Several pressing issues arise with regard to the DSOs sentenced. Importantly, how many of these offenders sentenced would not now meet the 'serious personal injury' offence clause of s. 661 of the Criminal Code (see Appendix B). As discussed previously, it was found by Jackson that none of the Habitual Criminals that he studied could be regarded as dangerous within this new definition. Secondly, a need existed to study more generally the manner in which the legislation operated, with specific reference to who was sentenced, where and why, and what has happened to them since incarceration. Only when these more specific questions are answered can we begin to provide information to those considering the possible need for a Judicial review.

CHAPTER 6 METHODOLOGY

DATE OF STUDY

The current study was conducted from June to September of 1985.

DATA SOURCES AND PROTOCOL

A list of all DSOs recorded with the Offender Information System (OIS), the automated data base of the Correctional Services of Canada, was obtained, the purpose of which was to identify those offenders sentenced under the legislation since its inception in 1947. In addition, Professor C. Greenland who has completed extensive research on this offender population offered generous access to his research material. Through these two sources, a total of 97 Dangerous Sex Offenders were identified.

Information contained in the National Parole Board (NPB) files was obtained for each offender, and constituted the data base for the present study. The National Parole Board Chairman was contacted with the proposal for the study for approval, which was granted. Contact was then made with each of the NPB regions to arrange the shipment of files to Ottawa for study.

A data collection protocol was formulated. Pilot testing involved assessing the adequacy of the protocol to capture the required information contained in the file, and involved using the files of several cases. When the final protocol was complete, it contained items to gather information on the following major topic areas:

- offender demographics
- previous offence and incarceration data
- psychiatric and behavioural problems prior to current incarceration
- index offence
- DSO hearing
- institutional history
- parole hearing and parole release history
- subsequent convictions
- current offender description
- recent outlook

DATA COLLECTION AND DATA RELIABILITY

A team of three research assistants and the author were involved in the data collection task. All coders had at least a 4 year university education in psychology.

The 97 files were divided approximately equally among the group. A training session was conducted to familiarize the assistants with the files and the sources of information

to be used for the data collection. This initial training session was followed by spot-checks and intermittent sessions with the group to ensure continuity and conformity with coding rules.

A systematic inter-rater reliability check was also conducted. All coders reviewed a random sample of two files from each of the other coders, resulting in 24 files which were reviewed twice. Correlations between coders were done on particularly subjective variables. As will be discussed in the results chapter, the reliability of their coding was found to be satisfactory.

Following data collection, all data were transposed onto coding sheets by the research team, and were then input into the computer. At each of these stages (transposition and data entry), the data were verified.

Where possible, the particular file source of the data collected and reported in each section is given. In an attempt to standardize data collection, what was deemed to be the most reliable source of information was used by all coders. For example, the offenders offence history was best retrieved from the Fingerprint Service (FPS) sheet, the official document detailing this information.

TREATMENT OF DATA

In keeping with the descriptive nature of the study, most of the results presented are descriptive statistics such as frequencies and means. When comparing groups on certain variables, however, the appropriate comparative statistic (ie. t-test, chi square) was used. When examining the relationship between two variables, a test of the correlation between them was done.

CHAPTER 7 RESULTS

The following chapter details the results of the study, which are presented under the major topic areas outlined in the preceding chapter.

Correlation analyses were conducted on those variables where coders were required to make a subjective assessment of the information in the file. The results of these analyses revealed a satisfactory agreement on all variables, and an excellent agreement on some. The specific correlation coefficients are reported with those variables where a test of the correlation was done.

OFFENDER DEMOGRAPHICS

AGE, MARITAL STATUS AND CHILDREN

The mean age of all DSOs at the time of conviction for the index offence was 33.5 (s.d.=11.4), with a range between 17 and 63. Ten DSOs (10%) were between 16 and 20; 15 (15%) were between 21 and 24; and 30 (31%) were between 25 and 34. The age category containing the largest number of offenders, 33, (34%) was between 35 and 49. Seven (7%) offenders were between 50 and 59 and two (2%) were over 60 years of age.

Most DSOs [48] (50%) were single (never married) at the time of the offence, and 20 (21%) were either separated or divorced. One was widowed. Twenty-five (26%) of the offenders were married and three (3%) were in a common-law relationship. Most of the offenders had no children [44] (56%), 15 (16%) had one, 11 (12%) had two and the remainder [17] (18%) had between 3 and 8 children.

EDUCATION

For the 92 DSOs on whom data were available, the average highest grade level reported completed prior to the offence was 7.7 (s.d.=3.6) with a range between 0 years (no formal education) and 17 years (4 years of university). The majority [63] (69%) had completed grade 8 or less. Twenty-two (24%) attended some part of high school, while 7 (7%) had at least part of a university education.

INTELLIGENCE

The most recent intelligence scores documented in the file were recorded. The mean I.Q. level for the 79 DSOs on whom scores were available was 102 (s.d.=16.2) with a range between 67 and 139. The largest group of offenders [38] (48%) fell in the normal range of intelligence (scores

between 91 and 110). Sixteen, however, (18%) had scores below 91, including 8 (10%) who scored between 66 and 79 (borderline intelligence), and 8 who had scores falling between 80 and 90 (dull normal). Interestingly, 25 (32%) offenders scored above 110, including 13 offenders (16%) in the bright normal range (scores between 111-119), 8 (10%) offenders who had scores in the superior range (120-127) and 4 (5%) offenders in the very superior range (128+).

EMPLOYMENT

The majority of DSOs [73] (77%) were employed at the time of the index offence, while 20 (21%) were unemployed. One offender was unable to work due to a physical infirmity and one was a student.

Blishen's (1967) Socioeconomic index scale was used to rate the status of the employment of the DSOs at the time the offence was committed. The index levels run from 19 to 75, rising proportionately to indicate the rising status of the occupation. Reliability analysis revealed a very close correspondence between coders (.93). The mean occupation level over all employed DSOs was 33.65. This level falls at 365 of 500 occupations.

PREVIOUS OFFENCE AND INCARCERATION HISTORY

Previous offence data was retrieved mainly from the offenders' Fingerprint Service (FPS) sheets. This document details the offence history (including charges that were discharged or dismissed) with date of conviction, type of offence, number of counts, and the disposition received.

PREVIOUS TIME SERVED

Twenty-one offenders (22%) had served no provincial sentence prior to the current incarceration. The majority [42] however, (43%) had served either 1 or 2 prior provincial incarcerations. Forty offenders (41%) had served no federal terms prior to this incarceration, while 51 (53%) had served either 1 or 2 prior federal terms. Five offenders (5%) had served 3 prior federal incarcerations and one had served ten.

The longest period of time to which each offender had been previously sentenced was determined (including both federal and provincial time). Sixty-nine offenders (71%) had had a previous maximum sentence length of 3 years or less. The remaining 28 (29%) had been sentenced previously to a term of between 3 and 10 years. Interestingly, 9 offenders had served no time, either provincial or federal, prior to this incarceration.

PREVIOUS CONVICTIONS

The number of previous convictions for each offender was examined. Four offenders (4%) had no convictions prior to the offence for which they received an indeterminate sentence. Sixty DSOs (62%) had between 1 and 5 prior convictions; twenty-three (24%) had between 6 and 10 while the remaining ten (10%) had received between 11 and 15 prior convictions. The mean number of prior convictions overall was 5.2 (s.d.=4.9), of which an average of 2.1 (s.d.=2.3) were sexual offences. This information is presented in Table 1.

Table 1 about here

TYPES OF PREVIOUS CONVICTIONS

Of interest to the current study was the type of offences for which these offenders had previously been convicted, both in terms of their sexual nature and whether or not physical harm was inflicted on the victim. Unless the offence was a so-called sexual offence where the sexual nature is implicit (e.g. rape), or unless reference was made in the file to the offence such that the information was discernable, whether or not the offence was sexually related was coded as 'unknown'. Whether or not harm was inflicted on the victim was more difficult to assess. Where the type of offence is by its nature defined as an offence in which harm is experienced (e.g. assault), it was coded as such. In cases where this information about harm to the victim was not readily available, it was coded as 'unknown'.

It was found that 19 offenders (20%) had no sexually-related previous conviction; 29 (30%) had 1 prior sex-related conviction; 22 (23%) had 2; 11 (11%) had 3; 5 (5%) had 4; 2 (2%) had 6; 3 (3%) had 7; and one offender each had 8 and 16 prior sex-related convictions.

The majority of offenders [70] (72%) had no prior convictions for which harm was known to have been experienced by the victim. Twenty-one offenders (22%) had 1 such prior conviction; 3 offenders (3%) had 2 such convictions, and 3 had 3 such convictions.

