



A History of the American Law Institute's
Model Penal Code: The Kinsey Reports'
Influence on "Science-based" Legal Reform
1923-2003

A WORK IN PROGRESS

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Introduction

Law Points the Way

...the conduct of life is to so large an extent determined by the existing legal institutions, that an understanding of the legal system must give you a clearer view of human affairs in their manifold relations, and must aid you in comprehending the conditions, and institutions by which you are surrounded.¹

Justice Louis D. Brandeis

In assessing America's current "conduct of life" related to women and children today, a team of researchers for the *RSVP America* Campaign examined public data in 1999 and prepared, "A Report of Illegitimacy and Violence in Kansas, Kentucky, Minnesota, Missouri, New Jersey, and Maryland" from *Statistical Abstracts of the U.S.* and *Vital Statistics of the U.S.* This six state survey revealed a most serious condition related to rates of illegitimacy, rape, and sexual violence as evidenced by rates that have skyrocketed since the 1950s.

If understanding the legal system gives you a "clearer view of human affairs" and aids in "comprehending conditions...by which you are surrounded," as Justice Brandeis declared, then the question to be answered is evident: What, within the nation's "legal institutions," changed to account for the significant changes in "the conduct of life" in America regarding illegitimacy, rape, and sexual violence?

Which Changed First: Law or Culture?

Many eminent thinkers and writers today attribute the 1960's cultural upheaval as the reason for the change in America's "conduct of life," but, in fact, it is an outcome or merely a symptom.

In regard to issues surrounding women and children, prior to the 1960s, there was an outcry from the American people demanding stricter enforcement of the already strong laws that protected marriage, feminine virtue and childhood modesty. Then the only lawful sexual congress between the sexes was heterosexual coitus in marriage.

Despite the outcry for stronger crime enforcement, crime rates were significantly lower than today. Then men who raped and preyed on children were criminals, not "actors" as they are today: abused and violated women and children were victims, not "complainants;" justice was meted out by a jury of one's peers, not by social science "experts;" and predators received penalties, not legal protections.

How and what happened to America post-1960, is the focus of this book. The research has revealed that America's present condition, related to sexual disease, dysfunction and violence against women and children, is not primarily a result of changes made by an evolving culture. Rather it is the result of well-executed plan beginning in 1923, to abolish the nation's founding common law principles which provided strong protections for women and children.

¹Leonard Baker, 1986. *Brandeis and Frankfurter: A Dual Biography*. Washington Square, NY: New York University Press, p. 29.

Based on the seminal work of Dr. Judith A. Reisman², the changes to pre-1948 laws protecting marriage, women and children are directly traced to the flawed sex science of Indiana University zoologist professor Alfred C. Kinsey. There had been other research into human sexuality deviant and otherwise, but until Kinsey's research there was never so grand a project (18,000 interviewees, Kinsey claimed,) to inquire into the behavior of people whom Kinsey claimed were normal Americans.

The plans revolutionaries made and acted upon overturned 52 designated laws³ protective of women and children,⁴ aided and enabled by the indispensable sex

1948 Ernst & Loth Crimes List (52 Sex Sex Crimes for Civil Order) Targeted for Abolition or Lightening by the Kinsey Legal Cadre

Crimes against Nature

- a. Sodomy
- b. Bestiality
- c. Buggery
- d. Cunnilingus
- e. Fellatio
- Adultery
- Indecent Exposure
- Disorderly Houses
- Nuisance
- Disorderly Conduct
- Pornographic Literature
- Immoral Shows and Exhibitions
- Contraception - Indecent Articles
- Bastardy
- Bigamy
- Chastity*
- Levial Cohabitation
- Incest
- Levial Acts with Infants (not defined as under 18-years-of-age)

Crimes Against Infants (Minors)

- a. Impairing morals of a minor
- b. Prostitution
- c. Abduction
- d. Seduction
- e. Statutory Rape
- Abortion
- Fornication
- Contacts (Sexual Immorality)
- Compulsory Prostitution of Wife

Transportation for Immoral Purpose

- Nude Camps
- Abduction
- Seduction
- Prostitution
- Rape
 - a. By force
 - b. Statutory
- Liquid Behavior
- Obscene Books, Letters, Communications
- Assault with Intent to Commit Sodomy
- Assault with Intent to Commit Rape
- Solicitation with Intent to Commit Sodomy
- Solicitation with Intent to Commit Prostitution
- Illicit Intercourse
- Publication of Sex Crimes Magazines
- Advertisements Relating to Certain Diseases
- Exposure of Person
- Man Living on Proceeds of Prostitution
- Sending Messages to Places of Prostitution
- Allowing Children to Remain in Houses of Prostitution or Any Place Where Opium or Other Such Preparations is Smoked
- Smoking Opium and Other Preparations
- Concealing Birth of a Child
- Libel of Sexual Behavior
- Standard of Sexual Behavior
- Compulsory Prostitution by Parents of Children (female and in some States, male)
- Miscegenation
- Obscene Language

* Here the authors include "chastity" as a sex crime. One assumes this "joke" was a reflection of the authors' specific views.

"science" of the Kinsey Reports. Why did change in the law have to precede cultural change? Because law points the way, and culture follows, or as Justice Brandeis put it: "...existing legal institutions" determine the "conduct of life."

In the 30 years since the ALI MPC eliminated protections for women and children, young people don't know obscenity, fornication, contraception and cohabitation, now commonplace, were once illegal. The ALI has produced the second wave....

² Reisman, J. A. 2000. *Kinsey: Crimes and Consequences*. (2nd ed.). Crestwood, KY: Institute For Media Education.

³ Morris Ernst and David Loth, 1948. *American Sexual Behavior and the Kinsey Report*. NY: Educational Book Co., p. 127. See also, J. A. Reisman, 2000, *Kinsey: Crimes and Consequences*. Crestwood, KY: The Institute for Media Education, pp. 194-196.

⁴ Morris Ernst and David Loth 1948. *American Sexual Behavior and The Kinsey Report*. NY: Graystone Press.

The Effect of Legal Reform on Women and Children:

- The work of overturning or reducing penalties for 52 common law protections for woman and children beginning more than 50 years ago has measurably destabilized society's smallest building block, marriage, by:
 - making divorce easy and thereby frequent;
 - decriminalizing fornication and cohabitation.
 - replacing parental support with welfare programs making taxpayers "daddy" to countless children born out-of-wedlock;
 - promoting government-supported contraception and abortion programs to teenagers most often without parental knowledge or consent.
 - legalizing sodomy which was a criminal act in every state, in 1948. Sodomy has become a state of being instead of an act; a political movement citing to the Kinsey Reports as its genesis,⁵ able to decide elections; gain access to classrooms and the White House.
- The abandoning of America's founding law standard has put children at risk;
 - declaring children sexual from birth;
 - by lowering the age of consent;
 - legalizing graphic, modesty-searing explicit Kinseyan-based sex education and AIDS prevention programs in schools,
 - by utilizing pornography as a teaching aid in American schools.⁶

Over the last 50 years, women and children have become prey as rape penalties have been lowered from felonies to misdemeanors and, in many states, only the evidence of physical violence or death constitutes forcible rape.⁷

⁵ Karla Jay and Allen Young, *Lavender Culture*, New York University Press, 1978.

⁶ See SIECUS, February/March 1996 "Position Statement" on "Sexually Explicit Materials," 21.

⁷ Potter, J. R. 1976. Sex Offenses. *Maine Law Review*, Vol. 28, p. 69.

~One~

The Story of Jeffrey Stumph

On January 5, 2002, drunken 22-year-old Jeffrey Stumph kidnapped, at knifepoint, a student at Missouri's Drury University. After raping her twice, Stumph released his victim shortly after midnight, returned to the bar where he had been drinking, and kidnapped a second victim sodomizing her at knifepoint. She only escaped Stumph by jumping from a speeding car and flagging down a motorist.

These two students were Stumph's victims number four and five. At 14, he raped his first victim. Victim one was also 14, and in the eyes of the law, this is viewed as "peer sex play," rather than a criminal act, and Stumph went free. A few months later, he attempted to rape a 20 year old woman, but since Stumph was a minor he was given another chance. Six months later, he attempted to kidnap an 18-year old, who fought back and identified Stumph to the police. Thus, at the tender age of 16, Stumph was sentenced to 10 years for three guilty pleas.

After serving seven of the ten year sentence, Stumph was released. Declared a model prisoner, he successfully completed the state mandated therapy program. Stumph had paid his debt to society by completing the prescribed rehabilitation in current Missouri law. However, two months later, the savage rapes of two teenage girls at Drury University called the system up short. The most striking and startling fact to many is that Jeffrey Stumph's story is common today. Unless a rape includes sensational elements like stalking and body dismemberment, it is lucky to make the crime listings at the back of the newspaper. And tragically the generation of victims recounted in this story cannot remember when it was any other way.

By now every American woman ought to know there is something terribly wrong with laws that require children to be locked away and huddle in their houses, while predators simply post their names on a registry. Convicted rapist Jeffrey Stumph, who admittedly rang in the New Year by raping two Missouri women in a 24-hour period, is only one of many testifying to the sad state of American justice, a system that has turned its back on victims of sexual violence in preference to the predator.

In the 1970s, following the lead of half the states in America, Missouri undertook to revise, for the first time in its history, the state's criminal code. Guided by the American Law Institute's (ALI's) Model Penal Code (MPC), Missouri rape laws were declared obsolete. A typical critic was St. Louis Judge Orville Richardson, who revised the state's sex offenses. He declared that the state's then-current rape laws, "carry extremely severe punishment" and that "those few who are punished are dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralists."¹

It turns out that the vision that guided Missouri jurists in refashioning sex offense laws was based upon the dubious research of the famous Alfred Kinsey. Kinsey actually used pedophiles to conduct his research – not exactly the picture of white-coated neutral observers – and he apparently suffered from misplaced compassion, reportedly weeping for the Jeffrey Stumphs of his generation.

¹ Richardson, O. 1973. Sexual offenses under the proposed Missouri Criminal Code. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 372.

Judge Richardson cites the Kinsey Institute Reports 14 times to buttress the judge's redefinition of the principle sex offenses (rape, sodomy, sexual abuse, and indecent exposure). In the revised criminal code that followed punishments were graded² according to the use of "forcible compulsion," the capacity or incapacity of the victim to consent, the age of the victim, and the age of the "actor," the new non-offensive term for the sexual predator. Imagine that! Against "actor" Jeffrey Stumph, under the revised Missouri code, women must be able to prove they vigorously fought the predator or they weren't really raped!

A seismic change in justice brought into states by the ALI Model Penal Code was caused by the redefinition of criminal responsibility. In Missouri 30 years ago, a convicted Jeffrey Stumph would never have been free to commit sexual violence for the fourth and fifth times. Now, however, in Missouri today, thanks to men like Herbert Wechsler, who was the chief author of the MPC, there's been a decisive change in emphasis.

"There has been some acceptance also of the larger point," Wechsler wrote "that penal law in general ought to concern itself with the offender's personality, viewing his crime ***primarily as a symptom of a deviation that may yield to diagnosis and therapy.***"³

Thirty years ago, when rape rates were 132% lower⁴, a predator was tried on the assumption he understood right from wrong. A judge and jury would hear the facts, render a verdict, and decide the penalties. But today, the predator is accountable for his crime only to the extent that a therapeutic expert says he was able to control himself.

The effect of this change in law from punishment to therapy can be seen in Jeffrey Stumph's case. Instead of capital punishment and long prison terms, Missouri now metes out therapy for men such as Stumph. Officials with the Missouri Department of Corrections said convicted sex-offender Stumph has met the requirements of law and thus should be freed. Stumph had been a good inmate. He had completed a sex-offender program. He served seven years of his ten-year sentence, and then he walked with the blessing of the state. But freeing Stumph has allowed him, just a few months later, to rape and terrorize two innocent Missouri girls.

Just how effective is therapy when it comes to rehabilitating sex-offenders? In 1996 the General Accounting Office researched the effectiveness of sex-offender treatment programs, taking a look at 550 studies on sex offenders over a 50 year period. According to the GAO, "none [of the reviews] concluded that the various forms of counseling that characterize this approach [psychotherapy] were sufficient by themselves to substantially alter the behavior of sex offenders."⁵ The GAO found no conclusive data to indicate that treatment reduces recidivism. One program in California was described in detail because of its use of strict methodological controls designed for evaluation. "Overall", the GAO concluded, "offenders completing the treatment program and the volunteer control group had approximately the same recidivism rate for [committing] new sex crimes."⁶ Despite findings such as these, and despite this poor track record, 80% of child-abusers are nevertheless ordered to

² Richardson, O. 1973. Sexual offenses under the proposed Missouri Criminal Code. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, 377, 392.

³ Wechsler, H. Challenge of a Model Penal Code. *Harvard Law Review*. Vol. 65, 1952, p. 1104.

⁴ Data from Statistical Abstracts of the United States, from 1962 to 1992.

⁵ Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism. United States General Accounting Office, 1996.

⁶ Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism. United States General Accounting Office, 1996, p. 13.

participate in therapy on an outpatient basis, with no jail time served,⁷ according to a report by the American Bar Association.

The evidence indicates that the State of Missouri has swallowed the therapy approach hook, line and sinker. In 1999, approximately half of all inpatient psychiatric services provided by Missouri tax dollars were spent on court-ordered offenders. The Missouri Department of Mental Health had a budget of \$668.4 million in 2001. And the Missouri Department of Social Services now nonjudgmentally refers to violent predators as morally neutral "clients." The 2000 Missouri budget provided \$9,470,398 for the "design, construction, demolition, renovation, and improvements for the 25-bed sexual-predator program at Southeast Missouri Mental Health Center."⁸

Four Missouri State Hospitals provide 822 of the total 1,668 mental health beds for court-ordered offenders. These services are provided by the Division of Comprehensive Psychiatric Services, Department of Mental Health, with a 1999 budget of \$273,433,011. The 2000 appropriation was \$292,931,459. Based on these financial reports, the courts are ordering in excess of \$145 million Missouri tax dollars to be spent on offender inpatient therapy alone.

Missouri appropriations from 1950 to 2000 demonstrate the creation and vast expansion of government programs to provide therapy for sex offenders but with no proof of result, so horribly evidenced by the Stumph debacle, to justify their continuation of the therapeutic approach to corrections.

Finding one's way again, when lost, usually requires a retracing of one's steps to where the mistake was made, and then moving forward from there. For American women, that means restoring the tough penalties and imprisonment for rape and molestation that once kept predators off the streets and protected women and children.

Violent sexual predators are very unlikely candidates for rehabilitation through treatment, and they do not belong on the street or in the house down the street with their names on a registry. Maniacal moralism? I don't think so. Just ask Jeffrey Stumph's newest victims.

Stumph is a mild example. There are many more gruesome. Another Missouri example from last year is that of William Barlow, a murderer who continues to receive state funded provisions for his rights and liberties, while the three women he brutally murdered have long ago faded from public memory. Barlow served eight years for strangling a prostitute in 1956. In 1971, while having one of his "freeway fantasies" he ran Joan Merritt off the road in Independence, Missouri, and stabbed her to death with a sharpened file. A year later, freely roaming Kansas City streets, he entered a laundry and stabbed Gloria Schuler to death while she washed diapers. Years later, however, the Kansas City Star reports, that doctors gave him favorable reports and he thrived at his job where he "worked alongside women." This story appeared in the Kansas City Star because of a law that confines sexual predators for mental treatment. The problem as framed in the media was the individual's rights vs. society's rights. Defense attorney O'Brien argues that "his client has already been in treatment for decades, and there is no evidence he cannot control his behavior" (the blood of three dead women notwithstanding). The questions begging to be answered are, how have Missouri taxpayers been required to pay for Barlow's

⁷ American Bar Association. 1990. The Probation Response to Child Sexual Abuse Offenders: How Is It Working? Executive Summary. State Justice Institute, Grant, SJI-88-IJJ-E-015.

⁸ State of Missouri Appropriation Activity Report, Appropriation Year 2000, Office of Administration, Division of Accounting, page 83.

28 years of state mental care, and who is paying Attorney O'Brien's current fees to determine if his treatment will continue, as well as paying for the court trial to determine twenty-eight years later that Barlow is a sexual predator, and will the therapeutic elite continue to dictate mental treatments paid for by public funds that usurp the power of the jury to mete justice for the Joan Merritts and Gloria Schulers of Missouri?⁹ Missouri taxpayers must salute this case with their checkbooks.

Just a few days ago, a local news story in Louisville, Kentucky caught my attention for its headline claim that a wrongdoer might actually be punished. The headline read, "Man Gets Sentence For Impregnating Girl."¹⁰ Like the Missouri stories, the reader had to dig to the fine print to find the truth. The man was not sentenced for getting a girl pregnant. A more appropriate headline would have been "Seven-time Convicted Criminal Gets his Eighth for Child Molestation." The previous seven convictions had occurred over a ten year period. The victim was 15 and was repeatedly molested since the age of 12. Her assailant was 37. It no longer seems strange that the word "molester" or "predator" are absent from our legal and popular reporting. The headlines frame the story this way. He was a man. The problem? She's pregnant.

Most people are surprised by the fact that from our country's founding until just 40 years ago, rapists and molesters potentially faced the death penalty in 18 states, and a life sentence in most others. Back then, children played in the parks. Back then, women gave little thought to their safety walking down the street alone. But today we lock ourselves in our homes while rapists and molesters are released to freedom. This book is the chronology of the legal experiment that brought us to such a sad state.

⁹ Judge delays predator trials. The Kansas City Star, Johnson Co./ Metro Ed., August 1, 2001, p. B4.

¹⁰ Appeared on June 3, 2002 at the news website, thelouisvillechannel.com.

~Two~

Nature of Law & America's Founding Law Order

"Upon these two foundations, the law of nature and the law of revelation, depend all human laws."¹

From the birth of America to the publication of Darwin's *Origin of the Species*, (entire title) in 1859, the primary law book in America was William Blackstone's *Commentaries on the Laws of England*.² Blackstone held that the principles of law were unchanging based on the will of a "Supreme Being." Because God's law comported with the reality of creation both human and material, Blackstone concluded that the "law of nature" dictated by God Himself was superior to all others and binding over all people at all times. The features of God's law provided for equal protection under law as no man is held to be above the law (not even the King).

Law is, by definition, fixed, therefore knowable with the reasonable expectation it could be kept by all. According to Noah Webster's 1828 American dictionary of the English language, law comes from the [Sax. Laga, lage, lag, or lah; Sw. lag; Dan. Lov; It. Legge; Sp. Ley; Fr. Loi; L. lex; from the root of lay, Sax. Lecgan, Goth. Lagyan. See Lay. A law is that which is laid, set or fixed, like statue, constitution, form L. statuo.] Law is fixed. Anti-law is moving, flexible or not fixed. Webster says further:

1. A rule, particularly an established or permanent rule, prescribed by the supreme power of a state to its subjects, for regulating their actions, particularly their social actions. Laws are imperative or mandatory, commanding what shall be done; prohibitory, restraining from what is to be forboren; or permissive, declaring what may be done without incurring a penalty. The laws which enjoin the duties of piety and morality, are prescribed by God and found in the Scriptures.

The majesty of God's law is that it is deemed adequate and binding because it contemplated the true nature of man: Inherently evil, in need of a Savior and repentance.

The criminal or penal law (define) in American states was enacted usually on or about the time of statehood and, while there were a few exceptions such as Louisiana, the English law order known as the "Common Law," which was rooted in the Old and New Testaments of "Nature's God" served as the law order. Because the Law was accepted as objective absolute, the "revelation" of God defined right and wrong, law was settled, fixed, and good and evil were unchangeable moral concepts

¹ William Blackstone, 1765. Blackstone's *Commentaries* were on the common law which is distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security [rights] of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and in this sense, particularly the ancient unwritten law of England.

² Sir William Blackstone (1723-1780), Professor of Common Law, Oxford University, was an eminent, prolific English authority on common law. The common law is part of the underlying law used in England and the United States. The common law derives from a long line of rights developed over centuries on behalf of the people. A famous example is the Magna Charta (1215) under King John. These rights include what was referenced by our own U.S. "Bill of Rights." Blackstone wrote prolifically on the laws on the England. His *Commentaries* were well received, went through a number of editions, and are still cited in modern legal references such as *Black's Law Dictionary*.

bringing societal order. The 1891 Blacks Law Dictionary confirms, "Christianity [is] the religion founded and established by Jesus Christ. Christianity is a part of the common law, or of the law of the land. See *State v. Chandler*, 2 Har. (Del.) 553;... *Vidal v. Girard*, 2 How. 127, 11 L. Ed. 205," etc.

The Standard: Fixed or Evolving?

The firm and fixed foundation of American law served until Christopher Columbus Langdell came to Harvard Law School, in 1870, where he charted a new course, legal positivism, or evolving law. Langdell was chosen by the respected Charles William Elliott, an avid promoter of the latest Darwinian principles and as Harvard's president brought many other Darwinians on staff at Harvard. Langdell held that since man evolves, his laws must also evolve and, like that, law was thereafter unhinged from the fixed and divine, as law students were redirected to a new stream of law focused more on judges decisions, not on America's firm and fixed law and the constitution.

As Harvard set the standard for the study of law in America and broke trail for all innovation, law was becoming dependent on social customs often based on the latest innovation or trend. In the next generation, Oliver Wendell Holmes, Jr., appointed to the supreme Court in 1902 captured the spirit of the evolving legal age when he declared:

[T]he justification of a law for us cannot be found in the fact that our fathers have always followed it. It must be found in some help which the law brings toward reaching a social end.³

By the time of Roscoe Pound, who lead the Harvard Law School as Dean from 1916-36, positivistic legal philosophy was firmly institutionalized in the progressive places where young legal minds were trained. The enlightened saw Law anew, as expansively charged with making broad social change. As memory of fixed standards faded, Pound declared no longer should it be the mission of jurisprudence to focus on the narrow field of legal interpretation; the goal should be to become a sociological force to influence the development of society.

As America settled and prospered, the settled and well-known Biblical standard with its explanation of Man and the World, according to Blackstone's "Nature and Nature's God" was becoming eclipsed by "Evolution" subjectively driven by men of science and scientific process. Law would not be the only field inspired by its new self-conferred messianic role to seek expanded influence and controls, not contemplated and counter to the US Constitution, over America's swelling population.

Kinsey's Flawed Statistical Evidence of "Normal" Sexuality

Kinsey's statistics disprove his *NYT* proposal. As Dr. Judith A. Reisman pointed out in her book, *Kinsey: Crimes & Consequences*, Kinsey's data largely reflect the conduct of criminals and sex deviates.⁴ Of 18,000 subjects in the Male sample, the Kinsey Male Report claims to reflect a normal distribution of 5,300 white males. Of that number, the Kinsey Reports denominates 2,446 as convicts, 946 as homosexuals, 57 as a special group of homosexuals (having 100 or more partners), 117 as mentally ill, 342 as "others" and 650 as boys. That means that the data in the Kinsey Report

³ Oliver Wendell Holmes, Jr., *Collected Legal Papers*. NY: Harcourt, Brace and Company, 1920. P. 225, "The Law in Science—the Science in Law." Cited in Barton, Original Intent. P. 229.

⁴ Reisman, J. A. 2000. *Supra.*, p. ii. Correspondence from Allen Wallis, Past President of the American Statistical Association, former editor of the *Journal of the American Statistical Association*, former Chancellor of the University of Rochester.

(1948) are based on 4,628 aberrant and a mere 873 normal males.⁵ Dr. Reisman's report of 86% of Kinsey's sample being aberrant males was finally conceded by Kinsey's co-author Paul Gebhard in 1990.⁶

An additional problem with Kinsey's scientific accuracy was pointed out by renowned psychologist Abraham Maslow, who warned Kinsey that only women (and men) engaged in unconventional, exhibitionist sexual behavior would be most likely to share their sexual experiences with strangers.⁷ Maslow's counsel garnered Kinsey's ire, but he continued on. As Maslow warned, Kinsey could locate almost no "normal" married women to interview so he redefined prostitutes as "married" if they ever lived over a year with a man. In addition, he purged prison and black female interviews due, he said, to their larger percentage of early sexual experiences.

These data were received by the legal profession as "scientific evidence" of an overwhelming and impossible problem with the common law standard then in force in state law across the nation. It led one legal sage to despair over Kinsey's claim that, if "a total clean up of sex offenders is demanded, it is in effect a proposal to put 95% of the male population in jail."⁸

The American Law Institute

Prompted by Kinsey's findings of what constituted "normal" sexuality, a full chorus of legal and therapeutic elites joined in the call for criminal law reform in state law. The 1955 Model Penal Code Draft 4, was sent to each state in answer to their call. The American Bar Association's educational arm, the American Law Institute (ALI), produced the "Model Penal Code" (MPC), fulfilling a goal spanning the entire history of the ALI. According to Professor Wechsler, "a study of the defects of American criminal law was begun by the Institute as early as May, 1923,"⁹ the year ALI was founded.

Wechsler reported again on the focus of the ALI in 1937: "Finally the American Law Institute, after a suggestion by President Roosevelt that it turn its attention to "the field of the substantive criminal law," has approved the recommendation of an advisory committee that it undertake the preparation of a model criminal code, a task that may, however, prove to be impossible of performance on any comprehensive scale, under contemporary social and economic conditions."¹⁰

Writing in 1968 Psychiatrist Manfred Guttmacher, a MPC Advisor, reported that the ALI had sought funds from the Rockefeller Foundation "a quarter of a century" before their funding was finally granted in 1950. The delay in Rockefeller funding was reportedly due to assistance needed from the behavioral sciences, which was not yet ready.¹¹ The assistance arrived in 1948 with the publication of the first Kinsey Report, *Sexual Behavior in the Human Male*.

⁵ For a complete discussion of the Kinsey Reports fraudulent statistical methodology, see Reisman, *Kinsey: Crimes & Consequences*, 2nd ed., pp. 49-68.

⁶ Letter from Paul Gebhard to Director June M. Reinisch at the Kinsey Institute, December 6, 1990.

⁷ Letter from Maslow to Abram Scheinfeld, Apr. 29, 1970. The Archives of the History of American Psychology, University of Akron, OH. See reprint in Reisman, et al, *Kinsey, Sex and Fraud*, p. 221.

⁸ Ploscowe, M. 1948. *Sex Habits of American Male*, Deutsch, p. 121, Quoting Kinsey, *Sexual Behavior in the Human Male*, 1948, p. 392.

⁹ Wechsler, H. 1952. The Challenge of a Model Penal Code. *Harvard Law Review*, 65(7), p. 1097, fn 1.

¹⁰ Herbert Wechsler. A Rational of the Law of Homicide. *Columbia Law Review*. Vol 37, 1937, p. 701.

¹¹ Guttmacher, M.S. 1968. *The Role of Psychiatry in the Law*. Springfield, IL: Charles C. Thomas, p. v, vi.

Exclaiming high hopes for releasing what the "social sciences" now said was "scientifically" verified "normal" human sexuality from outdated custom and moral fetters, Professor Wechsler made it official. Writing in a 1952, *Harvard Law Review*, he called the legal profession and the justice system's attention to the need to rewrite the Common Law. The ALI Model Penal Code would serve as a guide to the states in updating penal codes. The often cited purpose of the MPC was allegedly nothing more than to simply, merely, "define and clarify, the Common Law principles that exist in our country."¹² Professor Wechsler led the team, as the Model Penal Code's chief author.

The Call for Criminal Law Reform: Crimes Against the Person and Offenses Against Morality—Our Legal Foundation

The year after the first Kinsey Report, *Sexual Behavior in the Human Male*, on May 8, 1949, *The New York Times* reported:

Dr. Alfred Kinsey, [speaking at a Columbia University forum on crime prevention] author of the Kinsey Report, asked that the laws on sex offenses be changed. He said: 'Not more than 5 percent of the persons who pass through the courts are involved in behavior which damages other individuals'. The other 95 percent 'are involved in sexual behavior that transgresses laws that have no function other than to preserve custom,' he said.¹³

The national call for penal code reform, (which is state criminal law), began in 1952, with Professor Herbert Wechsler's article in the very prestigious and respected *Harvard Law Review*, in which he argues that the law's "ineffectiveness" can be seen "from the prevalence of serious offenses and the high rates of recidivism that the crime statistics uniformly show."¹⁴

Wechsler's points in argument for a model code and penal revision from the 1952 *Harvard Law Review* are listed in the order in which they occur. The Common Law fails because of:

1. The prevalence of serious sex offenses in America.
2. High rates of recidivism.
3. Use of punishments (even death) as criminal sanction.
4. Lack of attention to the causes of criminal behavior.
5. Lack of attention to the dynamics of criminal behavior.
6. Sanctions are determined by the injury inflicted—
 - a. There is no consideration of the future danger defendant presents
 - b. No consideration of requirements for effective therapy
7. Wide disparity of sentencing
8. Law has retributive objectives—vengeance in disguise
9. Based on unsound psychological premises
 - a. Such as freedom of will
 - b. The belief that punishment deters
10. The law rejects or does not use the aid of modern science.
11. Penal sanctions depend on past behavior rather than controlling future conduct.

¹² Rothenberg, R. E. 1981. *The Plain Language Law Dictionary*, p. 19.

¹³ New York Times, May 8, 1949, page 59, column 3.

¹⁴ Wechsler, H. 1952. Challenge of a Model Penal Code. *Harvard Law Review*. Vol. 65 at 1103.

12. Maximum prison terms are frequently too high to be regarded as real limitations.
13. Judicial sentencing is based on inadequate knowledge of the offender and involves widespread inequalities in the use of determinative norms.

Professor Wechsler's proposed solutions:

1. Penal law ought to be shaped by risk creation without reference to actual results.
2. Law should ask if there is a need to supplement the knowledge test (McNaughten) by asking whether the defendant has the power to control his conduct in light of knowledge.
3. Dilemmas can be solved by prosecutive acquiescence to psychiatric recommendation.
4. The rule of law defined by legislators should delineate major categories, and administration should determine the specifics.
5. "To the extent—and that extent is large—that legislative choice ought to be guided or can be assisted by knowledge or insight gained in the medical, psychological and social sciences, that knowledge will be marshaled for the purpose by those competent to set it forth." (p. 1130)
6. It is now feasible to use prediction tables to determine probation, which should be advanced.
7. Plea bargaining and indeterminate sentencing procedures should be formalized
8. Responsibility for offender "treatment" should come through a board of judge, social work, psychiatry, penology, and education—not judge and jury.
9. Sentencing should be postponed six months after commitment to make an institutional study of the offender.
10. "We may expect significant advance in scientific insight concerning both the causes and control of human conduct." (p. 1132)

Finally Wechsler, in the *Columbia Law Review*, in 1968 says:

The law should not express the pious sentiment of the community. Unless conduct unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests, it is not deemed to be a proper subject of a penal prohibition.

The measure of the Model Penal Code's success and its purpose would be to reduce crime, recidivism and to modernize the law.

The fourth draft of the American Law Institute's Model Penal Code (ALI-MPC) was sent to the states in 1955. Generally between the 1960s through the 70s, state criminal law reform committees formed to "define and clarify the [state's] common law principles" aided by the latest "science" and guided by the ALI-MPC. Numerous articles were published about the penal code revision in state academic and professional journals. When finished, the state drafting committees delivered to the legislature a penal code for passage that claimed to define and clarify the state's Common Law principles.

A small radical element within the bar and in allied therapeutic fields published 4 books discussing the "scientific evidence" revealed in the Kinsey Reports, with its

87% aberrant Male sample.¹⁵ This they said was the proof that the common law was anachronistic and in need of conformity to the most current knowledge of what was now revealed by science to be "normal" human behavior. In one of the 1948 books, the introduction enthused that;

...virtually every page of the Kinsey Report touches on some section of the legal code...a reminder that the law, like...our social pattern, falls lamentably short of being based on a knowledge of facts.¹⁶

With the debut of the Kinsey Reports, a small group of change agents began to insist that with 95% of "normal" American males classified as sexual criminals under the 1948 justice system, the laws which largely protected women and children were unenforceable. Therefore, legal pillars like Columbia University law professor Herbert Wechsler said that state criminal laws were in need of revision because they were "ineffective, inhumane and thoroughly unscientific" based on the truth now available through "objective" scientific pursuit.¹⁷ A carefully orchestrated media blitz across the nation reinforced the Kinsey Reports to be just that - "science."¹⁸

Only months after the *Male* Volume was published, Dr. Kinsey was invited to testify before a judicial committee of the California Legislature, regarding sex offense law. First, he claimed that his decade of research reflected "normal sexuality" to be found in the entire American male population; "[Our research] has the advantage of having a background of the picture typical in the population as a whole..."¹⁹ Then, Kinsey described his claims of "normal" human sexuality in America in the 1940s and 50s:

There is very near the whole of the population that is involved in exhibition or peeping at some time or another in its life. There is between 35 and 40 percent of the male population that has some homosexual activity after adolescence. There is 25 percent of the male population that has a considerable amount of homosexual activity. There is anywhere from 15 to 60 percent of the farm boys in different parts of the country which has animal intercourse. Now, that means that the persons who are apprehended for these things are

¹⁵ Dr. Judith Reisman identified the following principle findings claimed in The Kinsey Reports to be indicative of "normal" human sexual behavior:

- Kinsey spoke of orgasms as "outlets" and considered all outlets equal -- whether between husband and wife, boy and dog, man and boy, girl, or baby -- for there is no abnormality and no normality.
- As the aim of coitus is orgasm, the more orgasms from any "outlet," at the earliest age- the healthier the person.
- Masturbation is critical for sexual, physical and emotional health. It can never be excessive or pathological.
- All sexual taboos and sex laws are routinely broken; thus all taboos and sex laws should be eliminated, including that of rape, unless serious "force" is used. •Since sex is, can, and should be commonly shared with anyone and anything, jealousy is passé. •All sexual experimentation before marriage will increase the likelihood of a successful long-term marriage and venereal disease and other disorders will be reduced dramatically.
- Children are sexual and potentially orgasmic from birth ("womb to tomb"); are never harmed by adult/child sex, even incest, and often benefit thereby. •There is no medical or other reason for adult-child sex, or incest, to be forbidden. •People left on their own are naturally bisexual. Religious bigotry and prejudice forces people into heterosexuality and monogamy. •All sodomy is natural and healthy. Homosexuals represent 10-37% of the population or more. (Kinsey's findings were always very fluid on this point.) Some educators have interpreted his findings by saying that only 4% to 6% of the population is exclusively heterosexual so the "heterosexual" bias in the U.S. should be eliminated.

¹⁶ Ernst, M., & Loth, D. 1948. *American Sexual Behavior and the Kinsey Report*, NY: Graystone Press, n. 28, 132. See also Reisman, J. A., 2000, *Kinsey: Crimes & Consequences*. Crestwood, KY: Institute for Media Education, 204.

¹⁷ Wechsler, H. 1952. Challenge of a Model Penal Code. *Harvard Law Review*, Vol. 65, p. 1103.

¹⁸ Geoffrey Gorer, writing in the *American Scholar* (Vol. 17, 1948, p. 281) says that "The [Kinsey Reports] pre-publicity campaign, with vetted articles strategically placed, was one of the most ingenious and carefully executed in recent publishing history."

¹⁹ Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, p. 133. Recorded in the Assembly Journal, March 8, 1950.

involved in behavior which may or may not be different from that of the rest of the population.

It is our finding so far, that it is not more than 5 to 10 percent of the persons who are apprehended and convicted as sex offenders who are involved in behavior which is fundamentally different from that of a high proportion of the rest of the population.²⁰

The Zoologist Kinsey spoke throughout his testimony of his close association with Psychiatrist Manfred Guttmacher and the Group for the Advancement of Psychiatry (GAP), as well as his work with sociologist and lawyer Dr. Paul Tappan, director for the New Jersey Commission on the Habitual Sex Offender. Both of these therapeutic "experts" would bring Dr. Kinsey's flawed data to the table a few years later in the development of the Model Penal Code.

Kinsey also refers to "constant contact over a long period of years"²¹ with the courts of New York City, revealing his ongoing relationship with New York magistrate, Morris Ploscowe. Ploscowe and Dr. Tappan are two of the four Model Penal Code authors, and Dr. Guttmacher served as an advisor to the four MPC authors. Dr. Guttmacher is cited as the authority on sex psychopath laws in the 4th draft (1955) MPC, a primary source for the states to draft sex offense laws.²²

Kinsey cites Guttmacher and Tappan as authorities in support of his scientific claims, as they, in turn, refer to him in their research, creating a closed circle of cross-citing authorities in the new and burgeoning human sexuality field built on The Kinsey Reports.²³ Kinsey testifies to the importance of GAP in relation to how the law must begin to view and handle sex offenders:

There has been a group of the top psychiatric organizations in the United States, a Group for the Advancement of Psychiatry, a group of elective members who represent in the opinion of psychiatrists the country over, the top group. That group—"gap" as we ordinarily call it—has been making a special study of the problem of sex offenders for a goodly number of years, and within the last year has arrived at specific recommendations on the handling of sex offenders. Those recommendations are in print—I happen to have one copy with me.²⁴

There are some of us, of course, like ourselves, who are making special studies of sex problems who have material to give to you. I am very sure that there are experienced social workers who would give you valuable opportunity to take those things into account. A sociologist, Dr. Paul Tappan, of New York University, who has made a special study of delinquency, is the sociologist whom the New Jersey State Commission has called in for making a number of special

²⁰ Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, Recorded in the Assembly Journal, March 8, 1950, p. 135-136.

²¹ Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, p. 133.

²² Model Penal Code, Draft 4, 1955, Appendix D, p. 288-289.

²³ Additional quotations from Guttmacher and Tappan in Appendix 1.

²⁴ Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, p. 134.

studies, which would have been completely missed if your commission had been entirely a psychiatric group.²⁵

In 1950, the Group for the Advancement of Psychiatry recommended that children make sexual decisions at the age of seven.

The Committee proposes that in remedy the legal status of persons under 21 years of age relating to sexual behavior be clarified. In general, persons under the age of 7 are legally regarded as not responsible....It may be true that such persons cannot enter into contracts, but many are by endowment and training fully capable of part or exceptionally even full responsibility for sexual behavior. (Psychiatrically Deviated Sex Offenders, Report No. 9, Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, February, 1950.)

Examining the Evidence Today of Legal Change in the States

A preliminary examination of 30 state law schools and Bar Journals chronicle the period of law reform beginning with sexual psychopath legislation in the 40's to Professor Wechsler's call in 1952 to the early 1960s through the late seventies, when state criminal code reform was conducted in the thirty states reviewed. The state laws pre-Kinsey generally provided significantly stronger protections for women and children. For example:

Age of Consent	18 and 16 years old; (21 in Tennessee)
Statutory Rape Penalties	From Death (16 states) to minimum years
Rape Penalties	From Death, (18 states) to a minimum 2 years ²⁶

In the 18 states where the death penalty was the maximum sentence for rape, there were 316 executions from 1930 to 1948.²⁷

Until the promotion of the Model Penal Code, states relied from their beginnings on the common law, which held the view that men are blamable for sexual conduct, and are capable of self-discipline. MPC author Morris Ploscowe lamented the stringent law in force in his state, which he quoted in the New York Commission report discussed in detail later:

And be it further enacted by the authority aforesaid. That if any person shall by force ravish a married woman, or maid, or any other woman, it shall be deemed and adjudged a felony; and every offender being thereof duly convicted or attained, shall suffer death for the same.

(Chap. 23, Laws of 1787).²⁸

By 1965 the view that men are largely susceptible to feminine wiles and thus no longer blamable for sexual conduct dominated society, psychology and law. Kinsey's coauthors continued to push his free love dogma in their book

²⁵ Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, p. 148.

²⁶ Bensing, R. 1952. A Comparative Study of Sex Statutes. *Journal of Criminal Law, Criminology and Police Science*, Vol. 42, pp. 57-72.

²⁷ Illinois Commission on the Sex Offender, March 15, 1953, p. 27.

²⁸ Report and Analysis of Sex Crimes in the City of New York, 1939, p. 22 footnote 1.

that blamed the victim and pitied the predator:

Another source of the female desire to be forced is a psychological defense and projection mechanism that enables an inhibited woman to enjoy sexual activity without feeling guilty about it. "He made me do it" salves the conscience very readily. Unfortunately this excuse can have disastrous consequences if it is offered by the girl not only to herself but to her outraged parents. As Dr. Kinsey often said, the difference between a "good time" and a "rape" may hinge on whether the girl's parents were awake when she finally arrived home. ²⁹

Fifty years ago, 33% of the states in the union had no statute of limitations for reports of rape. Eighteen states provided the death penalty for rape of an adult woman. Men were considered responsible for their actions and sexual intercourse with a woman, not ones wife, other than a paid prostitute was largely viewed as unprincipled. What was a "traditional" American view of any man who would rape a woman? President Theodore Roosevelt said:

[R]ape....[is] the most abominable in all the category of crimes, even worse than murder....[I]n my judgment, the crime of rape should always be punished with death, as is the case with murder; assault with intent to commit rape should be made a capital crime.³⁰

"We Mean to Act as if We Were a Legislative Commission..."

There was more afoot than a simple clarification of the penal law that had ordered the American way of life and justice to that time. In 1948, (seven years before the MPC was generally released), Louis B. Schwartz, who claimed authorship of the "Sex Offense"³¹ section of the MPC, proposed a plan before the Code was funded in 1950 or announced in 1952. Schwartz said of the Code in a review of Kinsey's first published volume:

[Sexual penal reforms can] eventually...ease themselves into the written law, especially if it can be done in the course of a general revision of the penal code. This avoids the appearance of outright repudiation of conservative moral standards, by presenting the changes in a context of merely technical improvements.³²

Wechsler boasted in 1955, "we mean to act as if we were a legislative commission, charged with construction of an ideal penal code."³³ Wechsler writes in the *Columbia Law Review* when the project was over, "Viewing these words in retrospect, I am

²⁹ *Sex Offenders*, (1965), Paul Gebhard, John Gagnon, Wardell Pomeroy, Cornelia Christenson, Harper and Row, New York, The Kinsey Institute, Bloomington, IN., at 178.

³⁰ Sixth Annual Message to Congress. A Compilation of the Messages and Papers of the Presidents 20 vols. (New York: Bureau of National Literature, Inc., prepared under the direction of the Joint Committee on Printing, of the House and Senate, pursuant to an Act of the Fifty-Second Congress of the United States, 1893, 1923), Vol. XIV, pp. 7030-7032, 7046, 7048, a, Booklet 1 (March 1996), p. 31.

³¹ The MPC ushered in the term "sex" which appears to enter the Legal cannon in 1955 (and in the common parlance with The Kinsey Reports post 1948). "Crimes Against Persons" and "Offenses Against Morality"--under the common law--became "Sex Offenses" in the MPC.

³² Schwartz, L. B. 1948. Sexual Behavior in the Human Male, Book Review. *University of Pennsylvania Law Review*, vol. 96, p. 917.

³³ Wechsler, H. 1955. A Thoughtful Code of Substantive Law. *Journal of Criminal Law, Criminology and Police Science*, Vol. 45, pp. 524-535.

content with their description of the effort."³⁴ What was the authority for pretending to be a legislative commission? Not initiated by the will of the people, nor guided by their elected representatives, a private cadre of legal elites decided, by their own admission, they would rewrite our laws as if they had such authority!

A very typical story is found in Iowa, where in 1961, the Iowa Bar Association privately funded a special Committee on Criminal Law. Their first two years were spent primarily in the study of "revision of criminal codes in Illinois, Wisconsin, and Minnesota, and a study of the Model Penal Code." In 1964, they reported that "financial assistance is expected from the Iowa State Bar Foundation."³⁵

The legal elites did not trust legislators who would listen to the citizenry rather than the agenda of a private legal group which opposed the public outcry for stronger protections against crime. The therapeutic expert became the replacement for the "peer" who would serve on a jury. Such snobbery is expressed toward legislators and the justice system by Professor Jerome Hall of the Indiana University School of Law in Bloomington, and a member of ALI's Criminal Law Advisory Committee, who wrote,

Finally, in the agitated area of sexual offenses, it must be obvious that the limitation of inquiry to cases and statutes is grossly inadequate. The impetuous reaction of legislators to a vicious crime and consequent public hysteria is apt to result in legislation which is very cruel and violative of elementary legal safeguards. Adequate, defensible controls can be invented only if the relevant facts are known, together with the available knowledge of the personality of sexual offenders, the etiology of their offenses, and so on.³⁶

On the heels of the publication of Kinsey's Male Volume, Kinsey's ACLU lawyer, Morris Ernst, called upon "every bar association in the country" to "establish a Committee on the Laws of Sexual Behavior and consider its own State's legal system in this field...to adjust our laws to the growth of scientific knowledge and the changing needs of the people."³⁷ Ernst comments further:

"[N]o bar association, law school journal, or lawyers' committee can consider laws ...on sexual matters without reference to the Kinsey study. Kinsey's first volume ended an era ..."³⁸.

It is most noteworthy that Ernst called upon lawyers and the bar association, those without office and no accountability to the people to undertake to overturn state laws that had long served the American people. Post 1955, criminal law reform dependent on the Kinsey Reports swept the nation.

Other influences on the states' embrace of the ALI/MPC are suggested by Sanford J. Fox, the sole draftsman for the New Hampshire Criminal Code.

There is undoubtedly an element of 'me-too-ism' involved as well. The Model Penal Code and the enactment of new codes by several

³⁴ Wechsler, H. 1968. Codification of the Criminal Law in the United States: The Model Penal Code. *Columbia Law Review*, Vol. 68, p. 1427.

³⁵ Paul E. Wilson. 1964. State Criminal Law Revision. *American Criminal Law Quarterly*. Vol. 3, p. 200.

³⁶ Hall, J. 1954. Revision of Criminal Law—Objectives and Methods. *Nebraska Law Review*. Vol. 33, p. 393.

³⁷ Ernst, M. & Loth, D. *American Sexual Behavior and The Kinsey Report*. Graystone Press, New York, 1948, pp. 19, 139.

³⁸ Ernst, Morris, The Kinsey Report and the Law, in *Sexual Behavior in American Society*, Jerome Himehach and Sylvia Fava, (Eds.), W.W. Norton, New York, 1948, p. 245.

states during the recent past have exerted a strong influence to reevaluate a body of law which many have known to require revision...Of central historical importance is the background of the Model Penal Code. Several documents which demonstrate major ideational roots of the Code...make it clear that the thinking at Columbia and Chicago in the 1930's played a decisive historical role."³⁹

Model Penal Code Sent to States

The American Law Institute's 1955 Model Penal Code (Draft 4) and the changes it effected upon early states revisions are often cited as the preeminent guide for state criminal code reformers. The states generally followed this process for revision:

1. In 1952, Professor Herbert Wechsler in the *Harvard Law Review* dubbed the common law "ineffective, inhumane, and thoroughly unscientific." Funded by the Rockefeller Foundation in 1950, the MPC sex offenses chapter first draft appeared in 1955 (MPC Draft 4) and was distributed to the states.
2. The state's bar association or the legislature provide staff and/or funding, with federal assistance in some instances, to form a Commission/Committee to reform/revise the state criminal code. The Commission/Committee advises and approves drafts written by one or more "reporting staff."
3. The Commission/Committee consists of law school professors from each major law school, judges, and the legal elite. Some states had advisory committees that included the therapeutic sciences, and corrections.
4. The Commission/Committee examines the American Law Institute Model Penal Code as its primary source for reform including the ALI's recommended changes. There is also frequent reference to the early state revisions in Wisconsin (1956), Illinois (1962), New York (1967) and New Jersey (1971). There are specific citations to The Kinsey Reports, as well as the Wolfenden Report (a study of sodomy privatization in Great Britain) in the sex offenses recommendations, or to "second generation" sources which cite to The Kinsey Reports, the 1955 draft of the MPC being a primary example.
5. The Commission/Committee or one of its key spokesmen publishes an article calling for "reform" in a law school or state Bar journal. The justification given is that existing law is "obsolete," not based on "current social and scientific thought," and too complex. Some cite examples such as references to trains and livery stables.
6. In the "Crimes against the Person" and "Offenses against Morals" state law code sections, crimes are renamed "sex offenses" based on the Model Penal Code. The MPC (Draft 4) cites to Kinsey as an authority in the sex offenses chapter nine times, in addition to a complete appendix of quotes from the Kinsey Male Volume containing 18 citations. (Section 207.5, Appendix A). The MPC relied for its "Sex Science" data defining America's "normal" sexual practices on the distorted authority of the Kinsey Reports.
7. The common law concept of "consent" primarily to marry (or to determine if the crime was rape or fornication) is twisted to move toward legalization of all sexual contacts between "consenting adults," with the age of consent

³⁹ Fox, S. J. 1970. Reflection on the Law Reforming Process. *Journal of Law Reform*, vol. 4(3), p. 444.

being lowered in most cases.

8. Forcible rape becomes so narrowly defined by the requirement that the victim prove her resistance by injury or death, that the lesser crimes or infractions are often plea-bargained. Some states (Minnesota and New Jersey, for example) eliminated the term "rape" all together. Others use "sexual assault," "sexual misconduct," "sexual contact," "sexual conduct," "illegal intercourse," or other terms to describe sex offenses. The new terms for rape in the reformed codes are defined differently from state to state, as are the ages applied, and the penalties.

9. The state revision Commission/Committee introduces the concept of "forcible compulsion" into the definition of rape (burden of proof shifts from the predator to the victim), which is now required in addition to non consent. The crime is diminished by the creation of lesser offenses based on degree of non consent, the age of the victim, and age differential of the offender and victim, the amount of injury, and the relationship between the predator and victim, if any. The prosecutor may now choose from a dozen or so felony to misdemeanor charges that were once one serious crime of rape.

10. As recommended by the Model Penal Code and The Kinsey Reports (Male Volume p. 392), the age of consent is moved to between 12 and 16, (age 10 is recommended by the MPC) and offenses are graded downward as the age of the victim increases.

11. Generally, the state and common laws protecting marriage are abolished or penalties reduced. For example, consensual fornication, adultery, and sodomy are legal in many states. Bestiality and necrophilia are eliminated or moved from the sex offenses section to "cruelty to animals" or "abuse of a corpse."

12. The new criminal law code is presented to the state legislature as "merely technical improvement" without major substantive change, and is passed in whole or significant part.

States conformed the laws providing protections for women and children to the MPC, even though comparatively, the related disease, dysfunction and sexual violence so prevalent today could be said to be unknown under the old and "outdated" penal system. Although this was a time when people were demanding stronger enforcement of laws protecting women and children from rapists and child molesters, the penal reformers were guided by "social science" and legal and therapeutic elites to reduce penalties and/or sought to eliminate these laws. The state codes were uniformly weakened as result.

Assumptions of Science-based Criminal Law Reforms

Prior to 1950, William Blackstone's Commentaries defined a moral code that established the fixed laws of early America. The Bible provided the foundation for defining man's condition, his responsibility, and the penalties for breaking the law. It could be argued that "revision" is not a proper description of what happened in America in 1950. The foundation of American law shifted from Blackstone and the Common Law, to the new definition of man promoted by the new social sciences. The contemporaneous revolutions in education, religion and politics are commonly understood when themes like evolution, humanism, and Unitarianism are mentioned. The legal revolution is unique in that its history is much more obscure.

Just how important was the abandonment of absolute truth to the future of American law? New assumptions based on social science directed the course of America's institutions and over the past half century, America has become a science driven society:

1. Man is not a unique creature, endowed by a creator with certain unalienable rights, but rather is just another mammal.
2. "Science" is the exclusive source of truth.
3. Man's nature is inherently good, not evil as the Common Law held.
4. Man is not capable of self government as the Common Law held, but rather is not able to control himself.
5. There are no absolutes, as all is relative since new discoveries will improve knowledge constantly.
6. Penal laws need uniformity from state to state.
7. The ALI MPC relied upon Alfred Kinsey's research which found there are no unnatural sexual acts and all sexual acts are considered to be natural and normal, responding to a wide human need.
 - a. Any sexual behavior is beyond the law for "consenting adults."
 - b. Sex education will eliminate sex crime, illegitimacy, and disease.
 - c. Sodomy is not an unnatural act.
 - d. Treatment programs must be provided for sex offenders.
 - e. Pornography is harmless, and should be protected as free speech.
 - f. All statutory rape is consensual.
 - g. Sex is required by all people of all ages for health and happiness.
 - h. Protections for women in the law are excessive.
8. Only legal experts should make laws. Juries and judges need experts from a number of disciplines to determine guilt.
9. Perceptions of crime as a serious problem are the result of hysteria and ignorance.
10. Moral values produce guilt, anxiety and mental illness.

New Authority Given to the Therapeutic Sciences

A primary tenet of Wechsler's goal for penal code reform was the implementation of therapy for criminals. In his *Harvard Law Review* call for the Model Penal Code, he floats that;

There has been some acceptance also of the larger point that penal law in general ought to concern itself with the offender's personality, viewing his crime ***primarily as a symptom of a deviation that may yield to diagnosis and therapy.***⁴⁰ (emphasis added).

The chief psychiatric advisor for the Model Penal Code, Manfred Guttmacher, is quoted in the *Georgia Law Review* for the proposition that everyone really wants to be sexually deviant:

Philosophically a sex offense is an act which offends against the sex mores of the society in which the individual lives. And, it offends chiefly because it generates anxiety among the members of that society. Moreover, prohibited acts generate the greatest anxiety in

⁴⁰ Wechsler, H. Challenge of a Model Penal Code. *Harvard Law Review*. Vol. 65, 1952, p. 1104.

those individuals who themselves have strong unconscious desires to commit similar or related acts and who have suppressed or repressed them.⁴¹

Lest the reader think this was a passing comment from the sixties, the benchmark college text for corrections officers advised in 1995:

The punishment ideology is particularly attractive to those with a strong hostile urge just below the surface—although these people may appear to be upright and productive citizens. Thus justifications for the punishment ideology have been found in theories on theology, aesthetics, and utility, the idea being that the offender's suffering and expiation serve to cleanse and reestablish accord throughout the society as a whole. Although all kinds of logical arguments for punishment can be devised, it has been an obvious failure when set up as a uniform and inflexible response to negative behavior. The routine use of punishment in institutions designed to correct offenders can be viewed as more degrading to society than the offenses themselves in many cases.⁴²

Based on these expert opinions, the opposition was effectively silenced. Any objection to the "scientific" explanation was automatically converted to an admission of perversion on the part of the questioner. The charge of "maniacal moralist" and "pervert" silenced the few who dared to observe that protections under the common law were effective.

