



CSU  
College of Law Library

## Cleveland State Law Review

---

Volume 9  
Issue 3 *Psychiatry and Law (A Symposium)*

Article

---

1960

### California's Program for the Sexual Psychopath

Reginald S. Rood

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Law and Psychology Commons](#)

**How does access to this work benefit you? Let us know!**

---

#### Recommended Citation

Reginald S. Rood, California's Program for the Sexual Psychopath, 9 Clev.-Marshall L. Rev. 462 (1960)

This Article is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact [library.es@csuohio.edu](mailto:library.es@csuohio.edu).

## *California's Program for the Sexual Psychopath*

*Reginald S. Rood\**

THE BASIS FOR CALIFORNIA'S sexual psychopath program is the legal provision which establishes a state hospital as an alternative to prison for certain nonpsychotic, convicted offenders, legally defined as sexual psychopaths. The designated institution is the Atascadero State Hospital, a new facility opened in June, 1954. Its 1250 all male patient population is about sixty percent sexual psychopaths and forty percent criminal insane. This preponderance of non-psychotic patients is unique for a state hospital for the mentally ill, where, as a rule, about ninety percent of the patients are psychotic. My purpose is to discuss our program and procedures for the sexual psychopaths as implemented by the work of the hospital, to explain the rationale of this approach and to demonstrate the importance of a strict rule for criminal responsibility for its success.

Under California law, a sexual psychopath is any convicted criminal, not punishable by the death penalty, who suffers from abnormal sexual desire of a kind and degree to constitute him a menace to others. By this two-factor definition, we include typically the child molester and the exhibitionist but exclude the ordinary homosexual (not a menace) and, usually, the rapist of the physically mature female (not an expression of sexual deviancy, but more often a failure to control normal sexual inclination).

After his conviction, the court commits a probable sexual psychopath to Atascadero for a ninety-day observation period. Judgment of sexual psychopathy with commitment for an indefinite period follows upon the hospital's report that the subject is a sexual psychopath who could benefit by treatment. If the hospital finds him not to qualify as a sexual psychopath, he must then be handled again by the court as a criminal case, that is, be sentenced or granted probation. The hospital receives about 800 cases a year for observation and retains about half of these for the indefinite treatment period.

When the hospital has treated the patient sufficiently that

---

\* M.D., Superintendent and Medical Director, Atascadero State Hospital, Atascadero, Calif.; Certified Mental Hospital Administrator.

he is considered to be no longer a menace, it makes such a report to the committing court, with the recommendation that he be granted probation. As a rule about eighteen months total hospitalization precedes a favorable court recommendation, the law of course intending confinement until the element of menace becomes absent. The courts grant probation in about ninety percent of the cases favorably recommended, and sentence the others. Should the patient prove to be one who requires prison security, he is returned to court with the recommendation that he be sentenced for his original offense.

Briefly, the foregoing procedures interpose a period of hospital treatment between the time the offender is convicted and the time he comes up for sentence or probation. Their effect is to give the hospital the power to select its patients and the courts the power to decide on their return to society, because prison is an alternative.

The treatment program for the committed cases is essentially that of the therapeutic community, with group therapy and patient government in the milieu of acceptance and optimism for the patients' ability to improve. Group therapists number about twenty-five physicians, psychologists and social workers. The usual state hospital moral, environmental therapeutic activities of industry, recreation and religion abound. Inasmuch as the sexual psychopaths frequently include alcoholism in their symptomatology, an active A. A. program is of positive value. In this setting, the patient finds himself legally confined for a period of from one to two years in an atmosphere of friendship, good will, honest appraisal and hope for his improvement. This, I believe, presents a curative contrast to his often former community environment of competition, ill will and, in many cases, domestic strife.

Follow-up studies of 1400 treated cases placed on probation during the past five years, indicate a recidivism rate of about fourteen percent. The exhibitionists and the boy molesters are more recidivistic than the incest cases and girl molesters.