TABLE 1
DSO OFFENCE HISTORY

NUMBER OF PRIOR CONVICTIONS	FREQUENCY	PERCENT
NONE	4	4
1-5	60	62
6-10	23	24
11-25	10	10
TOTAL	97	100

SEX-RELATED CONVICTIONS

NONE	19	20
1-5	71	73
6-10	6	6
11-25	1	1
TOTAL	97	100

HARM-RELATED CONVICTIONS

NONE	70	72
1	21	22
2	3	3
3	3	3
TOTAL	97	100

PSYCHIATRIC AND BEHAVIOURAL PROBLEMS PRIOR TO CURRENT INCARCERATION

ALCOHOL AND DRUG USE

The offenders' use of alcohol and/or drugs was scored from 0 (no use) to 3 (chronic use). The correlation between the coders on this variable was satisfactory (.77).

Twenty-two DSOs (24%) were reported to have had a serious alcohol problem, but the majority [42] (46%) were moderate alcohol users. There were 14 offenders (16%) in each the social drinker and abstainer category.

Two offenders (2%) had a chronic drug problem, 7 (7%) were moderate users of drugs; and 6 (6%) were social or infrequent users. The vast majority of offenders [77] (84%) had no reported drug use history.

No DSO had both a serious alcohol and drug problem combined, although 5 (5%) had both a moderate alcohol and drug problem. In the assessment of combined alcohol/drug use, the largest percentage of offenders [11] fell into the moderate alcohol use/no drug use category. The most frequently used were 'soft' drugs (ie. marijuana, hashish), which were used by 12 (80%) of DSOs who used drugs.

PSYCHIATRIC AND BEHAVIOURAL PROBLEMS

Psychiatric, medical and behavioural problems occurring in the community prior to this incarceration, reported in the file, were noted and grouped into the following major categories: 'self-inflicted injury', 'other-directed aggression', 'medical problems', 'behaviour problems' and 'mental/emotional problems'. The results of these documentations are as follows.

The most frequently occurring category of incident was 'other-directed aggression'. As can be seen in Table 2, it accounted for 38 percent of incidents in the community. Within this broad category, deviant sexual activity of an aggressive nature accounted for the majority of this type of incident (58%). 'Medical problems' was the second most frequent category accounting for 21 percent of incidents. This broad category largely contained problems of a neurological nature, such as coma or serious head injury. 'Behaviour problems' accounted for 16 percent of prior community incidents. Non-aggressive deviant sexual behaviour (e.g. voyeurism) accounted for the majority of incidents in this category (81%).

Table 2 about here

PSYCHIATRIC DIAGNOSIS

Twenty DSOs had a reported psychiatric diagnosis during a previous incarceration. Thirty-seven diagnoses were given, including antisocial personality (24%) and atypical mixed personality disorder (22%). The following sexual disorders were also diagnosed: unspecified sexual deviation (8%), homosexuality (5%), pedophilia (2%), sexual sadism (2%) and sexual masochism (2%).

INDEX OFFENCE

The term 'index offence' is a reference to the offence or offences which resulted in the DSO designation. It is important to note that where an offender was convicted of a number of offences, only one of these may have directly resulted in the DSO designation. Other offences which he was convicted of at the time are referred to as peripheral offences since on their own, they could not have qualified the offender for a DSO application.

Information on all aspects of the index offence was gathered from the file. Where available, the police occurrence report was used as the major source of information regarding the offence. There are two major reasons for its use. First, its recency to the offence probably increases the reliability of the information. Second, victim information is generally given in these reports.

OFFENCE NUMBER AND TYPE

These offenders were convicted of 152 offences, both index and peripheral, for an average of 1.6 (s.d.=.9) convictions per offender. The most frequently occurring type of offence was indecent assault on a female [44] (29%), followed by rape and attempted rape [35] (23%), indecent assault on a male [21] (14%), gross indecency [16] (11%) and sexual intercourse with a minor (hereinafter referred to as carnal knowledge) [10] (7%). The remaining 26 offences were the peripheral offences. They included 6 assault offences and 3 abduction offences.

The most serious index offences committed by the offenders, according to the maximum punishment allowed in the Criminal Code, was examined. Each offender has only one 'major' offence even though there may be more than one offence conviction which on its own, could have resulted in a Dangerous Sex Offender designation. For example, if an

TABLE 2
PSYCHIATRIC INCIDENTS PRIOR TO CURRENT INCARCERATION

INCIDENT	FREQUENCY	PERCENT
Self-inflicted injury	5	7
Other-directed aggression	27	38
-deviant aggressive sexual behaviour	(22)	(31)
Behaviour Problems	12	17
-deviant non-aggressive sexual behaviour	(22)	(30)
Medical Problems	15	21
Mental/Emotional Problems	12	17
TOTAL	71	100

Number of offenders with documented incidents-43

offender was convicted of both gross indecency and indecent assault on a male, the latter would be counted as the major offence, as the punishments for these offences allowed in the Criminal Code are 5 years and 10 years, respectively. As can be seen in Table 3, the ninety-seven major offences were as follows: Indecent assault on a female [32 offenders]; rape and attempted rape [27], indecent assault on a male [16], carnal knowledge and attempted carnal knowledge [10], gross indecency [6] and buggery [6].

Table 3 about here

VIOLENCE AND FORCE USED

Type of violence used in the offence was discernable in 134 of the 152 offences. Violence was defined as type of threat or force used in the commission of the offence, and was categorized along the following continuum: no violence, verbal threat, physical threat, use of weapon to threaten the victim, bodily aggression without the use of a weapon, the use of a weapon to physically aggress. In most offences [55] (41%) the offender did not use a weapon, but used bodily force to overcome the victim. No apparent violence was evident in 42 (31%) offences. Most of these scenarios involved young children who unwittingly fell victim to the offender. Threats of one type or another were used in 17 (13%) offences. A weapon was used during the offence in 20 (15%) offences.

HARM TO THE VICTIM

Both physical and emotional harm to the victim was documented where such information was available in the file [108 and 32 offences respectively]. However, where physical harm was readily apparent and easily quantified, emotional harm was not. It was therefore noted in those few cases where specific reference to it was made. In 13 cases (11%) there was reference made to the offence having caused serious emotional damage to the victim that required psychiatric attention. Not surprisingly, in the remaining cases no assessment could be made on the effect of the crime on the victim's emotional well-being.

The presence of physical harm to the victim was known in 108 offences. In the majority of these [56] (52%) no physical harm was apparent, and in 28 offences (26%) minimal harm such as bruises were noted. Medical attention such as sutures was required in 14 offences (13%), hospitalization was required in 4 cases (4%), the offence was of a life-threatening nature to 3 victims (3%) and in two offences (2%), the victim died as a result of the attack.

TABLE 3

INDEX OFFENCE DESCRIPTION

TYPE OF MAJOR INDEX OFFENCE	FREQUENCY	PERCENT
Indecent Assault (F)	32	33
Rape and Attempted	27	28
Indecent Assault (M)	16	16
Carnal Knowledge and Attempted	10	10
Gross Indecency	6	6
Rugger	6	6
TOTAL	97	100

OFFENCE DESCRIPTION

1) Violence (N=112)		
None	42	38
Verbal Threat	10	9
Bodily Aggression	55	49
Weapon Used	5	5
TOTAL	112	100

2) Harm (N=108)		
None	56	52
Minimal	28	26
Medical attention or hospitalization	18	17
Life threatening or death	5	5
TOTAL	108	100

3) Victim Sex (N=146)		
Female	103	70
Male	42	29
Both	1	1
TOTAL	146	100

VICTIM INFORMATION

The victim was female in the majority of offences [102] (70%), male in 42 (29%) and victims of both sexes were noted in 1 percent of the offences. Interestingly, offenders with male victims were significantly older (38.2, s.d.=11.4) than offenders with female victims (29.9, s.d.=10.4) ($t=-4.2, p=.0001, df=142$).

The mean age of all the victims was 14.8 (s.d.=8.4), although female victims were significantly older (15.5, s.d.=9.7) than male victims (13.2, s.d.=3.2) ($t=2.0, p=.05, df=127$). The range in age of the male victims was between 6 and 24, although 92 percent were 16 years of age or less. In contrast, female victims ranged in age from 3 to 48, though 40 percent were 16 years of age or over.

The majority of victims were strangers to the offender, this being the case in 91 offences (64%). The second most frequently occurring relationship was 'acquaintance', which was the case in 30 offences (21%). In 11 offences the offender was in a position of power or authority over the victim, such as a teacher or babysitter. In 5 offences, the offender was related to the victim. Furthermore, in 34 offences (25%), the offence was deemed to be a breach of trust in the relationship between the offender and victim.

DSO HEARING

The hearing held to determine whether the DSO application was to be successful was held after conviction of one of the afore-mentioned sexual offences. The source of information for the proceedings of the hearing was the Court transcripts.

DSO DESIGNATIONS BY YEAR

The first DSO designation made following proclamation of the Act (November 1, 1948), was on January 31, 1949. Shown in Figure 1 is the number of designations made per year. As can be seen, the year with the most such designations was 1964 when 10 sex offenders were successfully processed as Dangerous Sex Offenders. In the last year before the repeal of the law (1977), 3 DSO designations were made. If one divides the 30 year period of the Act's existence (1948-1977) into decades, the decade with the most designations was that between 1958 and 1967, when 43 DSO designations were made. In the initial 10 year period, 24 designations were made and in the final decade, 30 DSO designations were made.