Benjamin Karpman, a psychotherapist quoted frequently in the Model Penal Code, held little regard for a common law that had provided safety and security for the law abiding citizen, while punishing criminal behavior. As a psychiatrist, he claims the medical profession is the "vanguard of human progress."

Experiment is viewed as superior to precedent; old methods are readily abandoned, to give way to newer methods. It is therefore a matter of great wonderment, and disappointment as well, that with so many physicians on the staff of prisons...medicine has thus far contributed so little of positive value toward a more scientific and more humane understanding of crime.⁴³

A further consequence of therapeutic influence has been to strip the authority of the jury, replacing it with expert testimony. The ALI MPC authors held that a judge had no special expertise and a jury of one's peers was more likely to mete out punishments to criminals. Wechsler writes,

It is widely urged that the responsibility for the determination of the treatment of offenders should not, in any case, be vested in the courts; that judges have no special expertise or insight in this area that warrants giving them decisive voice; and that they should be superseded by a dispositions board that might include the judge but would draw personnel of equal weight from social work, psychiatry, penology and education.⁴⁴

⁴¹ Pedophilia, Exhibitionism, and Voyeurism: Legal Problems in the Deviant Society. *Georgia Law Review*, Vol. 4, 1969, p. 149.

⁴² Allen, Harry E., & Simonsen, Clifford E. 1995. *Corrections in America* (7th ed.). Englewood Cliffs: Prentice Hall, p. 73.

⁴³ Karpman, B. Sex Life in Prison. *Journal of Criminal Law and Criminology*. Vol. 38, 1948, p. 476.

⁴⁴ Wechsler, H. 1952. *Harvard Law Review*. Vol. 65, p. 1128.

Wechsler's bias has been proven unsound by multiple studies reported at a conference held in San Diego in April, 1999. Professor of Law, Neil Vidmar, of Duke University reported through literature review and his own empirical study with two colleagues that the jury system over the last 25 years has remained effective. There was high agreement between trial judges and jury verdicts, juries are able to understand and act on complex trial evidence, and juries are adept at critical assessment of experts and their testimony. Vidmar concludes that there is substantial support for the jury system from a systematic examination of current research.⁴⁵

In view of the new sympathies and desire to therapeutically manage criminals in the ALI's MPC, the power of the uniquely American jury "of one's peers" system was curbed. This was accomplished in state after state through the expert's classification and sub-classification of crimes and the fixing of penalties of once simply understood laws.

As a more recent example, data were reported in *The New York Times* front page story following the rape-mutilation of a 7-year-old boy in Tacoma Washington, a state once thought to be a model program for its treatment of rapists and molesters. The *Times* reports:

State officials are now considering an overhaul of sex offender laws after a series of crimes this year by people who had undergone years of state sponsored counseling and therapy...[They] recommend life sentences for violent rape and molestation of children. The Governor's panel stated, "The research demonstrates that most child sex offenders will continue their abuses for many years and rarely are cured...[and that] all convicted sexual offenders register with the county in which they reside after leaving prison."⁴⁶

A program for the psychiatric evaluation and "treatment" of sexually violent predators is written into current state laws and funded by taxpayers, in spite of continued lack of demonstrable benefit. In a detailed analysis of the supreme Court decision in *Kansas v. Hendricks* in which the Court upheld a Kansas statute allowing the state to detain sex offenders indefinitely in mental health treatment facilities, the *Georgia Law Review* reports,

By committing rather than jailing, states suggest that sex offenders are less responsible and less blameworthy for their wrongs than other criminals...Civil commitment is appropriate for mentally ill people because their conditions posed risks to the public *and* to themselves. Civil, as opposed to criminal, detention is constitutionally justified because mentally ill people are vulnerable or incompetent and thus in need of state protection. In contrast, sexual predators are not considered vulnerable or incompetent but rather extremely dangerous and blameworthy. Thus the use of civil commitment in the context of sexual predators is an inappropriate response to a serious social problem.⁴⁷

⁴⁵ Vidmar, N. 1999. Jury's Comprehension of Scientific Evidence: A Jury of Peers? From the Proceedings of the National Conference on Science and the Law, April 15-16, 1999, pp. 183-188.

⁴⁶ Sex Crimes Against Children: Many Doubt There's a Cure. *New York Times*, Jan. 1, 1990, p. 1.

⁴⁷ Weeks, E. The Newly Found "Compassion" for Sexual Violent Predators: Civil Commitment and the Right to Treatment in the Wake of *Kansas v. Hendricks*. *Georgia Law Review*, Vol. 32, 1998.

The problem was demonstrated again on June 21, 2003, in the arrest of repeat sex offender Michael T. Crane. The Boston Globe reported that "doctors concluded his mental condition had changed and that he was no longer a threat." The Johnson County District Attorney reported that "Crane already had been through the predator treatment program." His past crimes included attempted rape and two counts of sex abuse in 1987, and a 1994 conviction for aggravated criminal sodomy, attempted rape, and kidnapping that were overturned on technical grounds, resulting in a lesser conviction in 1996 of sexual battery. According to the Kansas supreme Court records (No. 82,080), the victim was told to agree to the plea bargain agreement, and she believed it was the only way to "make sure he stays off the street." His 35 to life sentence resulted in only four years of imprisonment. A year after his release, on March 22, 2003, Crane attacked a woman in her car after she parked outside an apartment building.

Crane was released because at his violent sexual predator commitment hearing, he argued that involuntary commitment was limited by the holding of *Kansas v. Hendricks* (1997) to those who cannot control their dangerous behavior. The supreme Court ruled that narrow circumstances permit the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety." (*Kansas v. Hendricks* 521 U.S. 350, 357). By considering the danger to society rather than responsibility for violent acts against women and children, the legal system has put the mental health expert in the position of psychic, soothsayer and prophet. In the case of Michael Crane and countless other sexual predators, their predictions didn't come true, and another victim pays the price.

Some State legislatures are to be commended for seeking remedy for a criminal justice system that doesn't work. Fourteen states have abolished discretionary parole, and half of states require violent offenders to serve at least 85% of their sentence. Bureaucrat dreamers are squealing under such demands for accountability and safety from legislators who are listening to people question why predators are released. One such researcher is Jeremy Travis, a Senior Fellow at the Urban Institute, who laments, "We are a long way from the ideals of the Model Penal Code, which granted parole boards enormous power to decide the moment and conditions of reentry." His solution to releasing the offender might be titled, "Taxpayer's Hell." He writes,

Let's imagine a world unconstrained by budgetary realities, legal conventions, or implementation considerations. [His release] could include sex offender treatment, job readiness, education and/or training, a residential drug treatment program, and anger management.⁴⁸

Unfortunately, all these programs are already in place, and they have created an unbearable tax burden and skyrocketing recidivism.

"Harmless" Sexual Offenses Fosters Sympathy for Perpetrator

Forces within the therapeutic field fostered sympathy for the perpetrator and "treatment" supplanted common law penalties. *Sexual Behavior in the Human Female* (1953) added to the mix the stunning finding that no real harm from rape or molestation were found in the 4,441 female interviews that comprised the second

⁴⁸ Jeremy Travis. June 1, 2000. "But They All Come Back: Rethinking Prisoner Reentry. U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice. Available online, www.ncjrs.org.

Kinsey Report. If no measurable harm from rape and molestation occurred in the lives of "normal" American women, then the penalties for such crimes were unwarranted.

The Kinsey Reports went further and claimed that half of American women in the 1940s and 50s are not virgins when they married. With this kind of prodigious sexual activity Kinsey said he found, in the absence of legal contraception and abortion, do statistics support the high level of the inevitable illegitimate births? It is not found in the public health report data of the day. Nevertheless, to the men writing the Model Penal Code, the goal of protecting the chastity of women and the modesty and innocence of children loses value at law when the "scientific" evidence demonstrates that it is so freely given away.

Consequently, in various state MPC-driven "revisions," the rapist has evolved to "actor," the victim is redefined as "complainant," and rape itself is redefined as sexual misconduct, or nonconsensual intercourse, or peer sex play. The therapeutic field, psychiatrists and social scientists, derive power over the justice system from the judge and jury, many becoming advocates for the perpetrator (rather than the victim) of a crime, whose freedom is limited by repressive cultural mores represented in the pre-1950 criminal code.⁴⁹ For, as the author of the "Sex Offenses" section of the Missouri code, Judge Richardson said:

The label 'rapist' is a damaging one and should not ordinarily be used in the statutory non-consent cases...The Code reserves that term for the most heinous sexual offender. . . In 1955, eleven states fixed the age of consent for sexual intercourse at 12 and in several jurisdictions, the age was lower." (citing to MPC draft 4, 1955, p. 251, n. 126).⁵⁰

One MPC author, New York Magistrate Morris Ploscowe, put The Kinsey Report's sexual dogma into what ALCU Attorney Morris Ernst called "stream of the law." The Report's "finding" that 95% of the male population are "sex offenders" under the common law is reflected in the light and sympathetic treatment the MPC authors have for "sex offenders" whose victims are largely women and children. Ploscowe laments;

One of the conclusions of the Kinsey Report...the sex offender is not a monster...but an individual who is not very different from others in his social group....⁵¹

A relatively new term emerging in the literature to describe rape is "sexually coercive behavior." Discussing solutions to this neutralized euphemism of sexual coercion, Law professors John Q. LaFond and Bruce J. Winick suggest that incarceration of dangerous sex offenders relies on "harsh mandatory sentences." The second approach, releasing the dangerous sex offender into the community, relies on "registration and community notification." Though these legal advisors see incarceration as harshness to the predator, they readily admit that registration laws are worthless:

⁴⁹ Enforced, according to Judge Richardson, by a "shrinking fringe of maniacal moralists." *Missouri Law Review*, Vol. 38, 1973, p. 372.

⁵⁰ Vernon's Annotated Missouri Statutes, 2000, 555.040, Comment to 1973 Proposed Code; also, 1973 Missouri Symposium, pp. 382, 384.

⁵¹ Morris Ploscowe, 1948. "Sexual Patterns and the Law" in *Sex Habits of American Men, A Symposium on the Kinsey Reports*, Albert Deutsch, Editor, New York, Prentice Hall.

...it does nothing to stop the offender from moving to another neighborhood to commit crimes. In addition, the most dangerous sex offenders are often vagabonds who are hard to trace.⁵²

Penalties & Crimes Reduced by Redefinition and Reclassification

Lightening penalties for sex offenses is enabled through redefinition and reclassification of the crime and the criminal. What was a felony under common law may be devalued to a misdemeanor and the level of injury is calculated and must be proven by the victim. For example, citing to the MPC the Maine Crime Commission declares; "Only threats of serious bodily injury, kidnapping, or death will suffice to make out the crime of rape."⁵³ Current law in Minnesota and New Jersey fail to mention the word "rape" at all. In Missouri, Maine, and a number of other states there continues to be a concern for the use of the damaging label of "rapist."

The Assessment of The Kinsey's Report's Application in the Law

The all-encompassing impact of the Kinsey Reports on American Law is summarized in the 1950 comments of Frank Horack, Jr., acting Dean of the Indiana University Law School writing in the *Illinois Law Review*:

The principle impact of the Kinsey Report will be at the level of the administration of the law. It will provide the statistical support which police officers, prosecutors, judges, probation officers and superintendents of penal institutions need for judging individual cases. . . Officials will read it. Defense counsel will cite it. Even when it is not offered into evidence, it will condition official action. Psychiatrists, psychologists, penologists, juvenile and probation officers all participate in modern penal procedures—they will use the data and their professional advice will be heeded by the judge. Here the Report will control many decisions and dictate the disposition and treatment of many offenders."⁵⁴

Kinsey's Posthumous "Legal Volume"

Kinsey's third volume was to be a legal volume, and this goal was voiced in public as well as private meetings. It was actually published as Volume 4, following the publication of *Pregnancy, Birth and Abortion* in 1958. Dr. Gregg of the Rockefeller Institute suggested lawyers who could consult with Kinsey to give credence to the legal aspects of the work. However, Dr. Kinsey's death in 1956 prevented him from seeing the legal volume go to print. In 1965, Kinsey's co-authors at the Kinsey Institute published Kinsey's legal data under the title, *Sex Offenders*. Alfred Kinsey's name appears larger than the other authors on the front cover, and authors Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, Cornelia V. Christenson, acknowledge that most of the data collection occurred prior to Kinsey's death:

Between 1941 and 1945 we gathered some 38 per cent of our sex-offender sample, chiefly in Indiana; and between 1953 and 1955, in California prisons, we gathered 45 percent. The prison group also has an "Indiana phase" of 1940-1941 during which we obtained 37 per

⁵² Jennifer Tang. Understanding and Managing Sexually Coercive Behavior. Update, New York Academy of Sciences Magazine, October, 2002, pp. 2-5.

⁵³ Sex Offenses. *Maine Law Review*, Vol. 26, 1976, p. 69.

⁵⁴ *Illinois Law Review*, Vol. 44, 1950, p.156, 158.

cent of our sample, and a "California phase" of 1953-1955 from which came 32 per cent of the sample.

They also state that about 3/5 of the control group data was gathered prior to 1950.⁵⁵ Regarding the selection of subjects, they report,

Dr. Alfred C. Kinsey, who began and directed this research until his death in 1956, was never impressed by the desirability of keeping a record of refusal rates—the proportion of those who were asked for an interview but who refused. He felt that an individual should not be considered a refusal until he or she had been the recipient of Dr. Kinsey's persuasiveness, which was extraordinary.⁵⁶

Dr. Kinsey did not view the inmates as a discrete group that should be differentiated from people outside; instead, he looked upon the institutions as reservoirs of potential interviewees, literally captive subjects.⁵⁷

Choosing a sample population in interview research is perhaps the most critical question affecting outcome. In Dr. Reisman's overview of the Kinsey Reports, she devoted an entire chapter to analysis of the Male Report's statistical problems as reported by Kinsey's contemporaries, his funders, and his colleagues. As Gebhard and Johnson reported in 1977 regarding Kinsey's Male Volume, 87% of his subjects could not be considered part of the general population.⁵⁸ The Kinsey Institute authors of the Legal Volume explain their sampling procedure, acknowledging that no coding for prison population existed for the Male Volume, and there was indeed a difference in responses between the Sex Offender group, the general Prison Group, and the Control Group which had no prison record. Here is an example of the data collection:

The second instance of planned sampling took place at Soledad where all males who appeared obviously homosexual or who proved to be problems because of their homosexuality were segregated in one wing of a building—Z wing. We decided to sample Z wing as thoroughly as possible, and succeeded in interviewing 111 males—everyone in Z wing—plus two who had recently been returned to the general inmate population.

At other prisons the authors report interviewing one of every 40 sex offenders. At another, they interviewed 45% of available sex offenders.

Reflections from the offender data are comparable to the first two Kinsey Reports. For example, in discussing heterosexual contact with children the authors write,

It is evident that a reasonably prudent pedophile can indulge in his predilection for years before the human law and the law of averages

⁵⁵ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, p. 27.

⁵⁶ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, page 31.

⁵⁷ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, page 32.

⁵⁸ *Rationalization or Science?* Chapter 3 of J. A. Reisman (2000). *Kinsey: Crimes and Consequences*. Institute for Media Education, p. 49-69.

catch up with him. In fact, our most extensive pedophile, who had sexual contact with hundreds of little girls and boys, died in his sixties with never an arrest and only a few "close calls" in his case history.⁵⁹

In describing heterosexual aggressors vs. children, the Kinsey Institute reps summarize,

In many respects these aggressors had a Victorian sexual attitude: the double standard, the division of females into good girls and bad girls, the strong desire for a virgin bride, minimal foreplay in coitus, and a reliance on prostitutes.

The homosexual pedophile is also viewed with deep sympathy—

Among the most tragic cases in our records are those of men who had unstintingly devoted themselves to working with boys as teachers, camp leaders, and scout masters, and who subsequently became sexually involved with their charges and ended in our category of homosexual offenders.⁶⁰

Looking at all the men whose original sex-offense conviction was for homosexuality, it is quite evident that as a group those who chose as sexual partners older boys [defined as ages 12-15] and men pose no threat to society. Those who initially offended against children may be of more social concern, because of the probability of conditioning a child to become more homosexual, but even these men can scarcely be looked upon as serious dangers, since less than half of their second offenses and only about one tenth of their still later offenses were against children.⁶¹

Just as in the earlier Kinsey Report volumes, definitions were changed to bias the data (for example, a "married woman" was anyone who had lived with a man one year or more), the definitions in *Sex Offenders* are also novel. For example in describing homosexual acts as "incidental" the researchers provide this definition:

Here we simply defined incidental homosexual experience as 20 or fewer postpubertal experiences involving five or fewer males. If a man had 21 contacts or had contact with six males, he was judged to have had more than incidental experience.⁶²

Another example,

The term "adult" is here meant to signify anyone fifteen or over who, in addition, was at least five years older than the interviewee at the time of the relationship.

Based on this brief review of the "Legal Volume" published by the Kinsey Institute, it is clear that the agenda to abolish our common law protections was being carried forward by the Kinsey Institute. As Attorney Morris Ernst

⁵⁹ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, page 75.

⁶⁰ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, p. 299.

⁶¹ Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, p. 716.

⁶² Paul H. Gebhard, John H. Gagnon, Wardell B. Pomeroy, & Cornelia V. Christenson. 1965. *Sex Offenders, An Analysis of Types*. New York: Harper & Row, p. 25.

declared on the front cover of *Sex Offenders*, "I suggest that *Sex Offenders* is more significant than all prior publications."

Statutory Rape

Some states, for example, Kentucky, have confused the term statutory (a legal term defining under age) to mean consent, with the assumption that all statutory rape is consensual. The Kentucky Crime Commission Law Revision Commission writes,

But the basic purpose of KRS 510.140 is to preserve the concept of statutory rape...In such cases the defendant may well have been persuaded by the "victim" to engage in the proscribed conduct. It seems unnecessarily harsh to have a defendant within the prescribed age limitation who has been convicted of such a statutory offense to bear a criminal record labeling him as a "rapist" or "sodomist."⁶³

The New York Commission on the Sex Offender reported that in 1939, 80% of those charged with statutory rape pleaded guilty instead to a misdemeanor under a plea agreement. Over half of the sex offenders convicted in the Court of General Sessions and the county Courts were charged with statutory rape, which the report defines as "a normal act of sexual intercourse with a girl who was under the statutory age."⁶⁴

The Missouri Revision Commission speaks of 12 year olds as adults in terms of proving forcible compulsion in rape.

"Children who have entered puberty generally are subjected to sex offenses different from those that the below 12 children suffer. Usually, the child who has reached puberty is more sexually and emotionally mature, more wise in the ways of the world, and more physically capable of resisting sexual advances...Where no forcible compulsion is used, the actor does not deserve the punishment or label of "rapist" or "sodomist" when the object of his advances is over 12 years old."⁶⁵

MPC author, Morris Ploscowe writes about New York's Law Revision,

Most so-called statutory rape cases involve situations in which a male has had sexual intercourse with a consenting young female...We would have preferred an even lower limit for the new age of consent to wit: 16 or 15 years of age. In our opinion, a girl at puberty fully understands what she is doing when she engages in an act of sexual intercourse and the fiction of non-consent, which the law sets up, does not correspond to the facts."⁶⁶

The FBI at the recommendation of a "committee of experts" changed its Uniform Crime Reports in 1957 to report only "forcible rape", implying that statutory rape is a lesser and never a forcible offense.

It is a wrong presumption by the FBI, the MPC authors, the state revisionists, and courts today, that statutory rape is about a young girl who seeks to have sex, but the law limits her only because of her age. The South Carolina Law Review provides

⁶³ Kentucky Revised Statutes, 1999. Section 510.140, Commentary.

⁶⁴ Mayor's Committee for the Study of Sex Offenses, City of New York, 1939.

⁶⁵ Richardson, O. Missouri Law Review. Vol. 38, 1973, pp. 382-383.

⁶⁶ Ploscowe, M. Sex Offenses in the New Penal Law. Brooklyn Law Review, Vol. 32, 1966, p. 274.

the legal and historic definition of statutory rape, which negate the above line of reasoning,

All jurisdictions hold that consent is not an element of statutory rape, or even admissible in mitigation...The theory behind prosecution in cases of consent is that the female's willingness to consent is only apparent. She is regarded as resisting, no matter what her state of mind, for the law is said to resist for her...The South Carolina Supreme Court stated that the conviction was good under either statutory or common law rape, and the state could join the two in the same indictment.⁶⁷

Child Molestation

The "Sex Offense" section of the Model Penal Code also deals with child molestation. Based on Dr. Reisman's 1981 finding of 317 to over two thousand infants and children sex abused for the Kinsey "research,"⁶⁸ the Reports claim to prove sexual capacity and desire in humankind from birth which in effect released man from biological constraints. Thus, in accordance with the Kinsey Reports, the MPC trivialized penalties for child sexual abuse, by recommending age 10, but accepting age 12, as a proper "age of consent." This means, with reclassification and redefinition of statutory rape, a ten-year-old child would have to "prove" that force was used beyond her control, otherwise the rape would be considered merely corruption of a minor or sexual misconduct, a minor crime or misdemeanor.

Young children are now considered capable of participating and encouraging sexual invasion. Ralph Slovenko, a leader and frequent writer in both law and psychiatry, confirms the Kinseyan "sexual seducers from birth" dogma in the *Vanderbilt Law Review*,

The sometimes extreme seductiveness of a young female is a factor which has no place in the law, but it certainly affects motivation. ***Even at the age of four or five, this seductiveness may be so powerful as to overwhelm the adult*** into committing the offense. The affair is therefore not always the result of the adult's aggression; often the young female is the initiator and seducer."⁶⁹ (emphasis added)

In 1955, the MPC cites the Kinsey Report's groundless claim that criminal recidivism rates are lowest for predatory pedophiles and pederasts.⁷⁰ Because the brutal results are in after nearly 50 years, Congressman Matt Salmon, with 64 co-sponsors, introduced "Amiee's Law" in 2000, which passed both House and Senate,⁷¹ because "Released murderers, rapists and child molesters are more likely to [reoffend] than the general prison population. Released murders are 5 times more likely...and rapists 10.5 times more likely...to subsequently rape."

Impossible before the MPC, younger and younger children are prepared, often through contraception and abortion programs presented in the classroom, to decide for themselves when they should become sexually active. Through the efforts of

⁶⁷ Prevost, E. G. Statutory Rape: A Growing Liberalization. *South Carolina Law Review*. Vol. 18, 1966, p. 255-256.

⁶⁸ Kinsey, Pomeroy, & Martin. 1948. *Sexual Behavior in the Human Male*. Table 34, p. 180.

⁶⁹ Slovenko, R. & Phillips, C. 1962. Psychosexuality and the Criminal Law. *Vanderbilt Law Review*, Vol. 15, p. 809.

⁷⁰ California Sex Crimes Report 1950-1953, Cited by Model Penal Code, Draft 4 (1955), section 207.4 Rape and related offenses, fn 97, p. 241.

⁷¹ H.R.3244, Sec. 2001. Victims of Trafficking and Violence Protection Act of 2000.

private organizations like the Sex Information and Education Council of the United States (SIECUS), founded in 1964 at the Kinsey Institute, (for the stated purpose of purveying the Kinseyan model to American education), children are exposed to explicit sex and taught to assume an autonomous sexual role from kindergarten onward.⁷² SIECUS' 1991 "Guidelines for Comprehensive Sexuality Education, Level 1 Guidelines target 5 to 8 year olds, instructing teachers to use explicit language with these little girls and boys to mold attitudes about sex, marriage, abortion, homosexuality, and masturbation.

SIECUS president Dr. Harold I. Lief said of parents in 1972,

Most parents are so d--- anxious about this [sex education] that if they attempted to teach it—all they do is transfer their own anxiety to the kids. A lot of parents are so hung up about sex that their own repressive and suppressive mechanisms just increase their kids' guilt and anxiety. The parents who scream 'let the parents do it' are just the ones who will stir up all kinds of harmful emotions in their children. They think they'll do a good job, but I doubt it.⁷³

These classes would have been illegal in Missouri as late as 1978, before the Criminal Law Reform was adopted there (effective January 1, 1979), because it was unlawful until then to talk to anyone under 21 years of age about sexual intercourse.⁷⁴ State laws protective of childhood modesty would have to change to teach sexual intercourse and masturbation, and sodomy, or, "outercourse" as they are referred to in school contraception and abortion programs.

An entire book could be written on the impact of imagery through sex education, and its particularly destructive impact on young children. Acts that were once unimaginable are being demonstrated through pictures and drawings, billed as prevention programs, but "how-to" manuals in practice. The earliest examples of introducing children to deviance through imagery came through the comic book industry. The direct effect of comic book sadism on children has been most forcibly expressed by Edward Glover, a leading British psychoanalyst and editor of the *British Journal of Delinquency*. He wrote that the producers of crime comic books of the type illustrated in *Seduction of the innocent* are as guilty of the attempted seduction of minors as they would be if they personally led the child to a couch and sought to excite and pervert him by word of mouth or by hand. (6 *Brit. J. Delinquency*, 242 (1956)). William Wolf, who wrote an authoritative textbook of endocrinology, says of the same material that it "distorts, exploits and vilifies the normal sexual drive."⁷⁵

The MPC, relying on the Kinsey Reports, was often cited in "revised" state codes as authority for what could be called the peer rape rule to weaken statutory rape penalties. On Kinsey's claim that children are sexual from birth, the MPC recommended legalizing the sexual abuse of children, if the age difference between victim and offender is seen as minimal. For example, in many states if a 16 year old boy rapes a 12 year old girl, the rapist could be adjudicated as engaging in harmless

⁷² 1991 Guidelines for Comprehensive Sexuality Education: Kindergarten through 12th Grade. New York: Sex Information and Education Council of the United States.

⁷³ Lentz, G. 1972. *Raping Our Children: The Sex Education Scandal*. New Rochelle, NY: Arlington House, p. 165.

⁷⁴ Richardson, O. *Missouri Law Review*. Vol. 38, 1973, p. 397.

⁷⁵ Mass Media and Sex Deviation by Fredric Wertham. In Ralph Slovenko, *Sexual Behavior and the Law*. Springfield, IL: Charles C. Thomas, Publisher, 1965. Pp. 829-878.

"peer sex play."⁷⁶ Citing the Kinsey Reports, MPC author and New York Magistrate Morris Ploscowe said;

[O]nly where the age disparity between the man and the girl are very great is it possible to say that the rape may be the work of a mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.⁷⁷

And in 1973, Missouri's Judge Richardson writes utilizing the latest "science" revealing for the first time that children have venereal desires from birth, that "those 12 or 13 years of age...may have not only consented, but deliberately solicited the sexual act."⁷⁸

In 1990, the American Bar Association described the abuse of children as a "continuing theoretical debate." They report that over four-fifths of child sex abuse offenders are sentenced to probation, with the most common condition being that the offender receive "treatment for his sexual orientation to children."⁷⁹ Officials point out that these probationers pose serious potential harm for one compelling reason: their sexual orientation to children usually includes a long, pervasive and active history which is extremely difficult to change. The casual discussion of child sex abuse is stunning. For example, a description of felony offenders in St. Joseph County Indiana reads,

Most convicted offenders who sexually abuse children receive three or four years of probation, sometimes accompanied by 30 to 60 days of incarceration to be served on weekends. These offenders are supervised by the same probation officers who supervise other felony offenders. Most are on maximum supervision for at least six months...⁸⁰

Regarding the disposition of child abuse cases, "considerable consensus existed in all four sites [studied] that most child sexual abuse cases terminated with negotiated outcomes [plea-bargains] rather than trials."⁸¹

The Concept of "Consent" to Sexual Congress Enters the Law

The following national data reflect our current "conduct of life." Prior to this time, when the only lawful sexual congress was heterosexual coitus in marriage, consent is not a concept relevant to this area of the criminal law. In other words, under the common law any sexual acts, natural or unnatural, outside of marriage were unlawful and criminal. Whether consent was given or not was irrelevant. These prohibitions were in place to protect the institution of marriage, historically the smallest building block of any successful society. Consent enters the Law with a burden of proof on the victim through MPC-driven state penal code revisions. Did the victim give consent to the crime, and if not, or it can't easily be proven, it's the "complainant's" word against the "actor's" word. That is the burden of proof

⁷⁶ Model Penal Code, Draft 4, 1955, Section 207.4 (12), p. 253.

⁷⁷ Morris Ploscowe. 1951. *Sex and the Law*. New York: Prentice Hall, 217.

⁷⁸ Richardson, O. 1973. *Missouri Law Review*, vol. 38(3), p. 392.

⁷⁹ American Bar Association. 1990. *The Probation Response to Child Sexual Abuse Offenders: How Is It Working?* Executive Summary. State Justice Institute, Grant, SJI-88-IJJ-E-015, p. 1.

⁸⁰ American Bar Association. 1990. *The Probation Response to Child Sexual Abuse Offenders: How Is It Working?* Executive Summary. State Justice Institute, Grant, SJI-88-IJJ-E-015p. 5.

⁸¹ American Bar Association. 1990. *The Probation Response to Child Sexual Abuse Offenders: How Is It Working?* Executive Summary. State Justice Institute, Grant, SJI-88-IJJ-E-015., p. 6.

predicament for the victim under the new penal code, unless the use of excessive force is evident by convincing injuries or by death of the victim.

As Law has pointed the way in determining the conduct of American life, is it possible to say that the changes in the law have brought about the sexual freedom and peace the Kinsey Reports promised when put into the stream of the Law through criminal code reform? The following data are from the Statistical Abstracts of the United States, annual books, and include all data available from 1951 to 2000.

Years of available data	Evidence of conduct	Increase in behavior
1962-1990	"Forcible" Rape	366% increase
1955-1995	Unwed pregnancy, under 15	150% increase
1951-1996	Unwed pregnancy, 15-19	215% increase
1951-1996	Single Parent Households	213% increase
1951-1997	Violent Crime	993% increase

What Impact Can 50 Year Old Sex Science Possibly Have Today?

"Are the Kinsey Reports of fifty long years ago having an impact today and, if so, how?" The evidence found in our state-by-state review has consistently shown the Kinsey Reports to be foundational to current laws related to marriage, women and children.

The impact of the Kinsey reports also continues in our educational institutions, law schools, medical schools, and divinity schools. A tenured professor is expected to continue lifelong research, which is published in scholarly journals to direct the respective discipline. Who do our leading scholars today cite as authority in the legal and social science fields? The Westlaw database, America's most prestigious law Journal, cites to Kinsey in over 700 separate journal articles from 1982 through 2000.⁸² This is a collection of credits unmatched by any other "Sex Scientist." The Kinsey Reports are annually cited by ivy league law school journals. The Kinsey Reports today are cited double that of Freud in Social Science and Science Citation Indices, 1.5 times more than Masters and Johnson and 4 times more than Piaget. The Kinsey Reports continue to impact attitudes and behavior among researchers and their readers.

It is time to assess the outcomes, the costs and the benefits, both human and economic of a fifty-year legal experiment. The National Center for Health Statistics, Department of Health and Human Services reports:

National surveys claim that nearly 1 million teenagers become pregnant each year. About a third abort their pregnancies, 14% miscarry, and 52% give birth. Of those half million who give birth, 72 percent are out of wedlock (called pre-Kinsey, illegitimate). More than 80% of mothers 17 and younger

⁸² Citations are listed in Reisman, J. A. 2000. Kinsey Crimes & Consequences, supra., pp. 205-210.

end up in poverty and on welfare, many for the majority of their children's developmental years.⁸³ Another study by Child Trends Research reports 494,456 teen births in 1998, 79% to unmarried mothers.⁸⁴

In the 2000 study of the National Institute of Justice on violence against women, the list of key findings highlights the fact that adult victims of violence were child victims:

Many American women are raped at an early age: Of the 17.6% of all women surveyed who said they had been the victim of a completed or attempted rape at some time in their life, 21.6 percent were younger than age 12 when they were first raped, and 32.4 percent were ages 12 to 17. Thus, more than half (54 percent) of the female rape victims identified by the survey were younger than age 18 when they experienced their first attempted or completed rape.⁸⁵

From 1950 to 1987, the proportion of out-of-wedlock births in the United States increased sixfold, from 4% to 24% of all births, respectively. In 1988, 56% of black families and 38% of white families, with no male head of household, were classified as living below the poverty level. In 1990, the US Bureau of the Census published "Children's Well-Being: International Comparison to other Developed Nations." The U.S. was reported to have:

- The highest rate of births outside of marriage.
- The highest proportion of children likely to live with only one parent.
- The highest level of abortions among young women.
- The highest level of infant mortality among developed nations.
- The highest divorce rate among young couples.
- The highest rate of male homicide among developed nations; and
- The highest poverty rate for children among developed nations.⁸⁶

According to the *Colorado Statesman*, January 1996, Colorado spent \$11,992,519.00 for care, treatment, and education for HIV/AIDS, and \$913,123.00 on the control of other sexually transmitted diseases.⁸⁷ California reports an estimated cost to taxpayers for HIV and AIDS treatment in prison to be \$86,000 per inmate per year.⁸⁸ Moreover, according to a 1984 Juvenile Justice task force, an estimated 600,000 child prostitutes, roughly half of whom are boys, currently work the streets of this once great nation.⁸⁹

It does need to be said that with the elimination of the fornication, cohabitation and adultery and pornography laws, women and girls have been pushed to engage in the sexually permissive conduct Kinsey and the Model Penal Code had falsely claimed was common among their mothers and grandmothers. The fraud perpetrated upon our nation via our legal system then, as Louis Brandies warned, has coerced our

⁸³ U.S. Dept. of Justice, Fact Sheet #50, January 1997. Statistics are from the report of the Robin Hood Foundation on the Costs of Adolescent Childbearing.

⁸⁴ www.childtrends.org. Source of statistics from the National Center for Health Statistics, Department of Health and Human Services.

⁸⁵ U.S. Department of Justice. Full Report of the Prevalence, Incidence and Consequences of Violence Against Women. November, 2000. NCJ 183781.

⁸⁶ Fagan, P. "Social Stability in the United States." www.catholiceducation.org.

⁸⁷ Friends First: Economic & Social Costs of Sexually Transmitted Disease Fact Sheet. www.friendsfirst.org.

⁸⁸ Allen, H. E., & Simonsen, C. E. 1995. *Corrections in America*. (7th ed.) Englewood Cliffs: Prentice Hall, p. 505.

⁸⁹ Green, R. 1992. *Sexual Science and the Law*. Cambridge: Harvard University Press, 192. See also, Lloyd, R. 1976. *For Money or Love*. New York: Ballantine Books, 39.

female population into self destructive sexual conduct, which now opens them to question regarding their "consent" to non marital sex. It is therefore imperative that the pre MPC laws be reinstated so that women are allowed to point to solid sexual boundaries again, as a means of protecting their honor, their lives and the lives of our future generations.

Abolishing the fixed law of America has been accomplished through the American Law Institute's Model Penal Code. Now, the resulting scientific fraud and experimental proposals must be examined in light of the factual lack of safety and well-being of women and children. Law has pointed the way, and that way is now deeply entrenched in programs of rehabilitation and therapy; there are conflicting precedents, plea bargaining loopholes, systems for welfare, Medicaid, and shelters for victims; and little thought or consideration of the time when women and children were safe, and disease, violence and dysfunction were low.

In the chapters that follow, we will detail accounts of the state Fact Finding Commissions that directed Model Penal Code writers and state law revision committees, along with the major players from the therapeutic industry who molded laws to favor treatment as the modus operandi of corrections. In addition, the colorful and misguided process of revision will be described in depth using Missouri, Kansas, New Jersey and Kentucky as examples. A chapter on other states highlights will demonstrate the uniform acceptance of the ALI Model Penal Code and its detrimental effect on women and children's safety. The final chapter will address possible solutions for America's Institutions who have become entangled in a complex web of fraudulent science, special interests, and costly unproven programs created by experimental law revision.

~Three~

The Commission Reports

Several state legislatures funded "fact-finding" commissions to study the sex crime problem. This was usually in response to a particularly heinous attack that resulted in public outcry for stricter law and greater protections. Kinsey worked closely with these commissions to promote his fraudulent data, and to impact law changes to fit his "anything goes" sex dogma. According to Wardell Pomeroy, Co-author for the Male Volume:

In 1952 Kinsey collaborated with an Illinois State legislative committee which was working on a revision of sex laws in that state. He spent much time in gathering factual data for the committee's use. This action followed a pattern he had already established with legislative committees and special research groups set by the governments of New Jersey, New York, Delaware, Wyoming and Oregon.¹

In addition, Kinsey gave an entire day of testimony before the California Subcommittee on Sex Crimes in December, 1949.²

The Illinois Commission, 1953

As the ALI declares its intention to produce a model penal code in the Harvard Law Review, Illinois conducts a Commission on Sex Offenders published their report to the state legislature on March 15, 1953, which included "specific proposals for legislation and for administrative action." Arguments for the model penal code would be refined in Illinois and judging from a plethora of citations by other states revisions, Illinois was the most influential of the state sex offense commissions. The Illinois legislature began immediately after the commission study to revise its criminal code, by appointment of the governor in 1954, and with passage of the new code in 1961.

Nearly every state code revision that followed acknowledges the Illinois Criminal Code as well as the Model Penal Code as authorities. This "fact-finding" commission provides the basis for changes in sex offense law, by ripple effect, across the country.

Illinois was the first state to submit the Model Penal Code defenses to its legislature.³ The drafters of the ALI Model Penal Code monitored very closely the work of the first states to undertake the revision of their state criminal codes, particularly that of Illinois. The influence of the ALI MPC upon Illinois law was great as the ALI MPC reporters affirmed:

The Penal Code recommendations with respect to illicit sexual relations was in substance incorporated in the Illinois Criminal Code of 1961.⁴

¹ Pomeroy, W. 1972. Dr. Kinsey and the Institute for Sex Research. New York: Harper & Row, pp. 210-211.

² Preliminary Report of the Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process, California Assembly, March 8, 1950, Reported in forward, unnumbered.

³ Bowman, Charles H. The Illinois Criminal Code of 1961 and Code of Criminal Procedure of 1963. *Journal of Law Reform*. Vol. 4, 1970-71, p. 470.

⁴ "Confining the Criminal Law to Areas Where It Can Be Effectively and Fairly Enforced, p. 16. Article draft of 11/20/62 by Louis B. Schwartz. American Law Institute Archives.

The Illinois legislature did not initially fund the Bar Association's Revision Committee organized in 1954, but it did fund a "Legislative Commission on the Sex Offender" in 1951, and received its report in 1953. After preliminary research by fact-finding workgroups, information was sent to Commission members, who met in September 1952 to address the Workgroup findings. According to the Commission, the offender/criminal who was once punished for illegal acts, would be viewed as a "patient" in need of treatment or therapy to heal the offender of disease. The four Workgroups reflect the therapeutic paradigm of the Illinois Commission: (1) Diagnostic and Extramural Treatment Services; (2) Institutional and Post-institutional Treatment Services; (3) Prevention Programs and (4) Framework for Sex Offender Laws.

Francis Allen chaired the Illinois workgroup, "Framework for Sex Offender Laws," and also chaired the committee that drafted the report submitted to the legislature. Consultants for Allen's workgroup included Alfred C. Kinsey and his co-author on the *Male* volume Wardell Pomeroy. Kinsey, a zoologist, did not appear in the three workgroups addressing treatment and therapy issues; rather, his input and influence was on the law. In the report of the Commission to the legislature under "Scientific Findings" Allen declares:

No specific reference to the Kinsey findings is made here since these permeate all present thinking on this subject.⁵

In the Illinois report, however, zoologist Kinsey is presented as a hard "biological" science expert, while the authority from which Kinsey speaks on human sexuality, the Kinsey Reports, is soft social science, the sort that cannot be replicated. Quoting Kinsey, the Illinois report utilizes his scientific supplied justification for abolishing the fixed Biblically founded law principles in favor of more fluid laws constructed with currently understood science:

Current concepts of normality and abnormality in sex behavior represent primarily moral evaluations and have little if any biological justification.⁶

In a statement that is pure Kinsey mixed with what appears to be some measure of misogyny, the Illinois Commission comes down on the side of the predator by declaring women and children "overprotected" by the law and further, as Kinsey maintained, that making too much of sexual abuse does more harm than the offense itself.

It [the Commission] also believes that a cultural tendency to overprotect women and children often leads parents and others following a sexual abuse to actions which are much more detrimental to the welfare of the victim than the offense itself.⁷

The Illinois Commission declared in its scientific findings, "No specific reference to the Kinsey findings is made here since these permeate all present thinking on this subject."⁸ In addition, the Commission quotes only one other as a "biologist," Dr. Frank A. Beach. His experiments on rodents are used to further support the Commission's position established by Kinsey that;

⁵ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 9.

⁶ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 8.

⁷ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 36.

⁸ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 9.

children and all mammals are sexual from birth; and there is infinite modifiability of sexual arousal and expression. As for humans, they are experiencing increased freedom from specific physiological controls, with erotic responsiveness relatively independent of sexual physiology.⁹

Kinsey writes in his *Male* volume, "The existence of such an early [true orgasm] capacity is exactly what students of animal behavior have reported for other mammals (Beach, 1947), and it is, therefore, not surprising to find it in the human infant."¹⁰ In Kinsey's *Male* volume bibliography, Beach has 24 publications listed. Twenty of those deal with sexual behavior in rats that have been altered by castration, hormone injection and brain damage. The remaining four articles deal with mammals in general.¹¹ We do not have any information that Dr. Beach conducted human experiments, as Dr. Kinsey reported on infants and children in his *Male* Volume on page 180. These experiments are not mentioned in the Illinois Commission's Report.

Based on the authority of a rat expert (Beach) and a gall wasp taxonomist (Kinsey), humankind was declared sexual from birth, that is, unbounded from biological constraints of puberty and gender. All sexual "outlets," as Kinsey called sexual contacts began to be viewed as equal in value by the Illinois Commission. Kinsey's influence as a member of the Illinois Workgroup in its work to devise a new framework for sex laws for Illinois was greatly multiplied by the subsequent state revision commissions and committees, which used the Illinois Commission as their model for sex offense law reform. The work of the Illinois Commission so "permeated" by Kinsey was then used as the basis for state child law reforms.

Illinois Commission on Prevention and treatment

MPC Author Paul Tappan, was a member of the workgroup for "Prevention Programs." To prevent sex offense crime, the Illinois Commission recommended,

Increased support should be given to existing efforts to coordinate educational activities designed among other things to provide and organize educational efforts in regard to proper attitudes toward sex problems and in regard to the difficult problem of rearing children in freedom and with a sense of responsibility.¹²

The Committee reports that instruction for children is critical "in view of the extreme importance of disturbed parent-child relationships in the etiology of sexual deviations."¹³ Since parents are deemed unable to train their children, the Commission advocates state training in sex education:

Children oftentimes are inadequately trained to live in a free society. The inability of some parents to rear children in a democratic atmosphere and, at the same time, to observe the conventions of society is a fact that needs consideration...Prevention through mental hygiene and sex education for both adults and children may prove to be effective. Sex education is more than

⁹ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 9

¹⁰ Kinsey, A.C., Pomeroy, W. B., & Martin, C.E. *Sexual Behavior in the Human Male*. Indiana University Press, 1948, p. 181.

¹¹ Kinsey, A.C., Pomeroy, W. B., & Martin, C.E. *Sexual Behavior in the Human Male*. Indiana University Press, 1948, pp. 767-768.

¹² Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 6.

¹³ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 30, citing to the Michigan Commission on the Deviated Sex Offender, who cited the California Sexual Deviation Research for this position.

information about physiological functions; it must consider the more subtle emotional attitude toward both sexes and their relationship to one another.¹⁴

This statement explains why sex education now takes thirteen years instead of thirteen minutes. The "subtle emotional attitudes" of vulnerable children are being molded from kindergarten forward eliminating parent's protections and children's innocence. In terms of services to be provided, the committee again addresses sex education as their crime prevention recommendation, attacking parents and the home as their mythical scapegoat:

In general any efforts designed to increase opportunities for children, and adults as well, to adjust themselves to social living are constructive. These might include attempts to secure a more wholesome attitude toward sex education, to correct misconceptions about sex, and to establish counseling services for individuals needing special help. The elimination of **unhappiness and insecurity in the home** and overcoming guilt feelings and anti-social tendencies have been suggested as possible means of helping a potential sex offender...The Committee believes that better provision must be made in teacher training...for dealing with all types of personality problems of children.¹⁵ (emphasis added)

A decade later, after the 1953 Commission has disseminated its philosophy through its report as well as through the codification of Illinois' revision in 1960, a new Illinois Commission on Sex Offenders reports to Governor Otto Kerner:

Prevention of crime must be attacked in numerous ways. Enlightenment through schooling and public information programs are the two approaches most frequently mentioned. The program proposed here to encourage all school districts in the state to institute instruction in family life, venereal disease and sex education is believed by this Commission to be the most fundamental step in crime prevention which Illinois can make.¹⁶

Sex education as crime prevention? Sex education became a regular fixture in public schools in 1964 with the establishment of the Sex Education and Information Council of the United States (SIECUS). A chart of violent crime in America is included in the Appendix which shows a skyrocketing jump in violent crime in the sixties (see page XXX).

An example of the influence of the Kinsey Reports, and the Model Penal Code's sex offenses section can be seen in a discussion of "deviate sexual behavior under the new Illinois Criminal Code" which was published in the Washington University (St. Louis, MO) Law Journal in 1965. The writer states;

The Model Penal Code provisions were commented upon in the 1955 Tentative Draft Number 4, and with minor changes and reclassification of sections, were included in the 1962 Tentative Final Draft. The Model Code's comments were drawn upon by the Illinois drafters in 1960.¹⁷

¹⁴ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 37.

¹⁵ Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 37.

¹⁶ Illinois Commission on Sex Offenders, April, 1965.

¹⁷ Washington University Law Quarterly, Vol. 1965, April, 1965, p221, FN 4.

The Washington University article cites directly to the Model Penal Code 17 times, to the Kinsey Reports 6 times, and to the Kinsey influenced British Wolfenden Report 13 times. Drummond, who is cited 10 times in the Model Penal Code, is also cited here 5 times. Ernst and Loth's laudatory tome on The Kinsey Report, *Sex Habits of American Men, A Symposium on the Kinsey Reports*; was also cited three times. As Kinsey biographer Gathorne-Hardy explains in his book, *Sex the Measure of All Things*, "the [ALI] Model Penal Code is virtually a Kinsey document." Likewise, state revisions, with their stated reliance on the Model Penal Code, have their basis in the Kinsey Reports fraudulent junk science.

New York Mayor's Committee, 1939

In 1939, the Mayor's Committee for the Study of Sex Offenses published a study of sex crime in New York City for the period 1930-1939. The assembling and analysis of data for the New York Mayor's Committee was guided by future Model Penal Code author Morris Ploscowe, "who throughout the entire study served as Consultant to the Committee"¹⁸ and Robert Latov Dickinson¹⁹ who served as the New York report's, "Honorary Chairman, National Committee for the Study of Sex Offenses." While serving the New York crime committee in this advisory capacity, Dickinson was simultaneously directing (at minimum) one serial child rapist who was "scientifically" sexually assaulting over 800 infants and children for Kinsey's "child orgasm" data.²⁰

So, Kinsey and Dickinson were secretly aiding and abetting in mass child sexual abuse²¹ at the same time that they advised New York--and other state crime committees--in legislative and committee deliberations, research and recommendations.²² Moreover, while the New York report shows concern for the sexually violated children, Ploscowe's true voice is heard in The Brooklyn Law Review where he writes:

In our opinion, a girl at puberty [13-years old] fully understands what she is doing when she engages in an act of sexual intercourse and the fiction of non-consent, which the law sets up, does not correspond to the facts.²³

The committee dealt with nine major crimes: Forcible rape, statutory or second degree rape, carnal abuse of a child, sodomy, incest, abduction, seduction, impairing the morals of a minor, and indecent exposure; and made four recommendations, introducing the therapeutic concept of treatment for the sex offender:

[T]he degree of their abnormality and their dangerousness to the community, as well as their treatment needs, can be revealed by medical and psychiatric examination. It is highly desirable therefore that facilities be provided so that all offenders convicted of sex crimes be submitted to medical and psychiatric examination before sentence. Adequate facilities for psychiatric care and treatment should also be provided for sex offenders after sentence during the period of their incarceration.²⁴

¹⁸New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 8.

¹⁹New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 7

²⁰Yorkshire Television British Documentary, *Secret Histories: Kinsey's Paedophiles*, aired August 10, 1998.

²¹J. A. Reisman. 2000. *Kinsey, Crimes & Consequences*, (2nd ed.). Crestwood: Institute for Media Education, pp. 328-334. See discussions of employment of Rex King, Dr. Fritz von Balluseck and other child rapists for Kinsey's books, *Sexual Behavior in the Human Male* and *Sexual Behavior in the Human Female*.

²²New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 7.

²³Ploscowe, Morris. "Sex Offenses in the New Penal Law. *Brooklyn Law Review*, Vol. 32, 1966, 274-275.

²⁴New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 10.

In the court system of New York City, 3,295 sex offenders were reported on during the 1930-1939 time period. In the Court of General Sessions, 87% entered pleas of guilty, and 57% were convicted of assault in the third degree.

The Mayor's Commission reports on the disposition of cases:

The Legislature has declared that sexual intercourse with a girl under 18 is rape in the second degree and shall be a felony. Most offenders guilty of this crime, however, enter a plea to assault in the third degree, a misdemeanor and **an entirely different crime**. To a greater or lesser extent, the same practice of taking pleas of guilty to an entirely different crime of the grade of misdemeanor is employed in the other six crimes of abduction, carnal abuse, incest, forcible rape, sodomy, and seduction.²⁵

In the courts of New York in the 1930's there was already a distinction between a woman who refuses and a woman who proves her refusal by bruises, injuries, or worse. Over 1/3 of cases of forcible rape and 80% of statutory rapes were adjudicated by plea bargain as misdemeanors.

Note Ploscowe's concept of rape—

The modern law recognizes however that in many cases intercourse can be "against the will" of a woman yet not involve force. Moreover there are many cases where there is no real consent by the woman, yet force is absent...It must be noted, however that 'rape is not committed unless the woman opposed the man to the utmost limit of her power. A feigned or passive or perfunctory resistance is not enough. It must be genuine and active in proportion to the outrage.²⁶

The following data illustrate the plea bargaining process in New York in the 1930's:²⁷

Crime	% Convicted of felony	% Convicted of misdemeanor
Forcible Rape	66%	34%
Statutory Rape	20%	80%
Sodomy	51%	49%
Incest	74%	26%

In the case of 129 of the 274 defendants charged with forcible rape or attempted rape, convictions were for assault in the second degree, or attempted assault in the second degree. Of the 1,948 defendants charged with statutory rape who were convicted, 1,554 were convicted of a misdemeanor. The charge was reduced from a felony, and 98% of the convictions were for assault in the 3rd degree, a misdemeanor, and NOT a sex felony.

The commission explains who is responsible for the sex crimes perpetrated by these offenders, 80% of whom are plea bargained to misdemeanor offenses.

"It would be unwise to throw the blame for all these consequences solely upon the offender. **Neglect of parents** in supervising the activities of their children is partially responsible. Homes where one or

²⁵ New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 50.

²⁶ New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, pp. 20-21.

²⁷ New York Mayor's Committee For the Study of Sex Offenses, 1930-1939, p. 47.

both parents are immoral or indifferent to ethical or religious principles or addicted to alcoholism or to continual conflict, and which make the street the only refuge for the child, are contributing factors to **the participation of children** in sex delinquency. Moreover where children must live in congested crowded quarters and are witnesses of sex acts, where families must take in boarders in order to supplement their income, there is some likelihood that these children will become the victims of sex crimes. Similarly where both parents work to maintain the home, there is a minimum supervision of the child's free time. If, then, there are no opportunities for the constructive use of leisure time in the neighborhood in which the child lives, the spare time of the child is likely to be occupied with unwholesome activities. The stage is set for the child to become a victim of sex crime.²⁸ (emphasis added).

The California Commission echoes these accusations:

Testimony indicated that the heavy responsibility borne by people who are parents was not being carried out in many instances...These instances of negligence by parents very greatly hinder the work of crime prevention and crime prosecution. An area of negligence at home is the proper training of children—training in self-control, training in avoiding danger, training in constructive habits...Another area of negligence and noncooperation is in parents' relations with law enforcement agencies.²⁹

Here is one more example from the 1965 Illinois Commission on Sex Offenders:

We deplore divorce, we decry against child abuse and neglect, we are shocked by delinquency, we are victimized by crime, we groan under the burdens of public assistance, and we are unhappy about the increasing numbers of those humans among us who become mentally ill; but we seldom look to **the source of this human misery—the home** and its agent—the school. Lack of good home training and unsuitable schooling leave **most** young Americans unprepared to face adult living responsibly.³⁰ (emphasis added)

The myth that parents cannot possibly teach their children is pervasive in sex education promotion literature today. A report in the online journal, Research & Reflection exclaims that

[T]he family will never again have the control they had in the past over the information their children receive. Children are exposed daily to messages of sexuality from the mass media, and parents have little control over their children's access to it. The school can and should be a place where children come to understand that they have a right to receive answers and factual information....Additionally, most parents

²⁸ New York Mayor's Committee For the Study of Sex Offenses, 1930-1939,, p. 71

²⁹ Preliminary Report of the Subcommittee on Sex Crimes, California Legislature, Assembly Journal, March 8, 1950, p. 89.