In reflecting on the virtues of California's approach to the sexual psychopath, two questions naturally come to mind: (1) Why do we select the sexual psychopaths for this program in preference to other criminals? (2) Why is the state hospital a more favorable setting for psychotherapy than the prison? Regarding the first question, the sexual psychopath, in contrast to most other criminals, is motivated by abnormal desire rather

than failure to resist normal temptation. Thus, mental disorder is implied. Additionally, for the same reason, it is of no social value to punish the sexual psychopath as a deterrent example to others. Inasmuch as neither sexual attraction to children nor exhibitionism is a characteristic of the average person, there is no point in posing the prospect for punishment for these offenses.

With regard to the second question, the reasons that the hospital offers a more ready setting for psychotherapy than the penal institutions sum up in the fact that the spirit of acceptance, as against rejection, is more easily achieved in the hospital. The reasons for this are, first, the medical tradition, which is wholly one of acceptance; this is in contrast to the punitive tradition, which rejects the criminal person because of his crime. Second, there is nothing in the state hospital setting that stimulates us to reject the inmates collectively, as is true in the prison. This important fact is explained by the difference in the group behavior of psychotic and nonpsychotic persons. The psychotic, by the nature of his illness, is unable to conspire or plot with his fellows. He is incapable of organized activity, and therefore the danger from collective attack is not present in the state hospital. This, of course, is not true of the prison situation with its nonpsychotic inmates and potential riots. The state hospital's security measures are designed, therefore, only for the patients individually, not collectively.

Thus, the hospital's tradition and security permit a more accepting and relaxed therapeutic atmosphere than does the tradition of individual rejection and the cold war, inherent in the prison. For example, in the hospital the female nurse and psychiatric technician work safely with the male patients, greatly enhancing the therapy and therapeutic environment. A female nurse or technician is present on all the Atascadero wards.

The foregoing explanation of the difference between hospital and prison security rightfully raises the question: How can Atascadero, whose security is designed only for the psychotics, operate as a hospital when sixty percent of its patients are nonpsychotic criminals? The answer is that the law gives the hospital the power to select its nonpsychotic patients. During the alleged sexual psychopath's observation period, the hospital decides whether he legally qualifies under the definition and, if so, whether he should be recommitted for the indefinite period. The courts must follow the hospital's recommendation as to recom-

mitment, but of course have the power to sentence, the offender having been convicted.

The fact of the original conviction forms the basis for the hospital's power to select its nonpsychotic patients, because with the conviction we have three dispositional possibilities for the offender: hospital, prison or society. Under this arrangement, there is no conflict between the hospital and the courts over nonpsychotic offenders in need of mental treatment who should be in neither the hospital nor society. The hospital chooses its patients and the courts decide on the offender's return to society, because prison is an alternative. It is not often that we return a case to court as a sexual psychopath not amenable to hospital treatment, but it is obvious that the hospital must have the power to do so, otherwise it cannot protect itself from becoming a prison. The basis for this is the original criminal conviction.

This leads us to consider appropriate rules for criminal responsibility in general, because, when the courts commit an offender to the hospital as criminally irresponsible there is no conviction, consequently, prison is abandoned as an alternative. Therefore, any offender committed as criminally irresponsible should be suitable for the security measures designed for the individual rather than the group. In other words, he should be psychotic in the traditional, state hospital sense.

In California, the formula for criminal responsibility is the M'Naghten rule. As applied by the juries and judges, this rule usually selects as criminally irresponsible, offenders who are properly committed to the hospital without the need for prison as an alternative. About fifty male cases a year are so designated.

Admittedly, there are many offenders held criminally responsible under the M'Naghten rule and sent to prison who need mental treatment and would benefit by state hospitalization, especially in an institution like Atascadero. The rule is objected to for this reason, the presumption being that criminal responsibility necessarily means penal incarceration. As demonstrated by the law and procedures for the sexual psychopaths, this need not be true. On the other hand, to change the rule to accomplish hospitalization for many who are now held responsible, would force the hospital to become a prison, because the hospital would then lose its power to select patients for whom prison should be reserved as an alternative.

From the hospital's view, the forementioned objection to the M'Naghten rule should be met, not by changing the rule, but by

legally providing that the hospital be an after-conviction alternative to prison for offenders in need of mental treatment who are criminally responsible under the rule. This approach would give us the flexibility of commitment or sentence necessary to preserve the basic distinction between hospital and prison. It is exemplified in California's highly successful sexual psychopath law.