Figure 1 about here

DSO DESIGNATIONS BY PROVINCE

The province with the greatest number of DSO findings was British Columbia, sentencing 35 of the 97 (36%), followed by Ontario which sentenced 34 (35%) (see Table 4). As can be seen, the Maritime provinces had a total of 3 DSO findings, with none occurring in New Brunswick. There were 7 findings (7%) in Quebec and the same number in the Prairie provinces of Manitoba and Saskatchewan combined. Eight (8%) findings were made in Alberta, 3 (3%) in the North West Territories and none in the Yukon.

Table 4 about here

PSYCHIATRIC TESTIMONY

Two psychiatrists, one appointed by the Crown, were to be present to give evidence at the hearing. The names of the psychiatrists making testimony at the hearing were documented. It was found that in one province, British Columbia, one psychiatrist gave evidence at at least 24 17 (18%). This was by far the only province where one psychiatrist was involved in more than 6 hearings, and also the province in which most DSO designations were made. One might conjecture that the presence of these two particular psychiatrists was a factor contributing to the particularly large number of designations in this province.

PSYCHIATRIC DIAGNOSIS

The diagnosis made by the psychiatrists at each hearing was noted. It was found that 143 diagnoses were made on 69 (71%) offenders. The most frequently occurring single diagnosis was antisocial personality (41%). An assessment of 'no major mental illness' was made in 8 percent of diagnoses. The following sexual disorders were diagnosed: unspecified sexual deviation (20%), pedophilia (6%) and homosexuality (4%). An assessment of mild mental retardation was made in 4 percent of diagnoses.

TREATMENT

Whether or not treatment was recommended for the offender at the time of the hearing was also examined. In 47 cases where this information was known (59%), treatment was recommended. Among those for whom treatment was deemed necessary, 14 such recommendations were made by the Judge, 13 by the Crown psychiatrist, 4 by the Defence Counsel and 2 by the Crown Attorney.

Figure 1
Year of DSO Designations

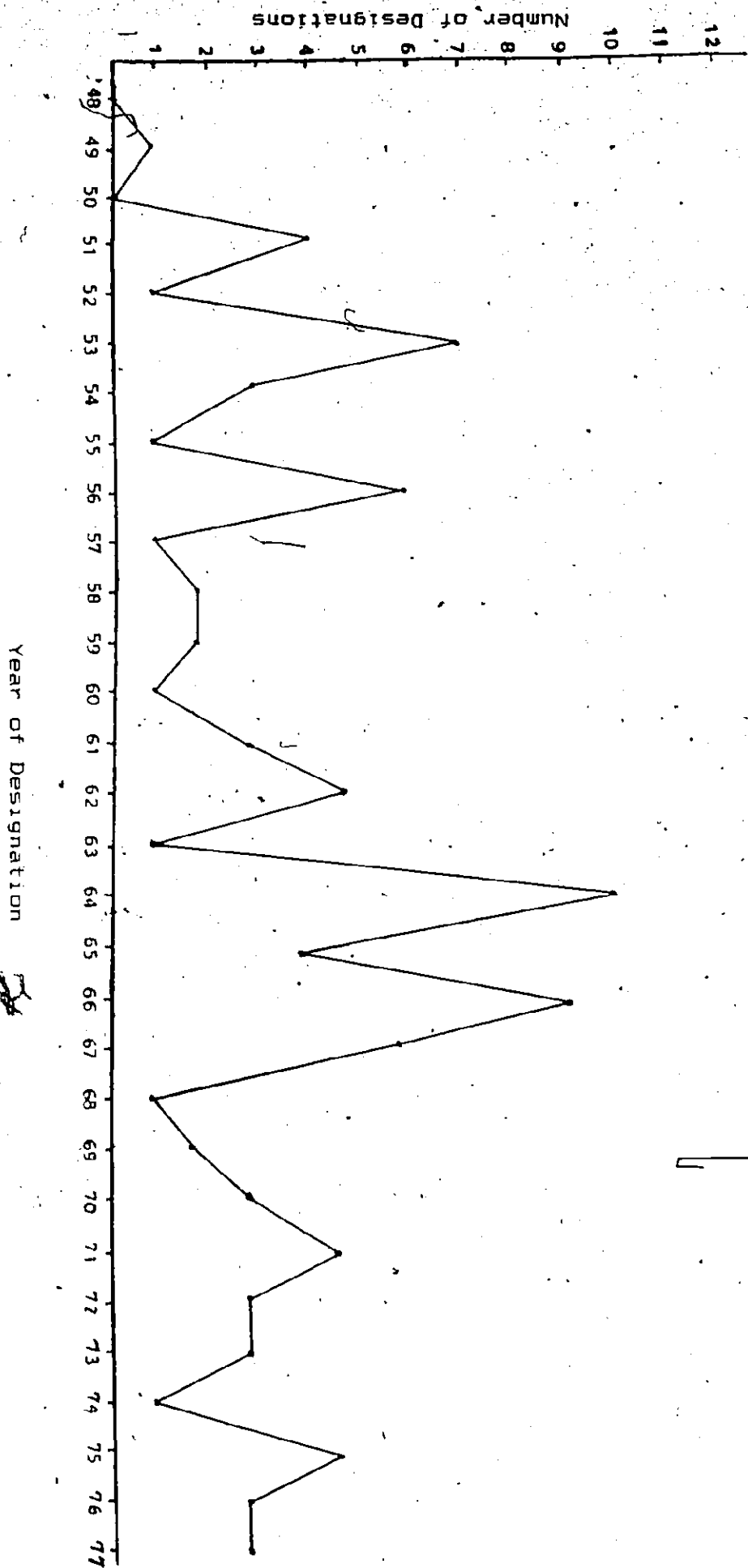


TABLE 4
PROVINCE OF DSO DESIGNATIONS

PROVINCE	FREQUENCY	PERCENT
British Columbia	35	36
Ontario	34	35
Alberta	8	8
Quebec	7	7
Saskatchewan	5	5
North West Territories	3	3
Manitoba	2	2
Nova Scotia	2	2
Prince Edward Island	1	1
New Brunswick	0	0
The Yukon	0	0
TOTAL	97	100

APPEAL OF SENTENCE

The majority of DSOs appealed their sentence of preventive detention [51] (53%). Those offenders who were sentenced as Dangerous Sex Offenders at one time but who won their appeal were not included in the current study. Seven such cases were identified.

ALTERNATE MAXIMUM SENTENCE

The maximum sentence that the DSO offenders could have received for their major index offence had the indeterminate sentence not been received was examined, with reference to the penalties allowed for these offences in the Criminal Code. It was found that the largest number of offenders could have received a maximum 5 year term [38] (39%). This was the maximum penalty possible for the offences of indecent assault on a female and gross indecency. In 32 cases (33%) a sentence of life imprisonment was the maximum penalty possible and was the punishment for those offenders convicted of rape, carnal knowledge and attempted carnal knowledge. In 21 cases (22%) the offenders, had they not received the indeterminate sentence, were eligible for a maximum punishment of 10 years imprisonment. Offenders convicted of indecent assault on a male and attempted rape were eligible for this sentence. Finally, 6 (6%) offenders could have received a maximum punishment of 14 years imprisonment, for having committed the offence of buggery.

OPINION REGARDING DSO STATUS

Where a specific reference was made in the file to the adjudication of the offender as a Dangerous Sex Offender by an individual judged to have sufficient knowledge to do so (e.g. psychiatrist, lawyer), the particular comment was rated according to whether the individual was in agreement or disagreement with the offender's status as such. A total of 81 comments were found for 43 offenders. Comments were made by psychiatrists (37%), legal professionals such as lawyers or judges (22%) and psychologists (15%). Interestingly, the vast majority of comments (74%) were in disagreement with the DSO designation as applied to a particular offender. Furthermore, the comment made regarding the offender's DSO status was found to be significantly related to the amount of harm experienced by the victim in the offence. The greater the harm experienced by the victim, the greater was the disagreement with the offenders status as a DSO ($r=.5, p<.005$).

DO CRITERION

Whether or not these offenders fit the Dangerous Offender (DO) offence criterion (see Appendix B for definition) was examined, since one of the arguments in favour of a Judicial review of this group is that they could perhaps be regarded as not dangerous within the new definition. As discussed earlier, several of the DSO offences were not carried over to the new provision (e.g. gross indecency) and second, the sexual assault legislation further changed the threshold criteria by excluding unlawful sexual intercourse (ie. carnal knowledge). Therefore, the major offence of each offender was examined. It was found that 19 DSOs would not now be eligible for the Dangerous Offender proceedings based on their major offence. This group is comprised of 2 offenders who had attempted carnal knowledge as their major offence, 7 carnal knowledge, 6 gross indecency, 2 buggery, and 2 offenders with convictions of both gross indecency and buggery. Two of these offenders are now deceased.