³⁰ Illinois Commission on Sex Offenders, April, 1965, p. 28.

do not or cannot provide their children with accurate sexual information.³¹

New York Report Claims Low Recidivism

To prove that sex offenders are not dangerous, and in fact a minor problem, Ploscowe quotes recidivism data showing that compared to other criminals, more sex offenders are first time offenders. For example, only 39% of sex offenders have a previous record, whereas 65% of all felons as a group have previous records. With forcible rape, the statistic is higher—52% had previous records. The question begs to be asked, how does the crime of arson, for example, and its frequency, somehow make forcible rape less serious, because the offender is less likely to be a recidivist? Ploscowe goes to great lengths to show that 77% of the sex offender arrests who are recidivists, were previously arrested for a non-sex crime. However, he has also carefully explained that 80% of arrests are plea-bargained, and 57% of those are charged with a completely different non-sex offense. It is clearly in the data that if a recidivist has a record of non-sex crime, it is very possible that the plea-bargaining process has hidden the facts.

Ploscowe's conclusion: "This finding goes through to the core of the sex offender question. Decidedly the answer to sex crime is not the recidivist."³²

The New Jersey Commission on the Habitual Sex Offender

Like the New York Report, the New Jersey Report was formulated by a future Model Penal Code author. On March 10, 1949, the New Jersey legislature appropriated \$10,000 to "cope with the problem of apprehending the habitual sex offender and thereafter provide either preventive treatment or appropriate institutional confinement of a corrective or therapeutic character."³³

Eight recommendations by the Commission addressed the prevention of sex crime, six of which promoted education as the crime prevention measure:

- Acquaint administrators and personnel in our schools with mental hygiene facilities
- Programs of sex and family life education at the adult level
- Churches to promote family life education
- Development of family life training in the public schools
- Training of teachers in mental hygiene and student's need for mental hygiene assistance
- Sound public education in regard to sex and mental hygiene

New Jersey Commission expressed their gratitude to Dr. Guttmacher's Group for the Advancement of Psychiatry, as well as to Dr. Kinsey and Morris Ploscowe for their "frequent and extended consultations."³⁴

The Commission points out that based on Dr. Kinsey's evidence from very large population samples, "there can be no real doubt that a very large number of the male population of New Jersey has engaged in practices coming within the enumerations of our present abnormal sex offender law, on the basis of which they

³¹ Leanne Whiteside. The Shaping of Education Policy Regarding Sex Education. Research & Reflection: A Journal of Educational Praxis. Vol. 1, No. 2, undated.

³² New York Mayor's Committee For the Study of Sex Offenses, 1930-1939,, p. 91.

³³ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950. Hereinafter called the Tappan Report.

³⁴ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950, p. 12.

might be committed to one of our state mental hospitals."³⁵ Section II of the report is titled, "Sex Deviation: Its Extent and Treatment." This section begins with quotations from Kinsey's Male volume, then copies the data from the New York report verbatim to show that recidivism is not a problem among sex offenders.

Paul Tappan, writing for the New Jersey commission relies upon Morris Ploscowe's New York data to define characteristics of sex offenders. He observes,

[T]he county courts awarded prison terms to only 19% of the felonious sex criminals convicted whereas probation or suspended sentences were given in 36%. Apparently the courts did not consider very many to be dangerous, habitual, or mentally abnormal criminals.³⁶

Tappan introduces the problem of violent sex offenses as one of media distortion and anxieties of an ill-informed public.

It may be useful at the start to consider a number of the propositions upon which public fears have been fed in relation to the sex offender [resulting in] ineffective legislation based on] views without real scientific or critical investigation. Their popularity must be attributed...to the exploitation of the peculiarly intense anxieties about sex crime...rabidly distorted declarations of ill-informed, often hysterical prophets of calamity. Single instances of the crimes of "sex

fiends" are given widest currency along with demands for heroic remedies.³⁷

TABLE IV
RECIDIVISM IN RELATION TO INDICTABLE CRIMES

Crime	Cases	Offenders With Records	Per Cent	Offenders Without Records	Per Cent
Abduction.....	63	34	54	29	46
Carnal Abuse.....	333	158	47	175	53
Incest.....	98	42	43	56	57
Rape-Forcible.....	418	215	52	203	48
Rape-Statutory.....	1948	666	34	1282	66
Seduction.....	21	6	29	15	71
Sodomy.....	414	173	42	241	58
Total.....	3295	1294	39%	2001	61%

The justification for the claim that sex offenders do not repeat their crimes comes from Table 35 of the New York report, reprinted by Tappan in his New Jersey report as Table IV. Yet, Tappan's reprint of the New York

data finds abduction at 54% and forcible rapists at 52% recidivism--not to mention incest and carnal abuse, even statutory rape at 34%, irrationally arguing that these are very low rates of recidivism.

Exposing a corrupt system of justice, the sex felons of the New York study whose offenses were used to prove low recidivism, were cases of a felony reduced to a non-sexual misdemeanor charge. Tappan puts this data forward to the New Jersey legislature through his Commission Report, and carries it on to the Model Penal Code. As a result, every state lowered its penalties and protections for women and children. The problem became the "ill-informed citizens and rabid reporters" against

³⁵ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950, p. 18.

³⁶ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950, p. 19.

³⁷ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950, p. 13.

the "experts," whose demands were codified through revision of sex offense laws.³⁸ The *St. John's Law Review* laments the danger in the shift from trial by jury to the exclusive judgment of a therapeutic expert:

It was their expert opinion that nearly all sex crimes were committed by 'psychopathic personalities'; that such psychopathic personalities will continue to commit sex crimes until they are 'cured'; that they can be identified even before they commit such crimes; that they should not be punished because they have no control over their impulses and are not really responsible for what they do; and that their diagnosis, segregation, treatment and release are the exclusive function of the psychiatrist.³⁹

Tappan cites the New York low sex offender recidivism claims as "fact." Hence, the low sex offender recidivism claim appeared as "fact" in crime committee reports and in most relevant law journal articles (taught in law schools) and legislatures nationwide. This claim justified short prison sentences with quick therapy and parole. Tappan's "Table IV, Recidivism In Relation To Indictable Crimes" speaks volumes regarding the fraud perpetrated by this group of change agents upon the crime committees Americans trusted to serve the people's interest. Today, with brief prison sentences the Associated Press reported on January 7, 2003, that 52% of rapists are arrested for new crimes within three years of leaving prison.

The Michigan Report

The committee members of the Michigan committee were exclusively Michigan residents, chaired by Rev. Ralph M. Richards, and directed by Donald M. D. Thurber. The names of its committee members do not appear in the national cadre of sexual revolutionaries; however, it is significant because of its timing—the Illinois Commission acknowledges that it studied the Michigan report. For example, the Illinois Committee argued for public school sex education, reporting that instruction for children is critical "in view of the extreme importance of disturbed parent-child relationships in the etiology of sexual deviations."⁴⁰ Financing in 1949 for the commission came from the Governor's allocation of \$2,500 for study commissions, and \$9,000 from the research account of the Department of Mental Health. On July 1, 1950, the legislature appropriated an additional \$15,000 directly to the commission. Noting that the great majority of start up funds originated with mental health interests, it follows that...

The general approach of the Commission has been to favor the introduction into the handling of all criminals, particularly sex criminals, of more and more of the psychiatric understanding and the philosophy of rehabilitation which now govern...the treatment of the mental ill.⁴¹

Though not citing the direct counsel of Kinsey, the Commission acknowledges the three commissions on which Kinsey made numerous contributions:

³⁸ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950, p. 13.

³⁹ Ludwig, F. J. Control of the Sex Criminal. *St. John's Law Review*, Vol. 25, December, 1950, pp. 203-204.

⁴⁰ Illinois Commission, p. 30, citing to the Michigan Commission on the Deviated Sex Offender, who cited the California Sexual Deviation Research for this position.

⁴¹ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, p. 3, hereinafter called the Michigan Report.

The copious use which the Commission has made of the valuable studies conducted in this field by New Jersey, New York, and California will be at once evident to the reader familiar with the literature.⁴²

The Michigan Commission freely admitted that its recommendations were experimental in nature, based on incomplete information, and that change would be necessary after examining the evidence:

Decisions cannot always wait, however, until all the evidence is in. Acting upon the best evidence available and being flexible enough to change when better evidence comes to hand is often a necessary policy. For example, the Commission believes generally in efforts to treat and to rehabilitate adult sex offenders, as contrasted with purely punitive segregation. (page 5) ...We all tend to judge others by ourselves. We make a serious mistake if, in doing so, we assume that self-control is equally strong in or even equally possible for, all persons. With less than the normal ability to resist impulses, one is less than normally responsible for his acts.⁴³

It is interesting that the Michigan Report makes the connection between sexual crime and the breakdown of marriage. They lament that national divorce has increased five fold from 1888 to 1948, and in Michigan the horrendous rate of 3.7 per 1,000 was seven times the national rate of 1887! This means that 10,000 children are the unmeasured victims of divorce annually, and many suffering the poverty of desertion. One of the grand arguments in favor of the Model Penal Code was that it would improve societal problems. Today's crime and divorce rates would be unimaginable to these commission members.

Like other fact finding commissions, the Michigan group saw the school as a force to mold children's attitudes. They recommend:

The school should find more intelligent and more effective ways to make sex education an integral part of character and personality development, not merely an isolated subject of instruction. Physical and biological aspects of sex should be integrated with emotional and moral factors.⁴⁴

Every commission placed a major emphasis on the access to children through the government mandated schools, and openly declared such things as,

The main stream of school instruction may contribute richly to the adjustment of young people. It may be used as an instrument of both diagnosis and therapy...⁴⁵

The full contribution of the school in preventing maladjustment on the one hand and in promoting healthy emotional living on the other will not be exploited unless we view the program of the school as a whole. After all, the school itself is a sub-culture which fortunately is capable of considerable control.⁴⁶

⁴² Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, Acknowledgments, p. viii.

⁴³ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, p. 6.

⁴⁴ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, page 15.

⁴⁵ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, page 170.

⁴⁶ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, page 171.

Clearly it can be overwhelmingly argued, they targeted the children, who are now 50% of the population, and 75% of the workforce, and the indoctrination continues.

In addition, the commission recommended "training which will impart a psychiatric orientation" to "judges, juvenile court officers, physicians, industrial physicians, clergymen, social workers, visiting teachers, public health nurses, public health educators, and others."⁴⁷

The fact finding section of the Michigan Report reveals the shift from fixed law to evolutionary social custom based on fraudulent research. Looking to the Kinsey Report, they warn that different classes and races have different sexual standards.

The Kinsey report points to still another danger—the danger of trying to judge the sexual behavior of one social stratum or race by the moral standards of another social stratum or race. As we have already noted, sexual norms vary by social classes.⁴⁸

The California Commission

The Commission acknowledged that statistics of incidents of sex crime "are available only from a few recent studies by such men as Dr. Alfred C. Kinsey." They claim that Kinsey's statistics are based on "a total of sixteen and one-half thousand case histories," and "have been corroborated to a very great extent."⁴⁹ Printed in table format to give a "factual aura" the Committee reports Kinsey's estimates for sex crime; statutory rape, 50% of the male population, fornication, 85% of the male population, adultery, 50% of the male population, Sodomy, 35 to 40% after adolescence, Bestiality, 15% to 60% of farm boys, exhibitionism, nearly 100%, and child molesting, not over 5% to 10%.

Chapter 3 of the California report contains a detailed summary of the New York Mayor's Commission Report.

On March 8, 1950 Kinsey gave testimony before the California Subcommittee on Sex Crimes. Kinsey revealed his agenda for changing the law by describing his goals as "trends" already in progress:

First, the trend throughout the years has been toward a lessening of the penalties. Second, the trend has been very definitely toward the elimination of sex law. And the third trend has been an attempt to recognize which of the sex offenders are in actuality psychiatric cases, and to treat those cases under much the same procedures as cases of insanity are treated under the laws of the particular state in which they occur.⁵⁰

Kinsey Perjures Himself before the California Legislative Assembly Subcommittee on Sex Crimes in 1949

In 1981, California's Governor Ronald Reagan felt compelled to note that the law's swift and severe punishment once shown to predators was completely removed showing empathy and favoritism to criminal predators. In his Preface to California's

⁴⁷ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, page 16.

⁴⁸ Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, page 40.

⁴⁹ Preliminary Report of the Subcommittee on Sex Crimes, California legislature, March 8, 1950, pp. 56-57.

⁵⁰ Preliminary Report of the Subcommittee on Sex Crimes, California legislature, March 8, 1950, p. 41.

1981 "Crime Victims Handbook," Reagan charged that the cost of violence in our society can be traced to a criminals' rights mentality promoted by the criminal justice system since the 1950s.

For the past thirty years justice has been unreasonably tilted in favor of criminals and against their innocent victims. This tragic era can fairly be described as a period when victims were forgotten and crimes were ignored.⁵¹

What had happened to California, and the nation, was that the passage of tough "sexual psychopath" laws during the 1930s-1940s had been wholly derailed by those pressing for a Kinseyan Model Penal Code, officially released in 1955. Several sex-murders of children had caused public outrage and demands for eliminating any paroles or early release time for sex offenders. The shift to criminal's rights can be traced via the Kinsey Reports but California offers an example via excerpts from Kinsey's testimony before the California Legislative Assembly Subcommittee on Sex Crimes in 1949, a year after the release of his *Male* volume:

DR. KINSEY: For the last 11 years we have had a research project, as you know, underway at the university on human sexual behavior [providing] a picture typical in the population as a whole as well as a special study of the persons who have been involved with the law as sex offenders. Indiana University supports the research, by the medical division of The Rockefeller Foundation, and by the medical division of the National Research Council at Washington we find that 95 percent of the [male] population has in actuality engaged in sexual activities, which are contrary to the law.

MR. BECK: What are your recommendations at the present time?

DR. KINSEY: by lessening the penalty—still arresting, still convicting, but by lessening the penalty....

MR. BECK: You mean by granting parole?

DR. KINSEY: They [New York] grant parole immediately in 80 percent of...sex cases....50 percent of the older men, are incapable of sexual performance anyway.

MR. BECK: I think that's the answer.⁵²

Kinsey perjured himself by testifying to the California committee that the Kinsey Reports represented, "a picture typical in the population as a whole."⁵³ The impotent elder sex offender was also false, for Kinsey knew his favorite subject was a "sixty-three-year old, quiet, soft-spoken...fellow" who was an active child rapist, having raped 800 children, providing data for the Kinsey Male report.⁵⁴ This Kinsey did *not* tell the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature — during an era when the future U.S. Supreme Court Justice, Earl Warren, was serving as Governor of California.

In his California testament Kinsey refers to The New York Mayor's Committee for the Study of Sex Offenses, (1939) and the subsequent New York sex offender program more than a dozen times in just 18 pages of his testimony. Kinsey claims that although no laws were changed, *enforcement* changed (was reduced) dramatically, and that everyone was pleased, the legislature, law enforcement and

⁵¹ Reagan, R. 1981. Preface to California Department of Justice, *Crime Victims Handbook*. U. S. Dept. of Justice.

⁵² Preliminary Report of *The Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process*, California Legislative Assembly, 1949, (Created by HR 232 and HR 43), pp. 103, 105, 117.

⁵³ Reisman, J. A. 2000. *Kinsey, Crimes & Consequences*, (2nd ed.). Crestwood, KY: Institute for Media Education.

⁵⁴ Wardell Pomeroy, 1972. *Dr. Kinsey and the Institute for Sex Research*. New York: Harper & Row, p. 122.

the public at large. He claims the New York City "experiment" (his word) "has been going on five or six years. New York State has had a full time commission for 1 1/2 years." This he says, "I know, because they came immediately to me."⁵⁵

Of the Kinsey influence on radicalizing sex laws state by state, co-author Wardell Pomeroy wrote:

Kinsey...carried on an elaborate study of the procedures involved in the handling of sex offenders ... As a result of this work...Kinsey could point to some concrete results in state legislatures. *In California, for example, the lawmakers appropriated \$75,000 per year for a study of sex offenders, supplementing his own work, and placed it under the direction of Kinsey's friend Dr. Karl Bowman.... [whose] research program made abundant use of our material....* Kinsey himself met with the California legislature's committee on sex laws, and he prepared special documentary material for the consideration of several other committees. Governor Pat Brown, whom he came to know well, worked with him closely in developing the state's program. In 1952 Kinsey collaborated with an Illinois State legislative committee which was working on a revision of sex laws in that state. He spent much time in gathering factual data for the committee's use. This action followed a pattern *he had already established with legislative committees and special research groups set by the governments of New Jersey, New York, Delaware, Wyoming and Oregon.*⁵⁶

The Kinsey colleagues stressed the harmlessness of the convicted sex offender, the rare abuse by the rapist and the need to view these acts as transitory in the offender's life. *The New York Times* reported Kinsey's keynote speech to *The American Correction Association, September 28, 1955*, claiming the sex offender "...was least likely to repeat his crime after release from prison." The famous psychiatrist and MPC consultant, Manfred Guttmacher echoed Ploscowe and Kinsey saying,

[I]t is [wrongly] believed that sex offenderstend to be recidivists... among sex offenders there is little tendency toward repetitiveness ... Paedophilia is one of the most frequent types of sex offense but recidivism is low."⁵⁷

Kinsey told the California legislators in 1949 that recidivism was rare among sex offenders. However, the Report of the Mayor's Committee for the Study of Sex Offenses in 1939, for which "Mr. Morris Ploscowe...throughout the entire study served as Consultant to the Committee,"⁵⁸ reported a 52% recidivism for forcible rape, 43% for incest, 34% for statutory rape, and 42% for sodomy. Few average Americans would consider these to be low or acceptable rates of recidivism.

The New York Committee (which Pomeroy claims Kinsey aided in their deliberations) concluded that that "sex [crime] is only a sideline to their major criminal activities," since the rapists' prior arrests (they claim) were often not for sex crime. However, a New York psychiatrist reports to attorneys in 1950 that 57% (2,155 of the 3,295 total) in the 1930-39 study plea bargained their sexual offense

⁵⁵ Wardell Pomeroy, 1972. *Dr. Kinsey and the Institute for Sex Research*. New York: Harper & Row.

⁵⁶ Wardell Pomeroy, 1972. *Dr. Kinsey and the Institute for Sex Research*. New York: Harper & Row, pp. 210-211

⁵⁷ Guttmacher, p. 288; MPC "Comments" 1955, p. 294.

⁵⁸ The New York Mayor's Committee for the Study of Sex Offenses, 1939, p. 9.

to a nonsexual misdemeanor charge of third-degree assault.⁵⁹ The Committee deduces that because "only" 34% of sex offenders reappeared in a police line-up within a decade, this "is convincing proof that sex crime is not habitual behavior with the majority of sex offenders."⁶⁰

In any case, this is clear evidence that Ploscowe had knowledge of the high rates of sex criminal recidivism 10 years prior to the ALI/MPC. (As an aside, Kinsey colleague, psychiatrist, Karl Bowman also was a consultant to the New York Committee as well as providing testimony to the California committee.)

As noted, in 1949 Dr. Kinsey testified to the California legislature that he had studied a "scientific" random sample of the nation's men, falsely testifying that children were unharmed by sexual interactions with adults and that it was inhibition and sexual repression which was largely responsible for sex crimes. Holding himself out as a legal expert on Kinsey's "science," MPC Chief Author, Professor Wechsler, picks up Kinsey's theme:

What rights ought the parolee to have? How can law best contribute to effecting readjustment after release from an institution? The object is to canvass the existing law and practice, articulating legislative issues, analyzing possible solutions and appraising the competing values and considerations which a legislative choice should weigh. To the extent - and the extent is large - that legislative choice ought to be guided or can be assisted by knowledge or insight [from] the medical, psychological and social sciences, that knowledge will be marshaled for the purpose by those competent to set it forth.⁶¹

Who was "competent to set it forth," for especially when addressing child sex abuse Kinsey urged the new "social science" view that *adult-child sex was harmless*.

Therefore, when Kinsey urged California's legislators to allow felons sexual readjustment "back into society," his alleged research confirmed that society should lower *its* values and morals to the sex criminals' mores and values, rather than *vice versa*. "Common sense," Kinsey told the California committee, was all sex criminals needed -- in order not to "offend" society.

The prevalence of the plea bargaining practice negates any validity whatsoever in recidivism claims made by law revision experts and presented to legislators who then changed laws based on a very distorted presentation of sex crime statistics. The California subcommittee cite the plea bargaining process in New York, and tell a poignant story of a California convict who walked after committing two felonies against children:

The prevalency of the bargaining practice, however, is well illustrated by statistics reported in the *Journal of Criminal Law*, January-February, 1942, which point out that in New York City in a single year, of the 5,761 convictions, 5067 resulted from such pleading; in Chicago 2582 convictions included 2,086 guilty pleas; and in Milwaukee 1,169 total convictions included 705 resulting from pleas.⁶²

⁵⁹ Ludwig, F. J. Control of the Sex Criminal. *St. John's Law Review*, Vol. 25, Dec. 1950, pp. 203-204.

⁶⁰ The New York Mayor's Committee for the Study of Sex Offenses, 1939, p. 93.

⁶¹ Wechsler, Herbert. 1952. *Harvard Law Review*, pp.1129-1130.

⁶² California Commission, p. 70.

A recent California case illustrating this "bargaining" occurred February 23, 1950, where a defendant charged with two counts of Penal Code Section 288 (felony involving lewd and lascivious conduct with children) was permitted to plead guilty to one count of Section 702 W.I.C. (misdemeanor of contributing to delinquency of a minor). Plea to second count was held in abeyance, pending decision on probation application. Probation (3 years) was granted on first plea, whereupon the representative of the district attorney present moved to dismiss the second count "in the interest of justice." Motion was granted and the defendant who had faced two felony counts involving children was granted probation following pleading guilty to one misdemeanor count of contributing to delinquency of a minor.⁶³

After conviction, protections for women and children become even more bleak. In 1948, there were 1,983 convicted sex offenders in California, excluding rape and prostitution. Of this group, 1,957 would return to the community within periods of from one day to one year.⁶⁴ When laws were changed to require mandatory imprisonment for rape, the legislative mandate was circumvented very simply, as reported by the Golden Gate University Law Review:

Until recently California law allowed a convicted rapist merely to be fined or placed on probation in lieu of imprisonment. However recent legal changes mandate that they receive prison terms. Nonetheless the plea bargaining process allows rapists to plead guilty to lesser charges such as simple assault or disorderly conduct and thereby circumvent the mandatory prison term for rape.⁶⁵

⁶³ California Commission.

⁶⁴ California Commission, p. 73.

⁶⁵ Kathleen Quenneville. 1979. Will Rape Ever Be A Crime of the Past?: A Feminist View of Societal Factors & Rape Law Reforms. Golden Gate University Law Review, Vol. 9, p. 585.

~Four~

Criminal Responsibility

Introduction

Every Presidential administration going back to 1964 has expressed concern about increasing violence and the breakdown of law and order. Not only has there been growing lawlessness in society, but this increase has also occurred individually as Americans have surrendered their right to self-government.

Vice and vicious, coming from the same root word, are descriptive of the process in which increased lawlessness produces a more violent society. Misbehavior in schools once characterized by gum chewing and spit wad manufacture, has escalated to shootings and other violent assault. Each attorney general of the United States has acknowledged the importance of protecting society's most vulnerable—women and children—who suffer a disproportionate amount of the injury that comes from a violent society. Attorney General John Ashcroft has declared his priority to address the problem of violence against women and children.

The states criminal law standards defining crime and its punishment have been dramatically changed through the work of the American Law Institute and states revision commissions. The scientifically false foundations of criminal law revision are found in the two pronged dogma of sexual freedom and therapeutic cures for crime. The restoration of legal protections for women and children was once secured by removing the predator from society, giving law abiding citizens the freedom they treasure. The basis of criminal law reform were misguided recommendations based on a social science that was seriously flawed. This has compounded the problem, never addressing real solutions based on fact. In light of the prosecution of crime at the federal level during the eight years of the Clinton Administration, even the justice system has been politicized.

An Example of Criminal Responsibility Definitions From Kansas

Based upon the ALI's MPC influenced state penal code revisions in Illinois, Wisconsin and New Mexico, Professor Wilson's summary of the Kansas criminal code revision was published in the Kansas Law Review in 1968. Although Wilson's writing does not specifically address the strong common law protections for victims, the proposed Kansas revision does contain the new therapeutic concern expressed in the MPC for dealing fairly with the offender. Professor Wilson writes:

Yet it is the destruction of the capacity for self-control that warrants the special treatment of the irresponsible. Hence, the M'Naghten rule raises a distinction which requires a discrimination that is neither logical nor just.¹

Thus the Kansas committee rejected the long-serving M'Naghten rule which considered the offender responsible for his crime when he knew and understood it was wrong, as too restrictive in defining criminal responsibility. The M'Naghten Rule originated in 1843, when an English would-be assassin attempted to kill the Prime Minister, but only managed to kill his assistant. The Lord Justices determined;

¹ Wilson, P. E. 1968. New Bottles for Old Wine: Criminal Law Revision in Kansas. Kansas Law Review, vol. 16, p. 592.

...it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.²

The M'Naghten Rule addressed only the cognitive ability of the offender to know his wrong.

The Durham test embraced by many psychiatrists was adopted from a case in the D.C. Circuit court in 1954, and is usually referred to as "the product test." The test read,

The rule we now hold must be applied...is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.³

The Circuit Court did not address the explosive issue of who would decide mental disease or defect. The result was a radical overturning of the jury system, placing the decision for criminal responsibility squarely in the hands of the therapeutic professionals.

The drafters of the Model Penal Code thought that in addition to knowledge, it was important to determine the offender's capacity for self-control. This determination was not to be made by a jury. In its work to develop the MPC, the American Law Institute records working through the problem of criminal responsibility with the aid of three psychiatrists, Freedman, Overholser, and Guttmacher. Though there was not complete agreement, Wechsler reports they "were totally responsive to the psychiatric points, while advancing a fresh solution."⁴

Wechsler agreed that cognitive understanding of wrong and the capacity for self-control were both essential elements of criminal responsibility.⁵ As a result, the MPC language, "lack of substantial capacity to know or understand, **or was incapable of conforming his conduct to the requirements of law.**"⁶ was adopted by statute in Illinois, New York, and Wisconsin, as well as later state revisions.

The Kansas revision committee recommended the adoption of the Model Penal Code's test "for reconciling the traditional concept of moral and legal accountability with contemporary scientific approaches to mental illness and deficiency."⁷ The Model Penal Code creates a subjective dual system for dealing with the criminal:

[T]he problem is to discriminate between the cases where a punitive-correctional disposition is appropriate and those in which a medical-custodial disposition is the only kind that the law should allow.⁸

Wilson assumes throughout his discussion of criminal responsibility that this is a decision to be made by the "psychiatric expert." The competence of the criminal to

² 8 Eng. Rep. 718, 722. Quoted in St. Johns Law Review, Vol. 25, December, 1950, p. 223.

³ Durham v. United States, 214 F.2d 862, 874 (D.C. Cir. 1954)

⁴ Wechsler, H. Codification of the Criminal Law in the United States: The Model Penal Code. Columbia Law Review, Vol. 68, No. 8, December, 1968, p. 1442.

⁵ Id.

⁶ MPC section 4.01, (1962).

⁷ Wilson, supra. p. 592.

⁸ Morris, N. & Hawkins, G. 1969. The Honest Politician's Guide to Crime Control. Chicago: The University of Chicago Press, p. 177.

understand the wrongfulness of his conduct "is essentially a problem for the scientist, to be reflected by the testimony of the expert witness, weighed and evaluated by the court and jury in light of common sense."⁹

The philosophical shift from trial by jury to criminology by scientific experts is proposed to the members of the Kansas bar in October, 1969:

[Criminal laws] also demand and require a new procedural outlook in the handling of criminal cases and an updating of law enforcement techniques, including the use of the science of criminology and the broader spectrum of social sciences, including psychiatry. Instead of methods based on tradition and precedent, it is suggested that we should strive to use more modern scientific methods.¹⁰

New Authority Given to the Therapeutic Sciences

In 1938 the *Yale Law Journal* published "Psychiatry and the Conditioning of Criminal Justice" in which the movement of psychiatry into the criminal law was described as a "primary article of faith in the modern school of criminology."¹¹ As American Law began its evolution from fixed principles to legal process early in the last century, the role and authority of the therapeutic sciences has enlarged to guide the "stream of the law." The Model Penal Code served to codify in the states law the new "primary article of faith" that therapy was the answer to criminal behavior. A leader in that movement, MPC advisor and psychiatrist Manfred Guttmacher, testifies to the importance of the Kinsey Reports to their efforts;

Kinsey's findings were the points by which we steered. The debt that society will owe to Kinsey and his co-workers for their research on sexual behavior will be immeasurable.¹²

Draft 4 (1955) of the Model Penal Code publishes 20 pages of correspondence between Guttmacher and the MPC's chief author, Herbert Wechsler, outlining therapeutic intervention for determining criminal responsibility.¹³ Guttmacher's "Group for the Advancement of Psychiatry" (GAP), undertook to shape psychiatry's intervention into the process of legislative and judicial lawmaking by providing the psychological language to support Kinsey's sexual claims.

In a 1950 report from GAP on "Psychiatrically Deviated Sex Offenders, (which acknowledges the "valuable assistance and guidance of Alfred C. Kinsey,") the therapeutic shift is profound:

It is clear that in the legal process we should go beyond the symptomatic illegal act itself and assess the total personality to enable the courts to better achieve the aim of both community protection and individual treatment...It is clear that the identification of the psychiatrically deviated sex offender and the estimate of his danger to the community are functions of which the responsibility rests largely

⁹ Wilson, *supra.*, p. 593.

¹⁰ Does Kansas Need Minimum Standards of Criminal Justice? *Kansas Judicial Council Bulletin*, October, 1969, p. 6.

¹¹ Dession, G. H. Psychiatry and the Conditioning of Criminal Justice. *The Yale Law Journal*. Vol. 47, no. 3, January, 1938, p. 319.

¹² David Allyn. "Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality." *Journal of American Studies* 30, 1996, pp. 3, 405-428.

¹³ Model Penal Code, Draft 4, 1955, pp. 182-201.

on the psychiatric expert. They are not matters best determined singly by the judge or by the jury.¹⁴

Chapter 207, Sexual Offenses, of the Model Penal Code, contains appendices of quotations from authorities to justify their disposition toward the sex offender. Just as the Kinsey Reports are the premiere authority to define "normal" sexual behavior, the Causes of Sexual Deviation (Appendix B) and Cure for Sexual Deviation (Appendix C) are introduced by quotations from Benjamin Karpman, a psychotherapist from St. Elizabeth's Hospital. The *Columbia Law Review* quotes Karpman arguing for no criminal responsibility under any circumstances:

Criminal behavior is an unconsciously conditional psychic reaction over which [the criminals] have no conscious control. We have to treat them as psychically sick people, which in every respect they are. It is no more reasonable to punish these individuals...than it is to punish an individual for breathing through his mouth because of enlarged adenoids, when a simple operation will do the trick.¹⁵

The influence of Guttmacher and the Group for the Advancement of Psychiatry on law reform is evidenced by states' adoption of a therapeutic approach to criminology knowing its experimental and unproven track record. The South Carolina Law Review reports in 1968 that,

There are no data indicating the amount of success of correctional efforts to date. There is a large body of literature reporting numerous research findings and suggesting a large number of plausible theories concerning treatment of the offender. However, the knowledge that is available has not been translated into feasible action programs or the programs have not been successfully implemented or if they have been implemented they have lacked evaluation. If they have been evaluated, the results have usually been negative, and in the few cases where there were positive results reported there have been no replications to support these findings.¹⁶

The replacement of criminality by therapy was the assumed agenda in Wechsler's call for penal law reform, published in the *Harvard Law Review* in 1952. His description of the problem is couched in therapeutic terms rather than criminal terms:

There has been some acceptance also of the larger point that penal law in general ought to concern itself with the offender's personality, viewing his crime primarily as a symptom of a deviation that may yield to diagnosis and to therapy....What methods of treatment ought to be prescribed or authorized in dealing with offenders; what scope of discretion as to method should be vested in administration; and in what agency or agencies should such discretion be reposed?¹⁷

The *Columbia Law Review* in 1952 asked the significant question—where do the doubts come from as to the validity of criminal punishment?

¹⁴ Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry. *Psychiatrically Deviated Sex Offenders*. Report No. 9, February, 1950.

¹⁵ Karpman, B. *Criminality, Insanity and the Law*, 1949. Quoted in *Columbia Law Review*, Vol. 52, 1952, p. 749.

¹⁶ Dean, C. W. *Treatment concepts and Penology: A Sociologists's View*. *South Carolina Law Review*, Vol. 21, 1968, p. 51.

¹⁷ Wechsler, H. *Challenge of a Model Penal Code*. *Harvard Law Review*, Vol. 62, 1952, pp. 1104-1105.

The answer lies within the modern science of psychiatry, which, having erased the heavy line between the insane and the normal individual, now wishes to expunge that between the criminal and his law-abiding counterpart.¹⁸

During this transition in law, the church experienced an equally revolutionary change of political and social silence, that forbid the ecclesiastical from meddling in the temporal. With the creation of a tax exempt status for churches hinging on political neutrality, the institution which had held authority for the definition of "responsibility" for centuries, surrendered it to a new priest class, which in turn declared criminal behaviors a "normal response to a wide human need." Today in Canada, it is unlawful to publish the scriptures condemning sodomy, considered a hate crime of intolerance. And in America, the criminal act is much less significant than the thoughts and intent of the criminal, measured by psychiatric future gazers, measuring hypothetical threats to society based on politically charged survey data that only yields rising crime to levels that were unimaginable sans a Kinsey Report, or a Group for the Advancement of Psychiatry.

¹⁸ Edward De Grazia. *Crime Without Punishment: A Psychiatric Conundrum*. Columbia Law Review, Vol. 52, 1952, p. 746.

Part Two

How the American Law Institute's Model Penal Code Entered State Law & The Continued Impact of "Science-based" Legal Reform on State Criminal Law

~Five~

Eliminating Protections for Women and Children in the New Jersey Penal Code

A Brief History of a State Criminal Code Revision

New Jersey was settled in 1618 by the Dutch, and became a British Royal Province in 1702. As one of the 13 original states, New Jersey adopted its first constitution on July 2, 1776, and its criminal law was patterned after English Common Law. Unlike other states, New Jersey has rewritten its constitution, first in 1844, and again in 1947. The New Jersey State government home page describes these Constitutions as reflecting the social and governmental conceptions of the state at the time they were written; the first constitution being described as a temporary charter composed as a stopgap measure.¹

It is interesting to note that the Constitution of New Jersey is viewed as a "reflection of the times" rather than a fixed rule of law on which other laws are based.

The Kinsey Reports Come to New Jersey

In 1949, just one year after Kinsey's *Sexual Behavior in the Human Male* was released amid widespread fanfare, the congress of New Jersey approved Senate Joint Resolution No. 7, appointing a commission to investigate the problem of the habitual sex offender. Specifically, the resolution charged the commission to

Make a thorough examination of the existing laws of this State and the practices there under to determine whether they are adequate to cope with the problem of apprehending the habitual sex offender and thereafter provide either preventive treatment or appropriate institutional confinement of a corrective or therapeutic character.

In addition, the commission would

Determine whether the problem of the habitual sex criminal should have specific recognition in our statutes for the prevention, treatment and cure of persons engaged in repetitious sex offenses...[and]...determine whether any amendments can or should be made to existing statutes or whether new statutes should be enacted to make possible the **more adequate scientific treatment** of the habitual sex offender or sex deviate.² (emphasis added)

The therapeutic solution for sex crime was not a new innovation with New Jersey. Several states had already passed sexual psychopath laws.³ As a drafter of the Model Penal Code, Paul Tappan brought forward the conclusions of the New Jersey Commission, which were examined by other state commissions and accepted as evidence for law change.

¹ www.state.nj.us.

² New Jersey Senate Joint Resolution No. 7, March 10, 1949.

³ IL C38, Sec. 820, 1938; MI Sec. 28.967(1); MN Sec. 526.09-11, 1945; MA Chapter 123A, 1947; OH Secs. 1345-19 – 1345.23, 1947; WI, Chapter 459, 1947; PA PL352, 1935; IN chap. 1, 1949; NJ Title 2 supp. Chapt. 192, 1949; CA chap. 447, 1939; etc.

THE NEW JERSEY REPORT, THE MODEL PENAL CODE AND KINSEY

As an author of the ALI Model Penal Code, Paul Tappan and his New Jersey report are foundational to the direction taken by the Model Penal Code. Since the New Jersey report is written in 1950 and Draft Four of the Model Penal Code (the Draft most often cited by the state revision commissions) does not emerge until 1955, Tappan's role serving the New Jersey report precedes the Code, and in Draft 4, (1955) the authors declare that the New Jersey report is the basis for the therapeutic model in the MPC:

See...the careful and comprehensive Report to the New Jersey Legislature of the Commission on the Habitual Sex Offender (1950). This report, drafted by Professor Paul W. Tappan, was based on extensive consultation...The position taken in the present text and comments is largely based on the facts gathered and presented in the New Jersey Report. The recommendations of the New Jersey Commission laid heavy emphasis on non-criminal law programs of prevention.⁴

And who were Paul Tappan's authorities for his recommendations? Kinsey testified before the California legislature⁵ in 1949, :

The New Jersey State Legislature, in, a great hurry *last year passed* a new law, but fortunately directed that the commission which was to administer the new law should also make a study of the situation and bring in further recommendations for revision of the law to the legislature. I have sat with that commission within the last three or four weeks and know in detail something of the problems that they have faced.⁶

And, confirming Kinsey's claim, on page 12 of his New Jersey report, Tappan acknowledges the following individuals for their "frequent and extended consultations:"

*Dr. Alfred C. Kinsey, Professor Edwin H. Sutherland, Dr. Philip Q. Roche, Judge Morris Ploscowe and Dr. Winfred Overholser, among the internationally recognized authorities consulted.*⁷ (Emphasis added)

Sex Education to Prevent Crime

The commission addressed only two areas in its legislative recommendations, prevention and treatment. Its eight point prevention program included six recommendations to develop extensive sex education, one recommendation for county clinic facilities, and one recommendation for voluntary treatment programs. The public education programs would be designed to shape the "attitudes and habits of the young."⁸ On the evidence, this has been accomplished—the Kinseyan

⁴ The American Law Institute Model Penal Code, Draft 4, Comments section 207.5, p. 277-278, note 176.

⁵ Note that while Kinsey testified to the California legislature that 80% of New York prisoners were released on parole, he never provided the follow up data, an admitted "52.6 percent of those removed by supervision by 1953 had been declared delinquent." The Code authors do not reveal what kind or number of crimes were committed by these "delinquent" parolees. Code, Draft 5, 1957, Comment 305.21, at 119.

⁶ Preliminary Report of The Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process, California Legislative Assembly, 1949.

⁷ Report and Recommendations of the Commission on the Habitual Sex Offender as formulated by Paul W. Tappan, Technical Consultant, February 1, 1950. Hereinafter called the Tappan Report.

⁸ The Tappan Report, *supra*, note 7, pp. 8-9.

definition of sexuality as a "biological outlet" is deeply entrenched in public education, while the devastating consequences to the young are shrugged off as an inevitable of life.

The treatment program recommended by the Commission provided a no-options exclusive direction, which focuses on remanding a defendant for diagnosis and treatment. They conclude their recommendations by saying,

Without effective treatment measures, any special legislation on the sex deviate may prove dangerous to the interests of the State of New Jersey through failure to meet its objective of a curative handling of abnormal sex criminals.⁹

A recent study by the Government Accounting Office examining 550 such treatment programs still fails to find "effective treatment measures" in over fifty years of therapeutic experiment.¹⁰

While the citizenry was calling for tougher restrictions on sex crime, the Science/Law/Therapy alliance, represented on the New Jersey Commission through consultation with Kinsey, Overholser, Ploscowe, Roche (Group for the Advancement of Psychiatry), and Tappan, were calling for experts to decide a "curative" plan for sex felons. A major obstacle to their success was the public's understanding of danger which required more stringent legal protections. In order to weaken or eliminate sex restrictions in the law, data were needed to minimize this problem. The creation of these data, their application to the law, its promotion in the Model Penal Code, and its codification in the states has resulted in a mind boggling structure of bureaucracy that handles the violent criminal with methods that defy reason.

Only four months after the New Jersey Criminal Code Revision became law, giving approval to fornication, adultery, seduction, and sodomy, as well as teen consensual sex, and graded penalties based on age, the sex educators took immediate action. The New York Times reports,

The State Board of Education says that it wants to mandate the teaching of sex education in all public schools from kindergarten through the 12th grade. The announcement has brought opposition from several sectors, including the New Jersey School Boards Association. Given ***the state's legal viewpoint and approval of teen-age sex***, different sex practices and so on, the curriculums being formulated should prove interesting, since ***what is legal in New Jersey could hardly be prohibited from being taught in the state's school-rooms***.¹¹ (emphasis added)

Again, law pointed the way to bring revolutionary changes in our children's understanding of their values, their relationships, and their health, through new programs searing the conscience of society's most vulnerable through the promotion of these "new liberties."

New Jersey's Sexual Psychopath Law

⁹ Id., p. 10.

¹⁰ U.S. General Accounting Office, 1996. Sex Offender Treatment: Research Results Inclusive About What Works to Reduce Recidivism. Report to the chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives.

¹¹ "Trenton's Policy on Sexuality is Laissez-Faire." New York Times, Sunday, December 30, 1979, section 11, p. 16.

In 1955, the Rutgers Law Review reports that a sexual psychopath statute was adopted in New Jersey providing for commitment to the State Diagnostic Center in Menlo Park, NJ, after a defendant had been convicted of a specified sexual offense. The examination period lasted up to 60 days, and the psychiatric evaluation could result in commitment or outpatient treatment. The court was bound by the psychiatric recommendation.¹² The writer laments that the predator under this statute suffers the

deprivation of freedom during the examination, the adverse publicity given the person involved, and the mental strain to which such person is subjected...It is well settled that most of the known sex deviates seldom resort to violence or to crimes of a public nature such as to be a significant danger to society. [cited to Ploscowe, Sex and the Law]...It is conceivable that...a completely innocuous sex deviate would become so confused and embittered that he would return to society a dangerous man.¹³

Rigg freely admits, "these statutes are actually only an experiment."¹⁴ He quotes MPC Advisor Manfred Guttmacher to say,

Perhaps the only valid justification for separate legislation for sexual psychopaths is a pragmatic one. Such legislation permits experimenting with new procedures in a limited area, procedures which would be considered too radical for general acceptance.¹⁵

New Jersey Codifies MPC Sex Fraud

In 1968, the New Jersey legislature received the report of "the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey." They reported that

It is clear that New Jersey's system for administering criminal justice would be strengthened, individual liberties and fair trials increased, and the cause of justice thereby advanced, if an independent commission were established to make a detailed analysis and redrafting of substantive criminal law. We must make sure the system is fair and rational, while we seek to make it effective.

A New Jersey Criminal Law Revision Commission was established based on that report, and charged with the duty of preparing an overall revision,

to modernize the criminal law of this State so as to embody principles representing the best in modern statutory law, to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions and to revise and codify the law in a logical, clear and concise manner.¹⁶

¹² Rigg, B. M. New Jersey's Treatment of Sex Offenders: Some Recommended Improvements. *Rutgers Law Review*, Vol. 9, 1955, p. 568.

¹³ *Id.*, 568-569.

¹⁴ *Id.*, p. 572.

¹⁵ Guttmacher & Weiholen, Sex Offenses, *Journal of Criminal Law & Criminology*, Vol. 43, 1952, p. 171.

¹⁶ Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, p. v.

The commission submitted its final revision to the Governor and the legislature in October, 1971. Members of the Criminal Law Revision Commission were

Robert E. Knowlton, Chairman, Professor of law, Rutgers Law School
T. Girard Wharton, Vice-Chairman, Former President, NJ State Bar Association
William K. Dickey, Assemblyman
Dominick J. Ferrelli, County Prosecutor
Edward Gaulkin, Superior Court Judge
Alvin E. Granite, Attorney, former County Prosecutor
Charles J. Irwin, Exec. Dir., Office of Consumer Protection, Dept. of Law & Public Safety
Richard B. McGlynn, Chief, Trial Section, Division of Criminal Justice
Ronald Owens, Assemblyman
William A. Wachenfeld, Former NJ supreme Court justice, deceased in 1969.
John G. Graham, Secretary, Attorney. Former assistant dean, Rutgers Law School.

In addition to the commission, there were six consultants, four research assistants, and a representative from the Attorney General's office. The secretary, John Graham, was responsible for drafting the proposals, writing the reports and commentaries, recruiting staff, and handling administration.

In 1970, the New Jersey Bar published an article calling for abolition of the sex crimes of fornication, gambling, sodomy and prostitution. Members of the Bar are told,

We know, from the work of Dr. Kinsey and his successors, that 76% of the adult males in the United States have committed fornication by age 20...These figures are not a product of the "New Morality" for Dr. Kinsey's interviews included our grandparents' generation. (It is reasonable to assume that New Jerseyans, being neither better nor worse than citizens of any other state, have conformed in their conduct to these figures.)¹⁷

Reasons For New Jersey Revision

The New Jersey Commission quoted from the sweeping call by Herbert Wechsler in the 1952 Harvard law Review to justify the law revision. Describing the problem as "particularly acute in New Jersey" they conclude that the statutes defining crimes are "hopelessly antiquated." Using the language of the President's Commission on Law Enforcement and the Administration of Justice, New Jersey's Criminal Law is described as having "perpetual anomalies and inadequacies," "irrational doctrines" and "legislative inattention."¹⁸

New Jersey adopted the revolution of law brought to the states by the Model Penal Code grading of crimes based on age of victim and use of force. The revision commission adds that this system of grading also provides for plea bargaining, giving the predator greater opportunity to plead guilty to a lesser offense than that for which he is charged. Knowing the history of MPC Author Morris Ploscowe's handling of sex criminals in New York, it is easy to understand how plea bargaining became a major factor in weakening protections for women and children. The New Jersey Commissioners write,

¹⁷ Comblatt, A. J. 1970. Sin and the Laws of New Jersey. *New Jersey State Bar Journal*, p. 21.

¹⁸ Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, p. vi.

Another benefit of a modern, rationally graduated penal code is the encouragement it would give to a better system of plea negotiations and agreements. The availability of a series of more and less serious offenses for each category of wrongdoing facilitates matching society's interest to the wrongdoing which the defendant is willing to admit. In drafting this code, we have established for each category of wrongdoing a series of offenses, graded by severity. This should substantially facilitate disposition by plea negotiations and agreements.¹⁹

In addition to plea-bargaining, new codes summarily undermined the Constitutional authority²⁰ of judge and jury. The New Jersey Commission states one of their goals is to limit judicial discretion:

The Code establishes a system of grading for virtually every offense. Legislative grading is important as a matter of fairness between offenders far apart in the spectrum of social danger and as a desirable legislative control of the discretion of sentencing judges.²¹

The Chairman of the Revision Commission, Professor Robert Knowlton, explained this goal in greater detail in *Rutgers Law Review*:

[A] code must arrive at a viable formula for the allocation of sentencing power among the various decision making bodies...unexplained variations in sentencing has led to restrictions being placed upon judges. One early consequence of these restrictions was to shift substantial discretion from judges to parole boards.²²

The Model Penal Code brings a new focus described here as the "spectrum of social danger" as a factor in addressing criminal sanctions. In the therapeutic model, the consequences for a crime are based on the ability of a therapeutic expert to predict the future actions of the criminal. This has reached an extreme described by the ABA in 1990 as a "continuing theoretical debate" in which 80% of child molesters serve no time, criminals being set free to repeat their violence upon unprotected children.

Knowlton argues further that in New Jersey "excessive" sentences may be corrected through the pre-sentence investigation, the disclosure to the defendant of facts used in sentencing, the requirement that the court must state its reasons for imposing the sentence, and finally as a further protection, the defendant is entitled to counsel at the sentencing hearing.²³

New Jersey Guided by Model Penal Code & Other State Revisions

The Commission expressed special gratitude to the American Law Institute for its Model Penal Code:

¹⁹ *Id.*, p. viii.

²⁰ U.S. Constitution 6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

²¹ Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, p. xiv.

²² Knowlton, R. E. Comments upon the New Jersey Penal Code. *Rutgers Law Review*, Vol. 32, 1979.

²³ *Id.*, p. 14, note 83.

In approaching our task, we are fortunate to have had many walk the same road. First, there is the American Law Institute's Model Penal Code. It has been the principle basis of our study. The product of 10 years work, it is a thoughtful and comprehensive examination of the substantive criminal law...Additionally, many States and the Federal Government have either enacted new penal codes or have had legislative commissions make recommendations as to such laws. Chief among the states is the New York revision together with those of Illinois, Wisconsin, Michigan, California and Connecticut. We have drawn heavily upon the work of these States.²⁴

Just as the 1949 New Jersey Commission on the Sex Offender had relied upon data from its New York counterpart, New York continued to play a major role in influencing New Jersey law. New York and New Jersey were natural consultants since both had a member on the drafting committee for the Model Penal Code (Tappan and Ploscowe), and their ideas are reflected in the New Jersey law.

Although other states are cited in the overall revision of New Jersey's criminal code, the rape and child abuse revisions reference only the Model Penal code for each section, with one additional reference to New York.

Renaming Rape to Hide Its Injuries in New Jersey

The principle that "law points the way" is understood clearly by Professor Charles Nemeth, who writes in the New Jersey Bar Association's Journal,

Translating reform ideology into practical reality is no easy task. Even more taxing is attempting to change public perceptions and attitudes on a controversial topic such as rape law and legislation. ***No other area of law is as dynamic and has been as successful in changing public and legal perceptions as the law of rape.*** With few exceptions, all states have revised, reformulated and redefined rape in the last 20 years.²⁵ (emphasis added)

A major tool for changing public perception in New Jersey was to drop altogether the word "rape" from the law. The rationale for making rape a more neutral crime is explained in the New Jersey Law Journal:

Past history and underlying emotions about "rape" are so deeply tainted that a new term might foster new attitudes or at least less prejudiced feelings about the crime. In addition, the term "rape" is automatically associated with female victims and any statute purporting to be sex-neutral would have an inherent bias to overcome...The responses indicate at least the awareness that the older term "rape" was fraught with negative emotion and unrealistic for this era...There is no justification for the perception that the female is a unique creature, harmed in some unique way by untoward sexual behavior.²⁶

²⁴ Final Report, supra note 24., pp. x-xi.

²⁵ Nemeth, C. P. How New Jersey Prosecutors View the New Sexual Offense Statutes. *New Jersey Law Journal*, May 5, 1983, p. 1.

²⁶ *Id.*, p. 6.

Nemeth then contradicts himself, quoting a prosecutor's response to his survey that women indeed are uniquely harmed by the crime of rape. The prosecutor comments,

There have been no cases involving male adult victims. No members of our squad can recall a case involving an adult male victim in the last several years. We have had many cases involving sexual abuse of juvenile males. There were also many of these cases under the old law.²⁷

So, as adult men are not the rape victims but are in fact 99% of the rapists, how does it strengthen penalties and thus serve justice to women and children to be "equalized" with the group who does the raping and does not suffer the victimization? Nemeth adds that the prosecutors noted "the new statute [was] merely replacing old statutes like sodomy and debauchery of minors which were just as effective." So, what was the **real** purpose of undermining the "emotional" nature of the rape laws?

In the current New Jersey law, Section 2C:14-2 is termed Aggravated Sexual Assault, and is defined as sexual penetration of a victim who is less than 13 and the actor is at least 4 yrs older, or 13-15 with aggravating circumstances. A second category, described as 2C:14-2(b) Sexual Assault is defined as sexual contact with a victim less than 13, or sexual penetration where the "actor" uses physical force or coercion, but the victim does not sustain severe personal injury; or the victim is 16 or 17 with aggravating circumstances, or the victim is 13 to 15 and the "actor" is at least 4 yrs older.

This "slight of words" redefines the crime of rape to the inclusive term of sexual assault, lumping sodomy and rape in one definition. This raises important questions for legislators charged with protecting the women and children of New Jersey. Lumping rape and sodomy together creates a statistical cover-up concealing increasing rates of sodomy of boys by pederasts. Current data from the Department of Justice on sex crimes against children identifies boys under age 12 to be 64% of forcible sodomy victims.²⁸ In New Jersey, this is the same crime as a middle-aged woman forcibly ravished and injured by a predator. Historically, rape meant that something was forever lost—a woman was ravished. By making sodomy a part of the rape concept, it has been joined to a natural act. The lines between natural and unnatural have been blurred. Rape is the forcing of a natural act by violent means on an unwilling female. Sodomy is classified as rape in the minds of people who would naturalize the act and change its historic meaning.

Gene Abel, M.D., a professor of psychiatry, who has taught at several medical schools including Columbia University and Emory University, found in his 1987 study of non-incarcerated child sex offenders that homosexuals "sexually molest young boys with an incidence that is occurring five times greater than the molestation of girls." Specifically, Abel's report provides data to show that on average, 150.2 boys are molested per homosexual pedophile offender, whereas 19.8 girls are molested per heterosexual pedophile offender. Sodomy offenders in Abel's study admitted between 23.4 and 281.7 acts of molesting boys. Abel concludes,

Therefore, the high percentage of crimes committed by adults who molest young boys is a true representation of the high percentage of molestations completed by this category of molesters when compared

²⁷ Id.