INSTITUTIONAL HISTORY

SECURITY-RELATED INCIDENTS

Documentation in the offenders' file pertaining to particularly problematic behaviour was noted. These incidents may or may not have resulted in institutional disciplinary action and were, for the most part, concerned with institutional security matters. It should be mentioned that it is by no means expected that all such behaviour by the inmates was recorded in the file. Therefore, these data do not purport to be an accurate representation of their behaviour, but are rather a sampling of the types of problem behaviour exhibited by these offenders.

Sixty-three offenders had no such incident recorded in their file; 15 had 1 incident; 12 had 2; 3 had 3 incidents; 1 had 4; 2 had 5 and 1 had 23 major security-related incidents. The most frequently occurring type of such problem behaviour was violent behaviour. There were 10 offenders with a record of a physical attack on another inmate. There were 4 offenders with a recorded incident of attacking a staff member of the institution and 4 offenders with a record of making a threat on the safety of an institutional staff member. Seven DSOs were found to be themselves a victim of an attack by another inmate.

OFFICIAL DISCIPLINARY ACTION

Information in the file pertaining to the offenders' misbehaviour in the institution which led to official disciplinary action on the part of the institutional authorities was documented.

If the file documentation is accurate, these offenders did not on the whole represent a serious institutional problem, as 51 offenders (53%) had no record of disciplinary action. Twenty-four DSOs (25%) had 1 disciplinary incident, ten had 2, 14 had between 3 and 6, 6 had between 8 and 13, and one very problematic offender had 59 such incidents (he was later murdered by other inmates at Millhaven Penitentiary).

The type of offences for which disciplinary action resulted was further examined. Possession of contraband accounted for 24 of the 87 recorded disciplinary incidents (28%), abusive/indecent/disrespectful language accounted for 10 incidents (12%), refusal to obey order involved 10 incidents (12%), and collective resistance involved 5 incidents (6%).

Finally, types of disposition received for these internal offences was examined. The most common disposition received by these offenders was warned/counselled/advised, occurring in 20 offences (27%), followed by loss of earned remission [13] (18%), loss of privileges [11] (15%), punitive dissociation [12] (16%), suspended sentence [7] (10%), administrative segregation [4] (5%) and other [5] (6%). It could be stated that since the majority of offences did not result in the most severe types of disposition (i.e. punitive dissociation), these offences were not considered by the institution to be of a very serious nature. When assessed by the status of each offender, it was seen that 51 percent of released offenders had no record of a disciplinary incident, while 36 percent of incarcerated offenders and only 12 percent of deceased offenders had no such record.

INSTITUTIONAL TRANSFERS

Information regarding the transfer of inmates from one institution to another was derived from the transfer sheets that were attached to the file.

Overall, the 97 DSOs were transferred an average of 7.2 (s.d.=4.7) times. This is not, however, a reflection of the number of different institutions each inmate was incarcerated in, as the transfer could have been between the same two institutions. Sixteen offenders were transferred

two times or less, including 7 offenders who remained in one institution. Forty-four (45%) offenders had between 5 and 8 transfers while the remaining 37 (38%) were transferred between 9 and 20 times.

Offenders now in the community had fewer institutional transfers (6.7, s.d.=4.0) than offenders currently incarcerated (10.0, s.d.=4.5). The average time spent in one institution before transfer over all offenders was 21.5 (s.d.=32.9) months.

The reason for the transfer of the inmate was coded using the CSC transfer reason codes. Reasons for the transfer were often not stated (19%), or did not fit into one of the pre-defined CSC categories (26%). Where the reason for transfer was known or definable, the most frequently occurring reason was for the offender to receive treatment (31%) including medical, psychiatric and psychological, although psychiatric treatment appeared most often of these three (71%). Other common transfer reasons included correctional treatment (19%), training (14%), and security-related reasons (14%).

PSYCHIATRIC DIAGNOSIS

One hundred and fifty-nine diagnoses were assigned to 86 offenders during the current prison term. Antisocial personality was the single diagnosis assigned most frequently (15%). An assessment of "no major mental illness" was made in 12 percent of the diagnoses. Other personality disorders diagnosed were atypical, mixed personality disorder (11%) and passive-aggressive personality disorder (7%). The following sexual disorders were diagnosed: pedophilia (12%), unspecified sexual deviation (8%), homosexuality (12%), sexual sadism (12%) and exhibitionism (.6%).

PSYCHIATRIC AND BEHAVIOURAL PROBLEMS

Sixty-three offenders had documented evidence of a psychiatric/medical or behaviour problem as defined previously, during the current incarceration. A total of 136 such incidents were recorded. As can be seen in Table 5, the category containing the largest number of incidents was 'mental/emotional problems', accounting for 79 (58%) of all incidents. Within this broad category, 34 incidents of depression were noted, accounting for 43 percent of the incidents within this category. The category of 'behaviour problems' contained 19 (14%) incidents. Non-aggressive sexual deviant behaviour was the most common type within this category (63%). 'Self-inflicted injury' as a category contained 17 (11%) incidents including suicidal threats (10 incidents), attempted suicide (5) and hunger strikes (2). The category 'other-directed aggression' contained 14 (10%)

incidents, the most frequent of which was deviant aggressive sexual behaviour (10), or 71 percent of incidents in this category.

Table 5 about here

TREATMENT

The amount and type of treatment the offenders were involved in since the start of their preventive detention sentence was documented as it was recorded in the offenders' file. For the purpose of the study, a 'treatment' was defined as a discrete encounter with a mental health practitioner in which medication may or may not have been prescribed, and which was considered either occasional (infrequent and/or of short duration) or regular (frequent and/or of long duration).

Overall, the 97 DSOs were involved in an average of 3.0 (s.d.=2.1) treatments since the start of their sentence excluding the 12 months prior to the study (this treatment, defined as recent, is discussed subsequently).

Twelve DSOs (12%) had no recorded treatment of any type. The majority of offenders who did receive treatment [68] (70%) received between 1 and 4 treatments, and the remaining 17 (18%) received between 5 and 10 discrete treatments.

Thirty-one (32%) were reported to have been prescribed medication of one type or another. The two most frequently prescribed types were antidepressants (22%) and antipsychotics (22%).

Forty-six DSOs (48%) received a total of 68 infrequent counselling treatments including individual psychotherapy (27 treatments), group psychotherapy (13), Alcoholics Anonymous (10) and electroshock therapy (7).

Seventy-five (77%) offenders received 163 regular counselling treatments. Twenty-three offenders (24%) were involved in 45 intensive programs for sex offenders, such as the program at a Regional Psychiatric Centre (RPC) or the Institute Philippe Pinel. Eighteen DSOs (19%) were involved in 41 individual psychotherapy treatments, 12 offenders (12%) received 25 group psychotherapy treatments and 16 offenders (17%) were involved in 24 Alcoholics Anonymous treatments.

Some of the treatment received occurred outside the institution in which the offender was incarcerated. The majority of sex offender treatment, for example, was given at an RPC. Fifty-three DSOs (55%) had at least one transfer to an RPC prior to the last 12 months, with a mean length of stay of 13.1 (s.d.=25.0) months. Thirty offenders

TABLE 5
PSYCHIATRIC INCIDENTS DURING CURRENT INCARCERATION

INCIDENT	FREQUENCY	PERCENT
Self-inflicted injury	12	13
Other-directed aggression	14	10
-deviant aggressive sexual behaviour	(10)	(7)
Behaviour Problems	15	14
-deviant non-aggressive sexual behaviour	(12)	(8)
Medical Problems	6	9
Mental/Emotional Problems	29	59
-depression	(34)	(75)
TOTAL	(35)	100

Number of offenders with documented incident - 63

(31%) were transferred to an outside facility (e.g. Provincial hospital) prior to the last 12 months remaining an average of 7.8 (s.d.=24.5) months. Finally, 11 DSOs (11%) had a recorded history of a stay in the prison hospital for medical treatment with an average length of stay of 7.8 (s.d.=24.5) months.

RECENT TREATMENT

The amount of treatment received by these offenders more recently is of further interest, as it provides an indication of their present situation. Therefore treatment provided the offenders in the 12 months prior to the data collection (ie. as of September 1, 1985) was documented separately.

Evidence of treatment in the last year was found for 16 offenders (19%). Of the 47 DSOs who were incarcerated, 10 (21%) received or were receiving treatment. Six of the DSOs released to the community (17%) had documented evidence of recent treatment. Treatment for both of these groups (incarcerated and released) was most commonly regular in intensity.

Of the 4 medications prescribed to 4 offenders in the last year, there was 1 each of an antidepressant medication and a sex suppressant and 2 antipsychotic medications.

Individual and group psychotherapy accounted for 57 percent of the 7 infrequent intensity treatments, but only 22 percent of the 18 regular therapy treatments provided to 12 offenders. Alcoholics Anonymous was the single most frequent regular intensity treatment (50%).