²⁸ U.S. Dept. of Justice National Incident-Based Reporting System, (NIBRS) "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics." July, 2000.

with other categories of molesters. Since only limited resources are available to provide assessment and treatment for child molesters, it would be advantageous to target those individuals who molest boys specifically since effective treatment of this group would dramatically reduce the total number of current and future child molestations.²⁹

A New Rape Law Based on the Model Penal Code

In 1952, the New Jersey Law, based on the Common Law, provided significantly greater protection for women and children against rape. The assailant was often deterred from such acts because he would spend a major portion of his life in prison and pay heavy fines. The law provided:

Any person who has carnal knowledge of a woman forcibly against her will, or who, being of the age of 16 or over, unlawfully and carnally abuses a woman-child under the age of 12 years, with or without her consent, is guilty of a high misdemeanor, punished by fine not more than \$5,000, or imprisonment not more than 30 years, or both; if victim is 12 to 15, fine not more than \$5,000, imprisonment not more than 15 years, or both.³⁰

The New Jersey Law Journal, a weekly newspaper for internal distribution to state Bar members, described the change to the common law that had protected women and children for two centuries:

Chapter 14 concerns sexual offenses. No aspect of the substantive criminal law in New Jersey has undergone more significant and dramatic change in the Code than the area of sexual offenses. The major change made by the Code in this area is the **redefinition of sex crimes and the import thereof**.³¹ (emphasis added)

The New Jersey Revision Commission recommended age 12 as the age of consent for New Jersey. This means that in a rape trial, a 12 year old is treated as an adult in determining the predator's force or threats of death or serious injury which are essential elements to constitute rape. In the debates for legislative approval that took place from the Commission's final report in October, 1971, to the adoption of the new code in 1978, the age of consent was changed to 13; then after a torrent of public outcry, amended to 16; and the term "rape" was changed to sexual assault.

Placing the victim in the worst possible light, the revision commission renames her the "complainant" and implies that rape is a trumped up charge:

[C]onviction often rests on little more than the testimony of the complainant; the central issue is likely to be the question of consent on the part of the female, a subtle psychological problem in view of social and religious pressures upon the woman to conceive of herself as victim rather than collaborator; and the offender's threat to society is difficult to evaluate.³²

²⁹ Abel, G. C. Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs. *Journal of Interpersonal Violence*. Vol. 2, No. 1, March, 1987, p. 24.

³⁰ 1952 New Jersey Law, Title 2A

³¹ Highlights of the New Code of Criminal Justice. *New Jersey Law Journal*, Thursday, January 18, 1979, p. 6.

³² Final Report of the New Jersey Criminal Law Revision commission, October, 1971, p. 190.

Today's New Jersey law remains much the same as the revision adopted in 1978. Four categories of sexual offenses using the neutral term "sexual penetration" are proscribed, Aggravated sexual assault where the victim is less than 13 and the "actor" is at least four years older, or 13-15 with aggravating circumstances such as use of a weapon, or severe injury; sexual assault, where the victim is 13-15, or 16 or 17 with aggravating circumstances; aggravated criminal sexual contact and criminal sexual contact, which use the same language as the assault sections, but does not require penetration. These are crimes in the first, second, third, and fourth degrees, respectively. News accounts of legislative debates pointed out that the purpose for varying degrees was to favor the predator. After a felony has been committed, the prosecutor may plea bargain for a lesser offense. "Michael Nizolk from the Governor's counsel office, one of the lawyers who has worked on the code, said the degrees in sentencing should allow prosecutors more options in plea bargaining with defendants."³³ Some have seen the degree of complexity and confusion as a deliberate attempt to further undermine swift and sure punishment of the offender. A chart detailing the comparison of the laws of 1898, 1952, and 1995, with penalties outlined follows this chapter.

As a result of the revision, fornication, adultery, consensual sodomy and incest between adults are no longer prohibited.³⁴ The commission reports,

A strong feeling exists in our minds that existing law has "over-criminalized" society. In particular, we believe the criminal law should be withdrawn substantially from the field of sexual behavior between consenting adults.

One must wonder if their "strong feelings" remain after thirty years of a failed experiment resulting in skyrocketing divorce and illegitimacy creating extreme hardship for victims as well as taxpayers who experience the "public interest" in strong marriages every year on April 15th as we finance the growing juvenile crime and poverty of single-parent households.

³³Finishing Touches Put on Jersey's First Penal Code. Newark Star Ledger, March 5, 1975.

³⁴ Final Report of the New Jersey Criminal Law Revision commission., p. 7.

New Jersey Law: Comparing 1898/1952 with Current Law

New Jersey Laws, Session of 1898	1995 New Jersey Code of Criminal Justice
<p>Rape: Carnal knowledge of a woman forcibly against her will, or aiding another to commit the act; or being of the age of 16 or over, shall unlawfully and carnally abuse a woman under the age of 16 yrs., with or without her consent, shall be guilty of a high misdemeanor³⁵, and punished by a fine not exceeding \$1,000, or imprisonment not exceeding 15 yrs., or both.</p> <p>Incest: Any act of indecency, or infamous proposal shall be guilty of a high misdemeanor, fine not exceeding \$1,000, or imprisonment not exceeding 15 yrs., or both.</p> <p>Adultery: A misdemeanor</p> <p>Fornication: a misdemeanor, fine not exceeding \$50 or imprisonment not exceeding 6 mo., or both.</p> <p>Lewdness: tending to debauch the morals and manners of the people, a misdemeanor.</p>	<p>2C:14-2 Aggravated Sexual Assault: Sexual penetration of victim <13 and actor is at least 4 yrs older, or 13-15 with aggravating circumstances Crime in the first degree, 10-20 yrs.</p> <p>2C:14-2(b) Sexual Assault: sexual contact with victim <13, or sexual penetration where actor uses physical force or coercion, but the victim does not sustain severe personal injury; victim is 16 or 17 with aggravating circumstances, or victim is 13-15 and actor is at least 4 yrs older. Crime in the Second degree, 5-10 yrs.</p> <p>2C:14-3 Aggravated Criminal Sexual Contact. Touching directly or through the clothing, same circumstances as aggravated sexual assault. Crime in the third degree, 3-5 yrs.</p> <p>2C:14-3(b) Criminal sexual Contact. Touching directly or through the clothing, same circumstances as sexual assault. Crime in the fourth degree (maximum penalty 18 mo.)</p> <p>2C:14-4 Lewdness Lewd and offensive act likely to be observed by nonconsenting person. A disorderly person offense. If observer is <13 and actor at least 4 yrs older, or observer has mental disease or defect, it is a Crime in the fourth degree.</p>
<p style="text-align: center;">1952 New Jersey Law, Title 2A</p> <p>2A:138-1 Rape and Carnal Abuse; penalty. Any person who has carnal knowledge of a woman forcibly against her will, or who, being of the age of 16 or over, unlawfully and carnally abuses a woman-child under the age of 12 years, with or without her consent, is guilty of a high misdemeanor, punished by fine not more than \$5,000, or imprisonment not more than 30 yrs, or both; if victim is 12 to 15, fine not more than \$5000, imprisonment not more than 15 years, or both.</p>	

The October, 1971 report of the Criminal Code Revision Commission was debated in the legislature for years, and after multiple committee drafts, the new penal code became known as "the Hawkins Bill rather than the work of a commission. Professor

³⁵ Term used for felony crime.

Knowlton, who chaired the revision commission expressed bitterness at his retirement over their tireless, voluntary work. The Newark Star Ledger reports,

A combination of governmental procrastination, political machinations and legislative ineptness has converted the monumental recommendations of the New Jersey Criminal Law Revision Commission, which Knowlton headed, into a thankless morass."³⁶

Quoting Knowlton, the Star Ledger reports,

'I think law professors owe this kind of contribution in time and energy to such a cause.' Knowlton commented on his role as a catalyst in the development of the model penal code that has since been torn asunder, largely by opportunists... "It appears that the whole package has now become the Hawkins bill," he said, referring to Assemblyman Eldridge Hawkins (D-Essex). 'There seems to be very little attention paid to the three or four years we spent as a commission.'³⁷

The Criminal Becomes "The Patient"

According to Professor Knowlton, persons convicted of listed sex crimes may be given a program of specialized treatment recommended by the Adult Diagnostic Center if the defendant's conduct was characterized by repetitive, compulsive behavior. Great care by the commission to protect the predator from society's failures resulted in a special classification board, and treatment program. The commission did not recommend the retention of the sex offender statute, because

the idea that sex offenders progress to more vicious or dangerous offenses is simply not true; nor is there any reason to believe that sex criminals have a greater need for treatment than other offenders. Finally, society's failure to provide adequate treatment facilities is grossly unfair to persons subject to the special treatment provisions.³⁸

In the final debates in the legislature, there was frequent mention of the change in homicide cases, where the jury could no longer decide if the defendant were insane, only if the crime occurred. Although some of the news accounts call it giving the judge "wider latitude," it is clear that the judgment call would be shifted to the "expert:" "Juries would decide only if a defendant committed a homicide, and a judge would decide if the person was insane based on evidence from psychiatrists."³⁹

Current New Jersey Law makes a similar provision:

When a person is convicted of the offense [Title 2C, sections 13 and 24, sexual offenses] the judge shall order the Department of Corrections to complete a psychological examination of the offender...The examination shall include a determination of whether the offender's conduct was characterized by a pattern of repetitive, compulsive behavior and, if it was, a further determination of the

³⁶ Prof Departing Sadder, Wiser on Penal Code. Newark Star Ledger, July 6, 1976.

³⁷ Id.

³⁸ Knowlton, supra., note 13, p. 16.

³⁹ "Finishing Touches Put on Jersey's First Penal Code" Newark Star Ledger, March 5, 1975.

offender's amenability to sex offender treatment and willingness to participate in such treatment.⁴⁰

Section 2C:47-3 further explains that if the felon is amenable to treatment, he will serve his term at the Adult Diagnostic and Treatment Center for sex offender treatment, or will be placed on probation with the requirement, as a condition of probation, that he receive outpatient psychological or psychiatric treatment as prescribed.

What happens if the felon does not attend treatment, or commits another offense?

"Whenever the parole of an offender committed to confinement under the terms of this chapter is revoked by the State Parole Board, the Department of Corrections shall, within 90 days of the date of revocation of parole, complete a psychological examination of the offender to determine whether the violation of the conditions of parole reflects emotional or behavioral problems as a sex offender that cause the offender to be incapable of making any acceptable social adjustment in the community and, if so, to determine further the offender's amenability to sex offender treatment and, if amenable, the offender's willingness to participate in such treatment. Not more than 30 days after the date of the examination, the Department of Corrections shall provide a written report of the results to the State Parole Board.⁴¹

In such a situation, New Jerseyans would surely remember the words of Ronald Reagan who described the dramatic shift in criminology as a time of protection for the predator, and the victim is forgotten.

The battle for Legislative Approval

On December 30, 1979, the New York Times described New Jersey as "hung up lately on the subject of sex." During 1979, according to the news report, New Jersey had:

- Set the age at which teen-agers could legally consent to sex
- Allowed municipalities to establish "zones" for live sex shows and pornography
- Legalized incest over the age of 16
- Legalized necrophilia and sodomy
- Legalized adultery, fornication, promiscuity, and seduction resulting in pregnancy
- Reducing penalties for the sale of commercial consumer sex (prostitution).

The report concludes that New Jersey "has given virtually free rein to all manner of sexual expression."⁴²

A report from the Record Trenton Bureau reports that Eldridge Hawkins, the East Orange Democrat, shepherded the criminal code revision through committee for more than two years. Hawkins made clear his disdain for law in comments reported in the press:

'The Governor asked us to work day and night if necessary and that's what we've been doing,' Hawkins said. 'Right now', he said, 'there is

⁴⁰ New Jersey Code of Criminal Justice, Title 2C:47-1.

⁴¹ The New Jersey Code of Criminal Justice, 2C:47-3.

⁴² The New Jersey Penal Code. New York Times. December 30, 1979.

no such thing as an organized penal code in New Jersey, just a bunch of statutes and common law,' Hawkins reported.⁴³

He described its arrival on the floor of the state Assembly "despite intense Republican opposition" on June 15, 1976. "At every opportunity, Republicans attempted to block the revised code."⁴⁴

Hawkins was chairman of the Assembly's Judiciary Committee during the period it had control over shaping the proposed codification. The Asbury Park Press reports,

Though the commission's recommendations were influential, much of what went into the proposed code—and was left out—bears the stamp of Assemblyman Eldridge Hawkins, D-Essex, a lawyer known for his liberal views...Hawkins, who ranks among the foes of capital punishment, once described the state's criminal laws as 'just a bunch of statutes and common law,' a view shared by law school scholars in their more formal critiques.⁴⁵

Hawkins introduced his bill in 1975, reintroduced it in 1976, and on November 22, after motions to send it back to committee were defeated, it passed the Assembly. Republicans fought unsuccessfully to tone it down with 17 amendments, so it went as written to the Senate, who did a page by page amendment of the 185 page document. A major concern of the Senate Judiciary Committee was the chapter on criminal responsibility. All 21 county prosecutors were on record as opposed to the provision doing away with the insanity defense. In response, the Senate Judiciary Committee retained the M'Naghten rule setting a strict legal standard for sanity, rather than the medical model proposed by Hawkins' committee.⁴⁶

Hawkins appealed to the emotions over reason to gain approval for the reduction of penalties throughout the revision. The Star-Ledger reports,

There are old people, blind people, crippled people that were jailed for numbers activity because it was treated as a felony. They would obviously be released, Hawkins said.⁴⁷

The Star Ledger reported that the revision passed the house on November 23, 1976, and

was approved 41-35 after nearly three hours of heated, and, at times, emotional debate. Conflicting views were expressed not only between Republicans and Democrats, but between those who view the code as a modern and effective way to deal with criminals and those that say it will become a law enforcement nightmare.⁴⁸

Typical of Wechsler's call for a Model Penal Code and other states who presented reform as mere clarification and technical improvement, the Trentonian informs the public that there is really little substantive change:

⁴³ "Finishing Touches put on Jersey's First Penal Code." The Newark Star Ledger, March 5, 1975.

⁴⁴ Crime law changes gain. The Record Trenton Bureau, June 15, 1976.

⁴⁵ Proposed New Jersey Penal Code Heads for Likely OK, Asbury Park Press, February 27, 1977, p. A11.

⁴⁶ Id.

⁴⁷ Job Completed: Assembly panel completes penal code revamp. The Star-Ledger, Wednesday, March 12, 1975.

⁴⁸ Penal Code Revamp Clears First Hurdle. Star Ledger, November 23, 1976.

'we've just changed it so that the average, everyday citizen will know what it means,' he [Hawkins] stated. Many of the penalties will remain the same, with the major change being that the penal laws will now be under an 'orderly code,' Hawkins explained.⁴⁹

In reality, there would be sweeping changes redefining crimes based on the Model Penal Codes grading by age and use of force, with drastic changes in penalties. The public was not, however, able to make an intelligent decision, according to Assemblyman William J. Bate, Vice Chairman of the Judiciary Committee. He says of public opposition,

The Legislature has the opportunity to forge ahead in a responsible manner, creating a new beginning which discards fear and emotion, and careful not to be diverted by the thirst for capital punishment, which is largely a symbolic sop to soothe the frustrations of a bewildered public.⁵⁰

The Bergen Record reported the passage of the new criminal code by the senate on July 28, 1978, amid a small crowd of 50 protestors, "many of whom were elderly women," who shouted "perverts" and "sodomites" at the senators. There was heavy lobbying by Governor Byrne's chief aids, who called the enactment "one of the major priorities of his administration."⁵¹

The Trenton Times reported on April 21, 1979 that Assemblyman Charles Hardwick called for a delay in implementing the new code because of its dangerous revision of sex offense laws. Hardwick said,

The new code would permit a girl 13 years old or older to engage in sexual relations with a man if he is not a relative, guardian or someone in a supervisory capacity, such as a teacher or foster parent. This is because the code abolishes statutory rape, which makes it a crime for an adult to have sexual relations with a minor regardless of whether she consents, Hardwick said.⁵²

The article mentioned the \$650,000 training program described as a "crash course" already in place for law enforcement, and the 815-page manual distributed to police officers, prosecutors, and judges on how to interpret the new law and how to sentence criminals. Paterson Police Chief James Hannan described the training course: "It's like you're changing a man's complete way of thinking. You've got to condition him that everything he's been taught in the past is going to be thrown out the window."⁵³

The suggestion to delay the enactment of the code caused a flurry in the legislature due to the lowering of age of consent from 16 to 13 in the sex offense laws. The new code also introduced the Model Penal Code concept of peer sex play, requiring the defendant to be four years older than the victim for prosecution. The Trenton Times reported that parents circulated petitions to retain the 16 year old age of sexual consent, and described the public as "outraged." The leader of the state wide petition drive said, "The penal code will force teenagers to make a decision on

⁴⁹ Proposed Penal Code Ends Life Sentences. The Trentonian, March 12, 1975.

⁵⁰ Penal Reform Endorsed. Newark Star Ledger, November 20, 1976.

⁵¹ "Criminal Code Approved", The Bergen Record. July 28, 1978.

⁵² New Crime Code Comes Under Fire. Trenton Times, April 21, 1979.

⁵³ Mastering the New Jersey Criminal Code. The Bergen Record. April 22, 1979.

whether or not to engage in a sexual relationship." The Times states that the lowering of the age of consent was a covert action, not brought to the people of New Jersey until law enforcement officials learned about it in their training seminars on the new code:

New Jersey Governor Brendan T. Byrne signed the code into law last August, but the public did not become aware of the ***buried sexual consent provision*** until recently, when questions were raised by Delaney and other law enforcement officials who learned of the lower consent age during a seminar on the code.⁵⁴ (emphasis added).

According to an April 3rd, 1979 Trenton Times article, the National Organization for Women's Rape Task Force drafted the sexual offenses provision of New Jersey's new code. Their stated purpose in lowering the age was to protect consensual sex among children. It "was in no way meant to legalize sex between a 13 year old and a 45 year old."⁵⁵ In May, the assembly voted to raise the age of consent back to 16. Assemblyman Minority Leader James Hurley, described the scenario: "What is so fantastically interesting to me is the real impetus for this bill comes from the public. When the mothers of this state found out, they rose up in arms."⁵⁶

Sentencing for All Crimes Reduced

Under the current New Jersey Code of Criminal Justice, Title 2C, the following penalties are prescribed for crimes:

Crime of the first degree	10 to 20 years
Crime of the second degree	5 to 10 years
Crime of the third degree	3 to 5 years
Crime of the fourth degree	Not to exceed 18 months

A cost analysis of programs under the new criminal code would be valuable information indeed for tax payers who carry the burden of sweeping changes that are a part of evolving law. On October 14, 1976, Franklin Gregory wrote in the Star Ledger about the need for a close examination of the costs of corrections and law enforcement:

Since November, 1963, to June of this year, [1976] 4,032 new employees increased the state payroll roster to 58,352...during a serious recession when industry was cutting back or holding firm...New Jersey already has far too much governmental structure providing far too little service. The bigger government gets, the less efficient...594 law enforcement agencies and 524 municipal courts are excessive for a state our size and should prod a top to bottom review, beginning with state agencies.

Conclusion: A Failed Experiment

New Jersey's hard data are in. The legal efforts of the last fifty plus years by the sexual freedom cadre of legal academic elites has been to co-opt the sexually

⁵⁴ Sex Consent Rule Stirring Outrage. Trenton Times, April 25, 1979.

⁵⁵ Sex-At-13 Consent Law Defended. Trenton Times, April 3rd, 1979.

⁵⁶ Assembly brings Age of Sex Consent Back to 16. Trenton Times, May 4, 1979.

conservative public direction of the 1930s which sought to restrict sexual conduct and eliminate sex offenders in society by permanent incarceration, up to and including capital punishment. The effort of this Kinsey-led, Model Penal Code cohort was highly successful, leading to pandemic rates of child sexual abuse and rape far beyond anything imaginable 50 years ago. In support of the criminal code revision in New Jersey, Attorney General Hyland said,

[R]ising crime rates compel an intensive re-examination of the criminal law to ensure that the law enforcement resources are used as effectively as possible. He added, 'Legislative definitions of criminal conduct and criteria for distinguishing greater and lesser degrees of criminality must be reviewed.'⁵⁷

Twenty five years later, these words are more true for New Jersey than ever, as the crime rate has skyrocketed to exorbitant proportions compared to Attorney General Hyland's era. It is impossible now to even measure the true problem of rape and child abuse in New Jersey. With so many different names and grades, and plea agreements that move the crime to simple assault and other categories, or make felonies misdemeanors, in addition to low incidence of reporting, it is safe to say the statistics that paint a cheery picture of diminishing crime are dreams unrooted in reality. Two stories from the Bergen Record from July 6th and July 8th, 1999, explain how the New Jersey Crime Reports omit sex cases. Though the word "rape" is not in the New Jersey statutes, crimes may be reported as such in the uniform crime reports if the victim is female. However, the following sex crimes are not reported at all by New Jersey Police: attacks on males by males, forced oral sodomy on males or females, statutory rape, and sexual misconduct. The Record states that there are 28 different sex charges used by North New Jersey Police in 1996 and 1997. A Hasbrouck Heights lawmaker is quoted, "If we don't see the crimes in print, then we're going to think they're not happening any more."⁵⁸ Statistics over the last decade have reflected a general decline in the incidence of rape, and child abuse. However the FBI uniform crime reports quit reporting statutory rape in 1957, and have eliminated children under 12 from their reports. More than half of forcible sodomy victims are under 12.

The Associated Press on December 17, 2001 reported that violent crime had dropped again for the ninth year. And where does that data come from? Police Departments across the country just like New Jersey's. "The FBI crime report is based on data reported voluntarily from 17,000 local and state law enforcement agencies, which represent 94% of the U.S. population."⁵⁹ As the media reports the numbers games, it is wise for a concerned public to exercise caution in response to their optimism. The redefinition of crimes is an effective cover up for a significant increase in violence over the past 50 years.

Emphasizing their foundation of moral relativism, the assertion of the New Jersey Revision Commission was that no one could question their goal:

No one has a monopoly on truth. Any one who has an open mind can learn from those who disagree with him. I would hope, however, that as we undertake this reform that all could pledge themselves to the same goal: a comprehensive new Code. Differences should be

⁵⁷ Assembly Alerted to Act on Penal Code Package. Newark Star Ledger, February 10, 1976.

⁵⁸ N. J. Crime Reports Omit Many Sex Cases. The Bergen Record, July 6, 1999. State Lawmakers Urge Redefining of Sex Crime. The Bergen Record. July 8, 1999. Available on line at www.bergen.com.

⁵⁹ "Violent Crime Continues to Drop. The Washington Post. December 17, 2001, p. A06.

confined to particular issues and not generalized to the Code itself. Otherwise, I fear our task will be in vain.⁶⁰

We have learned from those who disagree with us. The malicious skewing of facts has taught us that when sex is at issue, "science" often serves special interests and secret personal interests, to the detriment of "truth." When the public conceded truth to the science monopoly via the Kinsey Reports, it reaped disaster. Law points the way back to the restoration of protections for law abiding citizens and the deterrence of crime through absolute penalties for the violation of women and children.

⁶⁰ Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, p.xvii.

Eliminating Protections for Women and Children In the Kentucky Penal Code

A Brief History of a State Criminal Code Revision

Introduction

The Commonwealth of Kentucky was admitted into the Union as the fifteenth state in 1792, and its criminal law was drawn from the English common law. According to the report of the Kentucky Crime Commission, who was appointed for the purpose of preparing a revision of Kentucky's criminal law, "Kentucky's substantive criminal laws [had] never been the subject of a complete revision."¹

Kentucky's Revision Process

In 1968, the General Assembly ordered a revision of Kentucky's Criminal law, and assigned the job to the Kentucky Crime Commission and the Legislative Research Commission. There were 12 members of the advisory panel who were chosen by recommendation of state groups including the Kentucky Bar Association, Commonwealth's Attorneys Association, County Attorneys Association, Kentucky Judicial Conference, and the County Judges Association. Law School deans from the University of Louisville and University of Kentucky were also asked to serve.

Members of the Kentucky Criminal Code Revision Commission

Judge John S. Palmore, Kentucky Court of Appeals,
Attorney General John B. Breckinridge
Circuit Judge Robert O. Lukowsky
County Judge Caswell P. Lane
County Attorney Gladys Williams Black
Attorney James C. Jernigan
Attorney Frank E. Haddad, Jr.
Commonwealth's Attorney Frank Benton
Attorney Joseph R. Huddleston
Dean Emeritus W. L. Matthews, Jr., University of Kentucky
Dean James R. Merritt, University of Louisville

The Drafting Staff consisted of four members:

Robert G. Lawson, Acting Dean, University of Kentucky School of Law
Kathleen F. Brickey, Judicial Conference and Council Executive Director
Carl Ousley, Jr., First Assistant, Commonwealth's Attorney
Paul K. Murphy, Attorney

In addition, the Legislative Research Commission appointed one delegate, Norman W. Lawson, Jr., Attorney.

¹ Report of the Kentucky Crime Commission Kentucky Penal Code Final Draft, November, 1971.

Authority for Changes in Kentucky's Common Law

In their 1971 report, the commission identified their resources for revision: "The Model Penal Code, prepared by the American Law Institute from 1953 to 1962, was used extensively. Recent criminal law revisions by several states were also used, for revision is a growing movement. Some one dozen states have already enacted revised codes, 15 others have completed the revision process."²

The commission describes Kentucky law as "Haphazard coverage, with gaping loopholes in some areas and overlapping coverage in other areas. Law beset by shortcomings, inequities and, in some cases, nonsense." The problem as they saw it was, "But as the times changed, the laws remained."³

The Kentucky Crime Commission completed the final draft of the Kentucky Penal Code in November 1971. It was enacted by the 1974 General Assembly, effective January 1, 1975. Articles from the Kentucky Law Journal from 1968 through 1970 explain how the Kentucky Criminal Code revisions aligned with the Model Penal Code of the American Law Institute, giving credence to the fraudulent research of the Kinsey Reports and the false data from Karpman, Guttmacher, Slovenko, and others that therapy could cure criminal behavior.

The American Law Institute Model Penal Code as Authority for Kentucky's Revision

In 1968, the Kentucky Law Journal published "Classification and Degrees of Offenses—An Approach to Modernity."⁴ Author John Eldred argues that "the criminal laws of most states can be described as irrational, and at best, disorganized." Kentucky's "sweeping reformation," says Eldred, is based on states' revisions and the Model Penal Code:

The Crime Commission has thoroughly studied and will use as guidelines the recent revisions in New York and Illinois, the proposed revisions in Michigan and Delaware, and the Model Penal Code.⁵

Herbert Wechsler, chief author of the MPC, reports that "the new drafts in Delaware and Michigan look to the New York Law as well as to the Model Penal Code,"⁶ so in effect, New York and Illinois were the major state contributors to Kentucky's Criminal code.

Eldred names in particular the influence of the MPC, "Of course, all current revision of criminal codes has been given great impetus by the Model Penal Code, which was produced after a decade of sustained labor."⁷ The state revisions named by the Crime Commission also attest to the Kinsey Reports' authority in Kentucky when their criminal code revision history is considered.

² Renkey, Leslie E. Kentucky Penal Code, Final Draft, November 1971. Kentucky Crime Commission. Introduction, page unnumbered.

³ Id.

⁴ Eldred, J. S. 1968. Classification and degrees of offenses—An approach to modernity. *Kentucky Law Journal*, 57. 491-507.

⁵ Id., 491, fn 3.

⁶ Wechsler, H. Codification of Criminal Law in the United States: The Model Penal Code. *Columbia Law Review*. Vol. 68, 1968, 1428.

⁷ Eldred, *supra*, 493.

Illinois Penal Code cited in Kentucky

As one of the earliest state revisions, and the first to adopt the MPC in full, Illinois statutes are frequently cited in the sex offense chapters of other state codes.⁸ From our prior discussion of the Illinois Commission, you may remember that Francis Allen chaired the workgroup, "Framework for Sex Offender Laws, on which Kinsey and Pomeroy personally served. Professor Allen continued his campaign for law reforms, and his enamored views of Professor Kinsey are reflected in his lecture at Northern Kentucky University some 30 years after their mutual ties to the Illinois Commission. Allen declares the ALI Model Penal Code "one of the most significant intellectual contributions to American law during the past half-century."⁹ In accordance with Kinsey's crusade to abolish sex offense laws, Allen describes the regulation of private conduct as "oppressive", and that "criminal sanctions have been resorted to during periods when the older consensus has broken down, and when the proponents of repression are experiencing grave anxieties about the survival of the traditional moral codes."¹⁰

The Kinsey Reports Connection to Kentucky's Sex Education

The Louisville Voice-Tribune reported on the history of sex education in Louisville's public schools on August 16, 2000. According to the report, sex education was introduced in Kentucky in all twelve grades beginning in 1964, the year the Sex Information and Education Council of the United States (SIECUS) was founded. Today, state guidelines require "Family Life Education" from kindergarten through twelfth grade, addressing family living, decision making, physical development and care, interpersonal relationships, communicable diseases, personal safety and AIDS and sexually transmitted diseases. The city of Louisville used materials from SIECUS, the educational arm of the Kinsey Institute whose initial funding came from the Playboy Foundation.¹¹

As detailed in the Commission Reports (see chapter 3), sex education was promoted by the earliest fact finding committees in Illinois, California, and New Jersey, as a crime prevention technique. As the primary source for sex education curriculum, SIECUS has promoted the use of "sexually explicit materials" for school children, and was declared by Time Magazine to be "part of the pro-incest lobby."¹²

Illinois Revision Expansive To All Criminal Law

The Illinois law sets the stage for renaming rape by the amount of force used, and creating categories useful for plea bargaining a rape charge to a misdemeanor. As Wexler, secretary of the committee to rewrite Illinois' code reports,

"The felony provision of Article 11-4 is directed to the more gross abuse of the young and the subjective guilt of the accused...Article 11-5 [a misdemeanor] is patterned after the felony provisions of Art. 11-4 but is

⁸ Bowman, Charles H. The Illinois Criminal Code of 1961 and Code of Criminal Procedure of 1963. *Journal of Law Reform*. Vol. 4, 1970-71, p. 470.

⁹ Allen, F. A. Majorities, Minorities, and Morals: Penal Policy and Consensual Behavior. *Northern Kentucky Law Review*, Vol. 9, 1982, p. 2.

¹⁰ *Id.*, p. 11.

¹¹ E.E. Shelp. 1987. *Sexuality and Medicine*. Vol II. Reidel Publishing. Forward by Christy Helner. Quoted in Reisman, J. A. *Kinsey: Crimes and Consequences* (2d ed.). Crestwood, KY: Institute for Media Education, 2000, p. 177.

¹² SIECUS February/March 1996 Position Statement on Sexually Explicit Materials. Time Magazine, April 14, 1980. "Attacking the Last Taboo."

stripped of concern for the subjective guilt of the accused. It is intended to operate as a lesser included offense to Article 11-4."¹³

This grading of offenses as either a felony or a misdemeanor is new in the law with the ALI MPC and was intended to be used in plea bargaining, so the predator can plead guilty to a lesser charge (misdemeanor) and avoid standing trial for a felony behavior.¹⁴ This means that a predator, who rapes victim(s) without causing visible bruising or "serious" physical injury, may plead guilty to the lesser crime. To qualify for the charge of a lesser offense only requires that non-consent be established by the victim. Under the new code "non-consent" is less than proof of "forcible compulsion" by the attacker. By accepting the plea bargain, she does not have to prove the extent of her resistance and the predator admits only that she did not consent, and gets penalized for the misdemeanor lesser offense. The net effect of the ALI MPC's new crime grading system was to usurp the constitutional power¹⁵ invested in the American jury system by an expert class both legal and other; to weaken protections for women and children, and to attempt to "reduce" crime by declaring criminal acts no longer criminal.

Creating Degrees of Rape to Reduce Charges In Kentucky

Using rape as an example of need for revision, Eldred writes in the Kentucky Law Journal, "To have only one penalty for all types of rape . . . is patently illogical, and indeed unfair."¹⁶ Concern for the perpetrator is expressed, "An orderly rational code which defines specific degrees of crimes and sets punishments for those degrees based on specific conduct will prevent judges or juries from giving out inordinately heavy sentences."¹⁷ **This is a common theme in the MPC revision era. The American jury system is attacked as harsh, unfair, and incapable of determining justice. The offender will inevitably be mistreated. A new expert class would determine the definitions of crime and justice. The taxpayer would pay the bill, and the rehabilitation of the predator whose actions are explained in victimized terms, take priority over the safety of women and children.**

One effect of the implementation of degrees of a single crime (i.e., rape with additional violence vs. violent rape), will be a reduction of charges through plea-bargaining. Explains Eldred,

Since there will be more options open, the defendant may be encouraged to plead guilty to a lesser degree of the offense charged . . . Further, the grading of crimes can aid the prosecution in obtaining convictions—in cases where the prosecution might be unable to prove all the elements of the offense, he can drop to a lower degree with less elements to be proved.¹⁸

¹³Wexler, Morris. Sex Offenses Under the New Criminal Code. Illinois Bar Journal, Vol 51, October, 1962, 154.

¹⁴Heath, R. L. Plea Bargaining—Justice Off the Record. Washburn Law Journal.Vol. 9, 1970.

¹⁵U.S. Constitution 6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

¹⁶Eldred, supra., fn 4, 494.

¹⁷*Id.*, 495.

¹⁸*Id.*, 495-496.

This provision would have a great impact on statistics regarding rape, since lesser charges of assault or misdemeanor sexual misconduct, previously chargeable as rape, would no longer be reported as rape.

The Kentucky Revision Commission states that it is an element of every offense defined in this chapter [Chapter 11: Sexual Offenses] that the sexual act was committed without consent of the victim. Lack of consent results from "forcible compulsion." This is defined as physical force sufficient to overcome earnest resistance.

Force falling short of these standards, while possibly establishing some form of assault or coercion, does not render the victim's submission nonconsensual for purposes of a sex crime prosecution based on "forcible compulsion."¹⁹

So while women were being advised not to fight back against a predator to avoid being murdered, the law demanded they prove their resistance was "earnest," or "utmost" or consider a simple assault charge, which in most states is handled as a misdemeanor.

The penalty for first-degree rape is labeled "extreme" and the Model Penal Code is cited to support a legal difference between raping a friend and raping a stranger. Rape could only be charged when there is "forcible compulsion overcoming earnest resistance." Eldred cites to Morris Ploscowe (1951) for his treatment of rape. Ploscowe, one of the Model Penal Code's principle authors²⁰, argued—based on Kinsey's findings—that "when a total clean-up of sex offenders is demanded, it is in effect a proposal to put 95% of the male population in jail." Ploscowe continues,

One of the conclusions of the Kinsey report is that the sex offender is not a monster . . . but an individual who is not very different from others in his social group, and that his behavior is similar to theirs. The only difference is that others in the offender's social group have not been apprehended. This recognition that there is nothing very shocking or abnormal in the sex offender's behavior should lead to other changes in sex legislation . . . In the first place, it should lead to a downward revision of the penalties presently imposed on sex offenders.²¹

Ploscowe followed along with Kinsey who reported rape was harmless really and his conclusion was that the "hysteria surrounding these events [abuse] usually did more harm than the events themselves, which sometimes gave pleasure."²² The Michigan criminal code is cited by Eldred to show that the intent of the aggressor is a factor in determining the seriousness of the crime. He wrote "it would be unnecessarily harsh to subject a person to a severe penalty for a mere attempt to inflict minor injury with a knife or club."²³ Eldred concludes by saying that the "anti-reformers" will resist because of the confusion these complex reforms will bring. Yet he claims the "complex reforms" have lessened confusion in Louisiana and Wisconsin and expects Kentucky to benefit by adopting the reforms:

¹⁹ Kentucky Penal Code, Final Draft, November, 1971. Kentucky Crime Commission, section 1105.

²⁰ For a complete discussion of the Model Penal Code's reliance on the Kinsey Reports, see Reisman, J. A. 2000. Kinsey: Crimes & Consequences. (2nd ed.). Crestwood, KY: Institute for Media Education.

²¹ Ploscowe, M. 1948. Sexual patterns and the law. In Albert Deutsch (Ed.). Sex Habits of American Men. A Symposium on the Kinsey Report. New York: Prentice Hall, 133-134.

²² Jonathan Gathorne Hardy, *Sex the measure of all things*, p. 376.

²³ Eldred, supra, 503.

Updated laws, laws which are made efficient, accurate, and fair by the use of degrees are sorely needed, and with their adoption Kentucky will take a giant stride forward.²⁴

Using the Model Penal Code to Protect the Predator

Robert G. Lawson, Chair of the Kentucky Penal Code drafting project for the Kentucky Crime Commission²⁵ wrote the Kentucky Law Journal article, "Criminal Law Revision in Kentucky." This interim report of the work of the Kentucky Crime Commission cites Harvard Professor Herbert Wechsler, and the privately produced ALI Model Penal Code fifteen times to delineate degrees of offense for homicide and assault²⁶. Wechsler claimed new "scientific" information justified leniency because the "penal law is ineffective, inhumane and thoroughly unscientific."²⁷ Lawson begins with a justification of the revision effort. "This effort is justifiable only if the existing law is defective and the revision will result in significant improvement in [criminal law] administration."²⁸

Lawson, like Wechsler, describes the then current criminal law as in lamentable condition, haphazard, overlapping, with gaps, and lacking unifying ideas.

"[T]he statutes are nearly impossible to comprehend and literally engulfed with uncertainty of application. In addition, and **perhaps more significantly**, the possibility of inequitable treatment among offenders . . . exists in almost every major classification of offense." (emphasis added)

The "inequitable" treatment of offenders once meant that a jury of ones peers would evaluate the individual details of a case, and mete justice within a penalty range based on the facts of each unique circumstance. One predator would receive the death penalty based on the hideousness of his act. Another would receive a minimum 10 year penalty based on the circumstances of an impulsive act. New in the therapeutic model is the concept that all predators should receive equal penalties, or light penalties with treatment. The writer considers "equitable" treatment of the aggressor more significant than clarity of law.

Citing the MPC, Chairman Lawson claims the major infirmity of Kentucky's criminal law is sentencing "unsupported by principled rationale." The criminal law in Kentucky makes a shift away from protecting the victim to sympathy for the offender. Kentucky revised law points away from the common law principles of the Old and New Testaments focusing on the criminal act and the victim toward the ALI MPC which heavily favors the criminal and his welfare. The judge and the uniquely American jury of one's peers is weakened.

John Palmore, the Chief Justice of the Court of Appeals of Kentucky, and later Kentucky supreme Court justice argues for the tax supported programs of the revision, which he terms an experiment in trial and error:

²⁴ *Id.*, 507.

²⁵ Although the article does not identify his position with the project, Lawson is identified as chair by the Kentucky Legislative Research Commission, phone conversation of 6/18/98.

²⁶ Lawson, R. G. 1969. Criminal law revision in Kentucky. *Kentucky Law Journal*, 58, 242-274.

²⁷ Wechsler, H. 1952. The challenge of a model penal code. *Harvard Law Review*, 65, 1103.

²⁸ Lawson, *supra*, note 37, 242.

Though I shy away from calling it an “experiment” (a term that conjures visions of wild eyed tinkers with explosive substances), government should not be held to standards of perfection that exclude the wholesome benefits of trial and error.²⁹

The worst was the great body of substantive criminal law was not in the statutes at all, as of course it never had been. It resided in the restless ocean of common law, some of it floating near the surface for everyday observation, and therefore quite familiar, and some of it virtually indefinable in the obscurity of the deep.

I have always been intrigued by the ancient fiction that every man is presumed to know the law. Ordinarily, presumptions bear some relation to probabilities, but not that one.³⁰

Lawson’s article also explains the impact on statistical reporting of violent crime. For example, “. . . it is possible for any event, including mere words, to arouse an extreme mental or emotional disturbance sufficient in nature and degree to reduce murder to manslaughter.”³¹ Is the Chairman of the revision committee advocating that harsh words would justify to a major extent the killer’s behavior? Can much of the variation in violence reported by the FBI and Department of Justice be explained by the redefining of crimes such as murder, assault, and rape? To advocate further protection for the predator, Lawson quotes comments from the MPC:

The question, in the end will be whether the actor’s loss of self-control can be understood in terms that arouse sympathy enough to call for mitigation in the sentence.³²

Rehabilitation by Experts Introduced by the Model Penal Code

In 1951, guided by the new thinking on criminals promoted in the ALI MPC and in the therapeutic professions, Judge Louis J. Jull of the Louisville Domestic Relations Court introduced a sexual psychopath bill into the Kentucky legislature patterned after that of the District of Columbia. Jull is quoted as saying:

Our greatest single problem is that of sex cases. We go by the theory that sexual perverts should be treated not as criminals but as what they are—sick people.³³

However, reflecting the gravity still accorded to the crime of rape in 1950, Jull makes an important exception, “A statement may not be filed against a person charged with rape, attempted rape, or murder, since these are serious offenses a person must stand trial regardless.”³⁴

Today’s Kentucky law provides a specialized treatment program for sex offenders, including the violent predator. (KRS 197.400). The program provides psychoeducational courses to include sex education and victim personalization; and social skills development to include assertiveness training, stress management, and

²⁹ Palmore, J. S. Preface to Symposium on Kentucky Penal Code. *Kentucky Law Journal*, 61(3), 1973, 623.

³⁰ *Id.*, 622.

³¹ Lawson, *supra*. Note 37, 257.

³² MPC section 201.3, Comment 5 at 48 (Tent. Draft 9, 1959).

³³ *Louisville Courier Journal*, August 14, 1951, page 1. “Jull Suggests Law Covering Sex Offenders”

³⁴ *Id.*

aggression management. Public funds may be given to private agencies to implement the program. At this time, costs to taxpayers in Kentucky are not available. However, a report of a similar program in Kansas listed costs of over \$50,000 per violent predator, with over one million dollars spent for unproven therapy.³⁵ A similar program was also reported in depth in Kansas.

Kentucky Revised Statute 441.047 provides for psychiatric care for every county jailed prisoner at taxpayer expense. In every case of felony conviction, the state requires a presentence investigation (KRS 532.050) of the sex offender which "provides to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment shall be considered by the court in determining the appropriate sentence." Typical of revisions based on the ALI Model Penal Code, the heinous crime committed does not determine the sentence. Rather it is the opinion of "experts", defined in Kentucky as "psychiatric observation and examination for a period not exceeding sixty (60) days."³⁶

Taxpayers also fund a treatment program for juvenile sexual offenders (KRS 635.500), and a Sex Offender Risk Assessment Advisory Board (KRS 17.554) which develops criteria for the presentence evaluation including assessment of recidivism risk, psychological or psychiatric profiles, amenability to sex offender treatment, and the nature of the required sex offender treatment. The tests currently used in Kentucky have a very low predictive accuracy. In the Kentucky Department of Public Advocacy's manual for mental health experts, a grim picture is painted asserting that "these measures are not 'administered,' nor 'psychological,' nor even 'tests' in the sense we have employed such terms in the past. The tests used are described as "extraordinarily difficult to score" and "subject to considerable inter-rater reliability issues, absent expensive and rarely-accessed specialized training." The manual goes on to describe Kentucky's mandatory 32-hour Sex Offender Risk Assessment Advisory Board training. A clinician who evaluates adolescent recidivism admitted directly to the conference attendees that "all currently available measures designed for that population had only 'face' validity, concluding that 'we're back to just going by our judgment.'"³⁷ Although experts freely admit there is no objective scientific foundation for evaluating sexual predators, there has been no suggestion that Kentucky taxpayers cease to support massive, complex, and expensive therapeutic programs.

Penalties Are Reduced Based On The Model Penal Code

In further support of the adoption of the ALI Model Penal Code, University of Kentucky Law Professor Roy Moreland wrote, "Model Penal Code: Sentencing, Probation and Parole" for the 1968 volume of the *Kentucky Law Journal*.

Moreland's purpose was to promote the use of the ALI Model Penal Code for reformation in Kentucky. He states:

. . . the most thorough and helpful [studies] are those of the American Law Institute's Model Penal Code. The following is an examination of Kentucky's sentencing provisions as they relate to comparable portions

³⁵ Report of the Kansas Department of Social and Rehabilitation Services, Commission on Substance Abuse, Mental Health and Developmental Disabilities, Violent Sexual Predator Program, June, 1999.

³⁶ KRS532.050. Presentence procedure for felony conviction. Amended April 11, 2000.

³⁷ Eric Y. Drogin, J.D., Ph.D. Mental Health and Experts Manual, Chapter 9. Kentucky Department of Public Advocacy, <http://www.dpa.state.ky.us>.

of the Code, with recommendations suggested by a comparison of the two."³⁸

Moreland proposes that sentencing, probation, and parole should follow the suggestions of the New York Revised Code and the ALI Model Penal Code, which he describes as "revolutionary" because of its degrees of crime and sentencing for both felonies and misdemeanors.³⁹ He gives as example, that willful murder, kidnapping where the victim is killed, and perhaps forcible rape upon a child of ten or under could be classified as felonies in the first degree.⁴⁰ Again, citing the Model Sentencing Act, the defendant should not be sentenced until he is evaluated as to whether he is suffering from a "severe personality disorder" indicating a propensity toward criminal activity. Moreland says he is "enthusiastic" about a system that provides ninety days for personality diagnosis before being sentenced to a felony where he has inflicted "serious bodily harm."⁴¹

The Kentucky law professor vacillates between the prevailing bias within the justice system for criminal rehabilitation and the fact that it has resulted in skyrocketing crime:

it is clear that the fundamental principle is now that of reclamation and reformation . . . The reclamation principle is very persuasive. On the other hand, one is apt to be somewhat cynical about reforming criminals, particularly in this time of tragically increasing crime rates. In the immediate past, probation and parole have been increasingly used, but during that same period, crime has also increased by leaps and bounds."⁴²

Moreland supports the ALI MPC section 7.01: Criteria for Withholding Sentence of Imprisonment and for Placing Defendant on Probation and he reports that adult courts have heeded the counsel of the therapeutic professions and:

become somewhat analogous to the present state of affairs in juvenile courts, where every offender is allowed to commit two or three offenses, some of them serious, before the law imposes imprisonment. . . Too many of them [adult offenders] use the opportunity to commit later crimes. An offender has to commit several crimes, or one violent, serious one, before society is protected from him."⁴³

Moreland concludes, "Since Kentucky has adopted by statute most of the recommendations of the Model Penal Code relating to parole, and since these are largely in accord with what are considered good practices, it is difficult to suggest new or novel procedures for the state."⁴⁴ This comment is especially hard to understand now decades later when within Professor Moreland's recollection is the lower crime rates enjoyed under the only recently discarded common law standard.

The criminal code revision adopted in 1974 was amended in 1998, 1980 and 1976. Current penalties as of July, 2000 are as follows:

³⁸ Moreland, R. 1968. Model Penal Code: Sentencing, probation, and parole. *Kentucky Law Journal*, 57. 55.

³⁹ *Id.*, 63.

⁴⁰ *Id.*, 65.

⁴¹ *Id.* 66, 67.

⁴² *Id.*, 69.

⁴³ *Id.*, 71.

⁴⁴ *Id.*, 81.

Class A Felony	20 to 50 years or life
Class B Felony	10 to 20 years
Class C Felony	5 to 10 years
Class D Felony	1 to 5 years
Class A misdemeanor	90 days to 12 months
Class B misdemeanor	1 to 90 days
Violation	Fine only or punishment other than death or imprisonment

Kinsey Reports as Authority For Kentucky's Reform

As in other states when the penal codes are prepared for introduction to the legislature and/or the larger membership of the state bar including prosecutors and those dealing directly with crime and criminals, the *Kentucky Law Journal* devoted an entire issue in 1973 to a "Symposium on the New Kentucky Penal Code."⁴⁵ Drafter Kathleen F. Brickey writes the Introduction to the Symposium. She describes her work and that of the drafting team:

Drawing heavily upon the Model Penal Code and recent criminal law revisions of other states, a team of four drafters worked under the guidance of a twelve member advisory committee in an attempt to bring order and rationality to the state's substantive law of crimes.⁴⁶

Kentucky joins the many other states influenced by The Kinsey Report's dishonest research, as it's leaders in law and justice begin to adopt the Kinsey-laden ALI MPC containing Kinsey's legally constructed "grand scheme" to undo America's founding protections for women and children. Brickey begins her lengthy article with a quotation from *The Honest Politician's Guide to Crime Control*. That book is also her singular source in reference to sex offenses.⁴⁷ Morris and Hawkins, authors of *The Honest Politician's Guide to Crime Control*, also have a singular source for their discussion of sex offenses.

Under the book's section on Adultery, Fornication and Illicit Cohabitation, Morris and Hawkins regurgitate Kinsey's flawed and biased findings for lawmakers across the country:

- according to Kinsey, 95 percent of the male population is criminal by statutory standards.⁴⁸
- Under the section "Homosexual Acts" Morris and Hawkins' sole authority is, "The Kinsey report states: 'There appears to be no other major culture in the world in which public opinion and the statute law so severely penalize homosexual relationships as they do in the United States today.'⁴⁹
- Their only further evidence, "though the Kinsey report maintains that 'perhaps the major portion of the male population, has at least some homosexual experience...'⁵⁰

⁴⁵ Kentucky Law Journal, Vol. 63, No. 3, 1973.

⁴⁶ Brickey, K. F. An Introduction to the Kentucky Penal Code: A Critique of Pure Reason? *Kentucky Law Journal*, 61(3), 1973, p. 625.

⁴⁷ Id., FN37.

⁴⁸ Morris, N. and Hawkins, G. *The Honest Politician's Guide to Crime Control*. Chicago: University of Chicago Press, 1970, p. 16.

⁴⁹ Id., p. 19.

⁵⁰ Id., p. 20.

Similarly, Morris and Hawkins introduce the subject of prostitution with, "According to Kinsey almost 70 percent of the total white male population of the United States has some experience with prostitutes."⁵¹ To support their pornography and obscenity views, they write, "But the exhaustive Kinsey Institute study of 15,000 sex offenders found no evidence that pornography was a causal factor in the offenses."⁵² Brickey's reliance on Morris and Hawkins for sex offense law is reliance on the now proven junk science of the Kinsey Reports.

Redefining Rape based on the Model Penal Code

In 1948, Kentucky Revised Statutes, based on the common law, provided stringent protection for women and children against rape. The assailant was often deterred from such acts because he could receive the death penalty, life without parole, or a sentence of 10 years to life. However, based on the guidance of the ALI MPC, crime would now be graded by "age" of victim and offender and "use of force" by the offender. The Kentucky Committee redefined rape of women and carnal knowledge of children as seven graded crimes in the new criminal code. The punishment is graded according to the use of forcible compulsion, the capacity or incapacity of the victim to consent, the age of the victim, and the age of the "actor," a word considered less harsh by the authors of the ALI Model Penal Code and introduced by ALI Model Penal Code for the sexual predator.

Kentucky Common Law Definition of Rape

The following 1948 Kentucky rape statute provides an example of the simplicity of the common law which guided Americans, "citizen lawyers," as they were known in keeping the country's laws themselves, understanding the law and the penalty when they transgressed, and serving in a court, on a jury "of one's peers," when asked to determine the guilt or innocence of one accused of a crime(s). It reads:

435.090 Rape of female over 12. Any person who unlawfully carnally knows a female of and above twelve years of age against her will or consent, or by force or while she is insensible, shall be punished by death, or by confinement in the penitentiary for life without privilege of parole, life, or not less than ten nor more than twenty years.

435.100 Carnal knowledge of female child under 18 with her consent or of male child under 18.

Penalties: Under 12: min.20, max. 50 years, or death
12 to under 16: 5 to 20 yrs.
16 to under 18: 2 to 10 yrs,
or if prosecutrix is immoral, a fine of up to \$500 .

When male is 17-under 21, and female 18-under 21,
fine up to \$500.

The law protected girls up to the age of 18 from premature and harmful exposure to sexual aggression, with a prison sentence imposed where the victim was a child under 18, or a victim 18 and older did not consent.

⁵¹ Id.

⁵² Id., p. 23.

Most Rape Crimes in Kentucky Are Now "Sexual Misconduct"

The criminal code revision enacted in 1974, based on the ALI Model Penal Code followed the latest in crime grading by providing for first, second and third degree rape, first, second and third degree sexual abuse, and sexual misconduct. (See Appendix, Comparison of Kentucky Rape Law, 1948, 1978, 1999). First degree rape (KRS 510.040) is redefined as engaging in sexual intercourse with another person by forcible compulsion. The crime of rape is a violent aggressive act and, under the common law standard prior to the Kentucky revision, the victim did not have to prove that the predator was the aggressor. That was assumed by the nature of the crime of rape. The Report of the Kentucky Crime Commission explains what they mean by the new standard of "forcible compulsion" which shifts the burden of proof on the victim to prove that she was raped:

In brief, a person is not deemed "forcibly compelled" to submit to a sexual act unless there is physical force sufficient to overcome "earnest resistance," or intimidation involving a threat of physical injury or kidnapping...Force falling short of these standards, while possibly establishing some form of assault or coercion, does not render the victim's submission nonconsensual for purposes of a sex crime prosecution based on "forcible compulsion."⁵³

What the Crime Commission does not point out in its comments is this-- that a rape in which the victim does not prove forcible compulsion is now redefined as "sexual misconduct", which is a mere misdemeanor under the new revision. In effect, the Kentucky law standard went from the potential for the death penalty for rape to the weak and permissive standard of misdemeanor/probation for the crime of rape-- **overnight!**

On September 26-27, 1974, a Seminar on the Kentucky Penal Code was held at the University of Kentucky Law School to explain the new provisions. Commonwealth Attorney Patrick Malloy lectured on sex offenses, and Bob Lawson, from the drafting staff, answered questions. It is impossible not to hearken back to J. S. Eldred's 1968 comments in the *Kentucky Law Journal* when he said the "anti-reformers" will resist leaving the common law standard because of the "confusion these complex reforms will bring."⁵⁴ Attorney Malloy addressed the "confusion" those in the law may have with the new rape/sexual misconduct provisions of the new code:

The section that talks about sexual misconduct is toward the end of this chapter and seems to be a 'catch-all' and you won't find these ages, so hold onto this paper because you only can arrive at the ages that are stated in it by process of sort of deductive thinking.⁵⁵

Misdemeanor Recommended for All Rape Charges

Instructor Guy Bayes of the Kentucky Law Enforcement Council points out that section 11 of the code "provides for the use of the original Commentary to interpret provisions of the Code."⁵⁶ Just when one wonders if rape penalties could become more lax, the 1974 commentary by the Kentucky Crime Commission published in the

⁵³ Renkey, Leslie E. Kentucky Penal Code, Final Draft, November 1971. Kentucky Crime Commission, Sec. 1100.