PAROLE HEARING AND PAROLE RELEASE HISTORY

From the proclamation of the legislation on November 1, 1948 until the amendments to the Criminal Code in force on September 1, 1961, the cases of all those designated as Criminal Sexual Psychopaths were to be reviewed by the Minister of Justice at least once in every three years "with a view to determining whether he should be placed out on license and, if so, on what condition" (Criminal Code, 1948). The amendments to the Code in 1961 allowed for the review of these offenders at least once in every year. These conditions remained until the repeal of the legislation, and did not change with the Criminal Law Amendment Act of 1977. A provision in the new Part XXI (Dangerous Offender) allows that those sentenced to preventive detention prior to the proclamation of the new act were to have their cases reviewed at least once in every year.

The parole release information varies somewhat from that given in the section on parole hearing history. The reason for this discrepancy is that even though a release may have been granted, mitigating circumstances occasionally intervened (situations such as failure of release plans to materialize or failure to complete treatment), so that the release was not actually effected. Moreover, National Parole Board policy and procedures have changed over the years. For example, while DSOs released many years ago might have been given full parole without the benefit of a gradual release (ie. day parole) the normal procedure now is for the offender to be released on day parole to be followed by a full parole, assuming community adjustment has proceeded satisfactorily.

PAROLE HEARING HISTORY

Following the National Parole Board's hearing with an inmate, a Board decision sheet is completed detailing the date of the hearing, the decision and reason(s) for the decision. The sheet is then attached to the inmates file. These decision sheets were the source of information for the following section.

By far, the most frequent decision made by the Board was a defer parole decision. (This includes reserve decisions which occurred much less frequently.) It should be noted, however, that the Board's decision to defer was in effect a denial of the inmates parole, as the deferral could be in effect for one year and as noted above, the offenders were to be reviewed for parole after 1961, once in every year. That the deferral decision operated in effect as a denial of parole is further demonstrated by the fact that while only 4 offenders had no parole deferral decision given, 53 had no day parole denied decision and 29 had no full parole denied even though all offenders remained incarcerated for at least 5 years (some much longer).

A deferral decision occurred on average 15.8 (s.d.=10.2) times per offender. The most frequently cited reason for a parole deferral was "awaiting reports", occurring an average of 3.8 (s.d.=4.3) times, followed by "treatment needed" (1.4, s.d.=2.2), and inmate "still a risk" (1.1, s.d.=2.4).

A decision of day parole denied was given an average of 1.1 (s.d.=1.1) times. The most frequently cited reason was the inmate was "still a risk".

Full parole was denied an average of 3.5 (s.d.=3.2) times. The Board's most frequently cited reasons were that the inmate is "still a risk" (1.1, s.d.=1.8) and "treatment needed" (.6, s.d.=1.0).

A total of 118 day paroles were granted to 55 offenders. Eighty-two full paroles were granted to a total

of 57 offenders. Release continued was by far the most frequently occurring decision (277), made to 57 offenders. Sixty-two temporary absence grant decisions were given to 33 offenders.

PAROLE RELEASES

Twenty-two DSOs (23%) have never been granted a conditional release. Four of these offenders are now deceased, leaving 18 living DSOs who have never been granted a release and therefore remain incarcerated.

For the 75 offenders ever released, day parole was the most frequent type of release (66%). The majority of day parole releases were unescorted (78%), and were largely to be spent at a CRC or CCC (31%), followed by day parole releases of a 5 day per week period (11%), 4 hours per month (11%) and 2 hours per month (10%).

TEMPORARY ABSENCE

A total of 175 temporary absence (TA) passes were granted. Most frequently the passes were for 8 hours (20%), 12 hours (16%), 72 hours (13%) and 4 hours (8%). Most of the TAs were escorted, although the majority (61%) were resocialization as opposed to security escorts. The purpose of the temporary absence pass was also documented. Rehabilitation as the general overall purpose was the most frequent, accounting for 78 percent of all passes, and includes such activities as visiting family or friends, and socialization outings. Seven percent of the passes were for humanitarian reasons (eg. family death, marriage), and the remaining 15 percent were for medical treatment (medical, psychiatric and dental). Ninety-five percent of the 175 TAs were completed successfully, 5 ended UAL (3%), 1 offender was late and 1 was detained by the police. Seven of the 22 never released offenders (23%) have also never been out on a temporary absence pass.

PAROLE SUSPENSIONS AND REVOCATIONS

The behaviour of the offender following a parole release is monitored by the parole officer, and should problems in adjustment arise or the conditions of the parole agreement not be met, his parole may be revoked. The initial step in the parole revocation process is for the release to be suspended. At this time the offender is re-incarcerated until a decision on the offenders parole is made. Upon reflection on the seriousness of the problem the parole is either continued, at which point the offender is released to the community, or the parole is revoked and the offender remains incarcerated. The reports of the parole officer contained in the file provide a good source of

information on the offender's community adjustment, and detail any problems in such that may have developed.

A total of 69 suspensions and revocations were issued to 44 the 75 offenders ever released (58%). A suspension was counted only if it did not result in a revocation. Twenty-four offenders received 1 revocation, three received 2 revocations and 1 received 3 revocations. Ten offenders received one suspension, and five offenders received two suspensions and four offenders received both a suspension and a revocation.

The reasons for the termination of the conditional release were also examined. The most frequently occurring reasons for this Parole Board action were for parole violations [25] (36%) and secondly for deviant sexual activity [18] (26%). Parole violations were found to more often result in a suspension than a revocation of parole, whereas deviant sexual behaviour more often resulted in the revocation of the parole ($\chi^2 = 21.4, p < .02, df = 1$). Not surprisingly, in all cases where an offender was convicted of a further offence, his parole was revoked.

TIME SERVED

The number of years the 75 ever released offenders were incarcerated before being paroled was documented. Except for those DSOs who failed while on day parole (in which case the day parole release date was used), time served was calculated using the full parole release date.

1) Deceased DSOs

Nine DSOs died while on full parole. They were incarcerated an average of 11.9 (s.d.=4.9) years, ranging from 4.4 years to 19.5 years. They remained on parole for an average of 5.3 (s.d.=5.1) years until their death. Interestingly, two offenders died less than two months following their release. Two offenders were on day parole when they died. One was incarcerated for 4.0 years, while the other had been incarcerated for 8.4 years before being released on day parole.

2) Currently Incarcerated (N=47)

Eighteen currently living DSOs have never been granted a conditional release. They have remained incarcerated an average of 13.8 (s.d.=5.0) years. The range is 8.5 to 23.2 years.

Fifteen currently incarcerated offenders were previously on a day parole that was terminated. These offenders served an average of 9.6 (s.d.=2.3) years before parole, ranging between 5.9 to 15.0 years. This group has been re-incarcerated an average of 6.7 (s.d.=3.7) years

since their day parole termination. Two of these offenders were on day parole at the time the study was conducted.

Thirteen currently incarcerated offenders have previously had a full parole revoked. They served an average of 10.2 (s.d.=4.7) years until being released on full parole, ranging from 6.4 to 23.9 years. They have been re-incarcerated an average of 6.0 (s.d.=5.5) years. One of these offenders was on day parole at the time of the study. One DSO is currently on his first day parole, having served 10.8 years until this release.

3) Currently Released (N=35)

Fifteen DSOs who were on release at the time of the study have previously had a parole failure, which for the purpose of the study included both suspensions and revocations. Those currently released DSOs who failed while on day parole (N=3) served an average of 10.8 (1.0) years. The twelve offenders who previously had a full parole failure served an average of 11.6 (s.d.=4.8) years until being released. This group has been on release (to September 1, 1985) with no further problems an average of 4.2 (s.d.=2.7) years.

Twenty DSOs on full parole have been successful in the community since their release. They served an average of 13.5 (s.d.=5.8) years before being released on full parole. The range was 5.4 to 29.7 years. These offenders have been in the community for an average of 8.9 (s.d.=7.5) years.

SUBSEQUENT CONVICTIONS

NUMBER OF OFFENCES

Fifty offence convictions have been accumulated by twenty-four offenders since the beginning of their preventive detention sentence. Twenty-one offenders committed their offence(s) while on parole, while 3 offenders were on a temporary absence pass when the offence(s) was committed.

The mean number of convictions per offender by current status was examined. Those DSOs currently incarcerated had significantly more subsequent convictions (1.1, s.d.=2.) than those offenders currently in the community (.7, s.d.=1.5) ($t=4.4, p<.001, df=80$). Another way of looking at these data is to say that 34 (68%) of those convictions are accounted for by DSOs currently incarcerated, 12 (24%) are accounted for by DSOs in the community and the remaining 4 (8%) are accounted for by DSOs who have since deceased.

TYPES OF OFFENCES

The type of offences committed is of particular import, as it may be considered a rough indicator of the offender's rehabilitation since incarceration. In this regard, whether or not the offence was sexually related, and whether or not the victim incurred physical harm, was examined.

Sixteen of the 50 further offence convictions (32%) were sexually related, although just 10 were sexual offences per se such as rape (2), indecent assault (5) and indecent acts (2). The remaining six of these were known to have had a sexual intent. The victim experienced harm in 10 offences (20%). Offences in which no physical harm was experienced by the victim were significantly more likely to have been non-sexually-related than offences where harm was experienced by the victim ($\chi^2=4.8, p<.03, df=1$).