⁵⁴ Eldred, J. S. 1968. Classification and degrees of offenses—An approach to modernity. *Kentucky Law Journal*, 57. 491-507.

⁵⁵ Report of Seminar on Kentucky Penal Code, September 26-27, 1974, Prepared by the Office of Continuing Legal Education, University of Kentucky College of Law, p. 78.

⁵⁶ Analysis of New Kentucky Penal Code. Kentucky Law Enforcement Council, June 21, 1972, p. 3.

current Criminal Law of Kentucky recommends that sexual misconduct become the plea bargaining offense for virtually all sex offenses:

KRS 510.140 represents the basic crimes of rape and sodomy and, therefore, includes all of the higher degrees of each of these crimes. It provides a useful plea-bargaining tool for the prosecutor in certain cases even though some degree of forcible compulsion or incapacity to consent may be present.⁵⁷

Attorney James Gaynor further argued in a 1973 *Northern Kentucky Law Review* that sexual misconduct should be used for plea bargaining to avoid the "stigma" the offender would suffer by a rape charge.⁵⁸ In their zeal to protect the reputation of the offender, it is beyond the scope of our research at this time to determine what portion of violent rape is actually "plea-bargained" to a misdemeanor, by attorneys who agree with Gaynor and the authors of the ALI MPC, based on the recommendation of the revision committee. The option is published as indicated in Kentucky Revised Statutes today.

Kentucky's Misdemeanor Rape Found in New York Law

The source of abandonment of sex offense felonies is found in the Penal Code of New York, which the revision commission mentioned first as a resource for Kentucky law revision. MPC Author Morris Ploscowe, a New York magistrate and professor at the New York University Law School, was cited in the general overview of law revision as declaring statutory rape "a fiction."⁵⁹ The Kentucky Revision Commission, whose comments are still printed in the current Kentucky Revised Statutes, closely paraphrases Ploscowe's comments on "sexual misconduct" in the context of New York criminal code revision. Ploscowe writes,

[T]he new Penal Law has created a crime labeled "sexual misconduct" which is designated as a Class A misdemeanor...A person is guilty of sexual misconduct under the new statute if (1) being a male he engages in sexual intercourse with a female without her consent; or (2) he engages in deviate sexual intercourse with another person without the latter's consent...Sexual misconduct would then include all offenses covered by the three degrees of sodomy as well as the three degrees of rape in the new Penal Law...The inclusion of sexual misconduct, as an offense in its present form in the new statute, appears to be a device to make the prosecution of sex offenses easier. The prosecutor can seek an indictment for felonies of sodomy or rape and then reduce the charge to sexual misconduct upon the defendant pleading guilty thereto. Thus the severe penalties provided for rape and sodomy will probably have little application in practice.⁶⁰

New York Penal Code cited in Kentucky

Both New York and Illinois began their criminal code revisions of sex offense law with the reports of "fact-finding" commissions. A Citizen's Committee on the Control of Crime reported on the victims of sex crime from 1930 to 1939 in which the "average age of these 1,395 victims was 13 years, 8 months."⁶¹ Reporting on the New York

⁵⁷ 1998-99 Criminal Law of Kentucky, selectively annotated. West Group, p. 915.

⁵⁸ Gaynor, James K. Criminal Codes: Kentucky and Ohio. *Northern Kentucky State Law Forum*. Vol. 1, 1973, p. 118.

⁵⁹ Ploscowe, supra., fn 40.

⁶⁰ Ploscowe, M. Sex Offenses in the New Penal Law. *Brooklyn Law Review*, vol. 32, 1966. pp. 280-281.

⁶¹ Ludwig, Frederick J. Control of the Sex Criminal. *St. John's Law Review*. Vol. 25, Dec. 1950, p. 203.

Mayor's Committee studying 3,295 defendants, only one third of the offenders were convicted for the felony charged, and the remaining two thirds pleaded guilty to misdemeanors, 1,895 pleading guilty to the misleading nonsexual offense of third degree assault. Discussing the therapeutic reaction to these crimes, St. John's Law Review states,

It was their expert opinion that nearly all sex crimes were committed by "psychopathic personalities"; that such psychopathic personalities will continue to commit sex crimes until they are "cured"; that they should not be punished because they have no control over their impulses and are not really responsible for what they do; and that their diagnosis, segregation, treatment and release are the exclusive function of the psychiatrist.⁶²

The Citizen's Committee recommended that the Mayor appoint a committee to make a more thoroughgoing analysis of the problem of sex offenses, and as a result the New York Mayor's Commission was appointed, with MPC author Morris Plowcowe as reporter and consultant.⁶³ Tragically, the citizens who were gravely concerned about sex crime in New York were scorned by the Mayor's Commission, whose "experts" denied the predator's responsibility for his behavior.

Plowcowe's revealing article on the New York law revision explains the lessening of penalties that occurred in Kentucky after examining the New York Statutes. Plowcowe writes,

In our opinion, a girl at puberty fully understands what she is doing when she engages in an act of sexual intercourse and the fiction of non-consent, which the law sets up, does not correspond with the facts.⁶⁴

The comments of the Kentucky Revision Commission on sexual misconduct are a clear paraphrase of Plowcowe's discussion of the New York Law regarding sexual misconduct, and are in force in current Kentucky law⁶⁵

Kentucky's Protections for Women and Children Today

Following the national pattern, Kentucky relaxed and abolished common law protections shifting the law's focus from the unchanging human nature to the "modernity" of changing times. The impetus for reform came at a time when national and Kentucky groups were calling for stricter laws against sexual predators and greater protection for women and children on the heels of the Kinsey Reports. On June 7, 1952, the Jefferson County grand jury announced its concern for the treatment of sex crime. *The Louisville Courier Journal* reported, "The jury report noted, 'we have been shocked at the prevalence of perversion and sex offenses against children, also at the slight punishment meted out.'" The jury recommended, "All adult sex offenders be prosecuted vigorously without exception in the Police Domestic Relations, County, and Circuit courts."⁶⁶ The front-page headlines in the summer of 1952 give us an insight into the no-nonsense tenor of the public attitude in Kentucky toward sexual predators, "Grand Jury Asks Stiff Prosecution of Sex

⁶² Id., p. 204.

⁶³ Report of the Mayor's Committee For the Study of Sex Offenses. 1939, p. 5.

⁶⁴ Plowcowe, Morris. Sex Offenses in the New Penal Law. *Brooklyn Law Review*, Vol. 32, 1966, p.274.

⁶⁵ Id., pp. 280-281.

⁶⁶ *The Courier Journal*, July 3, 1952, p. 1, column 1.

Offenders," "Jury Favors Special Place For Sex Misfit," and "Report Declares Courts Too Lenient With Persons Who Repeat Offenses."⁶⁷

The legal elites claimed the opposite as true. John Palmore, chief justice of the Court of Appeals of Kentucky, said the 1971 draft of the penal law revision

would be generally acceptable to the public. As such, from a substantive viewpoint it is a conservative document in that with rare exceptions it reflects familiar, traditional philosophies and avoids substantial departure from what the members of the reviewing committee, based on their broad variety of experience in public life, considered to be the attitudes of the average man in the street. It was his ideas, as we conceived them to be, and not our own, that the review committee tried sincerely to apply as its criterion of judgment.⁶⁸

At this year's graduation ceremonies at the University of Louisville's Brandeis School of Law, Joseph Lambert, Chief Justice of Kentucky's supreme Court announced another era of reform in Kentucky's state law. The Courier Journal reported these propositions by Justice Lambert:

There is now a definite trend in the direction of therapeutic justice, a concept that courts and lawyers have a role in problem solving, not simply winning or losing...In Kentucky, we have made a major commitment to family courts...and I intend to urge passage of the constitutional amendment so that the expansion of family courts can continue...We are now addressing the dreadfully complex issues associated with multi-disciplinary practice and multi-jurisdictional practice, and I must tell you that these are among the most intractable issues on the horizon...With **each innovation and each experiment**, courts are learning more...⁶⁹ (emphasis added).

True to Justice Lambert's word, the proposal for a separate Family Court system in Kentucky appeared on the ballot in November, 2002, and was passed. We as taxpayers will now face the costs of a dreadfully complex multi-disciplinary court system in which criminal acts are only a minor consideration. Disposition must be met with psychiatric evaluation, anger management, victim assistance, rehabilitation programs, etc., managed by psychiatrists, psychologists, social workers, probation officers, and a host of support staff to implement the Innovation and experiment. Kentucky has a program of certification in Batterer Treatment for mental health providers.

Kentucky's Age of Consent

The current Kentucky Revised Statutes provide protections against rape only through age 11. A twelve year old victim must prove that there was "forcible compulsion" to overcome her earnest resistance. If she has the "proof" by her injuries, the penalties are lessened when she reaches 14, and again when she reaches 16.

A predator who chooses to rape may get a **maximum** penalty of a Class A misdemeanor if he is under 18 and his victim is at least 12; or under 21 and his victim is at least 14. This means there is essentially no protection against date rape for our daughters in Kentucky. The Kinseyan concept that children are sexual from

⁶⁷ Id.

⁶⁸ Palmore, J. S. Preface to Symposium on Kentucky Penal Code. Kentucky Law Journal, Vol. 61, No. 3, 1973, p. 621.

⁶⁹ The Courier Journal, May 27, 2001, D2, D4.

birth is reflected in the fact that no crime is committed at all in Kentucky if a female of 12 and a male under 18, or a female of 16 and a male under 21 commit fornication. Prior to the Kinsey reports, the Kentucky Law sought to safeguard children from irresponsible sexual exposure. Ironically, though immature girls are protected by laws in Kentucky mandating their being provided food, housing, medical care and education, they are vulnerable in the one area where premature activity leaves them exposed to disease, dysfunction, and even death at a very high cost individuals, families and ultimately to the state.

Prior to 1970 and the Kentucky Crime Commission's work, marriage was protected by a bodyguard of prohibitive sex-outside-of-marriage laws. The state had an interest in the orderly sexual conduct of all its citizens. Marriage afforded the best possible situation for human physical intimacy and the rearing of children. Thus fornication, cohabitation, adultery (and all other sexual contacts Dr. Kinsey recommended in 1948 and 1953 as harmless) were illegal for the benefit of the polity. The redefining and relaxing of penalties for sex crime is reflected in the skyrocketing rates of violence and illegitimacy in Kentucky all at great cost to the state. The percentage of illegitimate births in Kentucky rose 26.2 percent from 1990 to 1996 alone, with a 1,000% increase since 1946.⁷⁰ With deterring penalties for crime lax or non existent, violent crime in Kentucky has risen 570%, from 1963 to 1995.⁷¹ The Kentucky Governor's Office of Child Abuse and Domestic Violence Services reports that two-thirds of sex offenders in state prisons have victimized a child, and approximately one-third of all sexual abuse cases involve children younger than 6 years of age. The average prison term is 11 years, which is shorter than that received by those who victimize adults. Two thirds of rape victims are under 18.⁷²

On the evidence, Kentucky's laws today are inadequate to deter and punish sexual predators who prey on women and children. After over thirty years of steady and deadly increase in sex crimes, disease and dysfunction at great cost to the state, it is time to rethink this obviously failed experiment that has placed law in the flow of an evolutionary ethic and resultant eroding societal standards. How long must the people of Kentucky endure a court system Justice Lambert describes as founded on "innovation and experiment...to learn more about the power of an active, creative, problem-solving approach?"⁷³ The law history of Kentucky points the way to a time when women and children were safe, and violence, disease, and dysfunction were very low. Let the legislature restore the law standard that once proudly protected women and children.

George Washington warned in his farewell address of the change process our laws would undergo:

Resist with care the spirit of innovation...which will undermine what cannot be directly overthrown...In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments...[and that] changes [based on] mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion.⁷⁴

⁷⁰ The Louisville Voice-Tribune, July 29, 1998. Birth Rate for Unmarried Moms in Kentucky Rises Significantly Since '90.

⁷¹ Statistical Abstracts of the United States, Annual Reports.

⁷² Governor's Office of Child Abuse and Domestic Violence Services, www.state.ky.us/agencies/gov/domviol/csagi&s.htm

⁷³ "State's Courts are Engaged in a New Era of Reform. The Louisville Courier Journal, Sunday, May 27, 2001, Section D, p. 4.

⁷⁴ President George Washington, Farewell Address, September 17, 1796.

~Seven~

Eliminating Protections for Women and Children in the Kansas Penal Code

A Brief History of a State Criminal Code Revision

In the aftermath of The Kinsey Reports, criminal law reform swept the nation and in 1963, the Kansas Bar asked an Advisory Committee of the Kansas Judicial Council moved to "simplify, consolidate, condense and modernize" Kansas law to conform to modern penal legislation and the legislature in the same year appropriated \$15,000 to finance the revision. It is most noteworthy that the call for criminal code reform went out to lawyers and the bar association, those without office and no accountability to the people to undertake to alter state laws that had long served Kansas. The Kansas Bar Association Judicial Council appointed the members of the Advisory Committee, based on their experience and interest in criminal law. The Advisory Committee members were as follows:

Judge Doyle E. White, Arkansas City, Chair
E. Lael Alkire, Wichita
William M. Ferguson, Wellington
Charles F. Forsythe, Erie,
Lee Hornbaker, Junction City,
Selby S. Soward, Goodland,
George T. Van Bebber, Troy.
J. Richard Foth, Assistant Attorney General
Paul E. Wilson, University of Kansas School of Law, Reporter

Kansas became a state on January 29, 1861, the Criminal law of Kansas dated 1868 was based on a compilation of territorial laws with much of the language derived from the acts of the territorial legislature of 1855. In 1968, Advisory Committee member Professor Paul Wilson, reported in the *Kansas Law Review* to the Kansas law profession on the criminal law reform efforts of the Advisory Committee beginning in 1963 saying the "present Crimes Act has served the state for more than a century. It has provided a framework within which the public order has been maintained and the people of the state have enjoyed a high degree of security in their persons and property."¹ Professor Wilson introduced the proposed penal code changes to the Kansas Judicial Council Advisory Committee on Criminal Law Revision with the claim that:

Taken as a whole, the proposed code does not depart widely from present standards. Most conduct that is prohibited by the present law is unlawful under the proposal. Where new crimes have been created, it was in response to recognized social problems for which the present law does not provide a satisfactory solution.²

Professor Paul Wilson's statement that the "code does not depart widely from present standards," mirrored that of other reform committees conveying the revised codes

¹ Wilson, P. E. 1968. New Bottles for Old Wine: Criminal Law Revision in Kansas. *Kansas Law Review*, vol. 16, p. 586.

² Wilson, supra., Footnote 3, p. 588-589.

for distribution or legislative action, beginning with MPC author Louis B. Schwartz who recommended in 1948 that changes could be eased into a general revision of the code, "avoiding the appearance of outright repudiation of conservative moral standards, by presenting the changes in a context of merely technical improvement."³

Despite Dr. Schwartz's disclaimer to the contrary, the first change to the Kansas criminal code was to be profound. Wilson led the revision effort preparing and submitting the final drafts with comments and authoritative materials to the other members of the Advisory Committee. After the Committee's revisions were completed, it was approved and submitted to the Judicial Council for further revision and final approval.⁴

On February 26, 1969, *The Topeka State Journal* reported that the New Crime Code had passed in the senate by a vote of 25 to 12, with 3 abstentions. Earlier, on February 17th, it was reported that the two provisions of the proposed code that created the greatest controversy addressed abortion and the debate raging across the country regarding the definition of criminal responsibility—or as the Kansas newspaper reported, the "substantial capacity to know and understand the wrongfulness of his conduct, and also lacked the capacity to conform his conduct to the requirements of law."⁵ During the law reform debates in the legislature, the *Journal* also reported that Kansas State University hosted a lecture series on "Human Sexuality." Topics such as "The Rationality of Premarital Sex" and "Marriage—the Prospect of Failure" suggest the revolutionary influence of The Kinsey Reports on the forum.⁶

A specific issue debated in the state legislature was the elimination of the Habitual Criminal Act which provided that a prosecuting attorney may request a stiffer sentence, when the defendant has been found guilty of prior offenses. A prosecutor from Wyandotte County, Ed White, testified that a different standard was needed in dealing with professional criminals, a decision best understood by the county attorney.⁷ In the new code, contrary to the recommendations of the Judicial Council, a milder version of the Habitual Criminal Act was included in section 21-4504, providing for increased penalties for second or third conviction of a felony, and in section 21-3429, aggravated forcible felony, which added additional penalties, if the offender was armed with a firearm. The Kansas State Legislature adopted the revised criminal code in 1969, which became effective on July 1, 1970.

Kansas Guided by other State Revisions & ALI's MPC

The guiding precedent of the law reform movement was that state criminal code revisions were often undertaken by the private sector, the legal and academic elite. The precedent was set by the American Law Institute and Illinois, and was followed by Kansas. The criminal law reform was not initiated by the will of the people, nor guided by their elected representatives, the product of law reform was mislabeled as a "mere clarification" prepared by "experts," who pressed law makers to accept the revisions as "technical improvements" to reduce crime and simplify the process of justice. The prestige and influence of the American Law Institute, Harvard,

³ Schwartz, L. B. 1948. Sexual Behavior in the Human Male, Book Review. *University of Pennsylvania Law Review*, vol. 96, p. 917.

⁴ Proposed Kansas Criminal Code. Kansas Judicial Council Bulletin, April, 1968.

⁵ *Topeka State Journal*, February 17, 1969, p. 2, column 2.

⁶ *Topeka State Journal*, February 10, 1969, p. 2.

⁷ *Topeka Daily Capitol*, January 29, 1969, p. 8.

Columbia, and the rapid succession of states' participation created an illusion of legitimacy for legal change.

In the *Kansas Law Review* article announcing the Kansas penal code, Professor Wilson says the revisions in "Illinois, Minnesota, New Mexico, New York, Wisconsin;" as well as the work of "the American Law Institute which published the Model Penal Code in 1962" were used as guides to "simplify", "consolidate", "condense" and "modernize" the Kansas penal code.⁸

Illinois (1962), Wisconsin (1956) and New Mexico (1963) represented the earliest application of the Model Penal Code and its authors to state criminal codes by reform committees. For example, according to Professor Wilson in his discussion of Kansas theft law revision, "It was determined that the language of the Illinois statute was best suited to achieve the objectives of comprehensiveness and simplicity."⁹

Earlier chapters present the American Law Institute Model Penal Code's complete reliance on The Kinsey Reports as representative of "normal human sexuality" and further that flawed science was used to alter and abolish common law protections for women and children through the invention of a "sex offense" section of the state penal codes.

Illinois, Minnesota, New Mexico, New York, & Wisconsin Guide Kansas Reformers

The proposed Kansas penal code, published in the April 1968 volume of the *Kansas Judicial Council Bulletin*, identified three state revisions—Illinois, Wisconsin, and New Mexico-- as the source of intent and language for sex offenses law reforms in Kansas¹⁰: The Illinois revision is traced through the work of the Illinois Commission on the Sex Offender discussed in Chapter Three. The declaration of the Commission that "No specific reference to the Kinsey findings is made here since these permeate all present thinking on this subject," points to the fact that the Kansas revision commission stood on shifting sand when it relied on Illinois' work for its own criminal code revision.

In addition to the substantive flaws in Illinois, there were also procedural precedents from Illinois that were adopted in Kansas.

The Illinois Criminal Revision: More History

By 1954, the Illinois and Chicago State Bar Associations appointed a joint committee to revise the Illinois Criminal Code. The committee consisted of 16 lawyers, judges, prosecuting attorneys and law professors. "Initially without funds, and working within the Bar association's tradition of committee service without pay, the magnitude of the undertaking was almost more than the committee system could bear."

Charles H. Bowman, professor of law at the University of Illinois, reported that the Illinois committee spent the first two years examining different Codes including the American Law Institute Model Penal Code (Draft #4, 1955), the Criminal Code of Louisiana (the only state law code based on the Napoleonic Code), the Wisconsin

⁸ Wilson, *supra*. Footnote 3, p. 588-589.

⁹ Wilson, Paul E. 1972. The New Kansas Theft Law. *Kansas Law Review*, vol. 20, p. 392.

¹⁰ Proposed Kansas Criminal Code. *Kansas Judicial Council Bulletin*, April, 1968, 55-65.

Criminal Code (1956), and the Illinois Draft Criminal Code of 1935.¹¹ Although the Wisconsin Code and the evolving drafts of the Model Penal Code were relied upon for guidance, by the spring of 1960 only about a quarter or a third of the substantive Illinois Code revision had been drafted.¹²

Recognizing the proven slowness of the committee system, the Illinois Judicial Advisory Council provided funds for a full-time Reporter, and additional funding provided the research assistance of two senior law students. The substantive Illinois Code, with commentary, was completed in November 1960 at a total cost of \$25,000. Professor Bowman's advice regarding the Illinois's unpaid committee experience, according to Professor Wilson, was heeded by the Kansas criminal code project:

"In retrospect, and in view of the experience of the American Law Institute and of states which have revised their criminal laws since Illinois, it seems obvious to this reporter that the most efficient method of accomplishing such a task is to employ a full time paid reporter to direct and supervise the initial research and drafting for presentation to a full committee of practitioners. An intermediate subcommittee, or "advisory" committee, might be utilized to review and modify the preliminary drafts of the reporter so as to reduce the time the full committee need spend on final approval of the drafts.¹³

This was precisely the committee structure used by the Kansas Bar Association, with funding from the Kansas Legislature, in hiring Professor Paul Wilson as draftsman of the revised penal code. Wilson submitted his work to an advisory committee, who then sent approved sections to the Judicial Council.

In understanding Illinois' influences upon the Kansas revision it is important to understand that the changes in the Illinois code covered the entire expanse of the criminal code. Detailing the scope of the changes, Illinois Professor Bowman wrote, "The new Code compressed approximately eight hundred old sections into 197 new sections and repealed outright all of the old sections. The "new" sections contained the following changes: abolished common law crimes; abolished the life sentence and provided that all sentences in excess of one year should be for an indeterminate term; retained the death penalty in treason, murder, kidnapping for ransom, but restricted its imposition to cases where it is recommended by the jury; took all sentencing power away from the jury (except for the death recommendation); and provided that if two or more offenses arose out of the same conduct the sentences must run concurrently."¹⁴

As the Kentucky discussion illustrated, the Illinois revision provided the language and intent for plea bargaining so an offense such as rape could be viewed as a serious felony, a minor felony or a misdemeanor. Kansas' dependence on the MPC and Illinois revision reduced crimes to minor offenses and released predators to repeat their crimes.

¹¹Bowman, C. H. The Illinois Criminal Code of 1961 and Code of Criminal Procedure of 1963. *Journal of Law Reform*. Vol. 4, 1971, p. 461..

¹²Id., pp. 463-464.

¹³Id., p. 464.

¹⁴Id., p. 465.

Since America's founding, the institution of marriage enjoyed a protective circle of laws, both criminal and civil. Prior to the adoption of the concept of "sex offenses" in the ALI's Model Penal Code, the only lawful sexual contact in most, if not all states was heterosexual coitus in marriage, minimizing illegitimate births, sexual disease and dysfunction. It only made sense to the average citizen in 1960 that the law could and would protect innocent and law-abiding citizens from criminals and crime. Because the revisions were done privately and without citizen scrutiny, there were only a few groups who raised questions about the dangers of sweeping law change.

In 1961 Illinois' population was 35% Catholic and there arose strong opposition to the MPC liberalized provisions for abortion. A compromise was struck with the Council of Catholic Churches to secure their support for the new "sex offenses" statutes including the American Law Institute's MPC concept of legalizing the sexual activities of "consenting adults." The Council agreed not to oppose the work of the penal code committee on "sex offenses," if the abortion provisions in the new code were restricted to "only when necessary to save the mother's life." Consequently, Illinois became the first state in which the ALI-MPC's theme of legalizing sexual activity between "consenting adults" in private occurred.¹⁵

The only other organized opposition to the new Illinois code came from the National Rifle Association, and the Defense Lawyers Association, who objected to taking sentencing power from the jury. The Illinois State Bar had a representative in each session of the General Assembly to explain and lobby for the new criminal code, and seven public hearings and media briefings served to promote the legislation, and these two opposing groups were defeated.

Through the efforts of the Joint Committee of the Illinois State and Chicago Bar Associations and based on the ALI MPC author's reliance on The Kinsey Reports claim that children are erotic beings from birth, the new Illinois code diminished child protection laws, as described by Morris Wexler, the secretary of the Illinois Joint Committee to revise the Criminal Code. Addressing "The Protection of the Young and Immature From Sexual Advances of Older and More Mature Individuals" Wexler writes;

These acts are usually consented to by the child, but because of the child's age and immaturity, we do not permit the consent to prevent the imposition of criminal sanctions.¹⁶

This represents a profound shift in the legal protections for Illinois' children. The legal elite boldly proclaimed that children usually consent to sex, a new psychobabble translated to legalese, the fruit of the bogus science of zoologist Alfred Kinsey and rat researcher Frank Beach. (See the report of the Illinois Commission, Chapter 3) Such unthinkable proclamations become common in law journals in the 1960's. Law Professor Ralph Slovenko even declared in the Vanderbilt Law Review in 1965 that four and five year olds could overwhelm an adult into committing a sex offense.

An example of the influence of the Kinsey Reports, and the Model Penal Code's sex offenses section (which cites to The Kinsey Report and Kinsey associates to define "normal" sexual conduct), can be seen in a discussion of "deviate sexual behavior

¹⁵ Bowman, *supra*, Footnote 12, p. 471.

¹⁶ Wexler, M. J. Sex Offenses Under the New Criminal Code. Illinois Bar Journal, October 1962. p. 153.

under the new Illinois Criminal Code" which was published in the Washington University (St. Louis, MO) Law Journal in 1965. The writer states;

The Model Penal Code provisions were commented upon in the 1955 Tentative Draft Number 4, and with minor changes and reclassification of sections, were included in the 1962 Tentative Final Draft. The Model Code's comments were drawn upon by the Illinois drafters in 1960.¹⁷

The Washington University article cites directly to the Model Penal Code 17 times, to the Kinsey Reports 6 times, and to the Kinsey influenced British Wolfenden Report 13 times. Drummond, who is cited 10 times in the Model Penal Code, is also cited here 5 times. Ernst and Loth's laudatory book on The Kinsey Report, *Sex Habits of American Men, A Symposium on the Kinsey Reports*; was also cited three times. As Kinsey biographer Gathorne-Hardy explains in his book, *Sex the Measure of All Things*, "the [ALI] Model Penal Code is virtually a Kinsey document."

While some laws were changed via legislative action, The Kinsey Reports were also the basis for Kansas law changed via the courts. Such was the case with Kansas obscenity law in the decision of *State v. Next Door Cinema Corporation*.¹⁸ The 1978 opinion reads;

It can hardly be disputed in this day and age that certain educational, scientific and governmental agencies, persons, institutions and groups have a valid concern in the ongoing study of obscene material and its effects upon the individual. The famed studies of Dr. Alfred Kinsey and the Institute for Sex Research at Indiana University are one example of an educational and scientific person and institution whose interest in obscenity and pornography has been recognized as being of great service in furthering the understanding of the effects and results such material may or may not have on certain individuals. The language in the defense portions of our statute was taken largely from the American Law Institute Model Penal Code and the New York Penal Law.

The Wisconsin Criminal Revision: Short History

Although the comprehensive criminal code reform in Wisconsin was enacted in 1955, effective July 1, 1956, the sex offenses law was revised in 1951. A sexual psychopath law was passed in 1947, but no one was ever committed under its authority. On March 19, 1951, a committee was formed under the auspices of the Wisconsin Department of Public Welfare. Amazingly, it took only four months to codify the committee's proposal.

Wisconsin revised their sex crime laws (Chapter 340) on July 27, 1951, and the revision was known as "The 1951 Sexual Deviate Act."¹⁹ The Wisconsin revision of "sex offenses" predated the 4th draft of the Model Penal Code of 1955, which "sex offenses" chapter is heavily quoted post 1955 in every other state revision. However, it is evident that the ALI's "Model Penal Code influence" predominated in

¹⁷ Washington University Law Quarterly, Vol. 1965, April, 1965, p221, FN 4.

¹⁸ Pacific Reporter, 2d Series, p. 329, (Kansas 587 P.2d 326).

¹⁹ The act addresses rape, assault intending rape, carnal knowledge and abuse, liberty with a female child, or improper liberties. Wisconsin Law Review, Vol. 1954, pp. 324-335.

the Wisconsin Penal Reform because of authorities cited in a 1954 *Wisconsin Law Review* explaining the scope and function of the Sexual Deviate Act. The committee drafting Wisconsin's law included members of the bar association, judges, legislators, social workers, psychiatrists, psychologists, members of the PTA, representatives of women's clubs, and correctional administrators.

A review of the authorities cited in the 1954 *Wisconsin Law Review* reveals Paul Tappan and Morris Ploscowe, (later two of the four Reporters drafting the American Law Institute's Model Penal Code) quoted as authorities 15 and 7 times, respectively. Also quoted 7 times was MPC Adviser and influential psychiatrist Manfred S. Guttmacher. These three authors represent 78% of the author citations, and are part of the same small cadre of lawyers, psychiatrists, and sociologists, who framed and codified the "sexual revolution" based on the flawed Kinsey Report, via the American Law Institute's Model Penal Code. They simultaneously "field tested" their work by crafting the sex offense laws of Wisconsin.

The cross reference of authorities between the state revision committees is shown in the further citation by Wisconsin to the "Report of the Illinois Commission on Sex Offenders, 1953," cited 5 times. (See chapter 3).

The reliance of the Kansas Judicial Council on the Wisconsin's 1951 "Sexual Deviate Act" legislation for its criminal code revision may explain Kansas's strong approach to the new concepts proffered by the therapeutic field and supported by the ALI MPC for the treatment of sexual crime.

"The committee made a careful appraisal of the issues giving serious consideration to the psychological aspects of sexually abnormal behavior...The [Wisconsin] law "specifically recognized the psychological nature of many sex offenses. It established the legal and administrative machinery to both identify and provide specialized treatment for the deviated sex offender."²⁰

By 1960, a Psychiatric Services Unit of the Division of Corrections had been established in Wisconsin, staffed with three part-time psychiatrists, four psychologists, and one psychiatric social worker. During the decade following the passage of the Wisconsin law, 1,605 male convicted felons, half of those convicted during that time, were committed for diagnosis, and approximately half of them were determined sexually deviated.²¹

Fulbright Scholar and Law Professor Ralph Slovenko has published ten volumes including *Sexual Behavior and the Law*, and 60 articles in journals of law, psychiatry and philosophy. He is cited by a number of state committees as the therapeutic professions weakened the power of the jury system. Slovenko described the Wisconsin program as "a program under which a psychiatric staff takes full responsibility for deciding whether a man is sentenced indeterminately with opportunities for treatment or whether he is processed through usual correctional procedures and gives a definitive sentence."²² Despite the prevailing belief among some that the behavioral sciences could decrease crime by their methods and then manage criminal propensity, of the 457 paroled through the Wisconsin treatment program, 9% (43 offenders) violated their parole by the commission of a further sex

²⁰Halleck, Seymour, M.D., & Pacht, Asher R. Ph.D. 1960. The Current Status of the Wisconsin State Sex Crimes Law, *Wisconsin Bar Bulletin*, December 1960, p. 17.

²¹Id., p. 26.

²² Slovenko, R., & Phillips, C. Psychosexuality and the Law. *Vanderbilt Law Review*, Vol. 15, 1962, p. 822.

crime, and 8% (38 offenders) violated parole by other offenses. Eighty-one out of 457 were unable to complete parole after treatment. However, in reviewing the literature, it is important to note that the designation of "sexual" and "nonsexual" offenses is not truly representative, since sex offenses are often charged, then plea bargained to a lesser nonsexual offense to which the predator pleads guilty. In addition to those violating parole, 29 committed a new offense after discharge from the program.²³

The 1955 revision of the sex offense statutes created new categories with graded penalties for "statutory rape" and "carnal knowledge and abuse." The negative terms for the predator are eliminated, and the neutral term for the crime, "sexual intercourse with a child" replaces rape or abuse. The new law penalized a male of any age having intercourse with a female under 18, 1,000 fine, or 5 years or both; a male 18 or over having intercourse with a female under 16, a maximum of 15 years; or a male 18 or over having intercourse with a female under 12, a maximum of 30 years.²⁴ This grading of crime based on the age of the victim is the MPC prototype, and was used as a model for Kansas.

The New Mexico Criminal Revision: Short History

The Criminal Law Study Committee of New Mexico (1963) made up of seven legislators published the report of their work on the revised penal code in 1959. While information on the New Mexico revision is limited at the time of this writing, the rationale of the committee regarding the need for moving from the fixed principles of the common law to the evolutionary science-based code expressed in the introduction of their report mimics every other state's prodding and reliance on the American Law Institute's MPC as its guide to update laws as the common law is eliminated:

[T]he quality of [the felon's] conduct has been judged by standards which are centuries old, without consideration being given to changes in modes of living and the evolution of different ethical and social concepts. Moreover, there is no way to differentiate the penalty for particular common-law crimes, with the result that a blanket penalty must apply to all of the class without regard to the gravity of the crime or the circumstances of its commission.²⁵

The committee notes that abolition of America's founding common law crimes is provided for in the Model Penal Code, Section 1.05, and has already been abolished in 18 states, including Wisconsin.²⁶ The committee cites to the Wisconsin Criminal Code and the Model Penal Code as authority for changing the fixed law, that is, the common law based on the America's founding law principles, to a science-based "evolutionary ethic."²⁷

²³ Diagnosis and Treatment of Sex Offenders. American Journal of Psychiatry Vol. 118, March 1962, p. 807.

²⁴ Platz, W. A. The Criminal Code. Wisconsin Law Review, Vol. 1956, 1956, p. 77.

²⁵ Proposed Criminal Code, Tentative Drafts of Articles 1 through 10, February 3, 1959. Legislative Council Service, Santa Fe. New Mexico, page 12.

²⁶ Id.

²⁷ Id., p. 2.

The Kansas Criminal Revision

Professor Wilson wrote that criminal responsibility is the decision of the psychiatric expert.²⁸ (This is discussed more fully in Chapter 4). A major change in Kansas view of the criminal was ushered in with the penal code revision, in which therapeutic intervention was considered the only definition of "modern scientific method" in criminology.

Governor Robert Docking joined the authorities calling for therapeutic intervention for criminals. On February 24, 1969, the *Topeka State Journal* reported that;

Docking praised the Topeka Reception and Diagnostic Center . . . which conducts 60 day psychiatric evaluations of persons sentenced to terms in Kansas penal institutions, providing valuable reports to state officials. . . Kansas prison and reformatory population has been reduced considerably.

Quoting Governor Docking, the *Journal* states, "Recent movements toward reform in our prison system ask that the offender no longer be regarded as a person to be controlled and kept. Instead he should become, for some purposes at least, a patient." One supposes that this characterization of offender as "patient" implies that he/she should be treated, healed and released.

Possibly Governor Docking's report that prison populations are down considerably has more to do with Robert Heath's report in the *Washburn Law Journal*. He finds that most criminal cases are settled through plea bargaining, giving concessions to the accused in exchange for a guilty plea, rather than submitting the crime to the jury system.²⁹

The Kansas state constitution declares that "The right of trial by jury shall be inviolate." However, law journals at this time reflect the bias in current legal thinking which shows a general disdain for the judge and jury. The year after the criminal code revision was adopted in Kansas, Raymond Baker follows the ALI MPC theme when he also writes in the *Washburn Law Journal*,

[M]any sentences amount to no more than a reflection of the judge's prejudices or his prediction as to the defendant's future behavior. This type of sentencing falls far short of its intended purpose of protecting the public. Rather, the result is to embitter defendants who have been prejudicially dealt with and to engender a lack of respect for the judiciary.

Calling retribution, paying for one's crimes, a relic remnant of Mosaic law, Baker lauds the goal of rehabilitation:

In recent years there has been recognition that society can best be protected from repeated criminal acts by rehabilitating the offender and restoring him to the community as a law-abiding productive citizen. Rehabilitation focuses on the individual rather than upon the offense. Accordingly, punishment is

²⁸ See Chapter 4 for a full discussion of Kansas' treatment of criminal responsibility.

²⁹ Heath, Robert L. Plea Bargaining--Justice Off the Record. *Washburn Law Journal*. Vol. 9, 1970.

determined upon consideration of the individual's background, personality, education and other factors rather than upon his offense.³⁰

Baker laments that whenever deterrence, incapacitation, or retribution served as a foundation for a sentencing structure, the focus was on the offense rather than the individual.

The revision commission recommended the following penalties. Fines may be in addition to, or instead of confinement:

Crime	Fines	Imprisonment
Class A Felony		Death or life imprisonment, determined by the jury
Class B Felony	\$10,000	Minimum of 5-15 years, maximum life
Class C Felony	\$10,000	Minimum of 1 to 5 years, maximum 20 years
Class D Felony	\$5,000	Minimum of 1 to 3 years, maximum 10 years.
Class E Felony	\$5,000	Minimum of 1 year, maximum of five years
Undefined Felonies		Penalties listed in the statute, or treated as Class E Felony
Class A Misdemeanor	\$2,500	County jail not to exceed one year
Class B	\$1,000	County jail not to exceed six months
Class C	\$500	County jail not to exceed one month
Unclassified Misdemeanors	\$2,500	Sentence specified in statute, or not to exceed one year.

Kansas Law: Past and Present

The following chart gives the sources for Kansas' reform of "sex offense" law as identified in the Kansas Judicial Council Bulletin:

Kansas Statute	State Law referenced as source
21-502 Rape	New Mexico Criminal Code, 9-1 and 9-2.
21-503 Indecent Liberties with a Child	Illinois Criminal Code 11-4
21-907 Sodomy	Wisconsin Criminal Code 344.17
21-507 Adultery	The concept of "consent" was a feature first found in the Model Penal Code. (See Draft 4, Section 207.1) ³¹ The committee does not recommend that sexual intercourse between consenting adults, neither of whom is married, should be made criminal.
21-508 Lewd and Lascivious Behavior	Wisconsin Criminal Code 344.20
21-509 Enticement of a Child	New Mexico Code 9-10, Wisconsin, 344-12.
21-510 Indecent	New Mexico Code 9-10, Wisconsin, 344-12.

³⁰ Baker, Raymond W. Sentencing Felons to Imprisonment Under the Kansas Criminal Code: The Need For a Consistent Sentencing Policy. Washburn Law Journal. Vol. 10, 1971, p. 271.

³¹ The MPC comments cite Kinsey as their authority to eliminate adultery as criminal, "The enduring affair is properly regarded as a graver threat to the home and family than the occasional or transitory infidelity which Kinsey found in half the married men's lives." (Draft 4, p. 213)

Solicitation of a Child	
21-602 Incest	Illinois Criminal Code 11-11.

In 1949, the Kansas Criminal Code, like most all other states, provided absolute protections for women against the crime of rape. Section 21-424 defines its penalty as follows:

Every person who shall be convicted of rape by carnally and unlawfully knowing any female person under the age of eighteen years shall be punished by confinement and hard labor not less than one, nor more than twenty-one years, and every person who shall be convicted of forcibly ravishing any female person shall be punished by confinement and hard labor not less than five years nor more than twenty-one years.³²

After the criminal revision adopted in 1969, the child was protected in the law through age 15, but the rape is renamed "indecent liberties with a child." This law, crafted after Illinois' statute, reflects the Illinois commission's child sexuality claims, coming from gall-wasp zoologist Kinsey, and rat biologist, Beach. (See Chapter 3). This law was still in effect in 1988, where sexual offenses against the child 15 and under remained a felony, then soliciting a child under 16 to commit an unlawful sexual act was a misdemeanor, unless the child was invited to a secluded place for the purpose of committing an unlawful sex act, in which case it was a Class D Felony.

During the 1983 session, the Kansas Legislature enacted another comprehensive revision of the Criminal Code dealing with sex offenses. In that revision:

- Rape was redefined to include penetration by finger or object, and the spousal exemption was dropped.
- The Kansas Supreme Court also affirmed in 1982 the admissibility of a psychiatrist's testimony that the victim has "rape trauma syndrome." Acknowledging rape trauma syndrome as a relatively new psychiatric development, the court examined the literature and found that rape trauma syndrome is detectable and reliable evidence that a forcible assault took place.

In the same year, 1982, the Minnesota Supreme Court held that;

...the scientific evaluation of rape trauma syndrome has not reached a level of reliability that surpasses the quality of common sense evaluation present in jury deliberations, and that since jurors of ordinary abilities are competent to consider the evidence and determine whether the alleged crime occurred, the danger of unfair prejudice outweighs any probative value.³³

A new category of sexual battery was added to Kansas Law by the 1983 revision. Sexual battery prohibits nonconsensual touching of a sexual nature where force cannot be proven, and is a misdemeanor. Aggravated sexual battery is charged with application of force, when the victim is a person under 16, or when committed during criminal trespass.

³² 1949 General Statutes of Kansas, Chapter 21, Offenses Against Persons, section 424.

³³ Wason, Robert A. Survey of Kansas Law: Criminal Law. Kansas Law Review. Vol. 32, 1984.

The 1995 laws, as well as laws current through the 2000 session reflect further erosion of protection for Kansas's children. The definition of rape has been changed once again, protecting children only through age 13. A 14 year-old is treated the same as an adult in a rape trial, requiring the victim to prove force sufficient to overcome resistance. Based on the guidance of the ALI Model Penal Code, the crime of rape is graded by "age" and "use of force."

Using the preeminent Kinsey-based criteria at the foundation of Kansas law that claims children are entitled to and want sex, law revisions demand that a child of 14 must prove utmost resistance to her assailant in order to charge the crime of rape, or instead of a crime penalized at severity level 1, it is punished as "aggravated indecent liberties with a child of 14 or 15, (severity level 4) providing loopholes that would diminish the crime against children. Without prior criminal offenses, a level 4 Offense carries a maximum sentence of 43 months, about 3 ½ years.³⁴

In the current Kansas Law, sentencing for sex offenses is determined by a sentencing range grid issued by the Kansas Sentencing Commission. The grid consists of ten crime severity levels as the vertical axis, and the criminal history of the offender creates nine categories on the horizontal axis. There are three numbers in each box on the grid, representing the range in which the judge may sentence. The upper left portion of the grid presumes a prison sentence, and the lower right shaded boxes presume probation. A severity level 7 crime with a criminal history of 1 person and 1 non-person felony would have a presumptive probation. In severity levels 5 and 6, the judge may choose whether or not the felon will be imprisoned, if he has no prior record, 2 misdemeanors, or 1 non-person felony conviction.

Is Kansas Protecting Its Citizens From Sexual Predators?

Today in Kansas, the concepts of "punished" and "hard labor" are unheard of. Most sex offense charges are plea bargained to a lesser offense, and those who are convicted are called "patients" who receive "treatment" at an annual cost of \$2.4 million to the Kansas taxpayer. To their credit, there has been a meager attempt to evaluate these costly tax funded programs.

The Kansas Department of Corrections issued an Offender Programs Evaluation in April, 1999, which offers a very confusing picture to legislators and concerned citizens about how sex offenders are handled in Kansas. The evaluators admit on page 24,

Although it would be desirable to divide the comparison group of non-participants into two subgroups—one containing the offenders with sex offenses and one containing the offenders without sex offenses, it was not feasible to do so in this study.

In other words, the evaluators saw no problem with lumping drug abusers and child abusers into one single category! This kind of numerical manipulation negates any claims to benefit from offender treatment.

The program evaluation called for reducing recidivism. However, no provision was made to determine repeat offenses of those leaving the state, and there was no comparison group of sex-offenders not receiving treatment, only a group of "offenders" in general. If one relies on the literature, self-reporting criminal behavior

³⁴ Data from the Kansas Sentencing Commission, Sentencing Range for Nondrug Offenses, April, 2001.

paints a grim picture of the low percentage of offenses that are actually charged and prosecuted, suggesting that recidivism is a poor indicator of success of a program. One of the measurement indicators was "time intervals between felony re-convictions." It is shocking that Kansas law allows violent sexual predators to be released so that such time intervals may be measured in the blood of innocents.

The report of the Kansas Department of Corrections indicates that 122 offenders completed the Sex Offender Treatment Program in FY1998, at a cost of \$9,039.85 per offender completing the program, or a total cost of \$1.1 million. This program currently provides 208 program slots distributed between the Hutchinson and Lansing Correctional Facilities, which apparently is a 4-hour per day, 5 day per week program.

A report dated June, 1999, from the Kansas Department of Social and Rehabilitation Services describes a separate residential program created under the Violent Sexual Predator Treatment Act, which provided treatment to 28 residents in 1999. This program reports that child molesters have a recidivism rate of 46%. (p. 13). The FY2000 budget projecting the cost of the resident program to an average of 26 residents is \$1,372,827, working out to a cost to Kansas taxpayers of over \$50,000 per violent predator resident.³⁵

Evaluation of sex offender treatment programs has never provided any evidence of benefit. The Government Accounting Office examined studies of 550 sex offender treatment programs spanning 50 years³⁶, and concluded that no form of psychotherapy is shown to arrest sexual predators. An American Bar Association report tells why. "Officials...point out that these probationers pose serious potential harm for one compelling reason: their sexual orientation to children usually includes a long, pervasive and active history which is extremely difficult to change."³⁷

Based upon the flawed evaluation methods of the Kansas report, and the massive evidence contraindicating therapy as an alternative to punishment, legislatures must re-examine the methods by which Kansas deals with crimes against women and children. In 1962 when a judge and jury meted out tough penalties for violence, rape and all violent crime rates were low. The figures from Statistical Abstracts of the United States indicate rape and violent crime in Kansas have increased over 500% since that time. Violent predators should not be released to repeat their crimes against the innocent. Crime should be punished, unproven therapies defunded, and citizens' safety restored.

Comparative Costs to Kansas Tax Payers Of the Breakdown of Legal and Social Order

Numbers in parenthesis are conversions to 2001 dollars:

³⁵ Report of the Kansas Department of Social and Rehabilitation Services, Commission on Substance Abuse, Mental Health and Developmental Disabilities, June, 1999, pp. 28, 30.

³⁶ *Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism*. Government Accounting Office, GGD-96-137, June 21, 1996.

³⁷ American Bar Association. 1990. *The Probation Response to Child Sexual Abuse Offenders: How Is It Working?* Executive Summary. State Justice Institute, Grant, SJI-88-11J-E-015, p. 1.

Total state budget	Corrections	Social Services	Health
1955 \$369,146,527 (2,443,422,391)	1,515,617 (10,032,039)	56,420,180 (373,451,519)	14,443,809 (95,605,197)
1960 \$546,191,180 (3,260,000,000)	2,689,086 (16,089,819)	69,164,327 (413,836,349)	
1970 \$372,871,831 (1,702,124,550)	11,787,000 (53,806,537)	46,056,642 (210,244,203)	13,474,253 (61,508,687)
1980	33,775,000 (72,628,799)	366,001,000 (787,038,146)	30,837,000 (66,311,088)
1990	184,510,000 (250,040,680)	514,909,940 (697,785,657)	103,193,561 (139,843,847)
1998 7,681,014,000 (8,347,500,589)	254,981,000 (277,105,867)	1,092,556,000 (1,187,357,796)	293,522,000 (318,991,095)
Percent Increase 242%	2,662%	218%	234%

Social Service Programs

The "Division of Welfare" in 1955 provided support for child welfare, veteran's services, and tuberculosis treatment. By contrast, in the 1990 budget there are major program expenditures for crime victims,

abuse investigation, family violence prevention, child support enforcement, drug abuse funding, and alcoholism treatment. In other words, our public welfare, which at one time cared for orphans and the chronically ill, now focus taxpayer resources on the fall out from crime, violence, and promiscuity.

Costs of Sexually Transmitted Disease

In the 1990 Kansas Budget, a total of \$1.08 million was identified for the prevention and treatment of sexually transmitted disease. This is a 14-fold increase after allowance for inflation from 1955. The 2000 governors budget recommends 105,000 for STD programs, an additional \$609,772 for AIDS testing/counseling, and \$250,000 for AIDS medication reimbursement.

Most Inmates Are Repeat Offenders

The report of the Kansas Sentencing Commission may assist the Kansas legislature and its citizens to examine the efficiency of corrections sentencing, rehabilitation programs, and the general safety of law-abiding citizens. One third (\$33.5 million) of the 2001 Corrections budget is spent for treatment and programs in the principle areas of sex offender treatment, substance abuse treatment, academic education, vocational education, transitional programs for parolees, and mental health counseling for parolees. Parole violators were the largest group of admissions to the Department of Corrections in FY2001. Of those readmitted, 263 committed a violent sexual offence, rape, aggravated indecent liberties with a child, or indecent liberties with a child.³⁸ Of the Conditional Release violators, 51% were sex offenders. (p. 36) There was a 57% increase in prison admissions of parole/post-release violators from 1997 to 2001. During that same time period, a 74% increase in rape was reported for Kansas under the federal Uniform Crime Report guidelines (p. 73).

³⁸ Kansas Sentencing Commission, FY 2001 Annual Report, p. 34.

Kansas has a statute for the civil commitment of sexually violent predators (59-29a01). Part of the probate code, the statute provides for involuntary commitment of "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence." Legislative assumptions include:

- Sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high.
- The prognosis for rehabilitating sexually violent predators in a prison setting is poor.

As a result, the legislature has enacted civil commitment procedures, and a residential violent sexual predator program with 30 residents is operative in Kansas. This does not address the larger problem, however, of repeat sexual offenders whose unreported crimes are more frequent than their reported ones. The few studies that statistically document some benefit to programs similar to those used in Kansas are conducted by therapists whose livelihood depends on the success of their programs. Independent research is pessimistic to show any benefit to therapeutic management of criminal behavior when compared to a control group of similar-crime offenders who do not receive a mental health management protocol. The literature repeatedly refers to recidivism rates as low as 20% as perfectly acceptable to justify light sentences and/or probation. To say that Kansas citizens are 80% safe from repeated violence as the best scenario is a hollow definition of successful corrections procedures. When the penalties for rape and child molestation could be life imprisonment or death, such violence in America was rare, and repeat violence unheard of. When criminal responsibility is redefined as mental illness, the costs to insure safety of our citizenry skyrocket, and the lack of safety is borne by our most vulnerable citizens, its women and children.

Therapy Program for Violent Predators

In 1994, the Kansas State Legislature approved a program for the rehabilitation of sexually violent predators. The program is provided for those convicted of rape, sodomy and sex felonies against children. All sex offenders who are determined to "have a mental illness, mental abnormality, or personality disorder" are screened by the Kansas Department of Social and Rehabilitative Services. In 1999, 28 residents were receiving treatment.

According to the program report published by the Commission on Substance Abuse, Mental Health and Developmental Disabilities, there is controversy in the professional fields regarding the efficacy of sex offender treatment. "Recent studies of multi-faceted treatment programs provide an optimistic outlook on the efficacy of sex offender treatment."³⁹ The Commission's 1999 report emphasizes the use of physiological measures to determine "residents'" progress. One of the measurements, the Abel Assessment, "uses visual stimuli and measures visual reaction time to a variety of male and female subjects of various ages."

In common parlance, the Abel Assessment is a measure of a pedophile's "sexual arousal to children," which the Commission's report states is the number one predictor of relapse. Yet the Commission reports, "research consistently shows that the self-reports of sex offenders are unreliable"⁴⁰ and although there is no legal

³⁹ Report of the Kansas Department of Social and Rehabilitation Services, Commission on Substance Abuse, Mental Health and Developmental Disabilities, June, 1999.

⁴⁰ Id.

exemption for using child pornography to treat the pederast and pedophile, it has become common practice as a method of "therapy." The FY2000 budget projecting the cost of the therapy to an average of 26 residents is \$1,372,827, working out to a cost to Kansas taxpayers of over \$50,000 per violent predator resident.⁴¹ A long-range plan for the Sexual Predator Treatment Program, where predators are determined to need treatment as opposed to incarceration, includes the building of a State Security Hospital at the cost of \$24,331,500.⁴²

The developer of the "Abel Assessment," Psychologist Eugene Abel, reports his findings of child abuse offenders that "nonincarcerated child molesters admitted to from 23.4 to 281.7 acts per offender . . . whose targets were males." Said Abel, homosexuals "sexually molest young boys with an incidence that is occurring from five times greater than the adult heterosexual's molestation of girls."⁴³ Despite the repeat offenses documented in the Wisconsin program, as well as Abel's data, Kansas, with Kinsey as the foundation of the state's criminal sex offenses code, continues to parole child sex offenders based on Abel's "assessment."