The more serious of the further convictions included escape and UAL [11] (22%), possession of a weapon [1] (2%) and murder [1] (2%). The relatively less serious offences included 4 provincial and municipal convictions (8%) and 7 offences related to driving (e.g. driving over 80 mg.) (14%).

Finally, the disposition received for these offences was examined. The majority of offences were not deemed to warrant a very severe sentence. This may not be a reflection of the seriousness of the offence, but rather the fact that the offender, as he is already on an indeterminate sentence, could be incarcerated for life. Thirty convictions (60%) were followed by a sentence of 2 years or less, and 10 (20%) were followed by a non-carceral sentence (e.g. probation or fine). Nine offences (18%) were followed by a disposition of between 3 and 8 years, and the offender convicted of murder received a life sentence (to take precedence over the sentence of preventive detention).

CURRENT OFFENDER DESCRIPTION

STATUS

Forty-three DSOs (44%) were incarcerated at the time of the study, not on any conditional release program. Thirty-nine (40%) were on some type of formal conditional release, with 4 DSOs (4%) on day parole, 20 (21%) on full parole, 13 (13%) on parole reduced and 2 (2%) on discharge from parole (see Appendix A for definitions). Fifteen DSOs are deceased.

The status of each released offender was further examined according to whether he did or did not meet the DO

offence criterion (as described earlier). Six (35%) of the non-DO group were incarcerated, and the remaining 65 percent were on release. This may be compared with those offenders who do meet the DO offence criterion, where 63 percent were incarcerated and the remaining 37 percent were on release.

CAUSE OF DEATH

The majority of deceased DSOs [12] (85%) died of natural causes, 3 had an unknown cause of death and two were murdered while in custody, one of these in the Kingston Penitentiary riot of 1971. Nine of these offenders (60%) died while on release in the community, 6 (40%) died while incarcerated.

LOCATION

The 82 living DSOs are distributed in the CSC regions as follows: Pacific region, 32 offenders; Ontario region, 25 offenders; Quebec region, 11 offenders; Prairie region, 10 offenders and Atlantic region, 32 offenders. Almost half of all released DSOs are living in the Pacific region (43%).

Twenty-one of the 47 incarcerated DSOs (43%) are housed in a minimum security correctional institution, 15 (32%) are housed in a medium security institution while 1 offender is in a maximum security institution. Eleven of the incarcerated offenders (23%) are in multi-level security (including protective custody) institutions.

AGE

The mean age of living DSOs as of September 1, 1985 was 53.0 (s.d.=12.6), with a range between 30 and 87 years of age. Interestingly, the mean age of DSOs currently incarcerated (49.7, s.d.=11.7) is significantly lower than the mean age of released DSOs (57.4, s.d.=12.7) ($t=2.3, p<.05, df=80$).

MARITAL STATUS

Seventy-four DSOs (77%) were single at the time of the study (including divorced and separated), 5 (5%) were widowed and 22 (23%) were married or living common-law. Of released DSOs however, 20 (58%) were single, and 15 (43%) were either married or living common-law, reflecting the apparent trend for released DSOs to become involved in a stable relationship following their release.

EMPLOYMENT

The occupation of released DSOs was also examined. Importantly, 13 (38%) were unable to work due to either sickness or age as is not surprising considering their stated age. Five (14%) of those released were able to work but were unemployed. Interestingly, what has remained

unchanged since their incarceration is the large percentage (65%) of employed DSOs working in the lower end of the socioeconomic index scale. However, a significantly higher mean employment status was found for those currently released and working DSOs v. all DSOs at the time of their offence (37.6 v. 33.6) ($t=4.2, p<.001, df=83$).

RECENT OUTLOOK

SUBJECTIVE PROGNOSIS

Prognosis statements in the file concerning probability of the offenders re-offending were documented and were assigned a prognosis rating on a 5-point rating scale from 1 (poor prognosis, high probability of re-offending) to 5 (excellent prognosis, low probability of re-offending). The source of the prognosis statement and the context in which it was made were also documented. The correlation between the two coders' ratings of prognosis was only .6. Although significant, ($p<.001$) this level of correspondence is not as high as desired, and thus the prognosis data should be viewed with caution.

The overall mean prognosis rating was 2.7 (s.d.=1.2). Psychiatrists were the largest single source of prognosis statements (47%), followed by classification personnel (17%), parole officers (13%) and psychologists (12%). Not surprisingly, the most frequent context in which such evaluations were made was in the assessment of the offender's readiness for parole release (71%). The last (most recent) prognosis rating of each offender was examined. As one might expect, it was found that offenders in the community had a higher mean last prognosis rating (3.7, s.d.=1.2) than offenders who were incarcerated (2.0, s.d.=1.3) ($x=25.6, p<.001, df=4$).

The last prognosis rating was further analysed according to whether the offender meets or does not meet the DO offence criterion. Whereas the non-DO offenders were divided approximately equally as to whether they had a 'good to excellent' or 'fair to bad' prognosis rating, the majority of those offenders who did not meet the DO offence criterion (62%) were given a 'fair to bad' prognosis rating.

PAROLE PERFORMANCE RATING

Each DSO on parole was assigned by the coder a parole performance rating based on the reports of the parole officer. The rating was a reflection of the offenders adjustment in the following areas: social (ie. marital, friendships, community adjustment), employment, behaviour on parole (attitude to supervision and reporting). A 5-point rating scale was used. The reliability analysis of

coder's rating of parole performance revealed a very high agreement between coders (.92).

The mean parole performance rating overall was 3.9 (s.d.=.7). As noted earlier, 9 DSOs died while on parole. A rating was nonetheless made on their community adjustment before death. Four of these offenders (33%) had a 'fair' or 'poor to fair' rating, while 4 had a rating of 'good' and 2 had an 'excellent' rating. In comparison, of the 35 currently released DSOs (2 were recently released and therefore no rating was possible), 5 (15%) had a 'fair' rating, and none had 'fair to poor'. The majority of released offenders [23] (70%) were judged to be doing well in the community on release with a rating of 'good'. Five (15%) were judged to have adjusted extremely well on release.

Each offender's parole performance was further analysed according to whether he does or does not meet the DO offence criterion. Interestingly, where none of the non-DO criterion offenders had a 'fair' parole performance rating, 5 (15%) of the DO group had such a rating. Eight-two percent of the non-DO group fell into the 'good' category, where sixty-one percent of the DO group did. The remaining 18 percent of the non-DO group were judged to be performing very well in the community, where 14 percent of the DO group were judged to be doing so.

CHAPTER 8 DISCUSSION

Canada's now repealed Dangerous Sex Offender legislation has been the focus of a barrage of criticism. Indeed, the need for a Judicial Review of the offenders who were sentenced under the provision has been raised by a number of authors (see Law Reform Commission, 1975, 1976; Greenland, 1981). The present study is the only recent one to have examined in detail the cases of the 97 offenders so sentenced. The following discussion will incorporate the more salient results of the study, as presented in the previous chapter, into a delineation of issues to be considered for those required to ponder such a decision. It should be emphasized that although many findings have been presented, the focus of the discussion is on those findings that raise the most major concerns regarding the legislation. Ultimately, the results may be presented to support either stand on this question. The slant of the following discussion is critical of the legislation. Whether the findings presented argue for relief of these offenders from their sentence of preventive detention is a question that only the legislators are empowered to answer.

DISPARITY AND INEQUITY

One of the major criticisms that has been made of the legislation is that disparity and inequity occurred on a number of levels in its application. The 97 offenders sentenced under the legislation represent a small percentage of all convicted sex offenders in this country. (Greenland (1981) cites the figure of 3 percent). Various authors have postulated the reasons for its rare usage, including the reluctance of judges to commit offenders to an indeterminate sentence, especially when no treatment for them exists (McRuer, 1958). The Attorney General of the province was responsible for making an application for a Dangerous Sex Offender hearing. One might wonder whether it was a fairly arbitrary decision when one notes the small percentage of convicted sex offenders who were ever prosecuted under the law.

The disparity in the number of offenders sentenced between regions of the country is also striking. The fact that British Columbia (the majority in this province were sentenced in Vancouver) sentenced over one-third of all DSOs cannot be explained by a higher percentage of sex offenders worthy of the sentence, in that province. Interesting too, when one looks at Alberta, a province with a comparable population, which sentenced only 7 DSOs. In the case of British Columbia, it is apparent that other factors were at

work. In particular, one might wonder about what has been viewed as co-opting of particular psychiatrists; the same two gave evidence at most trials. This was called the "professional witness" phenomenon by Marcus (c.f. Greenland, 1981). In fact, the arbitrariness of the entire process was suggested by Gold (1969) when he stated "the real criterion for selection or rejection is a function of the examiner not the examinee".

"DANGEROUSNESS" OF THE DANGEROUS SEX OFFENDERS

The sentence of preventive detention (together with life imprisonment) represents the most severe sanction, since the abolition of the death penalty, available to the judiciary. It would be expected, therefore, that those sentenced to such a penalty would represent those offenders from whom society most requires protection. First offenders, though they may have committed a serious crime, would probably not ordinarily be considered to have shown a propensity for such dangerous behaviour to warrant an indeterminate prison sentence. There were, however, 4 offenders who were sentenced to indeterminate detention upon conviction for their first offence. Furthermore, 19 offenders had no prior sex-related conviction, and 70 offenders had 2 or less prior sex-related convictions. It would appear that the more recidivistic sex offenders escaped prosecution under this law.

In terms of a demonstrated history of violence, 70 offenders had no prior conviction for a violent offence in which known harm was experienced by the victim. In consideration of the offence for which the indeterminate sentence was given, no violence (including force, threats and the use of a weapon) was used in 31 percent of all offences. Moreover, in a majority of these offences (52%), no apparent physical harm was experienced by the victim.

It must be stated, however, that pedophilic offenders have clearly been the target of this legislation (70% of victims were under 16 years of age). Thus, serious psychological/emotional harm which may have been experienced by the young victim was an important consideration for the Courts. (In fact 92 percent of all male victims were under 16 years of age, and 60 percent of all female victims were below that age). That the legislation was concerned with the effects of the offence upon children as victims is demonstrated by the decision in the case of R. v. Roestad, wherein it was stated:

"the other evil referred to herein
is not necessarily related to injury
and pain also referred to herein and

accordingly the danger caused by an accused to the morals of children which could lead them to male prostitution or some other form of exploitive behaviour is a form of that evil".

ALTERNATE MAXIMUM SENTENCE

The alternate maximum sentence in the Criminal Code that these offenders could have received for their most serious offence conviction was also examined. While some may consider it a moot point, the fact that these offenders, whom it was previously seen were not greatly recidivistic, and many who were not violent (at least as indicated by their index offence) would make one question why an indeterminate sentence would be given on the basis of an offence for which the maximum penalty was 10 years (21 offenders) or even five years (32 offenders). It may be inferred that there were many sex offenders sentenced during the same period who had longer offence histories and who were convicted of similar offences who received a fixed term of imprisonment. On such a point one might seriously question the fairness of the legislation as it operated in practice, as well as its ability to protect the public from offenders from whom they might require the greatest degree of protection.

OPINION REGARDING DSO STATUS

An opinion was expressed regarding the status of offenders sentenced as Dangerous Sex Offenders, and the applicability of the status to a particular offender in 43 cases. Interestingly, the majority of these (74%) were in disagreement with the sentencing of a particular offender as a DSO. Also, the less physical harm that was experienced by the victim the greater was the disagreement with the status. This result may indicate that those who had an opinion regarding the status felt that the legislation should be used only for those offenders who inflict physical harm on the victim.

CONSTITUTIONALITY

The issue of the constitutionality of the legislation under the Canadian Bill of Rights (now Charter of Rights and Freedoms) was raised in a paper by Greenland (1981). As he states, the sentence of preventive detention for a separate class of offenders may be considered discriminatory as well as cruel and unusual punishment. The charge of discrimination is based on the fact that all offenders, apart from those sentenced to preventive detention, receive

a fixed sentence. The fact that one designated class of offenders receives an indeterminate prison term may be deemed to be contrary to the Charter, which guarantees equality before the law. Second, he states, the offender labelled "dangerous" and sentenced as a DSO may never be paroled, while a child killer sentenced to life imprisonment, is entitled to be considered for parole after serving seven years. The constitutionality of the legislation must be left for the Courts to decide.

DO CRITERION

One argument that has been put forward in support of a Judicial review is that some of the offenders who were sentenced as DSOs would not now meet the operative criterion of the Dangerous Offender (1977) legislation. First, two of the offences which were grounds for a DSO application were not carried over to the new provision. These are the offences of gross indecency and buggery. Second, the sexual assault legislation (1983) further changed the threshold criteria by excluding unlawful sexual intercourse (ie. carnal knowledge). As the Badgely Report (1984) states, these offences often relate to cases of pedophilia, and the exclusion of them from the new provision may be a policy decision to "restrict preventive detention provisions to forms of sexual assault".

A total of 19 offenders were convicted of one or more of the above-mentioned offences, and would therefore not have been eligible for prosecution under the current law. It is argued that these offenders should not continue to be detained under circumstances which no longer exist. It is analogous to the argument that an offender should not continue to be incarcerated for an offence that has since been repealed from the Criminal Code.

TIME SERVED

Regarding the time these offenders have served, Greenland (1984) stated: "it is a strange commentary on our scale of human values that the least offensive DSOs have been incarcerated for an average of 14 years compared to an average of 10-12 years for murderers released on parole".

The data presented in the current study clearly demonstrate that a number of offenders remained incarcerated for a length of time virtually unheard of in the Canadian Correctional system, and some would argue for a length of time in disproportion to the offence they committed. Three offenders who had not been paroled at the time of the study have served greater than 20 years for their offence; one of these falls into the group of 19 offenders who do not meet the DO offence criterion discussed above. He was convicted of the offence of carnal knowledge. Two offenders now in

the community were incarcerated for greater than 20 years before being granted parole. One of these would also not meet the DSO offence criterion, having been convicted of gross indecency. The second DSO served 30 years before being released. The question must be asked if justice was accomplished through the incarceration of these men for such a period of time, particularly when it is considered in relation to the time served by offenders convicted of murder.

PAROLE SUCCESS

Of interest to the present study was the adjustment of offenders in the community upon release. Success in this area may be defined in a number of ways. If it is defined as not having been re-incarcerated, then only 20 of the 75 ever-released offenders (27%) fall into this category. That is to say, these 20 offenders have been deemed by the NPB to have, since their release, performed satisfactorily on parole. The remaining 73 percent were either suspended or revoked while on parole. A second way of looking at parole success is the number of offenders who were convicted of an offence which they committed while in the community. Twenty-one of the ever-released offenders (28%) fall into this category. Seventy-two percent of the ever-released offenders were re-incarcerated on a technical violation of their parole. While a number of those re-incarcerated had violated the abstention clause of their parole agreement, for example, a number were suspected of further deviant sexual activity for which no criminal charge was laid.

PSYCHIATRIC TESTIMONY

The two psychiatrists required at the hearing were to give the Court an assessment of whether the accused "is likely to attack or otherwise inflict injury, loss, pain or other evil on any person" (original definition). The Canadian Committee on Corrections (Quimet Report, 1969) had noted the difficulty in determining with accuracy whether an offender is a DSO on the basis of one interview. It was apparent from the present study that the psychiatric assessments were indeed based on relatively little information. In the Manitoba Court of Appeal (1970) decision, R. v. McAmmond, it was held that if the accused refuses to submit to a psychiatric examination (which is their right), the psychiatric testimony may be based on the evidence given at the hearing. The reliability of the assessments made, therefore, appears questionable. The mental state of the accused was also in question at the hearing. The diagnosis assigned to each offender by the psychiatrists was examined. Sixty-nine (71%) offenders were assigned at least one diagnosis.

Psychopathy is the old DSM term that has since been changed to antisocial personality. Many have taken exception to this diagnosis, particularly psychopathy, calling it a diagnosis which had lost all meaning and had in fact become a wastepaper diagnosis. Interestingly, 41 percent of offenders were put in this, the largest single diagnostic category assigned.

CONCLUSION

Sentencing offenders incorporates a delicate balance between society's right to protection, and the offenders right to just and fair treatment. It is clear from the foregoing discussion that the DSO legislation was responsible for the detention of a number of dangerous offenders, and in these instances society's protection was rightfully secured. However as demonstrated, it is also true that relatively "non-dangerous" offenders were sentenced, putting into question the fair and just sentencing of the offenders under the DSO provision. Indeed, a legislation that can sentence an offender to indefinite penal confinement has no room for arbitrary application, as was seen in the operation of this legislation. These and other issues were discussed in the foregoing section with respect to the results of the present study.

In conclusion, whether the findings presented argue for relief of these offenders has ceased to be a moral question but as noted at the outset, must be addressed at the political level. As such, different questions may be asked, and ultimately, different answers may be given.