Conclusion

Fifty years ago, the General Statutes of Kansas provided absolute protections for women and children. The Kansas Bar, relying on the Kinsey Reports and Model Penal Code, propounded that children are sexual from birth, adultery, fornication, and sodomy are common practices, and that rape and incest are relatively harmless. Illinois, Wisconsin and New Mexico relied upon the Kinsey Reports, the Model Penal Code and each other as authority for law change, and Kansas used their resultant law reforms as a pattern for also abolishing protections for women and children. Using the MPC model, the burden of proof is on the victim of sex crime in Kansas. She must now prove her utmost resistance to the aggressor's use of force, and youth are exposed to abuse with little recourse in the law based on a new and convoluted structure of crime severity ratings. The violent sex offender is given unproven experimental therapies at exorbitant costs to the Kansas taxpayer, and his release is based on disproven statistics on recidivism. The great hope in early 1970s was that violent crime would decrease as a result of the new code, but today the goal is unmet. Violent crime has increased 627% in Kansas over the 50 years from 1945 to 1995.

S. Bernard Wottis, M.D., quoted often in the MPC, who says the Kinsey Reports provided "evidence" of normal sexuality and "infantile sexuality", addressed Kinsey's impact on "Psychiatry".

[S]exual activity in the male is present from birth to death....the "latent period" is the result of a damper on sex activity imposed by our culture....Kinsey has given us statistical confirmation of this bio-cultural phenomenon.⁴⁴

Such "statistical confirmation of this bio-cultural phenomenon" may be seen in the de-facto lowering of the age of consent in Kansas and all our states and in federal law and the weakening of penalties for rape and molestation. The state penal codes uniformly suggest that children may be treated as sexually liberated women (or

⁴¹ Id., pp. 28, 30.

⁴² Id., pp. 28-34.

⁴³ Abel, Eugene. 1987. Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs. *Journal of Interpersonal Violence*, 2(1). 5-25.

⁴⁴ S. Bernard Wottis, M.D., "Psychiatry" in *Saturday Review*, March 13, 1948, p. 19.

men) at age 12, or 13, or 16 or even younger. Kansas law began in 1970s to point the way toward promiscuity and has experienced a 1,077% increase in illegitimate live births from 1945 to 1992. It is time to rethink this disastrous experiment that has placed law in the flow of an evolutionary ethic and eroding societal standards. Before Kinsey and the revolutionary changes wrought by the ALI MPC, the law history of Kansas points to a time when women and children were safe, and violence, disease, and dysfunction were very low. It is time for the Kansas legislature to review the Kansas criminal law reform completed in 1968.

Psychiatrist Ralph Slovenko summarized the process of extracting the Old and New Testament grounded common law from state criminal codes through penal code reform that swept the nation in the 1960-1970s, in the *Kansas Law Review*,

"Of all the revolutions sweeping the world today, political, economic, social, scientific, and moral, the last may prove to be the most far-reaching, the most deep-going of all."⁴⁵

George Washington warned in his farewell address of the change process our laws would undergo:

Resist with care the spirit of innovation...which will undermine what cannot be directly overthrown...In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments...[and that] changes [based on] mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion.⁴⁶

⁴⁵ Lipton, *The Erotic Revolution* xiii (1965). Quoted in Slovenko, *Sex Mores and the Enforcement of the Law on Sex Crimes: A Study of the Status Quo*. *Kansas Law Review*, Vol. 15, 1966-67, p. 265.

⁴⁶ President George Washington, Farewell Address, September 17, 1796.

~Eight~

Eliminating Protections for Women and Children In the Missouri Penal Code

A Brief History of a State Criminal Code Revision

Missouri was the first state examined in depth in this project. Due to the extraordinary leadership of CWA director Joey Davis, her legislative liaison Bev Ehlen, and an enthusiastic staff, this story unfolded with fresh astonishment and determination for action to protect the women and children of Missouri. My spirits were dampened on September 11, 2001, when I flew to the Missouri capitol to talk with concerned legislators and collect further data from the archives Joey and Bev had identified. The desire to be immediately home with my children was futile. Air traffic was cancelled, so we proceeded with the work on the most somber day in America's recent history. Digging through old newspapers we found the media announcements of Kinsey's Female Volume in August, 1953. For five days running, the Columbia Missourian ran lengthy excerpts from Kinsey's book, presenting his "facts" as if he represented mainstream America. One New Jersey newspaper described Kinsey's book as "bunk and arrogance." They announced the H-Bomb explosion by Russia on the front page right; and the left column referred to the "K-Bomb" that Kinsey was dropping on America, described in such detail to Missourians as "news." Meanwhile, the radio softly apprised us of the current plane-bombing in New York and Washington. Though the K-Bomb did not produce the immediate collapse of buildings, it surely gave rise to the insidious collapse of our moral fabric—the indispensable support of our nation.¹

A Law Journal article sent to us by Missouri attorney, Rebecca Messall, along with other pieces of information gathered by the state offices of Concerned Women for America would convince even the casual reader that junk science and extreme bias motivated the MPC based law revision in Missouri. This overwhelming evidence in Missouri was the inspiration to search out other states, where confirmations led to further expansion of the research, and finally to this book. The process of revision in Missouri was summarized in an article published in *The Missouri Law Review* entitled,

Symposium--Proposed Missouri Criminal Code, The Modern Criminal Code for Missouri (Tentative Draft) A Challenge Fulfilled and the Challenge Presented.

The new Missouri Criminal Code, enacted by Laws 1977, S.B. no. 60, p. 662, effective January 1, 1979,² represented "the first comprehensive revision of the criminal laws of Missouri since 1835,"³ and remained the fixed law of the state until 1951 when the Senate created the first criminal law revision committee. This group found that there was an urgent need for a thorough review of the whole body of substantive criminal law. A second committee was appointed in 1951 "with authority for an enlarged scope of inquiry."⁴

¹ In George Washington's Farewell Address, he declares, "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."

² Danforth, J. C., 1973, Symposium—Proposed Missouri Criminal Code. The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 362.

³ *Vernon's Annotated Missouri Statutes*, Vol. 40. 1978. St. Paul: West Publishing, preface, p. III.

⁴ Final Report of the Senate Criminal Law Revision Committee to the State of Missouri, 68th General Assembly, January, 1955, p. 5.

Chapter Eight

Changes to Missouri's Criminal Code Post-1950

In 1968, the U.S. Congress passed the Omnibus Crime Control and Safe Streets Act and appropriated funds to establish the Legal Enforcement Assistance Administration (LEAA) for "law enforcement purposes and other purposes." The Missouri Law Enforcement and Assistance Council (MLEAC) was created to administer a grant of LEAA funds. Missouri Attorney General John C. Danforth submitted a proposal to the MLEAC for the "revision of the substantive criminal laws of Missouri."

The 1973 Symposium published in *Missouri Law Review* heralded the turning point in the Missouri penal law and the acceptance of the American Law Institute Model Penal Code (MPC).⁵ In fact, Attorney General Danforth, as author of the "Introduction" to the Symposium, declared the need for "reform" was "clearly indicated by the work of the American Law Institute in its Model Penal Code (MPC)."⁶

The *Missouri Law Review* informs readers that the work on the state penal code began in 1969. Missouri lawyers and judges formed the Committee to Draft a Modern Criminal Code to benefit from the work of the "distinguished committee of the American Law Institute which prepared the Model Penal Code," along with "recently enacted or proposed criminal codes from approximately twenty-five states."⁷ Earlier code revisions in four states were often cited by states that followed as authority and justification for changes in the state penal code. The four states were Wisconsin (1956), Illinois (1962), Minnesota (1963), and New York (1967).

In the 1973 article, Attorney General Danforth advised state legislators that the punishment should fit the crime, but that Missouri's laws were obsolete, vague, deficient, with uneven punishment, and with little reflection of present-day thought.⁸ Yet the 58-page Missouri "Symposium" ends with a two-page summary affirming, very much like Professor Wechsler did in the 1952 *Harvard Law Review* that, "The proposed Code would make no essential change in most respects in the present Missouri law of sexual offenses."⁹

Those serving on the Committee for a Modern Criminal Code represented a "who's who" of Missouri lawmakers:

Chairman, Judge Norwin D. Houser
Vice-Chairman, Judge Donald J. Murphy
Senator Donald L. Manford
Senator Ronald L. Somerville
Representative George E. Murray
Representative James E. Spain
Prosecuting Attorney Frank Conley
Prosecuting Attorney Byron L. Kinder
Prosecuting Attorney Gene McNary
Prosecuting Attorney James Millan
Prosecuting Attorney John Crow
Judge Joseph Simone

⁵ Danforth, J. C., 1973, Symposium—Proposed Missouri Criminal Code. The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 361.

⁶ *Id.*, 362.

⁷ *Id.*

⁸ *Id.*, p. 361-362.

⁹ Richardson, O. 1973. Sexual offenses under the proposed Missouri Criminal Code. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 392.

Judge Orville Richardson
Honorable Norman S. Landon, Esq.
Honorable Manford Maier, Esq.
Judge Theodore McMillan
Judge Frank Cottey
Senator Ike Skelton
Senator Paul L. Bradshaw
Representative Harold Holliday
Representative Robert O. Snyder
Representative Harold L. Volkmer
Judge Harry Wiggins
Assistant Attorney General Gene Voigts
Prosecuting Attorney Harold Barrick
Prosecuting Attorney David Dalton
Honorable Curt Vogel
Honorable Raymond R. Roberts

Four reporters composed the drafting committee: Professors Edward Hunvald, Jr., Gary Anderson, of the School of Law at Missouri University Columbia, and Professors Gene Schultz and Alan G. Kimbrell, of the law faculty of St. Louis University.

Ten years passed from the first Committee meeting in 1969, to the enactment of the new code. Throughout that process the Committee reports cite multiple authorities for legislators to consider. The Symposium lauded the proposed changes to the Missouri penal code recommended by the Committee, and Attorney General Danforth advised the *Law Review* readers that after all changes were made, the final draft would be completed and incorporated in a bill for presentation to the 87th Session of the Missouri General Assembly.

Hearings were held on February 3, 1977, in which Senator Murray described the Missouri Criminal Law as a "chaotic situation," and claimed that the proposed bill seeks to solve two points, namely that there should be a simplification and an understandability of the criminal statutes.¹⁰

Judge Orville Richardson, Author of Sex Offenses Section

St. Louis Circuit Judge Orville Richardson served on the Committee drafting the Sexual Offense section. In the 1973 Symposium article Judge Richardson echoed the Kinsey Reports, stating that sex crime statutes that were "obsolete and seldom used by prosecutors should be scrapped. Most of them abound with archaisms, euphemisms and emotionally charged words."¹¹ Richardson made no attempt to hide the bias of his "emotionally charged words" declaring that rape, sodomy and child molestation;

carry extremely severe punishment. . . Those few who are punished are dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralists.¹²

Stressing the familiar Kinsey Reports' themes, Judge Richardson addresses the "unenforceable" nature of current sex laws; the tragic labels of rapist or sodomist and sympathy for perpetrators:

¹⁰ Hearing of the criminal code sub-committee of the Senate Committee on Judiciary, Criminal Jurisprudence and Corrections on Senate Bill No. 60, Senator Caskey, Chairman, p. 3.

¹¹ Richardson. *Supra*, 371.

¹² *Id.*, 372.

Unenforceable and unenforced laws lead to disrespect for law in general...The sex deviate is driven underground and into houses of male and female prostitution. The few who are caught are branded as "rapists" or "sodomists" and sent away to prison to enjoy their perversions with others deprived of heterosexual outlets. The many who escape prosecution lead uneasy lives of fear, evasion, and guilt.¹³

Immediately following the above reference to sex deviates, the writer seeks to refashion the law's perspective on these perpetrators and empathetically recommends recognition of these sex offenders as "minorities:"

More than anything else, [needed reform must come through] more understanding and tolerance of all of the diverse minorities that make up our society.¹⁴

Kinsey Reports Authority for Missouri "Sex Offenses"

Pre-1950, the only lawful sexual congress between the sexes was heterosexual coitus in marriage. As a protection for marriage, all other sexual contacts were illegal, but significant penal revisions in existing Missouri common law (based on the principles of the Old and New Testaments) were changed based on other authorities. Judge Richardson, in his 26-page section on Sex Offenses in the *Missouri Law Review*, gives a glimpse of his new authority, citing to the Kinsey Reports, and to Kinsey's posthumous Legal Volume cited below as "Gebhard." All Kinsey data cited to are fraudulently derived.

1. [T]he good people...speaking through their legislatures, are as yet unwilling to grant sexual liberties to their neighbors which, at least according to Dr. Kinsey, they allow themselves.¹⁵
2. But neither our criminal laws nor our publicly-voiced moral codes as to impermissible conduct are obeyed by a substantial segment of society. Kinsey reported in 1948 as to males and in 1953 as to females that about one-half of all married males and about one-quarter of all married females commit at least one adulterous act, and one out of every six females who did not do so at least wanted to or considered.¹⁶
3. There is a high incidence of premarital sex (fornication) in the United States, even though it is prohibited, at least when indulged in "openly and notoriously," in all but about 10 states including Missouri [cite omitted here]. "The president of a mid-western university recently remarked that three things are essential for a happy and alert university: parking for the faculty, athletics for the alumni, and most important, sex for the students"[cite omitted here]. It is estimated that there are about 2,600,000 men and 1,400,000 women who are exclusively homosexual in the United States [cite omitted here]. This means that almost everyone in the United States could at one time or another during his life have been convicted of a felony for a sexual offense or, at least, that everyone has violated his avowed moral code. "Not one in a million such episodes is likely to be

¹³ *Id.*, 372.

¹⁴ *Id.*, 373.

¹⁵ *Id.*, 371, citing G. Mueller, *Legal Regulations of Sexual Conduct* 16 (1961)

¹⁶ *Id.*, 375, at fn 8, citing A. Kinsey, W. Pomeroy & C. Martin, *Sexual Behavior in the Human Male* 585 (1948)

discovered, none in a hundred million prosecuted.[cite omitted here—see Kinsey's Male Volume, pp. 391-392.].¹⁷

4. Much of any code of sexual offenses is an "inevitable fusion of secular law and religious belief."¹⁸
5. [M]ales far outnumber females in the commission of crime. Sexual offenses committed by females are so rare that the studies of the Kinsey Institute excluded them.¹⁹
6. Puberty in the female is that age at which she is capable of bearing children. The majority of children under 12 are prepubescent; they have "not developed pubic, hair, breast enlargement and other adult sexual characteristics that are sexually attractive to ordinary men."²⁰
7. [F]ew adult male homosexuals seem particularly interested in boys under 12; rather, they seek only adolescent or young adult males.²¹
8. Many studies have been made on the increasing numbers of teenagers who have had consensual heterosexual or homosexual experiences.²²
9. Kinsey's earlier studies may now be outdated. Even then he found that of girls born in the 1920's, 30 percent had petted to orgasm in their teens.²³
10. Other studies, including those of Kinsey, indicate that many young people have one or more homosexual experiences in their teens; those experiences are generally purely experimental and do not persist in adulthood.²⁴
11. The story is told of a man who met a good-looking girl given to heavy cosmetics, high heels, tight dresses, provocative mannerisms, and a propensity for drink and sexual banter. The anticipated sequence of events occurred. When he next saw her on the "witness stand in court, they had braided her hair in pigtails and given her a rag doll to hold."²⁵
12. The Kinsey Institute found it necessary and appropriate to classify sex offenders by types. One of the variables was the age of the victim. Another was whether force had been used. Obviously, the younger the child the more difficult it is to say whether force was used.²⁶ [this amazing claim has been used to substantially undermine protections to small children and punishment for their abusers]
13. The Kinsey Institute did not attempt to study sex offenders under 16 years of age...the human female is equally ready for adulthood at age 16.²⁷

¹⁷ *Id.*, 375, fn 8, quoting both Kinsey's "Male" and "Female" volumes.

¹⁸ *Id.*, fn 11, citing P. Gebhard, J. Gagnon, W. Pomeroy & C. Christenson, *Sex Offenders* 3 NY: Harper and Row, 1965, hereinafter cited as Gebhard.

¹⁹ *Id.* at 379, fn 23, citing Gebhard.

²⁰ *Id.* at 382, fn 31, citing the MPC section which quotes the Kinsey Reports. Also cites Gebhard, et al.

²¹ *Id.*, fn 32, citing Gebhard.

²² *Id.*, fn 33, citing Kinsey's Male and Female Volumes.

²³ *Id.*, citing Kinsey's Female volume at 244.

²⁴ *Id.*, omits specific citation.

²⁵ *Id.*, fn 34, citing Gebhard at 84.

²⁶ *Id.* at 383, fn 35, citing Gebhard at 54.

²⁷ *Id.* at 384, fn 39, citing Gebhard at 11.

14. Little agreement exists among legal and psychiatric experts as to what may properly be regarded as sex offenses or as to what punishment sex offenders should face.²⁸

In the 1973 article, Judge Richardson made legal and social references to psychiatrists Benjamin Karpman, Ralph Slovenko and Manfred Guttmacher. As the national overview explained in chapter 2, these psychiatrists relied almost exclusively upon Kinsey's data for their statistical claims of what is normal sexual conduct, and they reframed criminal behavior as a psychiatric disorder which could be cured through therapy. Judge Richardson also refers to ALI-MPC authors and advisors Ploscowe, Tappan, Guttmacher, and Packer, all fully supportive of the unproven science purported by gall wasp expert, Alfred Kinsey, and his friends in the therapeutic field.

Rape

Based on the New York revision and the guidance of the MPC²⁹, crime is graded by "age" and "use of force." The Missouri Committee redefined the principle sex offenses (rape, sodomy, sexual abuse, and indecent exposure) as eleven separate crimes in the new criminal code for the purpose of grading the punishment³⁰ according to the use of forcible compulsion, the capacity or incapacity of the victim to consent, the age of the victim, and the age of the actor.³¹ As in the concern expressed earlier by Judge Richardson for using "emotionally charged" words like "minorities" and "rapists," the Missouri Committee weaves a complex pattern of change accomplished by recasting established understandings of criminal conduct, aided with the use of new scientific terminology to justify the significant changes in sex offenses.

The History of Missouri's Rape Laws

The 1949 rape statute at common law, held that convicted rapists in Missouri could receive death or imprisonment for not less than two years at the discretion of the jury. The following 1949 rape law provides an example of the simplicity of the common law:

Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female child under the age of 16 years, or by forcibly ravishing any woman of 16 years or upward, shall suffer death, or be punished by imprisonment in the penitentiary for not less than two years, in the discretion of the jury.³²

The fact that the Kinsey Reports found not one real rape in the 4,441 interviews with women for the *Female* Report began to have legislative significance through the ALI-MPC and state penal code revisions like Missouri's. According to the Kinsey Reports, rape was only a problem if **excessive** force was used. Following the MPC's reliance on the Kinsey Reports and the Missouri Committee's reliance on the MPC, the Missouri "revisers" refashioned rape into "forcible compulsion." In Addenda II is the preliminary draft presenting the classification for the new terms for rape based on the victim's age.

²⁸ *Id.* at 391, fn 68, citing Gebhard at 1-13.

²⁹ The Proposed Criminal Code for the State of Missouri, October, 1973, prepared by The Committee to Draft a Modern Criminal Code, p. 146.

³⁰ Richardson, *supra.*, note 6, 377.

³¹ *Id.*

³² Missouri Revised Statutes, 559.260, 1949.

The logic in devaluing rape by rewording and penalty reduction, begins with the Kinsey Reports' flawed "scientific" findings on what is "normal" sexuality:

- The Reports claimed to find that Americans were sexually active prior to marriage and that 50 percent of American women in 1940-50s were not virgins when they married. (Illegitimacy rates, venereal disease rates, etc., from this period do not support this claim.)
- Laws prohibiting fornication were considered archaic because the Kinsey Reports' findings deemed it common and normal and eventually it became legitimate and legal.
- If women were giving away their virginity prior to marriage as the Kinsey Reports claimed, then they no longer required the protections of stringent rape laws and penalties.
- Amid the high levels of fornication reported by the Kinsey Reports, whether the woman had consented, or was raped becomes harder to determine unless she resisted and the evidence of beating is sufficient to see bodily damage or she is dead.
- Rape is downgraded to first-degree sexual assault when the victim cannot demonstrate "forcible compulsion" by specific injuries.³³ "The Code reserves that term [rape] for the most heinous sexual offender."³⁴

Rape is now redefined to include rape, sexual assault, sexual misconduct, and sexual abuse with varying degrees. The 2000 rape law (566.030) suggests that if the forcible compulsion is not serious enough, the "actor" should not be charged with rape.

If the compulsion is not physical force that overcomes reasonable resistance or a threat that places a person in reasonable fear of death, serious physical injury or kidnapping, the actor should not be held guilty of the serious crime of rape, although he may be found guilty of a lesser offense, e.g., an assault under 565.060 or 565.070 [3rd degree assault, a non-sexual class C misdemeanor].³⁵

Other states cite a misdemeanor clause with specific instruction to use it for plea bargaining. Juries once had discretion to penalize rape with death, to a minimum of two years. The revision has usurped the authority of the judiciary, creating levels of severity based on age of victim, and amount of force used; with penalties ranging from 20 years to fines or a six month or less imprisonment. A narrow range of sentencing (judge and jury no longer have authority) is based on which level of offense is agreed upon through conviction, or more often, plea-bargaining which gives undue weight to the predator's social and financial status.³⁶

The report of the revision commission on the Proposed Criminal Code cites to New York Penal Law, as well as the Model Penal Code, as its authority for defining rape. Professor Hunvald testified to the Missouri Senate Subcommittee that New York was

³³ Section 559.040 Sexual Assault in the First Degree. Missouri Revised Statutes, 1978.

³⁴ Section 566.040 Sexual Assault. Comment to 1973 Proposed Code. Vernon's Annotated Missouri Statutes, 2000, 332.

³⁵ Vernon's Annotated Missouri Statutes, 2000, section 566.030, p. 212.

³⁶ In a personal conversation with a Missouri Correction's Officer, he said that almost all of the prison sex offender population had no resources for legal counsel, and were serving lengthy sentences. His opinion was only those who could afford to "work the system" could reduce a felony to misdemeanor, or could get a lenient sentence or probation only by agreeing to pay for private therapy.

the major influence in sex offense law revisions. He states, "We based this primarily on the New York model that they had enacted as to the terminology and to the method of gradations."³⁷ Examining the New York law helps to explain how Missouri would plea bargain rape to a class C misdemeanor assault. MPC Author Morris Ploscowe, a New York magistrate and professor at the New York University Law School, was cited in the general overview of law revision as declaring statutory rape "a fiction."³⁸ The Missouri Revision Commission adopts the plea bargaining option delineated in the New York criminal code revision. New York Magistrate and MPC Author Morris Ploscowe writes,

[T]he new Penal Law has created a crime labeled "sexual misconduct" which is designated as a Class A misdemeanor...A person is guilty of sexual misconduct under the new statute if (1)being a male he engages in sexual intercourse with a female without her consent; or (2) he engages in deviate sexual intercourse with another person without the latter's consent...Sexual misconduct would then include all offenses covered by the three degrees of sodomy as well as the three degrees of rape in the new Penal Law...The inclusion of sexual misconduct, as an offense in its present form in the new statute, appears to be a device to make the prosecution of sex offenses easier. The prosecutor can seek an indictment for felonies of sodomy or rape and then reduce the charge to sexual misconduct upon the defendant pleading guilty thereto. Thus the severe penalties provided for rape and sodomy will probably have little application in practice.³⁹

After hearing the testimony of Professor Hunvald to the Senate subcommittee, Senator Welliver quipped, "I am not sure it agrees with Playboy yet."⁴⁰

Statutory Rape

Prior to the revision, rape laws extended protections until a girl reached eighteen. "Missouri law extends, by a separate statutory rape statute, the period of protection an additional two years for young women of previously chaste character. Being of "previously chaste character" means simply that the young woman was a virgin prior to the act charged...If the state establishes that the young woman was of "previously chaste character," the same protection given a female under the age sixteen is applicable--i.e., both the consent of the prosecutrix and the use of force are immaterial."⁴¹

Lesser degrees of the once sure, swift and absolute rape law and penalties were relegated to second-degree assault, statutory rape, or child molestation. Employing the new "assault" terms, explain the Missouri "revisers" were out of concern for the reputation of the rapist.

The label "rapist" is a damaging one and should not be used in the statutory non-consent cases, e.g. where a fully consenting, and often fully developed and promiscuous social companion is involved.⁴²

³⁷Hearing of the Criminal Code Sub-Committee of the Senate Committee on Judiciary, Criminal Jurisprudence and Corrections on Senate Bill No. 60, February 3, 1977, page 55.

³⁸Ploscowe, *supra.*, fn xx.

³⁹Ploscowe, M. Sex Offenses in the New Penal Law. *Brooklyn Law Review*, vol. 32, 1966. pp. 280-281.

⁴⁰Hearing of the Criminal Code Sub-Committee of the Senate committee on Judiciary, Criminal Jurisprudence and Corrections on Senate Bill No. 60, February 3, 1977, Senator Caskey, chairman, p. 55.

⁴¹Admissibility of Character Evidence in Rape Prosecutions in Missouri, *Missouri Law Review*, vol. 41, 1976, p. 512.

⁴²Section 566.040 Sexual assault. Comment to 1973 Proposed Code. *Vernon's Annotated Missouri Statutes*, 2000.

The modern "revisers" define their "non-consent" cases e.g., their "fully consenting" and "fully developed" example of a "promiscuous social companion" as a 12 or 13-year old child. Parroting the Kinsey data they explain that the Committee:

selected the age of 12 as the critical age for the heaviest penalties for rape, sodomy, and sexual abuse in the first degree for a number of reasons...Usually the child who has reached puberty is more sexually and emotionally mature, more wise in the ways of the world, and more physically capable of resisting sexual advances. The chances of persisting psychological or physical harm from the assault are considerably reduced. A substantial number of these young people have had sexual experience of one kind or another. (Cited to Kinsey's Male and Female Volumes) ⁴³

Richardson urged Missouri law to place the burden on the victim to prove use of force, assigning degrees of wrong based on age. As in the Model Penal Code, the age of consent could be seen by some to be age 10. By using the process of compromise, the Missouri Committee was able to move the age of consent to under age 14; and grading any sex offense as serious required the victim be under 12 years old. Rape of a girl 14 or older by an offender under 21 was redefined, as in the Kinsey canon, as a kind of peer sex play, less traumatic for the child victim than rape by an adult. Under the reformed Missouri law, there is no criminal restriction on young adults between the ages of 14 and 20.

The law recognizes an adolescent's immaturity in making decisions about where they will live, whether they will go to school, and their health needs; but no protections at law are afforded for these adolescents who are vulnerable to physical and emotional disease and dysfunction that result from early sexual exposure. Those protections were removed based on Kinseyan fraud that distorted normal sexual need and practice. The Model Penal Code denies that children need this essential protection.

Dr. Reisman revealed in 1981 that the child data in the Kinsey Reports is drawn from pedophile experiences with young boys, some as young as 2 months of age.⁴⁴ Upon these data, the Kinsey Reports claimed to find that "normal" children are venereal beings from birth with sexual capacities and desires. These highly irregular, illegal and unscientific data were relied upon by the Missouri authors, who cite directly to Kinsey's second volume as their authority, to blame their 12-year-old victim for not properly "resisting" her or his predator.

The reinvented term used to spare the reputation of the predator is that of "actor." Indeed, a preliminary review of the terms used in the Symposium report finds "actor" (meaning only one who plays a part) to be regularly substituted for predator, offender, criminal or any other objectively pejorative term identifying the crimes one has committed.

Child Sexual Abuse: Missouri's Lost Legacy. The Protection of Minors

Prior to the criminal code reform enacted in 1979, Missouri laws provided the potential for harsh penalties for those preying on women or children. For example, a minor was still regarded as any person under the age of 21 years (State v. Chapple, 462 S.W.2d. 707 (Mo. 1971). The Appendix A to the Symposium, "A Historical Review of Missouri Laws," included the following citation by symposium author Judge Orville Richardson regarding Missouri "minors," Pre-Kinsey and pre-ALI-MPC law

⁴³ Richardson, *supra*, p. 381-382.

⁴⁴ Kinsey, Pomeroy, Martin, 1948. *Sexual Behavior in the Human Male*. Table 34, p. 180.

indicates Missouri's vigilant protection for minors, the weaker and more vulnerable of the state.

K. Molesting Minor With Immoral Intent: § 563.160. RSMo 1969, enacted in 1949, provides for imprisonment in the penitentiary for a term of not more than 5 years, or a jail sentence of not over one year, or fine of \$500, or both for

[a]ny person who in the presence of any minor shall indulge in any degrading, lewd, immoral or vicious habits or practices; or who shall take indecent or improper liberties with such minor; or who shall publicly expose his or her person to such minor in an obscene or indecent manner; or who shall by language, sign or touching such minor suggest or refer to any immoral, lewd, lascivious or indecent act or who shall detain or divert such minor with intent to perpetrate any of the aforesaid acts.

...

Intent is not an essential element of the crime and consent is not a defense. A "minor" is any person under the age of 21 years. Because the statute proscribes all types of sexual offenses including rape, sodomy, touching, indecent exposure, and even mere mention of sexual intercourse, **the true "age of consent" in Missouri is 21 years.** (Emphasis added).⁴⁵

As would be expected from a cadre of state leaders crafting sex laws not based on a normal model, but a sexually deviant model, the Symposium writers continued to show decreasing regard at law for the plight of child victims, (miscast as sexual beings according to the Kinsey Reports), and sympathy for their abusers having been seduced by the child's "normal" desires.

Sexual intercourse with incapacitated persons and those 12 or 13 years of age should not carry as severe a penalty [as forcible acts and those against children under 12], especially where mistake as to age is no defense and the victim may have not only consented but deliberately solicited the sexual act.⁴⁶

As is evident from the consenting age of 21 in 1949, Missouri law sought to safeguard children against any irresponsible sexual exposure. Thirty years passed before Missouri jurists and then lawmakers finally accepted the Kinsey Reports, through the ALI-MPC, as the latest in objective sex science. Missouri law today carries the assumption that children are entitled to unfettered sexual expression early in life, and predators are not to be held to such "obsolete, vague, deficient," standards for doing what the Kinsey Reports says is normal.

Pre-1950 Missouri law held that those who talked about or displayed sexual materials to children as taking "indecent" and "improper liberties...degrading [by] immoral or vicious habits...practices...such a minor." Were this standard still upheld in Missouri, pornography and modern sex education would be wholly illegal under the pre 1973 laws. *Playboy* magazine first published in December 1953, would also be illegal to disseminate in any college near a "minor" under age 21. It is clear that such laws would threaten the existence of the burgeoning sex industry today.

⁴⁵ Richardson, O. 1973. Sexual offenses under the proposed Missouri Criminal Code. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 397.

⁴⁶ *Id.*

Changes in Age of Consent.

Prior to 1970, before Missouri's revised criminal code, *a child's consent to sex could not be obtained "under the age of 16."* This allowed judges the leeway based on the evidence presented to determine that in some cases a 16-year-old might have given consent in a "Romeo and Juliet" kind of scenario. In other less poetic circumstances, Lotharios were deterred by the threat of the potential penalty of death to a minimum imprisonment for not less than two years, for sex with someone under age 16.⁴⁷

The Kinsey-based ALI-MPC guided Missouri to reduce the age of consent to 14, ranking rape (new definition being forcible compulsion) as a Class B felony (Maximum imprisonment exceeds 10 years and is less than 20). So rape of a 14-year-old became a class A felony (20 years to life) only when "serious physical injury" was inflicted or a deadly weapon was displayed in a "threatening manner."⁴⁸ Adult sex with a 14-year-old was re-named "sexual assault in the first degree" instead of "rape." In keeping with Kinsey's alleged "findings of the harmlessness of adult sex with children" this was ranked as a lesser class C felony (maximum imprisonment 10 years).

Note that although a child under 14 could not legally consent to sex, her age is the criteria for "grading" her responsibility and lessening the seriousness of the violation based on the justice professional's view that by age 12 one is worldly wise. For example, a Class A misdemeanor, sexual abuse in the second degree (MO Rev. Stat. 566.110, 1986) applies to a predator who "subjects another person to whom he is not married to sexual contact, when the other person (child) is incapacitated or twelve or thirteen years old."

Redefining a sex crime or reducing a penalty based on the victim's age was justified by the Kinsey Report's construct of 'juvenile sexual entitlement.' *The burden of proof of harm was now placed on the victim to prove she or he did not "consent."* This concept of "consent," unknown in the common law for criminal behaviors, (addressed more extensively in the first section) is setting alarming precedents. A victim's burden of proof could extend to his/her death resulting from "rough sex." In the "rough sex" defense, the "actor" (rapist-murderer) under the new code says the "complainant" (victim) consented to the "rough sex" and died in the act. The victim, now dead, cannot defend and the rapist-murderer potentially can avoid receiving a conviction or penalty for murder.

This happened in Missouri. According to the *St. Louis Post Dispatch*, Dennis Bulloch was tried for first-degree murder in June 1987 insisting that his wife had died accidentally during a game of sexual bondage. Her nude body was found in the smoldering ruins of her home, gagged and bound to a chair with more than 76 feet of tape. Bulloch said he had been drunk at the time and must have passed out when his wife died. He said he had later set fire to the house and to his dead wife, to disguise the nature of her death. The state asked for the death penalty. It would seem that the claim of "rough sex" and a claim of drunkenness got Bulloch convicted of involuntary manslaughter. He received a seven-year prison sentence for his part in the "game" but Julia Miller Bulloch lost her life and received no justice.⁴⁹

The Sunday News Leader reported a similar story on December 1, 2002. In this case the parties are described as the "dominatrix" and her "client" who died, and was

⁴⁷ Section 559.260 Rape, punishment. Missouri Revised Statutes, 1949.

⁴⁸ Section 566.030 Rape. Missouri Revised Statutes, 1978.

⁴⁹ Mary E. Chollet, "3 Bulloch Charges Are Upheld By Judge," *St. Louis Post Dispatch*, April 12, 1988.

then dismembered by his assailant and her boyfriend, and disposed of in a restaurant dumpster. She has pleaded innocent to involuntary manslaughter.

Curbing the American Jury System

The net effect of the ALI MPC's new crime grading system was to usurp the constitutional power⁵⁰ invested in the American jury system by an expert class both legal and other; to weaken protections for women and children, and to attempt to "reduce" crime by declaring criminal acts no longer criminal.

In 1966, an article appeared in the St. Louis University Law Journal decrying the jury system as "a mixture of vengeance and ignorance."⁵¹ As in other states implementing criminal code reform, the sentencing of a criminal was framed as a therapeutic, multi-disciplinary decision rather than a criminal sanction:

The sentence pronounced should be weighed according to the individual's requirements as determined by a study of his character, his criminal record, his social history, and possibly by the recommendations of persons skilled in the study of human behavior.⁵²

The writer describes penalties meted out by juries as "uninformed speculation." Because Missouri allowed the parole board to grant parole to any prisoner even before the usual statutory minimum term of one third of his sentence is served, the writer considered strong penalties a speculation by the jury that only a portion of their sentence would be applied. The author responds, "Such dangerous jury speculation can be avoided by eliminating jury sentencing entirely."⁵³

Kinsey Influences Laws pre-empted by Supreme Court

Of the 52 laws targeted for change by Ernst and Loth in 1948, each and every one that was current on Missouri books was indeed changed by the criminal code revision. Laws such as "impairing morals, "nudist camps," and "obscenity" had already been altered by Supreme Court decisions.

Although our study has been limited to rape and child abuse in scope, the criminal code revisions have had a ripple effect on criminal and civil procedures. As an author of a 1980 *University of Missouri Kansas City Law Review* article points out regarding the entire criminal justice system:

Although the code is largely substantive in nature, it touches so intimately on procedural aspects that it warrants this initial recognition. In addition, its adoption spawned subsidiary changes such as the new Missouri Approved Instructions in criminal cases and Missouri Approved Charges, Criminal. Preliminary mention

⁵⁰ U.S. Constitution 6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

⁵¹ A Review of Sentencing in Missouri: The Need for Re-evaluation and Change. St. Louis University Law Journal. Vol. 11, 1966, p. 71.

⁵² Id.

⁵³ Id., pp. 72-73.

also should be made that the Supreme Court of Missouri ordered a large-scale revision of its rules pertaining to criminal matters.⁵⁴

Missouri's Mental Responsibility Law

In 1963, the Journal of the Missouri Bar published a symposium on "Missouri's Mental Responsibility Law." Introduced by the chief author of the Model Penal Code, Herbert Wechsler writes,

To all who shared the general concern for the improvement of our long neglected penal law, the enactment of this statute, dealing as it does with fundamental and divisive problems, is a heartening event. For those of us who labored for a decade on the Model Penal Code of the American Law Institute, there is encouragement in learning that Missouri's law makers were aided by our work.⁵⁵

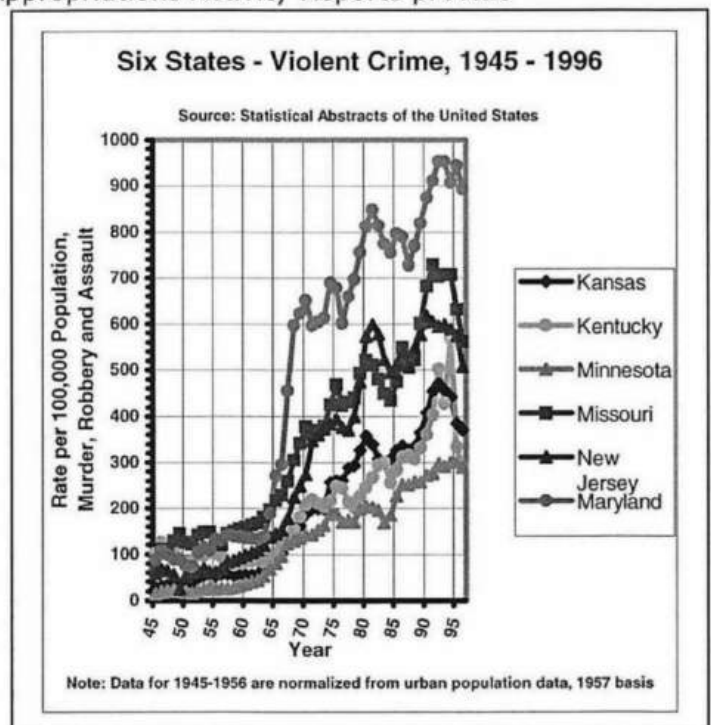
A New York Professor of Law, Gerhard O. W. Mueller, describes Missouri's new law as "the soundest American legislation on the topic in a century."⁵⁶ He concludes, "No test in any American jurisdiction comes as close to my personal purely academic ideal of a logically, legally and psychiatrically sound test of incapacity as that adopted by Missouri."⁵⁷ Comments were also published by Guttmacher, Overholser, Tappan and Weihofen reframing criminal acts as mental disability.

What Has the Failure of the MPC Cost Missourians?

In order to sample the public expenditures associated with the increased rates of sexual violence as reported, Missouri State Appropriations Activity Reports provide indicators. As shown here, all states have similarly significant increases in violent crime since the 1950s after adopting the guidance of the ALI Model Penal Code, which was billed to legislators as designed to decrease violent crime.

Reports from Missouri were reviewed every tenth year from 1950 through 2000. These documents do not list line item expenditures, and therefore give only a general picture of the upsurge, since 1950, in public spending for programs to address the increasing violence to women and children.

In this study, appropriations were determined for corrections, social services, and mental health for each decade in Missouri. It should be understood that rape and child abuse issues would be a part of these appropriations. Using



⁵⁴ Popper, R. 1980. Recent developments in Missouri: Criminal Law (The Sixth Amendment). *UMKC Law Review*, 48(4). Kansas City: UMKC Law School, 602.

⁵⁵ Wechsler, H. Missouri's Mental Responsibility Law: A Symposium. *Journal of the Missouri Bar*, December, 1963.

⁵⁶ *Id.*, p. 650.

⁵⁷ *Id.*, p. 654.

Economic History Services, all expenditures were converted to current dollars for the purpose of comparison (current dollar conversions in blue). The 2000 budget is available in greater detail than earlier appropriations, thus line item examples from the current budget are given. While acknowledging that a detailed analysis would require a line item examination of budgets to fully determine the special interests being served and what specific services are provided, this abbreviated report gives examples of the sizable increases in costs and the shift in emphasis over the years signaled by the types of social assistance funded by the state.

The annual cost of social services in 2000 in Missouri is \$4.78 billion. By comparison, the "Division of Welfare" in 1950 had a budget of \$35.8 million (\$265.8 million current dollars).

In 1950, the "Division of Welfare" provided 65.6% of the budget for old age assistance, and 14.5% of the budget for aid to dependent children. The balance paid for aid in case of public calamity, and for homes for the care of soldiers.

By contrast in the 2000 Missouri Budget, a total of \$23.9 million was identified for the prevention and treatment of sexually transmitted disease. This is an eight-fold increase after allowance for inflation from the 1950 budget of \$442,706.00 for venereal disease.

HIV/AIDS accounted for 88.5% of the total current STD expenditures, which includes the Department of Education's HIV/AIDS prevention program. Today, the Department of Health also focuses on decreasing growing family violence, alcohol and drug related crime, and teen pregnancy.

Also new in the current budget is the governor's recommendations for \$1.3 million for alcohol and drug treatment for adolescents, and \$1.2 million for law

enforcement to prevent the sale of tobacco to minors, \$8.3 million for the treatment and support services and new medications for adults with mental illness, \$4.7 million for an additional 120 social service workers to address child abuse and neglect investigations, and \$157,370 for legal staff to train teams on child protection, including the investigation of child pornography.

An additional \$4.8 million is recommended to improve and expand treatment for mentally ill and seriously emotionally disturbed children. A new group home for treatment of "forensic" clients (court-ordered offenders) will be opened at Fulton State Hospital at the cost of \$730,634.

In Summary: Missouri's 2000 social services budget is 18 times as expansive as it was in 1950, and there is an observable shift in spending emphasis from the aged and disabled in 1950, to the violent, criminal, and promiscuous in 2000.

	Corrections	Social Services	Mental Health
1950	1,645,300 (11,067,933)	35,894,000 (265,773,534)	4,151,040 (27,924,046)
1960	11,300,425 (68,072,630)	105,171,364 (633,541,780)	47,605,563 (286,771,151)
1970	13,645,216 (62,710,683)	357,051,924 (1,640,939,232.32)	84,090,283 (386,462,122.6)
1980	40,972,527 (88,701,424)	1,067,276,450 (2,310,546,787)	259,357,765 (561,483,625)
1990	202,757,907 (276,622,613)	1,581,262,114 (2,157,315,902)	432,106,442 (589,522,819)
2000	421,558,634	4,784,147,471	668,408,957

Corrections and Mental Health Services

Turning from social services, let us now examine the record on corrections and mental health. After adjusting for inflation, the cost of Corrections has increased 3,727% versus an 82% increase in population in the past 50 years, with a current corrections budget of \$421.5 Million.

Approximately half of all inpatient psychiatric services provided by Missouri tax dollars are spent for court-ordered offenders. Four Missouri State hospitals provide 822 of the total 1,668 mental health beds for court-ordered offenders. The Division of Comprehensive Psychiatric Services, Department of Mental Health, provides these services with a budget of \$273,433,011 in 1999. The 2000 appropriation was \$292,931,459.

Based on these financial reports, courts are ordering that more than \$145 million Missouri tax dollars be spent on offender inpatient therapy alone. The budget does not reveal what additional funding is used for outpatient therapy for offenders, other than for drug and alcohol abusers, for which \$73,449,556 was appropriated in 2000. The additional costs of outpatient therapy are not reflected in the totals listed here. The Missouri Department of Mental Health has a 2001 budget of \$668.4 Million.

An example of a state-funded in-patient mental health program is the Southeast Missouri Mental Health Center, where a 25-bed Sexual Predators Program is in operation. The 2000 Missouri budget provided \$9,470,398 for the "design, construction, demolition, renovation, and improvements for the sexual predator program at Southeast Missouri Mental Health Center."⁵⁸ In response to the Legislative Liaison for Missouri Concerned Women for America, the Department of Mental Health reported that the Sexual Predator Unit of the Southeast Missouri Mental Health Unit houses 60 "patients" at a cost to Missouri tax payers of \$4.4 million, or \$74 thousand per resident sexual predator.⁵⁹

A similar program is being conducted in Kansas, for which detailed costs were reported. In 1994, the Kansas State Legislature approved a rehabilitation program for sexually violent predators, those convicted of rape, sodomy and sex felonies against children. The Kansas Department of Social and Rehabilitative Services screens all sex offenders for "mental illness, mental abnormality, or personality disorder." In 1999, 28 residents were receiving treatment. The FY2000 budget projecting the cost of the therapy to an average of 26 residents is \$1,372,827, which equals a cost to Kansas taxpayers of over \$50,000 per violent predator resident.

In Summary: In the aftermath of deconstructing the common law framework in state penal law codes which strongly protected marriage, women and children, Missouri appropriations since 1950 demonstrate the creation and continued rapid expansion of public programs to address offenses known and understood in 1950 Missouri as "Crimes Against Morality." The taxpayer burden increases each year the state relies upon therapeutic programs with dubious track records and administered by an "expert" class above the will of the people. With the advent of the ALI MPC with its costly reforms and therapeutic programs and introduction of "experts" into the justice system, America's founding system of common law and trial by jury has been abolished, and criminals are given liberties at great personal and financial cost to the law-abiding citizen.

⁵⁸ State of Missouri Appropriation Activity Report, Appropriation Year 2000, Office of Administration, Division of Accounting, at 83.

⁵⁹ Reported by Patty Henry. Information requested by Bev Ehlen, Missouri CWA legislative liaison, through Representative Peter Myer's office. Fax dated January 25, 2002.

As stated earlier, a line-item analysis of appropriations is needed to determine the specific costs to America's citizenry that have resulted from the skyrocketing increases in criminal sexual behavior. However, it is clear from this sampling that public costs have risen to an unprecedented height, and the criminal law revisionists' promise of reducing crime and violence is today a failed social experiment.

Treatment Programs For Sex Offenders

A tenet of the Model Penal Code was expressed by author Herbert Wechsler, that crime should be viewed "primarily as a symptom of a deviation that may yield to diagnosis and therapy."⁶⁰ Today, the authority of our American system of trial by jury is stripped of its authority, replacing it with expert testimony. Current criminal sexual conduct (formerly rape) statutes provides for

Any person who has pleaded guilty or been found guilty of violating the provisions of this chapter [566 Sex Offenses] and is granted a suspended imposition or execution of sentence or placed under the supervision of the board of probation and parole shall be required to participate in a program of treatment, education, and rehabilitation designed for perpetrators of sexual offenses. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.⁶¹

Furthermore, when the offense involves a child, all probation or parole is conditioned on "being involved in an appropriate treatment program." (section 566.141). According to notes on Crime Prevention Control Programs and Services, completion of a program of treatment, education and rehabilitation for sexual assault offenders can facilitate parole.⁶²

The net effect of treatment programs can be to remove criminal behavior to the realm of civil action. For example, Chapter 455.523 describes the penalty for an abuser in his own household:

When the court has, after hearing for any full order of protection, issued an order of protection, it may, in addition....(6) Order the respondent to participate in a court-approved counseling program designed to help child abusers stop violent behavior or to treat substance abuse; (7) Order the respondent to pay, to the extent that he or she is able, the costs of his or her treatment, together with the treatment costs incurred by the victim; (8) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the victim by a shelter for victims of domestic abuse.⁶³

While states remain "optimistic" about their sex offender treatment programs, taxpayers and victims continue to pay the price for unproven experiments. The offender seldom has "ability to pay for treatment."

Missouri has an active sex offender registry system, as do most states.⁶⁴ These programs are designed to help law abiding citizens know where the free-roaming

⁶⁰ Wechsler, H. Challenge of a Model Penal Code. *Harvard Law Review*, Vol. 65, 1952, p. 1104.

⁶¹ Missouri Revised Statutes, 2000, Section 566.140.

⁶² Missouri Revised Statutes, 2000, Section 589.040.

⁶³ Missouri Revised Statutes, 2000, Section 455-523.

⁶⁴ Missouri Revised Statutes, 2000, §589.400 (adult offenders), and 211.425 (juvenile offenders).

predators are, so they can lock up their children and themselves for their own safety. Sex offender registries are a clear demonstration of the innocent being punished so the criminal can remain free. In addition to its conceptual flaw, however, is its inefficiency. Does it make law makers appear to be tougher on crime than they are? Does Missouri's sex offender registry provide any added protection against predators? According to a Missouri State Audit, the auditors found that 36% of listed offenders had not met the requirements of the registration law, and more than 500 sexual offenders would not be included due to a "suspended imposition of sentence."⁶⁵

Legislative Approval of the Revision

The Criminal Code Sub-Committee of the Senate Committee on Judiciary Criminal Jurisprudence and Corrections held hearings on the criminal code revision on February 3, 1977. In his opening remarks, Senator George Murray of the 26th District described the revision as a mere clarification of existing statutes. He says,

At its earliest meeting the commission decided that they were not charged with any duty to bring any changes in the law or changes in philosophy. Their duty was to make sense of the existing statutes to put them in understandable language, to eliminate the ambiguities, to use language that was readily understandable by police officers, by prosecutors, and indeed by the person on the street.⁶⁶

Missouri Criminal Penalties

For the year 1979 when the MPC-based Missouri Code took effect, the following penalties apply:

- Class A felony- life imprisonment or twenty years or more
- Class B felony - maximum imprisonment exceeds ten years but is less than twenty
- Class C felony - if the maximum imprisonment is ten years
- Class D felony -if the maximum imprisonment is less than ten years;
- Class A misdemeanor - if imprisonment exceeds six months in jail; fine not to exceed one thousand dollars
- Class B misdemeanor - - if imprisonment exceeds thirty days but is not more than six months; fine not to exceed five hundred dollars
- Class C misdemeanor - if imprisonment is thirty days or less; fine not to exceed three hundred dollars.

Conclusion: Missouri's Women & Children Today

Contrary to the Symposium's summary remarks that "the Proposed Code would make no essential change in most respects in the present Missouri law of sexual offenses,"⁶⁷ the new Code indeed made "substantive changes" in most laws on Missouri Sexual Offenses. In fact, the new code is unrecognizable as a successor to Missouri's pre-Kinsey child protection statutes. The 2000 edition of *Vernon's Annotated Missouri Statutes* includes "Comment to 1973 Proposed Code" in each subsection. Chapter 566 Sex Offenses cites the ALI Model Penal Code in virtually every comment pertaining to the sex crimes reviewed, thus directly connecting the Kinsey Reports--in which the ALI Code was grounded--to most current Missouri laws

⁶⁵ STLtoday.com, May 29, 2002. "State Audit Notes Problem with Missouri's Sex Offender Registry."

⁶⁶ The Criminal Code Sub-Committee of the Senate Committee on Judiciary Criminal Jurisprudence and Corrections, Hearings on Senate Bill No. 60, February 3, 1977.

⁶⁷ Richardson, *supra*, p. 392.

on sexual matters. These facts regarding the scientific fraud that undergird the Missouri Criminal Code related to Sexual Offenses need to be brought to the attention of state leaders and legislators invested with the authority to redress the use of Kinsey's fraudulent scientific "data" in reducing or eliminating protections and remedies at law for Missouri women and children.

Missouri Rape Laws: A Comparative Analysis
1949--1986--2000

1949 Missouri Revised Statute	1986 Missouri Revised Statute	2000 Missouri Revised Statute
<p>Rape. 559.260. "Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female under the age of sixteen years, or by forcibly ravishing any woman of the age of sixteen years or upward, shall <u>suffer death, or be</u> punished by imprisonment in the penitentiary for not less than two years, in the discretion of the jury."</p> <p>559.300 Carnal knowledge of female between ages of 16 and 18. "If any person over the age of 17 years shall have carnal knowledge of any unmarried female of previously chaste character, between the age of 16 and 18 years of age, he shall be deemed guilty of a felony. Penalty: Imprisonment in the penitentiary for a term of two years, or in the county jail 1 to 6 months, or a fine of not less than \$100, or more than \$500, or both in the discretion of the jury."</p>	<p>Rape 566.030 "A person commits the crime of forcible rape if: (1)He has sexual intercourse with another person to whom he is not married, without that person's consent by the use of forcible compulsion; or (2)he has sexual intercourse with another person to whom he is not married who is less than 14 years old. Rape is a Class B felony.</p> <p>Sexual assault in the first degree. 566.040 "...sexual intercourse with another person to whom he is not married and who is incapacitated or who is 14 or 15 years old. Sexual assault in the first degree is a class C felony.</p> <p>Sexual Assault in the second degree 566.050. sexual intercourse with a 16 ear old. (Class D Felony)</p> <p>Sexual misconduct 555.090. "Being less than 17, having intercourse with a 14 or 15 year old; (Class A misdemeanor).</p> <p>Sexual abuse in the first degree 566.100. ... subjects another person who is less than 12 years old to sexual contact, or contact by forcible compulsion (Class D felony unless actor inflicts serious physical harm or displays a deadly weapon— then a Class C felony).</p> <p>Sexual abuse in the second degree 566.110. Subjects another person who is 12 or 13 years old to sexual contact (Class A misdemeanor).</p> <p>Sexual abuse in the 3rd degree 566.120 Subjects another person to sexual contact without that person's</p>	<p>Forcible Rape 566.030. Sexual intercourse with another person by the use of forcible compulsion. (minimum five years; 10 yrs. With a weapon).</p> <p>Sexual Assault 566.040. "... if he has sexual intercourse with another person knowing that he does so without that person's consent. (Class C felony).</p> <p>Statutory Rape in the first degree. 566.032. Person over 21 having intercourse with a person less than 14 years old. Life imprisonment or 5 years, unless the victim is less than 12 years old or weapon used, in which case 10 years is authorized.</p> <p>Statutory Rape in the Second Degree 566.034. Person over 21 having intercourse with another person who is less than 17. (Class C felony)</p> <p>Child molestation in the first degree 566.067 Subjects a person under 12 years of age to sexual contact (Class B felony)*</p> <p>Child molestation in the second degree 566.068. subjects another person who is 12 or 13 years of age to sexual contact. (Class A misdemeanor).</p> <p>566.083 Sexual misconduct involving a child. "Knowingly exposing the person's genitals to a child less than 14 years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; coerces a child less than 14 years of age to expose the child's genitals. ."(Class D felony)</p>

	consent. (Class B misdemeanor)	566.090 Sexual misconduct in the first degree. " . . purposely subjects another person to sexual contact or engages in conduct which would constitute sexual contact except that the touching occurs through the clothing without that person's consent. (Class A misdemeanor)
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Asst. Prosecuting Attorney Jill Geary, Greene Co. MO., reported this change in 2000 session.

~Nine~

Eliminating Protections for Women and Children in the Georgia, Minnesota, Tennessee, California Penal Codes

A Brief History of a States' Criminal Code Revision

As one of the original thirteen colonies, Georgia law was derived from the English common law. In 1811, the General Assembly of Georgia passed an "Act to Ameliorate the Criminal Code and Conform the Same to the Penitentiary System." The first general code of law in Georgia was published in 1863, which embodied both criminal and civil law, and was adopted by the General Assembly as the first general code of Georgia.¹

Summary of Georgia's Revision Process

Georgia criminal law reform was dominated by University Law Professors and leadership within the Georgia Bar Association. The Bar Association's Standing Committee on Criminal Law and Procedure met in August 1960, and its resolution was submitted to the General Assembly creating the Criminal Law Study Committee, which served to approve Georgia's Criminal Law Revision.

The influential Bar Research Staff charged with drafting the revision consisted of the following "outstanding legal scholars:"

Dean James C. Quarles, Walter F. George School of Law, Mercer University;
Professor James C. Rehberg, Walter F. George School of Law, Mercer University;
Professor Royal Shannonhouse, University of Georgia Law School,
Professor Marion W. Benfield, Jr., University of Georgia Law School.

In Addition, Professors Albert B. Saye and Norman Crandell of the University of Georgia served on the Drafting Subcommittee.

The Criminal Law Study Committee, which was to approve the drafts, consisted of 16 members, five members of the senate, five members of the house, and six members appointed by the governor. Attorney T. T. Molnar, from Cuthbert, chaired the Criminal Law Study Committee. The criminal code produced by the above was adopted by the 1968 session of the Georgia General Assembly and became effective July 1, 1969.

Reasons For Georgia Revision

Again not unlike the authors of the Model Penal Code and other state revisionists, according to Mr. Molnar's report, the criminal laws of Georgia had also "developed into a patchwork of inconsistencies, contradictions, and confusion by reason of the

¹ Molnar, T. T. Criminal Law Revision in Georgia. *Mercer Law Review*, Vol. 15, 1964, pp. 400-402.

desire to break away from the common law and create as rapidly as possible a legal system more nearly adapted to local conditions."²

Molnar reports public outcry regarding the criminal code:

The public was aroused and demanded that the Criminal Code of Georgia be revised. Voluntary organizations sprang up in various parts of the state, each organization sponsoring a different system of criminal law. In the years immediately preceding 1960 this public demand grew in intensity. Governor Ernest Vandiver insisted that the creation of a code commission is the responsibility of the Georgia Bar Association and not of voluntary organizations.³

Georgia Guided by ALI's Model Penal Code & Illinois Revision

The Georgia commission relied upon five authorities for their revision: Existing Georgia law with court interpretations; the American Law Institute's Model Penal Code; the Criminal Code of Illinois; and finally, other states revisions and the constructions of the research groups (law school professors).

In September of 1961, Professor Charles H. Bowman, Reporter for the Illinois Revision Commission, met with the Georgia Criminal Law Study Committee. He brought with him to Georgia six years of revision work just completed in Illinois.⁴ Illinois was reported to be the first state to adopt the Model Penal Code, and its fact finding commission declared that Kinsey's sex science permeated all present thinking on the subject of sex offenders. The Illinois Commission report was examined in depth in Chapter 3.

Brief Overview of Georgia Law Protecting Women and Children

In 1926, the criminal code of Georgia provided the death penalty for the simple common law definition of rape:

Article 4, section 93: Rape: carnal knowledge of a female, forcibly and against her will. The crime of rape shall be punished with death, unless the defendant is recommended to mercy by the jury, in which case the punishment shall be the same as for an assault with intent to commit a rape.⁵

Pre-ALI Model Penal Code, the accused would be brought to court before a jury of peers, and evidence from both defense and prosecution would be presented to the jury before a judge. At the completion of the evidence, the jury would then decide the innocence or guilt of the accused and sentence passed. In current law, the burden of proof is on the victim to prove her resistance to force, she is in essence on trial to prove her rape. If she cannot demonstrate and prove her resistance to force through physical injury or her own death, the rapist is not guilty of the law's new definition of rape. And although the death penalty is still on the books, the Courts have set aside the law, calling the death penalty "grossly disproportionate and

² Id., p. 399.

³ Id., p. 405.

⁴ Id., p. 407.

⁵ The Criminal Code of Georgia, 1926.

excessive punishment for rape, and is therefore forbidden by U.S. Const. Amend. 8 as cruel and unusual punishment.”⁶

Kinseyan Dogma: Children are Sexual from Birth.

Alfred Kinsey and the now proven junk science of The Kinsey Reports were immeasurably influential in the Illinois Revision, the ALI Model Penal Code, and in Georgia. One of the stunning and most important findings of The Kinsey Reports to rape and child molestation laws was that humankind was erotic and sexually desirous from birth. In other words, Kinsey said infants and children are interested in and should be allowed unencumbered sexual privileges from birth with other children and adults.

Georgia’s unique definition of rape is influenced by The Kinsey Reports in the state’s requirement that a young child prove that force was used against her to constitute rape. Otherwise she could be said, based on the science, to be soliciting an adult from a natural urge to be sexually satisfied. The two elements to be proven are “against her will”, which is proven by the victim whose age is under 10. However, force must be proven by all rape victims regardless of age. Georgia annotations in the current law state:

The fact that a victim is under the age of consent may supply the “against her will” element in a forcible rape prosecution under this section, but the same fact cannot supply the element of force as a matter of law. *State v. Collins*, 70 Ga. 42, 508 S.E.2d 390 (1998).

Statutory Rape

Historically, statutory rape is the “age limit set by the statutes beyond which consent by the minor is a defense to prosecution.”⁷ More simply stated, when a girl reaches the statutory age, non-consent must be present to prove the crime of rape; and under the statutory age, sexual intercourse is ***always*** rape. In 1952, the statutory age was 18 in twenty-three states, and 16 in twenty-one states. In Georgia, the carnal knowledge of a female under 14 was rape, no matter what the circumstances. Today in Georgia, a curious redefinition of “statutory” assumes, true to Kinseyan form, that ALL females victimized in statutory rape consented to the act. In the current Georgia law, the annotations explain,

Statutory intent. This statute [16-6-3 Statutory Rape] was intended to apply only to cases where the act of intercourse was accomplished with the actual consent or acquiescence of the female, and is to be treated as rape merely because the female is under the age of consent as therein specified.⁸

Statutory rape applies to victims under 16, if the rapist is over 21.
Punishment is fixed at 10 to 20 years, or, if the victim is 14 or 15 and the

⁶ *Coker v. Georgia*, 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (1977), cited in current GA code..

⁷ Bensing, Robert C. A Comparative Study of American Sex Statutes. *Journal of Criminal Law, Criminology and Police Science*. Vol. 42, 1952, p. 60.

⁸ Official Code of Georgia, Annotated, 1999, Section 16-6-3, p. 382.

person so convicted is no more than three years older, the penalty is a misdemeanor.

Therapy Replaces the Juries, Judges, & Criminal Sanctions

As was common in the Penal Revisions sweeping the country, the jury and the judge were weakened in the administration of justice by the "expert" class and chief among the experts at this time in the law are those in the therapeutic professions of psychiatry, psychology and sociology. Entering the law are a number of new concepts such as that of the "unconscious" mind, where man is not in control of his functions. Mans' ability to know right from wrong is vital to the law. The chair of the Criminal Law Study Committee, T. T. Molnar, writes in the Mercer Law Review,

In separating the bad from the sick, the common law deemed it indisputable that every man has the ability to adhere to the right. Psychiatry challenges this basis for a finding of personal blameworthiness...Indeed, the unconscious is deemed to mock and play havoc with the conscious. In the psychiatric view, the distinction between the sick and the bad is an illusion. In terms of personal blameworthiness, there is no difference between the functional aberration called a disease or defect of mind and what is inscrutably called a defect of character. However helpful such classifications may be in the treatment of the sick, they are irrelevant to the infliction of the stigma of criminal. The thrust of the psychiatric thesis must be to reject insanity as a defense and to deal with all transgressors as unfortunate mortals.⁹

The chief psychiatric advisor for the Model Penal Code was Manfred Guttmacher. He is quoted philosophizing in the Georgia Law Review what Kinsey held, to explain why society reacts badly to rape and child molestation. The implication is that society ought to lighten up, especially those who, while they are most vocal in their "anxiety" over such crimes, are suppressing the desire to perpetrate the same crimes.

Philosophically a sex offense is an act which offends against the sex mores of the society in which the individual lives. And, it offends chiefly because it generates anxiety among the members of that society. Moreover, prohibited acts generate the greatest anxiety in those individuals who themselves have strong unconscious desires to commit similar or related acts and who have suppressed or repressed them.¹⁰

This was also a favored tactic of Kinsey's to quiet those who spoke out against rape and child molestation. Accuse those who lament these terrible acts of wanting to do the same is quite an effective method to silence opposition and advocates for women and children. Georgia joins the chorus by referring to pedophilia [child molestation] as a "relatively minor crime," and the Georgia Law Review states that the "absurdity of enforcing most of our sex laws...should be obvious, even to the most prudish Neo-

⁹Molnar, *Supra*, Note 1, pp. 419-420.

¹⁰ Pedophilia, Exhibitionism, and Voyeurism: Legal Problems in the Deviant Society. Georgia Law Review, Vol. 4, 1969, p. 149.

Puritans.¹¹ Besides, it goes on to parrot Kinsey's error widely circulated in the legal community that "recidivism for sexual offenders as a whole is extremely infrequent...especially for pedophiles." The footnote quotes Frisbe's study, with recidivism for homosexual pedophiles at 34.5%, and heterosexual pedophiles at 18.2%. Few law abiding citizens would consider these recidivism rates acceptable, or low or "extremely infrequent."

Although the crime of child molestation in Georgia carries the penalty of 5 to 20 years:

Upon such first conviction of the offense of child molestation, the judge may probate the sentence; and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist...upon a defendant's being incarcerated on a conviction for such first offense, the Department of Corrections shall provide counseling to such defendant.¹²

Despite the abysmal failures of therapy to rehabilitate child predators, current Georgia law requires that a predator convicted of aggravated child molestation of a victim 16 or younger undergo a psychiatric evaluation to determine if behavior can be changed with hormonal treatments of medroxyprogesterone acetate. The court may require chemical treatment, along with mental health treatment, as a condition of probation.

Conclusion

Fifty years ago, the Criminal Law of Georgia provided absolute protections for women and children. The Criminal Law Revision relied upon the fraudulent Kinsey Reports and the Model Penal Code, propounding fraudulent notions that children are sexual from birth and women and children want to be raped, to redefine crime and its consequences. The result, reflected in the charts that follow, have been disastrous.

Molnar, the Georgia Criminal Law Study Committee chair writes of the faith the Committee has put in modern advancements as the rationale for departing from the common law standard proven over hundreds of years to be accurately reflective of human nature and fair justice in the effective control and management of criminals:

In conclusion, the Committee shall follow the advances made by science, medicine, technology, social improvements and the arts and will endeavor to create a Criminal Code which will retain the old traditions so far as they are applicable; preserve the store of wisdom and precedent in our court decision so far as they are in harmony with present day standards.¹³

The criminal code revision of Georgia looked at "present day standards," but was likely unaware of the fraudulent nature of The Kinsey Reports as this authority provided the "science" for law and social change. Rather than examining the fixed precepts of law that had served Georgia since its colonial days, legal concepts and laws not in harmony with the present-day standard were discarded.

Minnesota

¹¹ Id., p. 150

¹² Criminal Code of Georgia, 1999, Section 16-6-4, p. 387.

¹³ Molnar, supra., note 1, p. 409.

The Minnesota criminal law was enacted in 1885 and consisted largely of adaptations of the New York Penal Code. In their introductory statement, the Advisory Committee to the Legislative Commission acknowledged that it is a legislative responsibility to revise the Minnesota Criminal Code. However, "the technical nature of the task imposes the major burden upon the bench and the bar of the State."¹⁴ Typical of the state revisions, the call for reform came not from the voice of "the people" to their elected representatives, but rather from the "bench and bar", those without office and no accountability to the people, undertaking to alter state law that had served the people of Minnesota for over 80 years.

In 1955, the Legislature established the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections, and assigned the task of revising the criminal code. The Commission was funded each year until 1961, and the revision was completed for submission and passage at the 1963 legislative session. The commission was composed of seven senators and twelve representatives. This commission delegated the revision to an Advisory Committee on Revision of the Criminal Law, composed of appointees from the State Bar Association (10 members), the County Attorney's Association (2 members), the District Court Judges' Association (2 members), the Supreme Court (2 members), the attorney general, the reviser of statutes, Professors Kamisar, Ellington, and Pirsig of the University of Minnesota Law School, Mr. T. E. Thompson, Chairman of the Criminal Law Committee of the State Bar Association, and Harold W. Schultz, State Senator, from the Interim Commission.¹⁵ A single reporter, Professor Maynard E. Pirsig, with the aid of law student assistants, did research and preparation of preliminary drafts.

The stated purpose of the criminal code revision was to (1) remove duplications, inconsistencies, invalid provisions and obsolete materials; (2) state elements of the crime in clear, simple, and understandable terms; (3) to conform to accepted modern standards and concepts; and (4) to confine provisions to matters which properly belong to criminal law.¹⁶

The advisory committee assured the reader that changes to the criminal code were only a restatement and improvement:

[T]he Advisory Committee considered that the revision should not be the occasion for the introduction of an entirely new criminal code. It was felt that the legal principles of each crime should be examined and restated and, where necessary, improved; however, remaining within the general framework of present legislation.

Professor Pirsig, the Advisory Committee's reporter describes the pre-revision law as based on emotion rather than reason:

Our present statutes were enacted in the 19th century when the subject of sex was not considered fit for public discussion and the provisions of the criminal law reflected more of an emotional reaction to certain kinds of sexual behavior than a considered judgment as to the harm they involved to others or to the public.¹⁷

¹⁴ Introductory Statement of Advisory Committee of the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections, June, 1963, p. xi.

¹⁵ *Id.*

¹⁶ *Id.*, p. xv.

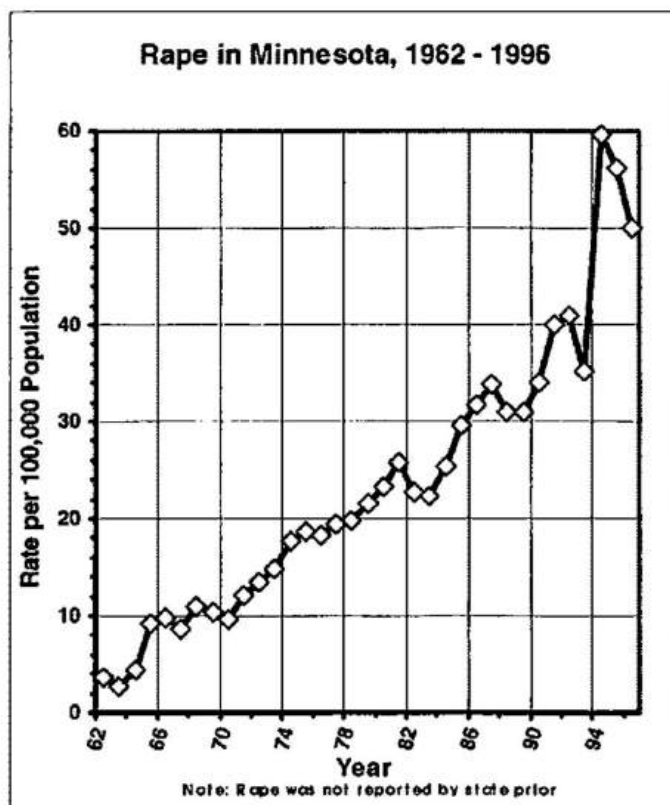
¹⁷ Pirsig, Maynard. Proposed Criminal Code. *Minnesota Law Review*, Vol. 47, 1963, p. 442.

In his discussion of indecent liberties, he describes the crime as "a charge easily made and open to abuse."¹⁸ Under the pre-revision law indecent liberties was a felony. Under the revision, it is graded by the age of the victim and use of force, as recommended by the Model Penal Code. If a child is under 14, imprisonment up to 5 years was recommended; however with an adult, it is a misdemeanor. With force, it became aggravated assault, a gross misdemeanor. It will be shown that rather than "remaining within the general framework of present legislation" the Minnesota Code has been restructured adopting the Model Penal Code's radically new stream of law.

Minnesota Guided by Other State Revisions & ALI's MPC

The advisory Committee reported that the Minnesota revision was based on the revisions of Wisconsin and the American Law Institute's Model Penal Code. Although the revision commission had a substantial portion of the Minnesota code revised before the Illinois Code became available in 1961, the Illinois' code was used for "re-examining the policies pursued and recommendations made in many parts of this [Minnesota] proposed revision."¹⁹ The Illinois commission report and its state code revision has been reviewed extensively in previous chapters, and the Wisconsin criminal revision was reviewed in the Kansas chapter. These histories lay the foundation for what happened in Minnesota to weaken penalties for predators.

Minnesota Law, Past and Present



Minnesota's stringent rape law once sent a predator to jail for up to 30 years for his crime. Rape, which was first reported state by state in 1962, has increased in Minnesota 1,289%. The predator is now described as the "actor", and the heinous act of rape is no longer mentioned in Minnesota law—replaced with the more neutral term "criminal sexual conduct" and is graded by the age of the victim.

The concept of "peer sex play" is now the law, so the predator must be two to four years older than his victim or there is no legal recourse for the victim. The victim is labeled the "complainant", and indecent assault is now the neutral-sounding "sexual contact". Fornication, adultery, bestiality, and necrophilia are decriminalized.

The Criminal Becomes "The Patient"

¹⁸ *Id.*, p. 445.

¹⁹ Introductory Statement of Advisory Committee of the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections, June, 1963, p. xiii.

A tenet of the Model Penal Code was expressed by author Herbert Wechsler, that crime should be viewed "primarily as a symptom of a deviation that may yield to diagnosis and therapy."²⁰ Today, the authority of our American system of trial by jury is stripped of its authority, replacing it with expert testimony. Current criminal sexual conduct (formerly rape) statutes provides that

A court may stay imposition or execution of the sentence if it finds that a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.²¹

Minnesota Statutes Section 241.67 states that sex offender treatment programs are financed by public funds. Programs which last a mere minimum of four months, must be certified by the commissioner of corrections. Although the Minnesota law does not indicate costs to taxpayers, a similar program in Kansas costs over \$50,000 per resident.²²

Tennessee

History of Tennessee Criminal Law from 1790-1973

The land that is now Tennessee became a United States territory in 1790, and its criminal law was drawn from the English common law. After admission to statehood in 1796, the common law continued to define criminal conduct until the Enactment of 1829, an eighteen-page document outlining definitions and principles of criminal law.²³ The code was reorganized and revised in 1859, and since that time until the 1973 Law Revision Commission report "recodifications have been limited to minor editorial changes, and no major revision of the law itself has been attempted."²⁴

The Tennessee Law Revision Commission was created in 1963 as a research agency of the state composed of nine attorneys appointed by the Governor for staggered six-year terms. The first six years were spent analyzing existing law in Tennessee, the statutes, rules and practice of other states, the American Law Institute's Model Penal Code (ALI MPC), the American Bar Association's Minimum Standards for Criminal Justice, and decisions of state and federal courts. Members of the Law Revision Commission who drafted the proposed revision were:

Oris D. Hyder, Johnson City
Judge William S. Russell, Shelbyville

Additional members of the Commission were:

Lloyd S. Adams, Humbolt
James H. Epps, III, Johnson City
M. Watkins Ewell, Jr., Dyersburg
Benjamin Goodman, Memphis
Richard F. LaRoche, Murphreesboro
H. H. McCampbell, Jr., Knoxville
William P. Moss, Jackson

²⁰ Wechsler, H. Challenge of a Model Penal Code. *Harvard Law Review*, Vol. 65, 1952, p. 1104.

²¹ Minnesota Statutes 2000, section 609.342, Subd. 3(b).

²² *Report of the Kansas Department of Social and Rehabilitation Services*, Commission on Substance Abuse, Mental health and Developmental Disabilities, June, 1999.

²³ Tennessee Criminal Code and Code of Criminal Procedure, Proposed Final Draft, November, 1973, pp. ix, x.

²⁴ *Id.*, p. x.

Val Sanford, Nashville
Stanley T. Snodgrass, Nashville
Thomas Wardlaw Steele, Nashville
Bayard Tarpley, Shelbyville
Jere T. Tipton Chattanooga
Charlie H. Walker, Lexington
Robert Kirk Walker, Chattanooga
Charles H. Warfield, Nashville
Joe W. Worley, Kingsport

In addition, the commission had a 19 member advisory legal staff of attorneys, law professors and consultants.

Reasons For Tennessee Revision

Tennessee responded as did other states to the sweeping call in the 1952 *Harvard Law Review* for penal reform advocated, not by elected representatives, but rather largely by legal academics, private lawyers within the state and county bar associations, and the therapeutic profession. The Commission noted that their Tennessee Criminal Code and Code of Criminal Procedure report placed:

...Tennessee among 33 other American jurisdictions that are now revising or have recently completed a major criminal law revision project. This interest in criminal law revision is long overdue in Tennessee, as in many of the United States, due to past neglect of the criminal justice system.²⁵

In 1967, the Commission reported to the 85th General Assembly:

There is a manifest crisis in the administration of criminal justice throughout this country. The need for an extensive revision of the criminal laws of Tennessee is equally manifest...The need for revision of Tennessee's substantive criminal law thus arises from its antiquity, prolixity, and growing internal and external inconsistency.²⁶

Tennessee Guided by other State Revisions & ALI's MPC

The Revision Commission began its work it says by "determining the status [of Tennessee law] in light of the statutes and rules of practice of other states, and the American Law Institute's Model Penal Code." Also mentioned were the ABA's Minimum Standards for Criminal Justice. The work of the Texas penal law reform revisionists was the most influential state on the Tennessee Commission:

The Criminal Code was patterned after the proposed revision of the Texas Penal Code, which the Commission selected as the jurisdiction most compatible with Tennessee in its approach to criminal law.²⁷

An important precedent set by the American Law Institute as well as Texas was the private nature of law revision by the legal academic elite. Not initiated by the will of the people, nor guided by their elected representatives, the product of criminal law reform came from the Texas Bar Association, which suggested that their Bar

²⁵ Tennessee Criminal Code and Code of Criminal Procedure, *supra*, p. ix.

²⁶ *Id.*, pp. ix-x.

²⁷ *Id.*, p.viii.

proposal could "be easily integrated into the general statutory revision program."²⁸ The Texas State Bar Association appointed the Texas Revision Commission, based on three factors: The development of the ALI Model Penal Code, revisions in other states, and the Texas Statutory Revision Program which involved a systematic review of all Texas statute law to be codified into 26 topical codes.²⁹ The Texas Legislative Council had previous to the Criminal Code rewritten the Business and Commerce Code and the Water Code, both of which were introduced to the legislature in 1967.

Illinois Penal Code cited in Tennessee for Child Protection

In addition to the Texas code, the comments of the Tennessee Revision Commission in the child sections of rape of a child (39-1306), sexual abuse of a child (39-1307), and indecency with a child (39-1308) cite the Illinois Statutes as the basis for change. As the reader will recall, Illinois statutes are most frequently cited in the sex offense chapters of other state codes as the first state to adopt the ALI MPC in its criminal code revision.

How Tennessee Law Protected Women and Children

The 1968 Survey of Criminal Law in Tennessee published in the *Tennessee Law Review* revealed the Bar's disapproval of the rape law. J. G. Cook wrote in the *Review* article that "Tennessee has the most stringent carnal knowledge statute in the United States, setting the age at which a woman is capable of giving consent to sexual intercourse at twenty-one."³⁰ The maximum penalty for rape was death, to a minimum of 10 years.³¹ Prior to the Kinsey Reports, "giving consent" implied consent to marry; whereas today it has been twisted to "consent to fornicate" without legal penalty.

The introduction of the Model Penal Code's lenient and sympathetic standard for rapists in Tennessee, as well as laws current through the 2000 session reflect erosion of protection for Tennessee's women and children. The definition of rape has been redefined into five categories, requiring the victim to prove force sufficient to overcome resistance. Based on the guidance of the ALI Model Penal Code, the crime of rape is graded by "age" and "use of force." The burden of proof placed on the victim instead of the rapist is new with the ALI MPC. Before the ALI MPC the women simply had to say that she had been raped.

Non-Consent Means Forcible Compulsion in Tennessee

Under the common law, rape was an act of sexual intercourse to which the girl/woman did not consent. After criminal law revisions swept the country, and MPC author Morris Ploscowe's declaration that rape is a fiction³², a victim is required to prove her utmost resistance to force for the crime to be termed rape. Tennessee law handles this change quite delicately, and at first reading, one might think non consent is sufficient to charge the crime of rape in Tennessee. However, as the comments of the Tennessee Law Revision Commission explain,

²⁸ Id., p. 405.

²⁹ Proposed revision of the Texas Penal Code. *Texas Law Review*, 45(3), February, 1967, pp. 404-405.

³⁰ Tennessee Code Annotated, Section 39-3706 (1955). Cook, J. G., Criminal Law in Tennessee in 1968—A Critical Survey. *Tennessee Law Review*, 36(2), Winter, 1969, p. 225.

³¹ Bensing, R. C. A Comparative Study of American Sex Statutes. *The Journal of Criminal Law, Criminology and Police Science*, Vol. 42, 1952, p. 57.

³² Ploscowe, M. 1966. Sex offenses in the New Penal Law. *Brooklyn Law Review*, Vol. 32, p. 274-275. (see quotations, page 25).

[T]he amount of force necessary to negate consent is a relative matter to be judged under all the circumstances the most important of which is the resistance of the female.³³

Rather than the pre-Kinsey absolute protections provided under common law, the victim must now prove her resistance, which is judged as a "relative matter." If there is insufficient evidence, such as bruises, serious injuries or death, and her non consent is deemed insufficient, the offense can be plea bargained to "sexual battery" charged as the minimum Class E Felony.

Using the preeminent Kinsey-based criteria claiming children are entitled to and desire sex activity from birth, law revisions have lessened protections for the immature female. A girl from 13 through 17 becomes the victim of the new category of "statutory rape," whose predator is charged with the minimum Class E felony. If the predator is under 18, he is charged as a juvenile, and, if within 4 years of the victim's age, there is no statutory prohibition. This, in Tennessee law today, is what is widely known as "peer sex play." Ironically, though immature girls are protected by laws in Tennessee mandating their being provided food, housing, medical care and education, they are vulnerable in the one area where premature activity leaves them exposed to disease, dysfunction, and even death at a very high cost to individuals, families and ultimately to the state.

Forcible Sodomy Misnamed Rape in Tennessee

Although our state-by-state analysis has not included an in-depth study of sodomy law, its complete omission in Tennessee raises important questions for legislators whose actions will protect the children of this state. The definition section (39-13-501) requires careful searching to discover how forcible sodomy is prosecuted in Tennessee. Definition (7) reads:

Sexual penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or any object into the genital or anal openings of the victim's, the defendant's or any other person's body, but emission of semen is not required;³⁴

The only sections using the term "sexual penetration" are the various degrees of rape. Normalizing sodomy, an "unnatural act," by blending it in with rape, a forcible "natural act" against girls and women, creates a statistical cover-up concealing rapidly increasing rates of sodomy of boys by pederasts from exposure. Current data from the Department of Justice on sex crimes against children **under age 12** identifies children as 67% of all sex abuse victims and boys under age 12 to be 64% of forcible sodomy victims.³⁵ The National Incident-Based Reporting System of the Department of Justice in July 2000 says:

The single age with the greatest proportion of sexual assault victims...was age 14 [with] *more victims...between 3 and 17 than...over age 17* [any adult age group], and ***more victims age 2 than... over age 40***...[U]nder age 12, 4-year-olds were at greatest risk of being the victim of a sexual assault..." [Forcible sodomy peaked at] around

³³ Tennessee Criminal Code and Code of Criminal Procedure, Proposed Final Draft, November 1973, p. 97.

³⁴ Tennessee Code Section 39-13-501 (7), from Findlaw.com.

³⁵ The US DoJ, National Incident-Based Reporting System, (NIBRS) "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics," July 2000.

age 4....The risk of being sexually assaulted with an object peaked at ages 3 and 4, then fell to less than half by age 8. Forcible fondling...**peaked at age 4...[and] age 13.**³⁶ [Emphasis added].

While it is not proven that "treatment" of offenders reduces current and future child molestations, the research as to the number of offenses has been confirmed by more recent studies, including a survey of the premiere magazine, *The Advocate*, which caters to readers who practice sodomy as identity. Of the 2,500 responses *The Advocate* obtained from their 1994 survey, 21 percent admitted that an adult man committed a sexual act with them by the time they were 15, and 73 percent of respondents reported sexual contacts with boys 16-19 or younger.³⁷ The current trends promoting sodomy to young boys in the public schools by publicly funded youth organizations and activist groups such as the North American Man Boy Love Association (NAMBLA) are extensively documented in the research of Dr. Judith Reisman.³⁸

Current Sex Education Omits Marriage, Lauds Evolution

The earliest fact finding state commissions to address sex offense laws, New Jersey and Illinois, recommended sex education as a means to deter sex crime.³⁹ Although rape and other violence, illegitimacy, and divorce, have skyrocketed since their commission reports were published, Kinsey's call for sexual freedom still rings in the ears of our youngest citizens. Section 49-6-1005 of the Tennessee Code refers to our children as "homo sapiens," a term introduced by the religion of secular humanism in the context of "hominid evolution."⁴⁰ The code states that:

Any such course in sex education shall, in addition to teaching facts concerning human reproduction, hygiene and health concerns, include presentations encouraging abstinence from sexual intercourse during the teen and pre-teen years.

The burning question in the "abstinence" movement is what is taught in an "abstinence" course? Is the course "Abstinence until marriage" where marriage is taught as the only proper place for sexual congress? Or is it "Abstinence Plus" where marriage is possibly addressed as the best possible circumstance for sexual contacts, but, if the child elects not to wait until marriage to begin sexual practices, other sexuality instruction is presented, and condoms are recommended even though condoms do not prevent the incurable HPV virus which is especially deadly for women.

In the Tennessee code there is no reference to the protections of marriage as an institution of interest to the public welfare, but the Code addresses who may teach

³⁶ The US DoJ, National Incident-Based Reporting System, (NIBRS) "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics," July 2000, NCJ 182990. The 12 sample states reporting in comprised 24% of all US states, representing 60,991 child sex abuse victims; 24% of 51 states is an estimated child sex victim population of roughly 244,000 in 1999.

³⁷ *The Advocate*, August 23, 1994, p. 20.

³⁸ Reisman, J. A. *Crafting Gay Children: An Inquiry Into the Abuse of Vulnerable Youth Via Establishment Media and the Schoolroom*. Crestwood, KY: Institute for Media Education, 2000. See also *Homosexualities* by Alan Bell, 1978. (Simon & Schuster), *The Gay Report* by Jay and Young, 1979, *Gay and Lesbian Youth* by Herdt, 1989, *The Homosexual Network* by Fueda, 1982.

³⁹ New Jersey Commission on the Habitual Sex Offender, February 1, 1950. Illinois Commission on Sex Offenders, March 15, 1953.

⁴⁰ Reeser, K. *Hominid Evolution from Australopithecus to Cro-Magnon. A Definitive Survey of the Current State of Knowledge Regarding Human Origins*. www.geocities.com, © 1998.

"sex education pertaining to 'homo sapiens' in the public, elementary, junior high or high schools in this state" and the protections extended to instructors. Instructors are to be "qualified" as determined by the local school board involved and the code further directs;

...the instructor shall not be construed in violation of this section for answering in good faith any question, or series of questions, germane and material to the course, asked of the instructor and initiated by the student or students enrolled in the course.

The section does not seem to apply to discussions of sexuality that take place in the general high school courses in biology, physiology, health, physical education or home economics taught to classes.

Protecting the Predator: The MPC's Therapeutic Influence

Current Tennessee law provides for a 13-member sex offender treatment board.⁴¹ This board is like many others established through state penal reforms brought about by the ALI MPC. These treatment boards were established through the strong advocacy of the therapeutic professions, which persuaded the legal community to consider criminal activity as evidence of the sex offender's need for treatment.

Taxpayers, get out your check books and salute this program. They guarantee there will be no success in "curing" the predator, and freely admit these offenders will not change their bent for abuse. The board is charged with the task of evaluating and identifying the offender as a patient and not as a criminal;

based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention.⁴²

Treatment programs are to include polygraph examinations by therapists and probation and parole officers, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. These "treatments" are directed to be appropriate to the needs of the particular sex offender, provided, that there is no reduction of the safety of victims and potential victims. Tennessee is not unique in asking its citizens to pay for therapy based on zero success. In 1996, the Government Accounting Office surveyed studies addressing 550 therapy programs spanning fifty years. The Government Accounting Office's 1996 report on sex offenders concludes that no form of psychotherapy is shown to arrest sexual predators.⁴³

Yale law professor George Dession writing in the *Yale Law Review* 1938 described the advancement of psychiatry into and the resultant therapeutic conditioning of the criminal justice system as:

a primary article of faith in a movement which, when it becomes possible to look back on the present state in the evolution of what we

⁴¹ Tennessee Code Section 39-13-704, from Findlaw.com.

⁴² *Id.*

⁴³ *Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism*. Government Accounting Office, GGD-96-137, June 21, 1996.

call criminal justice, will probably be recognized as overshadowing all other contemporary phenomena in its influence on that evolution.⁴⁴

Penalties Proposed in the Code Revision

Prior to the ALI MPC and under the common law, crimes were clearly stated and the punishments for the crime set in a range from the maximum to the minimum for judges and juries to consider in their deliberations at trial.

As for the rape penalty in Tennessee the maximum sentence was death and the minimum sentence was not less than ten years.⁴⁵ Because of the prevailing therapeutic and Bar Association thinking which found its way into the ALI MPC, the terms sodomist and rapist were considered far too harsh especially for behaviors that were essentially harmless according to the Kinsey Reports. The ALI MPC authors (see Wechsler, chapter 2) further held that a judge had no special expertise and a jury of one's peers was more likely to mete out punishments to criminals. In view of the new sympathies and desire to therapeutically manage criminals in the ALI's MPC, the power of the uniquely American jury "of one's peers" system was curbed. This was accomplished in state after state through the expert's classification and sub-classification of crimes and the fixing of penalties of once simply understood laws.

Section 803-04 of the proposed Tennessee penal code of 1972 classified felonies into four categories, and misdemeanors into three categories, each having a specified range of punishment⁴⁶:

Capital Felony	Mandatory death penalty
Felony in the first degree	One year to life
Felony in the second degree	Maximum of 12 years
Felony in the Third degree	Maximum of 6 years
Class A misdemeanor	Imprisonment for less than one year
Class B misdemeanor	Imprisonment for 3 months
Class C misdemeanor	Imprisonment not to exceed 10 days

The current law (Tennessee Code 40-35-111, 2001) has further reduced the penalty for crimes eliminating the death penalty, but added fines.

Class A Felony	15 to 60 years, and may assess \$50,000 fine
Class B Felony	8 to 30 years, and may assess \$25,000 fine
Class C Felony	3 to 15 years, and may assess \$10,000 fine
Class D Felony	2 to 12 years, and may assess \$5,000 fine
Class E Felony	1 to 6 years, and may assess \$3,000 fine
Class A misdemeanor	Less than 1 year, or a fine up to \$2,500 or both
Class B misdemeanor	Not more than 6 mo., or a fine up to \$500, or both
Class C misdemeanor	Not more than 30 days, or a fine up to \$50, or both

⁴⁴ Dession, G. H. Psychiatry and the Conditioning of Criminal Justice. The Yale Law Journal, Vol. 47(3), 1938, p. 319.

⁴⁵ Bensing, R. C. 1952. A Comparative Study of American Sex Statutes. The Journal of Criminal Law, Criminology and Police Science. Vol. 42, p. 58.

⁴⁶ The Proposed Tennessee Criminal Code. Tennessee Bar Journal, Vol. 41, 1973, p. 135, fn15.

Conclusion

Stare decisis or adhering to the precedent created by cases already decided is at the heart of the current law. Accordingly then Texas and Illinois relied upon the "expert" views of Alfred Kinsey, the American Law Institute's Model Penal Code (which relied upon the Kinsey Reports) and each other as authority for massive law change. Tennessee reformers used these authorities as precedent for Tennessee state penal law reform and as the guide for abolishing strong common law protections for women and children. Using the MPC model, now the Tennessee victim of a sex crime must prove her utmost resistance to the aggressor's use of force or it is not rape, and youth are exposed to abuse with little recourse based on a complex structure of crime severity ratings. It is vital to note, since being devalued as a crime with weaker penalties, rape in Tennessee has increased 600%. Since the ALI MPC was used a guide for Tennessee penal reform violent crime increased 410% in Tennessee in the 50 years from 1945 to 1995.

Kinsey's impact on "*Psychiatry*" was addressed by S. Bernard Wottis, M.D., quoted in the MPC, who said the Kinsey Reports provided "evidence" of normal sexuality and "infantile sexuality" and that:

"[S]exual activity in the male is present from birth to death....the "latent period" is the result of a damper on sex activity imposed by our culture....Kinsey has given us statistical confirmation of this bio-cultural phenomenon."⁴⁷

Such "statistical confirmation of this bio-cultural phenomenon" may be seen in the de-facto lowering of the age of consent in all states penal law and in federal law. The penal codes uniformly suggest that children may be treated as sexually liberated women (or men) at age 12, or 13, or 16 or even younger. Law has pointed the way to promiscuity by lightening penalties and eliminating sex crimes such as fornication and rape. Tennessee has experienced a 587% increase in illegitimate live births from 1945 to 1992.

The Tennessee Revision Commission were accountable to the "experts" who wrote the new state penal reform, rather than the people of Tennessee and their elected representatives. Their report states,

"Throughout the preparation of these codes, the Law Revision Commission has been concerned over the often raised question of whether such massive change in the criminal law would be accepted by the bench and bar of the state."⁴⁸

It is long overdue that the laws of Tennessee be subject to citizen's review.

California

California's history in relation to the ALI Model Penal Code is unique. A decade was spent rewriting the California penal code to conform to the ALI model, but the final product was rejected by the California State Legislature both in 1968 and again in 1973. California highlights the bitter debate and deeply conflicting ideologies that went on for years in many of the states as revolutionary changes were covertly

⁴⁷ S. Bernard Wottis, M.D., "*Psychiatry*" in *Saturday Review*, March 13, 1948, p. 19.

⁴⁸ Tennessee Criminal Code and Code of Criminal Procedure Proposed Final Draft, November 1973, p. vii.

introduced into the criminal law as "merely technical improvements."

In 1963, the California Joint Legislative Committee for the Revision of the Penal Code was organized, including 10 men, divided equally from both houses of the legislature. The revision staff was made up of law school professors from UC Berkley, Los Angeles, University of Southern California, and Stanford University. The group was headed by Arthur Sherry, a professor of law and criminology at the University of California, Berkley. According to UCLA researcher. W.L. Gordon, the California group were "law professors from the prestigious law schools who had either participated in the drafting of the MPC, or shared its outlook."⁴⁹ Sherry describes the reform as a political issue initiated by the California legislature and the Governor.

Crime and crime control were important political issues receiving extensive public exposure, and the recently published Proposed Official Draft of the Model Penal Code was beginning to be recognized as a useful example of what could be accomplished by a comprehensive study of the whole body of the substantive criminal law."⁵⁰

In addition there was an advisory board of two district attorneys, two criminal defense attorneys, two judges, a law professor, and a representative from the Attorney General's office. Each member of the staff was assigned individual research and drafting responsibilities. When the staff of law professors brought their product of 18 months work to the board, the response was unfavorable. Sherry, indignant for himself and his staff, wrote:

[I]t's product at first inspection struck most of the members of the Board, unfamiliar with the Model Penal Code or any other contemporary criminal law revision as a strange and baffling departure from all of the familiar landmarks of conventional law. The style of the Model Penal Code, its rigorously logical order and its general abandonment of common law terminology does pose difficulties for anyone whose entire educational and professional experience has been circumscribed by the eighteenth century common law concepts still preserved in the criminal law of California. The staff, of course, was greatly influenced by the Model Penal Code...to the unprepared eyes of the Board members, the staff proposals were undistinguishable from the Model Penal Code and regarded with the same suspicion.⁵¹

In 1969, the staff of law school professors were dismissed, and a former Deputy Attorney General was appointed to redirect the reform process. The *UCLA Law Review* devoted its April 1972 Issue to a "Student Symposium on the Proposed California Criminal Code." They described the current California Penal Code, which was based on an 1872 enactment, as "outdated, unmanageably lengthy, and internally inconsistent."⁵²

According to Professor Sherry, "it seemed apparent to the staff that the Model Penal Code provided the most useful and efficient base from which to attack this disorderly

⁴⁹ Gordon, W. L. 1981. *Political, Ideological, and Institutional Aspects of Comprehensive Criminal Law Reform in California: 1960-1975*. Pro Quest Dissertation Abstracts #AAT 8113851.

⁵⁰ Sherry, A. H. 1970. Criminal Law Revision in California. *Journal of Law Reform*, vol. 4 (3), 429-442.

⁵¹ Sherry, *supra*, p. 433.

⁵² Student Symposium on the Proposed California Criminal Code. *UCLA Law Review*, vol. 19(4), p.525.

body of law."⁵³ Their "efficient" draft on sex offenses "assumed that in almost all offenses, a maximum term of five years would be adequate and would best serve the goals of modern correctional practice"⁵⁴

To do this, sex felonies would be demoted to lesser crimes and/or penalties, while they proposed stripping the law of most if not all of its misdemeanor criminal sanctions, substituting the non-criminal offense of "infraction" punishable by fine, or some other non-custodial restraint.

To the committee's great surprise, the sex offense proposed revisions met with praise and commendation. Without any substantive change, it was approved and went to print, and its publication stirred little public reaction.

Professor Sherry was very clear that his group of law professor elites were in the best position to pass judgment on the existing law, and California's elected representatives were a source of the perceived problems in the law. The reporters' proposal for marijuana regulation proved to be the straw that awakened opposition. Sherry is indignant. He says,

It seemed obvious to the revision project staff that any body of law containing such a rigid and extreme sentencing structure cried aloud for serious, critical examination and study...Beyond what seemed to the staff to be a clear case of punitive overkill in the way the legislature had dealt with the subject, the statutory equation of marijuana use ... was being called into question by respectable authorities that inquiry into the matter was urgent.⁵⁵

Public reaction was strongly against the revision because of the drug regulation proposals. The committee recommended that giving marijuana to a person under 18, cultivation of and possession of over a pound of marijuana be classed as a misdemeanor and over 10 pounds a 3rd degree felony.⁵⁶ The California District Attorney's Association opposed the revision project, and made a strong commitment to the defense of the current Penal Code. Prosecutors who "purported not to be able to understand them" ridiculed the culpability provisions. Replacing the M'Naghten Rule with a definition drawn from the Model Penal Code was attacked by the District Attorney's Association because it would "turn criminal trials over to the psychiatrists."⁵⁷ The sentencing proposals were rejected because their lower maximum terms were described as a threat to the public safety. The second MPC reform proposal was also rejected by the Legislature in 1973.

Judging the Criminal Mind or the Criminal Act?

By 1970, the sole control for the sex offender's future was in the hands of the California Adult Authority, an administrative agency composed of eight members *chosen by the governor* and approved by the State Senate. According to writer, Louis Barnett, Chairman of the National Foundation to Fight Political Corruption, Governor Brown was very fond of appointing controversial figures whose connections to pornography, organized crime, and disregard for the law, was flagrant.⁵⁸

⁵³ Sherry, *supra*, p. 434-35.

⁵⁴ Sherry, *supra*, p. 437.

⁵⁵ Sherry, *supra*, p. 438-9.

⁵⁶ Sherry, *supra*, p. 439.

⁵⁷ Sherry, *supra*, p. 441.

⁵⁸ Barnett, L. W., Feliz, J. M., & Scholl, D. 1982. *Jerry Brown's Judicial Legacy*. Glendale, CA: The National Foundation to Fight Political Corruption, Inc.

Were probation denied, the judge could only sentence the offender to the term prescribed by law. Once this was done, the governor-appointed Adult Authority then had discretion to determine the exact length of imprisonment and parole within this term.⁵⁹

The California District Attorney's Association objection to the proposed reforms was based on their concern that criminal conduct would no not be judged on its face, but would be determined by a class of therapeutic experts. The MPC's chief author, Herbert Wechsler also scorned the American system of governance requiring a trial by jury. In his call for law reform in the Harvard Law Review, Wechsler writes,

It is widely urged that the responsibility for the determination of the treatment of offenders should not, in any case, be vested in the courts; that judges have no special expertise or insight in this area that warrants giving them decisive voice; and that they should be superseded by a dispositions board that might include the judge but would draw personnel of equal weight from social work, psychiatry, penology, and education.⁶⁰

Wechsler's bias has been disproven by studies reported at a conference held in San Diego in April, 1999. Professor of Law, Neil Vidmar, of Duke University reported through literature review and his own empirical study with two colleagues that the jury system over the last 25 years has remained effective.

There was high agreement between trial judges and jury verdicts, juries are able to understand and act on complex trial evidence, and juries are adept at critical assessment of experts and their testimony. Vidmar concludes that there is substantial support for the jury system from a systematic examination of current research.⁶¹

California Law 2001

After careful examination of the current California Penal Code, it appears that, as in most other post-common law states, *no fixed law provides a clear felony offense for sex with a child* unless it is proven that the act is against the child's will by means of force and violence. Massive confusion exists in the degrees and sub degrees which must be labeled by the police and the victim.

Richard H. Kuh, a working New York prosecutor,⁶² complimented the authors of the MPC on many aids the MPC provided to prosecutors. However, he complained about the heavily weighted academic and social science advisors as well as the missing working prosecutors. Kuh was especially concerned about the confusion in the ALI/MPC as filtering out all our states. He worried:

If the [ALI/MPC] draftsmen wish to force trial judges to stop and puzzle over abstruse wording, that discipline can do no harm. But...[this is] linguistic embroidery to which lay jurors would inevitably be exposed....awkward phrases and shrouded concepts bother me; for instructions in the law—jury charges—are delivered to jurors orally,

⁵⁹ Student Symposium, *supra*, p. 530, fn 28.

⁶⁰ Wechsler, H. 1952. Harvard Law Review. Vol. 65, p. 1128.

⁶¹ Vidmar, N. 1999. Jury's Comprehension of Scientific Evidence: A Jury of Peers? From the Proceedings of the National Conference on Science and the Law, April 15-16, 1999, pp. 183-188.

⁶² Richard H. Kuh, ⁶² Columbia Law Review Vol LXIII, New York, "A Prosecutor Considers The Model Penal Code, 1963, pp. 622.

and may go on for hours. [And] if a verdict is to be reached, the jurors must all end up as of one mind, convinced beyond a reasonable doubt. Nor can the Code's protagonists—if they are, at this time, to be realists—respond, "these definitions are not for the jury; the judge may simplify them, using his own words when he charges." Trial judges do not like to be reversed, and the safe course for them is to charge the law precisely as the legislature has handed it down.

Kuh says the ALI/MPC models confounding "mental gymnastics" such as

....a twenty-one page discussion...[which] contains so many conditions modifying other provisions, which in turn have modified still others, that limitations of space make adequate description impossible.

These "conditions modifying other provisions, which in turn have modified still others" are seen in bold relief in the California child abuse statutes. A child of *any age* who allegedly willingly submits to "unlawful sexual intercourse" is only guaranteed a misdemeanor penalty should the aggressor be found guilty. (See attached chart, California Law: 2001).

This puts the smallest children (up to age 13) in the position of having to *prove* force if they are to make the offense punishable under section 269 as a felony. If the child cannot prove force, a common problem in child sexual abuse, or her tenderness of years create such intimidation in those circumstances that she is unable to establish the facts of her trauma, her rape can be penalized either as a misdemeanor or a felony. Prior to 1950, the laws were fixed favoring explicit protection for children.

Men genuinely feared that ravishing a child, with or without her "consent" would result in significant imprisonment—with provocative teens commonly called "jail bait." Hence fewer men and boys engaged in sex with children. Today, it may be said that on the evidence women and children suffer under the ALI/MPC definitions of sexual abuse. However, it appears that adult women tend to fare better under the "lightened" rape laws than do children. (Indeed, since 1958, convictions for "statutory rape" of children are no longer even counted in the FBI rape statistics.

While 261 (2), 289 and 288 (3) punish offenders with "3, 6, or 8 years" for forcible rape and rape with an object, etc., (hence a felony) only a) children 0-13 who are raped by men over 23 years old can receive 15 years. to life. Even here the sentence may be "suspended" with a "report from a psychiatrist or psychologist or treatment program (288.1).

"Awkward phrases and shrouded concepts " abound in the California statutes on rape (statutory rape is no longer a category of offense). Continuous sexual abuse, defined as three or more acts of substantial sexual contact including with a foreign object or by oral copulation with a child under 14 in not less than three months, is a felony—but only when proof of "force, violence, duress, menace, or fear of immediate and unlawful bodily injury" can be established (Section 261 (2).

The pattern established by the ALI/MPC is reflected in current California law--lightening penalties for sex offenses is enabled through redefinition and reclassification of the crime and the criminal. What was a felony under common law is devalued to a misdemeanor and the level of injury is calculated and must be proven by the victim.

The current California law also reflects the concept of rape as many conditions modifying other provisions, which in turn have modified still others, the so called defense of peer sex play having been first articulated by Kinsey and introduced into law by the ALI/MPC. An age differential between the aggressor and the victim determines the severity of the crime and the resultant penalty. In the case of aggravated sexual assault, a felony, the aggressor must be ten years older than his victim. This means that when a 22 year old offender assaults a 13 year old child, it would be not be aggravated sexual assault but the lesser crime of unlawful sexual intercourse, either a misdemeanor or a felony (261.5(D)).

In 1980, the UCLA Law Review argues that the concept of "statutory rape" has an inherent gender bias, and is therefore unconstitutional. The Kinsey Institute's fourth volume entitled *Sex Offenders* is the premiere citation for the argument.⁶³ Promoting the Kinsey Report's position that children need and want sex, Eidson writes that youngsters between the ages of 12 and 15 are often willing, if not seductive. Protection should be achieved without punishing many blameless men. Based on factual statistics of rape, it is a strange argument indeed that protecting women is a "sexist assumption."⁶⁴

Layers of protection for the predator—not the victim—are firmly enmeshed in California law. The plea bargaining process often provides the offender the option of pleading guilty to a lesser offense and avoiding prosecution for his felonious behavior.

Until recently California law allowed a convicted rapist merely to be fined or placed on probation in lieu of imprisonment. However recent legal changes mandate that they receive prison terms. Nonetheless the plea bargaining process allows rapists to plead guilty to lesser charges such as simple assault or disorderly conduct and thereby circumvent the mandatory prison term for rape.⁶⁵

Therapy Replaces Penalization

Therapy for predators has replaced long term or permanent incarceration, as reflected in section 1000.30, where tax payers fund "treatment to child sexual abuse perpetrators.

1000.30. The Office of Criminal Justice Planning shall...establish a pilot project for a period of two years...to provide treatment to child sexual abuse perpetrators, including intrafamilial and pedophilic abusers, and including abusers who are incarcerated, as well as those who are not. (c)...Nothing in this section prohibits the use by district attorneys of counseling and other treatment programs as a diversion from prosecution. In pilot counties, diversion services shall be integrated with the services provided under this chapter.

Tax payers fund the coordination of services to child predators from "county mental health, welfare department, district attorney, juvenile court, superior court, municipal court, probation department, and private child welfare service agencies participating in and coordinating case referral, case management, and service

⁶³ Eidson, R. 1980. The Constitutionality of Statutory Rape Laws. UCLA Law Review, vol. 27, p. 757, fn3.

⁶⁴ Id., p. 761.

⁶⁵ Kathleen Quenneville. 1979. Will Rape Ever Be A Crime of the Past?: A Feminist View of Societal Factors & Rape Law Reforms. Golden Gate University Law Review, Vol. 9, p. 585.

delivery to the 'target population.'" This section (1000.30) suggests that counseling and treatment programs are used as a diversion from prosecution, at the district attorney's discretion.

The provisions of Criminal Code Reform in the states have left a clear trail of skyrocketing violent crime, illegitimacy and juvenile delinquency. By its own admission, the California State Legislature has acknowledged that current programs to address sex crime are ineffective. Penal Code section 13885 begins,

The Legislature hereby finds that a substantial and disproportionate amount of sexual offenses are committed against the people of California by a relatively small number of multiple and repeat sex offenders.

Section 999i adds,

The Legislature hereby finds that repeat sexual offenders present a clear and present danger to the mental and physical well-being of the citizens of the State of California, especially of its children.