REFERENCES

- Badgely, R. (1984). Committee on Sexual Offences against Children and Youth (Canada). Health and Welfare Canada.
- Brafel, S.J. and Rock, R.S. (1971). The Mentally Disabled and the Law (rev.). Chicago:University of Chicago, American Bar Foundation.
- Day, G.E. (1976). Differential Processing of Abnormal Sex Offenders:Utilisation of California's Mentally Disordered Sex Offender Program. Journal of Criminal Law and Criminology, 67(2), 233-243.
- Favole, R.J. (1983). Mental Disability in the American Criminal Justice Process. In J. Monahan and S.J. Steadman Mentally Disordered Offenders:Perspectives from Law and Social Science. New York:Plenum Press.
- Forst, M. (1978). Civil Commitment and Social Control. Lexington, Massachusetts:Lexington Books.
- Gould, D.B. and Herwitz, I.L. (1985). Out of Line with the Times. The Massachusetts SPP Statute. Boston University Law Review, 45, 321-398.
- Greenland, C. (1972). Dangerous Sexual Offender in Canada. Canadian Journal of Criminology and Correction, 14, 44-54.
- _____ (1976). Dangerous Sexual Offenders in Canada in Law Reform Commission of Canada, Studies on Imprisonment. Ottawa:Information Canada.
- _____ (1977). Psychiatry and the Pso. Canadian Psychiatric Association Journal, 22(4), 155-159.
- _____ (1981). Dangerous Sexual Offender Legislation:1948-1977:A Misadventure in State Psychiatry. McMaster University, Hamilton, Ontario.
- _____ (1984). Dangerous Sexual Offender Legislation in Canada, 1948-1977:An Experiment that Failed. Canadian Journal of Criminology, 26, 1-17.
- Hacker, F.J. and Frym, M. (1955). The Sexual Psychopath Act in Practice:A Critical Discussion. California Law Review, 43, 76-780.

Jackson, M. (1982). Sentences that never end: the Report on the Habitual Criminal Study. Vancouver: Faculty of Law, University of British Columbia.

Konecni, V.J., Mulcahy E.M. and Ebbesen, E.B. (1980). Prison or Mental Hospital: Factors Affecting the processing of persons suspected of being mentally disordered offenders'. in P. Lipsett and B. Sales (eds.) New Directions in Psychological Research. New York: von Nostrand Reinhold.

Klippert v. the Queen (1968). 2 C.C.C., 129, 2 C.R.N.S. 319, [1967] S.C.R. 822.

Law Reform Commission of Canada (1975). *Imprisonment and Release: working paper 11. Ottawa: Information Canada.

----- (1976). Studies on Imprisonment. Ottawa: Information Canada.

Leggatt, S.M. (1984). The Report of the Inquiry into Habitual Criminals in Canada. Ottawa: Government of Canada.

Malmquist, C.P. (1977). Psychiatry and Sex Psychopath Legislation: the 30's to the 80's. Group for the Advancement of Psychiatry, IX, No. 98 (April). New York: Mental Health Materials Centre, 831-959.

McRuer, J.G. (Chairman) (1958). Report of the Royal Commission Relating to Criminal Sexual Psychopaths. Ottawa: The Queen's Printer.

Menzies, R.J. (1977). Dangerous Sex Offender Legislation in Canada: a Critical Evaluation. Unpublished Report. Queen's University.

Mewett, A.W. (1961). Habitual Criminal Legislation under the Criminal Code... Canadian Bar Review, 39, 43-58.

Minnow, N. (1953). The Illinois Proposal to Confine Sexually Dangerous Persons. Journal of Criminal Law and Criminology, 40, 186-196.

Monahan, J. and Kantorowski Davis, S. (1983). Mentally Disordered Sex Offenders in Mentally Disordered Offenders: Perspectives from Law and Social Sciences. New York: Plenum Press.

Monahan, J. and Steadman, H.J. (eds). Mentally Disordered Offenders: Perspectives from Law and Social Sciences. New York: Plenum Press.

Oliver, A.D. (1982). The Sex Offender: Lessons from the California Experience. International Journal of Law and Psychiatry, 5(3-4), 403-411.

Quimet, R. (Chairman) (1958). Report of the Canadian Committee on Corrections. Ottawa: The Queen's Printer.

Pacht, A. and Cowden J. (1974). An Exploratory Study of Five Hundred Sex Offenders. Criminal Justice and Behaviour, 1, 13-20.

Powers, E. (1968). The Basic Structure of the Administration of Criminal Justice in Massachusetts. Massachusetts Correctional Association, Boston.

Price, R.R. and Gold, A.D. (1976). Legal Controls for the Dangerous Offender in Law Reform Commission of Canada Studies on Imprisonment. Ottawa: Information Canada.

Rennie, Y. (1978). The Search for Criminal Man. Lexington: Lexington Books.

R. v. McAmmond (1970). 1 C.C.C. 175, 7 C.R.H.Q. 200, 7 D.L.R. (3d) 346, 69 W.W.R. 277.

R. v. Roestad (1971). 5 C.C.C. (2d) 569, 19 C.R.H.Q. 190, [1972] 10 R. 814.

Schiffner, M. (1982). Psychology behind bars. Toronto: Butterworths.

Schreiber, (1970). Indeterminate Therapeutic Incarceration of Dangerous Criminals: Perspectives and Problems. Virginia Law Review, 602 at 616.

Shah, S.A. (1975). The Mentally Disordered Offender in R. Allen, E.Z. Forster and J.G. Rubin (eds.) Readings in Law and Psychiatry (rev.). Baltimore: John Hopkins University Press.

_____ (1978). Dangerousness: A Paradigm for Exploring some issues in Law and Psychology. American Psychologist, 33,3, p. 224-238.

Stortini, R. (1975). Preventive Detention of Dangerous Sexual Offenders. Criminal Law Quarterly, 17, 416-439.

Sturgeon, V. and Taylor, J. (1980). Report of a five year follow up study of mentally disordered sex offenders.

released from Atascadero State Hospital in 1973. Criminal Justice Journal of Western State University, 4, 31-64.

Sturup, G. (1968). Treating the Untreatables. Baltimore:John Hopkins University Press.

Sutherland, E. (1950). The Sexual Psychopath Laws. Journal of Criminal Law and Criminology, 40, 543.

Tenney, J. (1962). Sex, Sanity and Stupidity in Massachusetts. Boston University Law Review, 42, 1.

Walker, J., Hammond, L., and Steer, M. (1967). Repeated Violence. Criminal Law Review, 465, 5-6.

von Hirsch, A. (1976). Doing Justice: The Choice of Punishment. New York:McGraw Hill.

APPENDIX A TERMS

PAROLE REDUCED

The NPB may grant Parole Reduced, whereby all of the terms and conditions of the Parole agreement are lifted except the requirements that the individual reports to the District Director, in person or in writing, any change of address, and the parolee is required to report to the District Director once a year even if his address has not changed. The parolee is still on Parole, and the terms and conditions may be reinstated by the NPB, or his release may be revoked should circumstances warrant.

When an individual has been on Parole for three years, NPV will review the case and decide to grant or refuse Parole Reduced. The Board will give the parolee the reasons of denial. Should the decision of Parole Reduced be denied, the Board will set another review date.

When Parole Reduced has been granted, the district office must keep a record of the individual and his current status. When the individual moves to another district, he must inform the district office. Although a transfer of supervision does not apply to his circumstances, the authority over the case and the case file must be transferred to the District Director of the new district and the individual shall be so advised by letter. Three years after the date of release on Full Parole the Parole Supervisor will submit a report to the NPB regarding Parole Reduced. Reports recommending Parole Reduced should contain the following information:

- 1) the person's progress while under supervision
- 2) the length of time since the conditional release began;
- 3) an assessment of the degree of the person's re-integration into society.

DISCHARGE FROM PAROLE

The Parole Act (Section 10(1)(d)) empowers the NPB to grant discharge from Parole to any inmate on Full Parole except those sentenced to imprisonment for life as a minimum punishment.

The policy of the NPB is to use the power to discharge Parole in extraordinary circumstances only.

The reports submitted to the Board should provide the same information that is required when recommendations are made for Parole Reduced.

APPENDIX B

PART XX1

DANGEROUS OFFENDERS

Definitions-"court"- "serious personal injury offence"

687. In this part,

"court" means the court by which an offender to whom an application under this Part is made was convicted, or a superior court of criminal jurisdiction;

"serious personal injury offence" means

a) an indictable offence (other than high treason, treason, first degree murder or second degree murder) involving

1) the use or attempted use of violence against another person, or

11) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

b) an offence or attempt to commit an offence mentioned in section 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault).

1976-77, c. 53, s. 14; 1980-81-82, c. 125, s. 26.

DANGEROUS OFFENDERS

APPLICATION for finding.

688. Where, upon an application made under this Part following the conviction of a person for an offence but before the offender is sentenced therefore, it is established to the satisfaction of the court

a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 687 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(1) a pattern of repetitive behaviour by the offender, of which the offence for which he has been convicted forms a part, showing a failure to restrain his behaviour and a likelihood of his causing death or injury to other person, or inflicting severe psychological damage upon other persons, through failure in the future to restrain his behaviour,

11) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he has been

convicted forms a part, showing a substantial degree of indifference on the part of the offender as to the reasonably foreseeable consequences to other persons of his behaviour, or

111) any behaviour by the offender, associated with the offence for which he has been convicted, that is of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint, or

b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 687 and the offender, by his conduct in any sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses and a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control his sexual impulses, the court may find the offender to be a dangerous offender and may thereupon impose a sentence of detention in a penitentiary for an indeterminate period, in lieu of any other sentence that might be imposed for the offence for which the offender has been convicted. 1976-77, c. 53, s. 14