The Criminal Justice System is very careful not to infringe on the offenders freedom, but is very willing to establish complex and expensive programs at the tax payers expense, and the multiple victims' violations, to "target and monitor chronic repeat violent sex offenders before the commission of additional sexual offenses." [13885.1(b)].

Louise Viets Frisbie reported on the "Atascadero [California] study of 1,921 treated "sexual psychopath"" patients." Most of the sex offenders served under two or three years in prison, receiving psychological counseling and treatment throughout their tenure. Frisbie seemed pleased that most of the paroled sex felons were not caught and returned to prison. However, by the end of the 5-year study, 34.5%, of paroled molesters of boys, 18.2%, of paroled molesters of girls and 46.8% of "voyeurs, transvestites and lewd persons" had been convicted of additional sexual offenses.

Moreover, while Frisbie argued that sex offenders did not increase the severity of their crimes, the data did not support that claim. One reason, among many, was that 11% of exhibitionists, the least "dangerous" of all offenders, "shifted to a more serious offense (bodily contact)" Frisbie does not reveal the nature of the contact, rape, molestation, adult or child victim(s)?⁶⁶ And the report again frames these offenders not as felons or criminals but as the therapeutic model requires, as "patients" of the state.

The Changes In California's Sex Offense Language

Pages of minutiae, downloaded from the "California Penal Codes" find child and adult sex offenses listed with roughly 29 pages devoted to Treatment of Offenders. The sex offender codes include nearly 200 explicit gradations identifying the penalties for subtle aspects of each crime, much depending upon the age differential between the victim and offender. "Child" appears seldom in reference to penal laws, "minor" being the definition of choice, outside of a generic "child sexual abuse" discussion.

⁶⁶ Louise Viets Frisbie, "Treated Sex Offenders Who Reverted to Sexually Deviant Behavior" in *Federal Probation*, June 1965, pp. 55-57.

"Rape" appears seldom, while "statutory rape" is no longer a definition for any California penal laws. In fact, the word "rape" which is swiftly disappearing from many state law books, is found here only in identifying crimes against adult women as in "spousal rape" and "Rape: sexual intercourse against a person's will by means of force," etc. Rapes of children are redefined and "softened," called "sexual misconduct," sexual liberties, child sexual abuse and the like.

Governor Reagan asked, as many Americans have asked, what transpired over those intervening years to divert the justice system from its responsibility to protect society from lawbreakers to that of protecting and coddling predators. This study begins to answer Reagan's query by tracking a federal and state judicial system overwhelmingly influenced by the junk science contained in *Sexual Behavior in the Human Male* published in 1948 and *Sexual Behavior in the Human Female* published in 1953.

California Law, 2001

Crime	Penalty	Comments
Section 261(2). Rape: sexual intercourse against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. Section 289, sexual penetration, uses the same criteria and penalties, using a foreign object, substance, instrument, device, or unknown object, including any part of the body.	State prison, 3, 6, or 8 years	Consent means "positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act. The same criteria and penalties apply to forcible oral copulation [288(3)].
261.5(A) Unlawful sexual intercourse with a minor (non-spouse); or sexual penetration (289h) with a minor; or oral copulation with a minor (288b)	Misdemeanor; imprisonment for not more than one year.	minor = under 18 adult = 18 +
261.5(B) Unlawful sexual intercourse with a minor within 3 yrs. of perpetrator's age.	Misdemeanor	Adults may be liable for additional civil penalties: Adult with minor <2 yrs. younger, \$2,000
261.5(C) Unlawful Sexual Intercourse. With a minor more than 3 yrs. younger than the perpetrator; either a misdemeanor or a felony; plus civil penalties:	Either a misdemeanor or a felony	2 yrs. + younger, \$5,000 3 yrs. + younger, \$10,000
261.5(D) A person 21 or older engages in unlawful sexual intercourse with a minor under 16	Either a misdemeanor or a felony, county jail for one year, or state prison 2-4 yrs.	Over 21 & under 16, \$25,000 Sexual penetration (289i) and oral copulation (288b(2)) in these circumstances is a felony.
262. Spousal Rape	3, 6 or 8 years state prison; or probation & payment to battered women's shelter, restitution to victim	Same criteria as rape (force, violence, etc.)
269. Aggravated sexual assault of a child. Child under 14, and person guilty of assault 10 + yrs. older, commits: rape, forcible sodomy, forced oral copulation, or any other sexual penetration (see 289)	15 yrs. to life. Sentence may not be suspended without a report from psychiatrist or psychologist or treatment program (288.1).	Section 289J specifies 3, 6, or 8 years with these age limits when sexual penetration is with foreign object, substance, instrument, or other part of the body, or for oral copulation(288c(1)).

288.5 Continuous sexual abuse of a child. 3+ acts of substantial sexual conduct with child <14 in not less than 3 months.	Imprisonment for 6, 12 or 16 yrs.	
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Comparing Minnesota Statutes Pre-Kinsey and Today

Offenses against Chastity, Morals, and Decency, Chapter 617, 1949	Minnesota Statutes 2000 Criminal Code chapter 609
<p>617.01 Rape. sexual intercourse with a female not the wife of the perpetrator, committed against her will or without her consent; of ten years or upwards; Penalty: 7-30 years</p>	<p>609.342 Criminal sexual conduct in the first degree. A person who engages in sexual penetration with another person, or in sexual contact with complainant who is under 13 and actor is more than 36 months older, or complainant is 13-15, and actor is more than 48 months older and in a position of authority over complainant, or has significant relationship to complainant. Penalty: imprisonment, minimum 12 yrs. up to 30 years or fine of \$40,000 or both.. The court may stay the sentence if it is in the best interest of the complainant or family unit, or a professional assessment indicates offender has been accepted and can respond to treatment.</p>
<p>617.02 Carnal Knowledge of Children. Every person who shall carnally know and abuse any female child under the age of 18 years shall be punished as follows: under 10, life imprisonment Age 10-13, 7 to 30 yrs. Age 14-17, 1 to 7 yrs.</p>	<p>609.343 Criminal sexual conduct in the second degree. A person who engages in sexual contact when Complainant is 13-15, and actor is 3 yrs older or more; or actor is more than 4 yrs older and in a position of authority over complainant. Penalty: imprisonment up to 25 years or fine of \$35,000 or both. The court may stay the sentence, same criteria as above.</p>
<p>617.08 Indecent assault. Every person who shall take any indecent liberties with or on the person of any female, not a public prostitute, without consent expressly given, or of any female under 16..shall be guilty of a felony</p>	<p>609.344 Criminal sexual conduct in the third degree. A person who engages in sexual penetration when complainant is under 13, and actor is less than 3 yrs older; complainant is 13-15 and actor is more than 2 yrs older. Mistake of age is a defense. Consent by complainant not a defense; complainant is 16 or 17 and actor is more than 4 yrs. older and in a position of authority over complainant Penalty, imprisonment up to 5 yrs when actor is 2-4 yrs older than complainant; Up to 15 yrs or fine up to \$30,000 or both.</p>
<p>617.14. Sodomy. Carnally know in any manner any animal or bird, male or female person by the anus or by or with the mouth, or with a dead body, is guilty of sodomy; Punishment up to 20 yrs.</p>	<p>609.345 Criminal sexual conduct in the fourth degree.A person who engages in sexual contact when complainant is less than 13 and actor is less than 3 yrs older; Complainant is 13-15 and actor is more than 4 yrs older and has a position of authority over complainant, mistake of age is a defense; Complainant is 16-17, actor more than 4 yrs older, mistake of age not a defense.</p>
<p>617.15 Adultery, imprisonment up to 2 yrs, or fine up to \$300. Repealed, 1963.</p>	<p>609.352 Solicitation of children to engage in sexual conduct. A person 18 or older who solicits a child (age 15 or younger) to engage in sexual conduct Penalty: imprisonment up to 3 yrs, or fine of \$5,000 or both.</p>
<p>617.16 Fornication. Imprisonment up to 90 days, or fine up to \$100</p>	

Georgia Revised Statutes

Criminal Code of 1926	Criminal Code of 1981	Criminal Code of 1999
Article 4, section 93	26-2001 Rape. Carnal	16-6-1 Rape. Carnal knowledge of a

Rape: carnal knowledge of a female, forcibly and against her will. The crime of rape shall be punished with death, (unless the defendant is recommended to mercy by the jury, in which case the punishment shall be the same as for an assault with intent to commit a rape.)	knowledge of a female forcibly and against her will. Penalty: death, imprisonment for life, or not less than 1 nor more than 20 years.	female forcibly and against her will; or a female less than 10 yrs old. Penalty: death, life without parole, life, or not less than 10 nor more than 20 years.
94.1 Sexual intercourse with female under 14. Punishment same as for rape, unless the jury trying the cause shall recommend that the defendant be punished as for a misdemeanor.	26-2004 Bestiality: Performs or submits to any sexual act with an animal involving the sex organs of the one and the mouth, anus, penis, or vagina of the other. Punishment: 1-5 yrs.	16-6-3. Statutory rape. Sexual intercourse with any person under 16. Testimony must be supported. Punishment 1-20 yrs. For convicted person over 21, 10-20 yrs. If victim is 14-15, and convicted person no more than 3 yrs older, a misdemeanor.
98. Assault with intent to rape. Penalty 1-20 years.	26-2008 Adultery and 26-2010 Fornication Punished as misdemeanors.	16-6-4 Child molestation; aggravated child molestation. Any immoral or indecent act to or in presence of child under 16. First offense, 5-20 yrs*
	26-2019 Child Molestation Any immoral or indecent act to or in the presence of or with any child under 14. Punishment 1-20 yrs; judge may probate with counseling for 1 st offense. 2 nd or 3 rd offense, minimum 5 years;	16-6-5 Enticing a child for indecent purposes. Solicits a child under 16 for molestation or indecent acts Punishment 1-20 yrs. may be probated with mandatory counseling.; 2 nd & 3 rd offense, min. 5 yrs. 4 th offense, 20 yrs.
372 (381) Adultery and fornication. Shall be severally punished as for a misdemeanor;	Aggravated child molestation. Act which physically injures the child or involves an act of sodomy. Penalty 2-30 yrs.	16-6-6. Bestiality. Punishment 1-5 yrs. 16-6-7 Necrophilia. Punishment 1-10 yrs.
(but it shall, at any time be within the power of the parties to prevent or suspend the prosecution and the punishment by marriage.)		16-6-18 Fornication, and 16-6-19 Adultery. Punished as misdemeanors Includes consensual sodomy
		16-6-22.1 Sexual battery. Intentionally touching intimate parts without consent. Misdemeanor. 16-6-22.2 Aggravated sexual battery. Penetrates sexual organ or anus with foreign object. Punishment, 10-20 yrs.

.*Judge may probate with mandatory counseling.

2nd offense, 10-30 yrs or life. Aggravated is with injury or involving sodomy.

Current Tennessee Law, 2001, Title 39 Criminal Offenses

Crime	Penalty
39-13-502 Aggravated Rape: unlawful sexual penetration using a weapon or inflicting bodily injury, or aided by another person, or with force or coercion	Class A felony*
39-13-503 Rape. unlawful sexual penetration with force or coercion; or without consent, or by fraud, or by mental deficiency	Class B Felony*
39-13-504 Aggravated sexual battery: unlawful sexual contact by force or coercion and with weapon, or bodily injury, or aided by another person, or with force or coercion, or victim is less than 13 yrs. old.	Class B felony
39-13-505 Sexual Battery: unlawful sexual contact accompanied by force or coercion, or without consent, or by fraud	Class E Felony
39-13-506 Statutory Rape. Sexual penetration with victim >13 and <18, and defendant is at least 4 yrs older than victim. Defendant under 18 tried as juvenile.	Class E Felony
39-13-511 Public Indecency – Indecent Exposure A person in a public place engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, or other ultimate sex acts; appears in a state of nudity, or fondles the genitals of such person or another person. Excluded are public restrooms, single sex showers, locker rooms, university classrooms and family-oriented clothing optional facilities properly licensed by the state, or theatre productions (b) Indecent exposure: intentional public exposure, or engaging in sexual contact or sexual penetration, with expectation that it will be viewed by another When defendant is >18 and victim <13, Defendant >18, victim <13, 3 rd offense, .	Class B Misdemeanor: third offense, Class A misdemeanor Class B misdemeanor Class A misdemeanor Class E felony
39-13-522 Rape of a Child. Victim <13 yrs old	Class A Felony*
39-13-523 Multiple rapists and child rapists	Must serve entire sentence without reduction

*39-13-524 Provides for Community supervision for life for these offenses

~Ten~

Kinsey's Abortion Legacy: Scientific Fraud at the Heart of *Roe v. Wade*

An Overview of Unexamined Abortion Data Cited by Roe v. Wade, 410 U.S. 113 (1973), to the American Law Institute Model Penal Code, whose authorities are Calderone's Abortion in the United States, 1958, and the Kinsey Institute's Third Volume, Pregnancy, Birth and Abortion, 1958.

In 1942, a conference on abortion was held under the auspices of the National Committee on Maternal Health under the leadership of Dr. Howard C. Taylor, Jr. Dr. Taylor wrote that the only definite conclusion from the conference was that more education was needed for the young, as well as the population in general, including teaching the physiology of pregnancy in public schools, and giving contraceptive information to married persons, which he considered inevitable. Dr. Calderone laments that this conference did not bring about the desired action to alleviate the abortion problem. So, in 1954 a steering committee at Planned Parenthood Federation of America, headed by Mary S. Calderone, Medical Director, organized the conference where Dr. Alfred Kinsey first reported his data on abortion. Eight members of the Planned Parenthood conference had participated in the 1942 conference.

Participants included thirty-one medical doctors, four Ph.D.'s and four others whose credentials were unidentified. The participants met at the Arden House in Harriman, New York, for a weekend in April, 1955, and reconvened two months later for a full day of deliberations at the New York Academy of Medicine. Alfred Kinsey presented his data at the conference, and then served on the statistics committee, one of three committees that reported and organized the conference findings for publication. Mary Calderone, Medical Director for Planned Parenthood Federation of America, edited and published the conference proceedings.

Here is the brief story quoted from the introduction of how "The Kinsey Reports" third volume, the abortion data was published:

As a result of correspondence with Dr. Mary Steichen Calderone, the medical director of the Planned Parenthood Federation of America, which began in 1953, Dr. Kinsey took part in the Arden House Abortion Conference sponsored by the Planned Parenthood Federation and held at Harriman, New York, in 1955. There he was made keenly aware that the data he presented concerning conception and the outcome of conception were of primary and immediate importance to the participants of the conference and to many other persons. Consequently, it was decided to publish those particular data in the proceedings of the meeting, and that the Institute for Sex Research would prepare a more comprehensive study to be issued as a separate volume. It was realized that such a volume would contain information of unique social and scientific value.¹

Is the abortion book a Kinsey document? Although Kinsey died in 1956, the authors of the book are his colleagues who had participated in the data collection, analysis and publication of the Male and Female Volumes, published in 1948 and 1953.

¹ Paul Gebhard, Wardell B. Pomeroy, Clyde E. Martin, and Cornelia V. Christenson. 1958. *Pregnancy, Birth and Abortion*. NY: Harper & Brothers, p. xi.

Kinsey's name appears on the cover in bolder and larger print than those of authors, Gebhard, Pomeroy, Martin and Christenson. They claim that the survey data on which the book is based was directed by Kinsey, 97 percent from the years 1940-49, indicating these data would reflect the same sample as the Female Volume. "The 5,293 white non-prison women, the subjects of the main body of this study, were interviewed in the years 1938-1955. About 97 percent of the interviews occurred during 1940-1949, with January, 1946 being the median date of interview."² Regarding Kinsey's input, the authors explain,

While this and subsequent volumes cannot represent writing and analyses done directly by Dr. Kinsey, it should be obvious that they owe their existence to him. Our future publications will stem from a research organization that he founded, and for years many of the data utilized will be those that he personally accumulated. As the Institute for Sex Research continues to produce work of value, the debt science and society in general owe to Dr. Kinsey will continue to increase.

Mary Calderone also published in 1958, the proceedings of the Planned Parenthood Conference. The chapter on the incidence of illegal abortion in the U.S. is the first person testimony of Dr. Alfred Kinsey, reporting on "4,248 pregnancies that occurred among 5,293 white, non-prison females in our sample."³

Before delving into his abortion statistics, Kinsey explained, "there is a much higher percentage of girls in the United States who are having premarital intercourse today than was true forty years ago. That is the chief product of the concerted attack on prostitution." Kinsey claimed that men who must respond to their biological need were visiting prostitutes less often because of the legal and social objections, and they have compensated with premarital coitus with girls who are not prostitutes. By implication, these restrictions in the law were causing an increase in unwanted pregnancy and illegal abortion.

Kinsey told the conference that "The proportion of premarital conceptions resolved before marriage by induced abortion ranges from 88 to 95 per cent in the present sample"⁴ Among married women, who had reached 45 years of age, approximately 22 per cent of them had had at least one induced abortion. Kinsey points out that other studies have placed the figure as low as 2.6 per cent and as high as 51 per cent, but these groups were so special they were not typical at all. Trying to make his sample sound like all middle class America, he states,

But for the cross section of our sample among married white women, ultimately, in the course of their lives, by the time they are forty-five years of age, 22 per cent have had one or more induced abortions.....The agreement of the following two figures is worth thinking about: Among all the women in the sample ever married, 22 per cent have had abortions in marriage by the age of forty-five. Among all the single white females who have had coitus, 20 per cent have had abortions" (p. 55).

Like their first two volumes, The Kinsey Institute had taken a very skewed sample and reported them as middle class America. During the 1950's Americans married at younger ages and produced more children than ever before in modern history. In

² Paul Gebhard, Wardell B. Pomeroy, Clyde E. Martin, and Cornelia V. Christenson. 1958. *Pregnancy, Birth and Abortion*. NY: Harper & Brothers, p. 15.

³ Mary S. Calderone (Ed.). 1958. *Abortion in the United States*. New York: Harper & Brothers, p. 51.

⁴ Calderone, *supra*, p. 54.

1950 in America, 70 % of males, and 67% of females over age 15 were married, and the divorce rate was only 10%. Surveys showed most Americans thought three or four children made up the ideal family.⁵ One of the most astounding claims of the abortion data is that of those women over 44 who had married as teens and had conceived children, 92.2% had had an induced abortion.

Kinsey looked for groups who wanted to talk about their most intimate experiences—for research purposes, of course. His sample had no correlation to American women of the 1950's. In the official Third Volume of the Kinsey Institute, the sample is identified as follows:

The majority of the groups was (sic), almost necessarily, made up of persons who had some interest in, and comprehended the value of, sex research: teachers, students, P.T.A. members, women's clubs, civic organizations, social workers, and the staffs of hospitals and clinics.....The largest source of case histories consists of college students; there are 2,228 college females of whom 279 had married.⁶

From this highly irregular sample, there were 417 premarital pregnancies, 75.8% of which ended in induced abortion. It is difficult to interpret the value of these data which represent single college age women who "comprehended the value of sex research," and were reported to be willing to discuss their version of intimacy with Dr. Kinsey and his associates.

Fifty-eight per cent of the sample was unmarried, and 42% married. Table 22, page 74 reports that 10.3% of the sample age 36 and over experienced premarital conception, and 8% had experienced induced abortion. Kinsey's definition of marriage was certainly unconventional based on the mores of 1950. On page 53 of the Female Volume, he defines married women as anyone who had lived with a man for more than a year. He freely admits, "common-law relationships have been more frequently accepted as marriages in our data."

Table 27 reports that a total of 417 pre-marital conceptions were reported. Of those in the under 20 group 69% aborted; in the 21-25 group 74.3% aborted; over 26, 85.7% aborted. For the total group, 75.8% of premarital conceptions ended in induced abortion.

Table 28 reports outcome of premarital conceptions by marital status at interview. For terminating by induced abortion, never marrieds reported 86.7%; Married once, still married reported 70.8%; and Ever Single, Divorced or Widowed, reported 70.7%.

Table 44 is from the chapter on married women. It indicates that for conceptions by women who marry between the ages of 16-20, 92.2% have had an induced abortion by age 45.

The Conference Proceedings includes an Appendix providing a statistical analysis of Kinsey's data by a medical doctor. Dr. Christopher Tietze, who also consulted with the Kinsey Institute on their Third Volume, begins by saying the data only apply to Kinsey's subjects. Sounding quite official, he states, "In a statistical sense the histories represent only themselves." His concluding paragraph, however, suggests

⁵ Donald T. Chritchlow. 1999. *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America*. New York: Oxford University Press, p. 57.

⁶ *Pregnancy, Birth and Abortion*, supra., p. 14.

that the data apply to the general population and are useful for general conclusions about women in America:

In summary...the differences are not substantial enough to invalidate the implicit assumption that the reported incidence of spontaneous and induced abortion is indicative of their incidence in the general population of equal educational and socioeconomic status.⁷

Social scientists were impressed with the size of Kinsey's sample, and of course there were no comparable studies to refute his claims. He was adamant that all biological "outlets" were equal, and had no function or meaning unique to human beings. Kinsey was uncomfortable around other social scientists who wanted to place abortion in the context of the pre-born child and a mother's decision to end her child's life. One of the sessions in the Planned Parenthood conference was a discussion by psychiatrists of the woman's psychological distresses before and after an abortion, and the causes for those states. Dr. Kinsey was asked to close the session. The following is an excerpt of his response:

I should like to disclaim the implication that biology puts a purposive interpretation upon the function of sex....In consequence, if one wants to define the function of an embryo, the function of reproduction, one must identify the definition as philosophic...I finish as a biologist by denying that biology would justify the use of the term "biologic function" for every embryo that happens to get implanted in a uterus." (p. 143).

Kinsey held himself up as the sole authority for knowing the real facts about illegal abortion in America. He criticized those who based the problems on official reports:

I know of no more untrustworthy fashion of securing statistics on the incidence of any illicit activity than to take the official figures that are obtained either through police departments or through reports that are required by state law in any other fashion....I have been amused at the suggestion that only abnormal women who would not have families are the ones who engage in all the premarital and extramarital activities that we reported in our volume on the female, and some persons have actually stated that no decent lady would have given us a history!⁸

Kinsey was proud of the unconventional survey methods he used to collect data, and claimed a higher validity than "official" documentation that would dispute his claims. The only other report on illegal abortion at the conference was from a retired doctor who practiced as an abortionist in Baltimore for twenty years. The Kinsey data provided the only "facts" that were supposed to represent a cross-section typical of American females. The appendix contains an analysis of the Kinsey Report from a statistical framework and minimizes the differences between his subjects and the general population. Following the "Illegal Abortion" presentations, the discussion turned to therapeutic abortion, where a group of timid physicians justified the practices of their hospitals in major cities based on psychiatric and physical difficulty.

⁷ Calderone, *supra*, p. 217.

⁸ Calderone, *supra*, pp. 50-51.

The trail of money from the Rockefeller Foundation brings the abortion story to the next generation. They were the major funders for the Kinsey Institute, then the funding of the American Law Institute's Model Penal Code, and next,

From 1973 through 1978 Rockefeller (John D. Rockefeller 3rd) contributed close to half a million dollars from his personal funds to the abortion movement. He became a major donor to NARAL, Planned Parenthood, the American Civil Liberties Union Reproductive Freedom Project, the Center for Constitutional Rights, the Association for the Study of Abortion, the Alan Guttmacher Institute, Zero Population Growth, and an array of other activist groups and institutions. The primary purpose of his giving was to ensure that the Supreme Court's decision in *Roe* was not eroded and the right to abortion exercised.⁹

Rockefeller funding had a concurrent tidal wave impact on the promotion of public sex education for children. Along with the Ford Foundation, he was a major supporter of SIECUS, headed by Mary Calderone. He also provided \$50 thousand for a sex education program in New York City conducted by Planned Parenthood, and established the Project on Human Sexual Development in 1974. Executive director of that program, Elizabeth J. Roberts,

influenced by the work of Kinsey, believed that early child genital play was critical to the development of sexual identity, gender roles, and body image. Self-exploration, masturbation, and desire 'to explore the genitals of other children' was the most common form of learned experience, and the 'anger, anxiety or moral concern' of adults distorted this 'natural activity' and reinforced the message that sexual activity for females is for reproduction and not for sexual pleasure.¹⁰ (emphasis added)

Roe v. Wade cites to the 1959 Draft of the ALI Model Penal Code, another Rockefeller funded project. This MPC draft cites to both Calderone's 1955 conference proceedings and the Kinsey Institute third volume, both published in 1958. Alan Guttmacher, who presented his data on therapeutic abortion at the Planned Parenthood conference, was taken to the ALI meeting by his twin brother, MPC Advisor, Psychiatrist Manfred Guttmacher, whose considerable influence on the MPC is recorded in the published correspondence between him and chief MPC author Herbert Wechsler. During that May 21, 1959 ALI formal meeting held at New York City's Harvard Club, Wechsler's draft of decriminalized state abortion law was approved by an overwhelming voice vote of the group of about 30 ALI members present. Guttmacher later pointed to the ALI MPC as the first major stimulus toward "liberalization" of abortion law.¹¹

⁹ Donald T. Critchlow. 1999. *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America*. NY: Oxford University Press, p. 195.

¹⁰ Critchlow, *supra*, p. 194.

¹¹ David J. Garrow. 1994. *Liberty and Sexuality. The Right to Privacy and the Making of Roe v. Wade*. New York: MacMillan, p. 277.

~Eleven~

Towards Real Legal Reform

There is destructive irony in the fact that children are protected by the state from bad decisions made out of their own immaturity with only one exception. State laws recognize adolescents' immaturity for important decisions about where they will live, where they will go to school, whether to smoke or drink, when they will drive, and the state provides certain health care. Can anyone imagine proposing a law that children at age 12 can decide for themselves when and if they will go to school, what subjects they may accept or reject, what time school will begin and end, and what adults they would interact with in achieving their self-appointed education goals?

It would be interesting to survey sixth graders to find out what they think is the proper driving age, what the speed limit should be, how insurance rates should be determined, and what kind of car they would want the bank to finance for them. Highway safety would be over for everyone, but, hey, everybody is going to drive eventually. Certainly no one would act to change the law based on such a survey.

The problem with my illustration is that when the subject is sex, there are people who actually think twelve-year-olds should be treated as adults with the full right to make unlimited informed decisions regarding behaviors whose consequences are disease, dysfunction, and death, and such attitudes are reflected in state laws across our great nation that once protected children from premature exposure to sexual information and behavior. Furthermore, these adults have surveyed and continue to survey twelve-year-old children asking invasive and biased questions about behaviors that were unthinkable only a generation ago, and then expect the laws to reflect children's unfettered rights to practice disease effective behaviors using their survey data to shore up unreasonable demands.

The RSVP America campaign has proposed to state legislators that we restore criminal penalties—as opposed to treatment—for fornication and illicit cohabitation for those under 21 to promote health and safety for children and to assist in reducing state welfare costs and reduce crime. For our proposal, we define fornication according to Webster, 1828, *American Dictionary of the English Language*:

Fornicate: To commit lewdness, as an unmarried man or woman, or as a married man with an unmarried woman.

Fornication: The incontinence or lewdness of unmarried persons, male or female; also, the criminal conversation of a married man with an unmarried woman. (Laws of Connecticut).

2. Adultery, Matt. V

3. Incest. I Cor. V.

4. Idolatry; a forsaking of the true God, and worshipping of idols. 2 Chron XXI. Rev. XIX.

5. An Arching; the forming of a vault.

Fornicator. An unmarried person, male or female, who has criminal conversation with the other sex; also a married man who has sexual commerce with an unmarried woman. [See Adultery]

2. A lewd person.

3. An idolater.

Fornicatress. An unmarried female guilty of lewdness.

Yes, Virginia. Safe sex really is a lie.

According to the National Institutes of Health study on condom effectiveness released in 2001,¹ condoms are effective in preventing the heterosexual transmission of HIV and the female to male transmission of gonorrhea. These cases are rare, only 2% of STD transmissions. This means that condoms will not prevent 98% of STD transmissions. Dr. Meg Meeker's recent book release, *Epidemic: How Teen Sex is Killing Our Kids*, reports the following grim statistics:

- Nearly 1 in 5 adolescents is living with an STD. (p. 13)
- In the 1960's a shot of penicillin could cure the two known STDs, syphilis and gonorrhea. Today there are no simple cures and, in most cases, no cures at all. (pp. 15-31)
- The CDC considers the STD epidemic a "multiple" epidemic of at least 25 separate diseases, or nearly 50 if you count the various strains of virus groups. (p. 14).
- Over 80% of STD-infected teens are unaware they have an STD; therefore they don't get medical attention and may continue to infect others. (p. 35).
- False claims are asserted by sex educators who under-inform or mislead kids about STDs and condoms that offer little or no protection from disease. (pp. 104-5).
- Pharmaceutical companies promote drugs that control STD symptoms, encouraging kids in the delusion they can be promiscuous without any of the associated problems.
- Anatomic and immunological differences make the adolescent body—particularly the female's—more susceptible to STD's than the adult body. (p. 175-6)
- The idea of maintaining sexual freedom rather than preventing disease remains the driving force and primary focus of national sex education and the STD epidemic continues to worsen as long as it does. (p. 26-29).

After nearly forty years of the SIECUS/Kinseyan-based monopoly on sex education, Surgeon General Satcher's report² on sexuality is the evidence that the last 40 years of sexuality education in the schools is a failure. According to the Surgeon General the diagnosis is grave: Five of the 10 most commonly reported infectious diseases in the US are STDs; 45 million are infected with genital herpes, HPV is responsible for 93 percent of cervical cancer with 5.5 million new cases a year.

The Surgeon General further reports no evidence that "Abstinence-only" programs work. These programs, many started by concerned parents, are a significant challenge to the SIECUS/Kinseyan monopoly. Even though Abstinence programs have only received federal funds since 1996, the Kinseyan monopoly wants to be sure Abstinence upstarts don't cut into the billions they have received for decades. Whether or not programs that direct children to the "marital act" will succeed in meeting the government's objectives is not the question. One thing is certain: SIECUS/Kinseyan programs can't provide a history of success or assurances for future success: Abstinence programs can. When the Abstinence message is adhered to children will have no disease, dysfunction or become pregnant or die from those actions.

¹ National Institutes of Health, July 20, 2001. "Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention."

² David Satcher. *The Surgeon General's Call to Action to Promote Sexual Health and Responsible Sexual Behavior*. June, 2001.

A new study refuting the claims of the Kaiser Family Foundation and SIECUS reports that when parents are presented with the actual statements of comprehensive sex education curriculum, 61% are opposed to having their children exposed to such information. The Centers for Disease Control Curriculum tallied a whopping 75.3% opposition from parents. The study was conducted by Zogby International on a random sample of 1,245 adult parents of children aged 5 to 18. The Zogby poll reports that former surveys by Alan Guttmacher Institute, Planned Parenthood, SIECUS and Advocates for Youth have been seriously flawed by vague, deceptive, and leading questions, with a clearly biased agenda to convince parents that such "expert" sex education is needed for their children's health and well being. Examples of outrageously biased questioning by SIECUS and Planned Parenthood are given in the study's February 13, 2003 analysis entitled, "Deception Uncovered."³

Based on the Surgeon General's report it is possible to declare the SIECUS/Kinseyan experiment and its wide variety of tax-supported permissive promiscuous sexual programs an expensive crashing failure.

The Kinseyans are attempting to deflect attention to Abstinence's five year "too soon to tell" performance in reducing out of wedlock births. They desperately hope to distract their funders, federal and state lawmakers, from Satcher's tally of their failures. After paying to establish "safe sex" education in schools and their undoing of the contraception, fornication, cohabitation, and abortion laws, sexual freedom has proven not to be free. After four decades, lawmakers are finally being given an evaluation of the post-Kinsey years and it is not good for kids: Gonorrhea in ages 10-14 is up 200 percent from the 1950s; there is 150 percent increase in out of wedlock births to girls under 15 years of age since the 1950s; birthrates for girls 15-19 are up 215 percent.

Founded in 1964 at the Kinsey Institute, SIECUS was the vehicle intended to pump Kinseyan sex-ed into schools, but there was a lot of work to do. In states like Missouri as late as 1971 it was illegal to mention "sexual intercourse" to a child under the age of 21. But with leadership like former Planned Parenthood president and first executive director of SIECUS, Dr. Mary Calderone and a cast of dedicated sexperts traveling the nation to lobby legislatures, starting separate-sounding organizations, but Kinsey affiliates none-the-less, placing Kinseyans in existing organizations, SIECUS' sex knowledge programs and the promiscuous sex-outside-of-marriage philosophy was launched into the American mainstream.

Let's look at this 40-year failure and give everyone the benefit of the doubt. In the early 1950 and 60s, when sexual disease, dysfunction, out of wedlock births were very low (because everyone just said "no" - there was no contraception or abortion) no one knew what would happen in this great SIECUS "anything goes" experiment with America's children. But today there is no doubt about it. It is time to declare the obvious and prepare for a changing of the guard. The evidence is in thanks to Dr. Satcher. America's reigning sexuality model, the SIECUS/Kinseyan brand of comprehensive sex-ed should be defunded, if not prosecuted.

Kinsey collected data on the sexual abuses of infants and children, said they like it, and then claimed this proves humankind is erotic from birth (not human beings - "sexual beings"). Dr. Satcher and SIECUS say we have to teach little children about all manner of sexual matters because they need to be informed sexual actors from early childhood.

³ Survey results and analysis are available at www.whatparentsthink.com

The Kinsey Report's "scientific" sample is admittedly 87% aberrant males - comprised of convicts, sodomists, etc. Kinsey says all sodomy is natural and healthy and the "gay rights" movement is born. Then comes the deadly AIDS virus. SIECUS advocates homosexuality be accepted and mandatory AIDS education is taught in all the schools to children who are, according to Kinsey, sexual from birth so they need to know about sodomy as an alternative, not behavior, but rather a "lifestyle," a state of being.

The Kinsey Report said sexual experimentation before marriage increases the likelihood of successful long-time marriage and disease and other disorders are greatly reduced. Kinsey also said people are naturally bi-sexual and religious bigotry and prejudice forces people into heterosexuality and monogamy. The SIECUS clearinghouse has delivered the "anything goes" philosophy for almost four decades and today divorce is off the charts and many families are fatherless putting children at risk to predators.

Kinsey said there is no reason adult-child sex (or incest) should be forbidden so laws deterring criminals and protecting children were weakened and eliminated. Today, according to a 1990 ABA report, over 4/5ths of child abusers serve NO time for crimes against children, even though corrections practitioners strongly affirm that child abusers are confirmed in their behavior and remain a continuing threat to children, with or without fathers.⁴

Given Dr. Satcher's report, if SIECUS and the Kinseyan sexperts had any honor, it would take its leave from the national arena and pay reparations to the victims of the sexual revolution they started. Now is the time to restore the standard that worked so well in keeping children healthy and pure until marriage.

The Kaiser Family foundation reported that 85% of parents said teenagers should be taught how to use condoms, and 84% said other forms of birth control should be taught. Yet students, including young girls, are not told that the most common sexually transmitted disease, and the cause of cervical cancer, kills 5,000 women per year in the United States. Nor are these children taught that condoms never protect against HPV—which is spread by skin contact not by fluids.⁵

Readily available contraception makes children life-long "contraceptors" and promotes a misguided "sexual freedom." *The Washington Post* reported on October 9, 1995, that "teen pregnancies are higher in states that teach condom use." Despite the CDC's strong advocacy of condoms, not one of the Center for Disease Control's five "safer sex" programs has demonstrated a decline in out-of-wedlock births or STDs. There is a 24% pregnancy rate for teens who use condoms. Grossly underreported to young women is, as researcher Joel Brind reports, 12 out of 13 recent medical studies have shown a significant link between abortion and breast cancer.⁶ Nationally over 1.36 million abortions were performed in 1996, and to date, more than 4 million children have died before their birth.

- According to the December 1999 Center for Disease Control reports, heterosexual contact has accounted for a miniscule 4% of AIDS in males, and a total of 10% of all AIDS cases since reporting began in 1981. Despite the

⁴ American Bar Association, 1990, "The Probation Response to Child Sexual Abuse Offenders: How is it Working?" Executive Summary, State Justice Institute Grant, SJI-88-11J-E-015, p. 1.

⁵ Dr. John Diggs, WebMD, <http://my.webmd.com/content/article/1700.50173>

⁶ New Jersey Index of Leading Cultural Indicators, 2000.

spin, AIDS remains overwhelmingly a homosexual/drug user disease.⁷ The British medical journal, *Lancet*, suggests that "increased condom use will increase the number of AIDS transmissions that result from condom failures."⁸ Yet much of our AIDS prevention international programs are little more than condom distribution in countries who face a real risk of annihilation.

Gay Lesbian Straight Education Network, or Parents, Families and Friends of Lesbians and Gays and other adult groups working openly in high schools across America actively recruit children to experiment with sodomy/homosexual sex. The ratio of boys to girls who have AIDS—infected by an adult or older juvenile sexual predator—is five to one.⁹

It is important to note here that the only African country that has reduced the AIDS plague is Uganda. The media underreports the success in Uganda and the UN dismisses Uganda's success in diminishing the AIDS plague as it continues to aggressively promote and distribute condoms as the anecdote to the sweeping spread of AIDS across the continent. Ugandans understand that the only way to really prevent AIDS is chastity, and they have boldly taken a life saving public policy position, reducing AIDS by 30% in rural areas, and 50% in urban areas¹⁰. They are on message with abstinence and monogamy—firm in the conviction that people can and must change destructive sexual behaviors in order to survive.

The facts over the last forty years lead to one conclusion. The "sexual freedom" Kinsey predicted would bring us greater "health," in fact, it has brought measurably more disease, dysfunction and economic strain to struggling young female heads of household and the nation. We now know, Kinsey deliberately lied and America is not healthier and sexual freedom is not free. A real sign of responsible adulthood is not entering the playing field of sexual anarchy, but rather choosing the former self discipline standard which once flourished in American homes when we "waited" and were, in fact, measurably healthier for it.

The Kinseyan-supported "science" crowd is losing their grip on the lucrative government supported sex-ed fiefdom: Once the final authority and totally in control of the sex ed industry in the schools, their "comprehensive sex education" allotment of schools in 1999 has shrunk to 58%, with abstinence-only programs peeling off 34% of schools.¹¹

In 1997, the American Bar Association issued a study on sexual relationships between adult males and young teen girls. They cite two studies indicating that child molestation is a factor in teen pregnancy. In a 1986 study of 445 Illinois teen mothers, 60% reported they had been molested at a mean age of 11 ½. Almost half were abused by men more than 10 years older. In a 1992 study of 535 Washington state teen mothers, two thirds reported molestation by a mean age of 9.7. The mean age of the offender was 27.4.¹²

The risk for sexually transmitted disease is even higher. In the July, 1995 issue of the British Medical Journal, *Lancet*, M. A. Males reports that seven out of ten girls who become infected with STDs are the result of sexual relations with men over 20. "His data suggest that teenagers, particularly girls, acquire nearly all HIV infections

⁷ Center for Disease Control, HIV/AIDS Surveillance Report. Dec. 1999. Vol. 11, No. 2, Table 5.

⁸ *World Magazine*, September 9, 2000

⁹ Reisman, J. A. 2000. "Crafting Bi/Homosexual Youth," *Regent University Law Review*, Vol. 14, 2002, p. 283.

¹⁰ *World Magazine*, September 9, 2000.

¹¹ Reuters, "U.S. Parents, Teachers Want More Covered In Sex Ed," September 26, 2000.

¹² Sharon G. Elstein & Noy Davis. October, 1997. *Sexual Relationships Between Adult Males and Young Teen Girls: Exploring the Legal and Social Responses*. American Bar Association, Center on Children and the Law at 2.

from sex with older men.”¹³ In a 1997 study, it was found that 40% of 15 year old girls had a baby with a partner aged 20 or older.¹⁴

The ABA study surveyed the 50 states “statutory rape” laws, and found that “states are increasingly establishing parameters for sexual activity between ‘peers’ that is not subject to prosecution or that constitutes a misdemeanor rather than a felony.”¹⁵ Almost all states delineate a lower age for the minor to increase the seriousness of the conduct.

In interviews with 46 prosecutors, the ABA findings show “there is not a lot of societal support for prosecuting the men involved in sexual relationships with young teen girls.”¹⁶

In addition, 88% of judges recommend that the male receive some form of sexual offender treatment.¹⁷ In 1994, the Alan Guttmacher Institute reported that the fathers of children born to adolescent mothers at least six years older in one fifth of cases. “Recent research also suggests that the incidence of pregnancy among adolescent girls often is the result of sexually predatory behavior of older men.”¹⁸ Boys are one third as likely as girls to become adolescent parents.

Our Missouri Proposal

RATIONALE FOR PROPOSED LEGISLATION TO UNIFORMLY DEFINE ADULT MATURITY

Pre-1950, in Missouri, as in almost all states, the only lawful sexual congress between the sexes was heterosexual coitus in marriage. To provide order and protection for children, all other sexual contacts and conduct were illegal. In Missouri, as late as 1978, it was illegal to mention “sexual intercourse” to a child under the age of 21.

The first criminal code of Missouri was enacted in 1835, and remained the fixed law of the state until 1979, when the Missouri Bar joined the rest of the nation in using the American Law Institute’s Model Penal Code (ALI-MPC) as its guide to “abolish” common law protections for women and children in the state penal code.¹⁹ The ALI-MPC authority for eliminating these protections rests on fraudulent Kinsey Reports (1948-1953). Kinsey Institute officials have now admitted that 87% of the *Male Report’s* “scientific” sample was based on interviews of aberrant individuals. Yet upon this scientifically inaccurate view of “normal” human sexuality, Missouri removed legal protections that had pointed the way for sexual health and protection for women and children.²⁰ Missouri’s Revision Commission quoted the erroneous and biased Kinsey Reports, stating that sex crime statutes that were “obsolete and seldom used by prosecutors should be scrapped.”

The proposed legislation is intended to recall laws changed based on scientific fraud and address the failures related to these changes. After four decades since most states undertook penal code revision all based on the ALI-MPC, lawmakers across the

¹³ Cited in the ABA study, *ibid.*, at 3.

¹⁴ *Id.*, at 5.

¹⁵ *Id.*, at 17.

¹⁶ *Id.*, at 25.

¹⁷ *Id.*, at 27.

¹⁸ Rebecca A. Maynard, Ed. *Kids Having Kids: A Special Report on the Costs of Adolescent Child Bearing*. The Robin Hood Foundation at 16.

¹⁹ Danforth, J. C., 1973, Symposium—Proposed Missouri Criminal Code. *The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented*. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 361, 362.

²⁰ Richardson. *Supra*, 371.

country are once again evaluating the law and the skyrocketing costs associated with codifying the expensive, dangerous and, in some cases, deadly Kinseyan "sexual revolution:" Gonorrhea in ages 10-14 is up 200 percent from the 1950s; there is 150 percent increase in out of wedlock births to girls under 15 years of age since the 1950s; birthrates for girls 15-19 are up 215 percent, and more than 25 new STD's plague this generation.

Missouri laws prohibiting fornication and cohabitation have been removed and since 1964 sex-ed in America's public schools has promoted "safe sex" contacts and conduct largely through condom use. It is now time to restore the Pre-Kinsey standard. These laws pointed the way to the only standard that kept children healthy when disease, dysfunction and out-of-wedlock births were considerably lower.

Uniform Definition of Adult Maturity

A person under the age of eighteen years is deemed a minor entitled to protections at law from potential physical injury under current Missouri Revised Statutes:

(1) Missouri shall continue to provide assistance benefits to children under the age of eighteen years, or under the age of nineteen years if a full time student in a secondary school pursuant to Missouri Revised Statutes Chapter 208.040.

(2)The Bureau of Child Hygiene shall continue to monitor sanitary and hygienic conditions for minors in public school buildings and grounds pursuant to Missouri Revised Statutes Chapter 192.070.

(3) The superintendent of public schools shall continue to guarantee a program of academic instruction to minors between the ages of seven and sixteen pursuant to Missouri Revised Statutes 167.031.

(4) School boards shall continue to provide all children under the age of eighteen years who have not completed the elementary school course a part time program of academic instruction pursuant to Missouri Revised Statutes 167.051.

(5) Any licensee under the Liquor Control Law who shall sell, vend or give away or otherwise supply intoxicating liquor to any person under the age of twenty-one years shall be deemed guilty of a misdemeanor pursuant to Missouri Revised Statutes 311.310.

(6) An intermediate driver's license shall be issued to minors over sixteen years of age with permission of the parent, grandparent, or legal guardian, or supervising person over 21 pursuant to Missouri Revised Statutes 302.178.

(7) No minor in child day care facilities may be exposed to tobacco smoke or other use of tobacco products pursuant to Missouri Revised Statutes 191.776.

The legislature of the state of Missouri acknowledges that the health and safety of Missouri's children requires their protection from exposure to health risks. Surgeon General Satcher's June, 2001 report on sexual health, as well as the Department of Health and Human Services July, 2001 study indicate there is no scientific evidence that condoms prevent the transmission of most sexually transmitted diseases. Exposure to premature sexual contact endangers the physical health of children by exposure to disease, dysfunction, and death risks. NOW THEREFORE,

Be it resolved by the General Assembly of the State of Missouri:

Any person who promotes or causes sexual contact with a minor under the age of 18 years is guilty of molesting a minor with immoral intent.

Any minor who exposes another minor to sexual contact is guilty of juvenile criminal recklessness, and shall be punished by fines, community service hours, and/or probation; and repeat offenders shall be remanded to juvenile detention services for disposition of the offense.

Historically, Missouri Revised Statutes protected children under the age of 21 years of age as follows (KRS 563.160, 1969):

"Any person who in the presence of any minor shall indulge in any degrading, lewd, immoral or vicious habits or practices; or who shall take indecent or improper liberties with such minor; or who shall public expose his or her person to such minor in an obscene or indecent manner; or who shall by language, sign or touching such minor suggest or refer to any immoral, lewd, lascivious or indecent act, or who shall detain or divert such minor with intent to perpetrate any of the aforesaid acts shall be punished by imprisonment in the penitentiary for a term of not more than 5 years, or a jail sentence of not over one year, or fine of \$500, or both."

Current scientific findings affirm the essential need for protection of minors from premature sexual exposure. Based on the adoption of penal code reform in 1979, Common Law protections were abolished for immature youth regarding fornication and cohabitation. The restoration of these protections for those under 21 will provide warning and protection against disease and dysfunction. The fraudulent science of the Kinsey Reports, was used as the basis to define "normality" in the Model Penal Code, as well as early revisions in New York, Illinois, and Minnesota. All of the foregoing were reviewed by the Missouri Criminal Code Revision Commission and Missouri penal law was changed to diminish protections for minors.

Uniform Definition of Adult Maturity (Kentucky Version)

A person under the age of eighteen years is deemed a minor entitled to additional protections at law from potential physical injury under current Kentucky Revised Statutes:

- (1) KRS205.6483 Kentucky Children's Health Insurance Program—Purposes. (1) Providing health care coverage and other coordinated services to children through the age of eighteen (18) years at or below two hundred percent (200%) of the federal poverty level...
- (2) KRS156.160 (1)(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code. This regulation also provides for physical examinations (156.160(1)(f) and vision examinations (g) for "the protection of physical welfare and safety of the public school children."
- (4) KRS199.8992 (1)(g) [The Cabinet for Families and Children shall] Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community.
- (5) KRS244.085 (3) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverage.
- (6) KRS527.110 A person is guilty of unlawfully providing a handgun to a juvenile or permitting a juvenile to possess a handgun when he (a) intentionally, knowingly, or recklessly provides a handgun, with or without remuneration, ...to any person...under eighteen (18) years of age..
- (7) KRS438.310 (1) No person shall sell or cause to be sold any tobacco product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product at retail. (In addition, 438.325 requires each owner of a retail establishment to notify employees that the sale of tobacco to persons under 18 is prohibited, and proof of age is required from a prospective buyer.)

Historically, Kentucky Revised Statutes protected children under the age of 21 years of age as follows (1948 KRS 435.090):

Rape of female over 12. Any person who unlawfully carnally knows a female of and above twelve years of age against her will or consent, or by force or while she is insensible, **shall be punished by death**, or by confinement in the penitentiary for life without privilege of parole, life, or not less than ten nor more than twenty years.

435.100 (1984) Carnal knowledge of female child under 18 with her consent or of male child under 18, penalties:

Under 12: min.20, max. 50 years, or death

12 to under 16: 5 to 20 yrs.

16 to under 18: 2 to 10 yrs, or if prosecutrix is immoral, a fine of up to \$500 .
When male is 17-under 21, and female 18-under 21, fine up to \$500.

Based on the June 2001 Surgeon General Report, "Call to Action to Promote Sexual Health and Responsible Sexual Health," it is clear that the country is in a serious public health crisis as 5 of the 10 most commonly reported infectious diseases in the US are STDs; and in 1995, STDs accounted for 87% of cases reported among those ten. Chlamydia and gonorrhea infections account for 15% of cases of infertility in women; 45 million are infected with genital herpes, Human Papillomavirus (HPV) is responsible for 93 percent of cervical cancer in women with 5.5 million new cases a year killing more women than AIDS.

After years of promoting "safe" sex to children with condoms, on July 20, 2001 the Department of Health and Human Services (HHS) issued an alarming scientific report finding there is no scientific evidence that condoms prevent the transmission of most sexually transmitted diseases.

Children are not considered responsible or mature in most state statutes until age 18 to 21. Irresponsible sexuality, Surgeon General David Satcher warns, can generate STDs, (including HIV/AIDS) unintended pregnancy, and even coercive and violent behavior.

Current scientific findings affirm the essential need for protection of minors from premature sexual exposure. Based on the adoption of penal code reform in 1974, Common Law protections were abolished for immature youth regarding fornication and cohabitation. The restoration of these protections for those under 21 would provide warning and protection against disease and dysfunction. The fraudulent science of the Kinsey Reports, was used as the basis to define "normality" in the Model Penal Code, as well as early revisions in New York, and Illinois. These revisions were reviewed by the Kentucky Criminal Code Revision Commission and Kentucky penal law was changed to diminish protections for minors.

The legislature of the state of Kentucky acknowledges that the health and safety of Kentucky's children require their protection from exposure to health risks. Surgeon General Satcher's June, 2001 report on sexual health, as well as the Department of Health and Human Services July, 2001 study indicate there is no scientific evidence that condoms prevent the transmission of most sexually transmitted diseases. Exposure to premature sexual contact endangers the physical health of children by exposure to disease, dysfunction, and death risks.

NOW THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Any person who promotes or causes sexual contact with a minor under the age of 18 years is guilty of molesting a minor with immoral intent.

Any minor who exposes another minor to sexual contact is guilty of juvenile criminal recklessness, and shall be punished by fines, community service hours, and/or probation; and repeat offenders shall be remanded to juvenile detention services for disposition of the offense.

A Word about Law Enforcement

There have been concerns expressed about the costs associated with re-penalizing illicit sexual behavior, and those concerns can be addressed based on current

systems in place for dealing with minors who break the law. In Oldham County, Kentucky, a typical first offense by a fifteen year old of, for example, shop lifting, results in a "diversion" assignment of 50 hours of community service. The offender has thirty days or so to perform the work and return the confirmation sheet to a court overseer of diversion cases. We propose that two minors engaged in dangerous and disease effective behavior such as fornication would be handled in a similar manner through the existing system.

The case of an adult involved with a minor would be treated as exploitation of an immature adolescent, who does not have the option to make adult decisions. The law speaks for him or her in that all adult behavior—drinking, driving, health, education, etc—there is a ***uniform definition of adult maturity*** that precludes twelve year olds from making rash and deadly decisions clearly not in their best interests. The law punishes adults who encourage truancy, who sell tobacco and alcohol to minors, and should punish those who introduce minors to premature unhealthy sexual behavior.

Additional cost containment will be realized by the reduction of sexually transmitted diseases resulting from stringent laws forbidding promiscuous behavior. The National Institutes of Health report that in 1994, \$10 billion was spent on major STDs and their preventable complications, not including HIV infections. The pro sodomy website, beingalive.org reports that 75% of HIV patients who receive treatment depend on taxpayer funded programs to get medicine. The latest AIDS drug, fuzeon, costs approximately \$21 thousand annually per patient, or over \$7 billion annually if it were provided to 70% of existing AIDS survivors.

A History of Fornication Law

There appears to be considerable legislative resistance to considering fornication as a criminal act. It might be helpful to give a short history lesson of American law the year that Kinsey published his Male volume, and "Crimes Against the Person" were rare by today's standards.

In 1948, fornication is no crime in twelve states of the 48 states: CA, DE, LA, MD, MI, NM, NY, OK, SD, TN, VT, WA.

In addition two states have no fornication law, but cohabitation is a crime (AZ and NV)

Over half the states had prison sentences for fornication: AL, CO, CT, D.C., FL,, GA, ID, IL, IN, KS, ME, MA, MN, MS, MO, MT, NE, ND, NH, NJ, OH, OR, SC, UT, WI, WY.

In addition, seven states mandated fines: AR., KY, PA, RI, TX, VA, WV,

NC law reads, "punishable as a misdemeanor at common law," which would probably be considered fines and a short prison term.

Two states mention fornication with a minor—Florida where the penalty is 10 years or \$2,000 fine, and Wisconsin, with a chaste minor, 4 years and/or \$200. In most states in 1948 when a person under 18 was involved, this crime would be prosecuted as molestation or statutory rape.

Penalties for adultery were typically much more severe. We are not asking legislators to consider reinstating these fornication laws that applied to adults, although such legislation is needed to restore safety in America. We are only asking legislators to address the child's (this term means under 18 or under 21 in the Common Law) need for uniform protection from exposure to harmful acts such as

smoking, drinking, truancy, and fornication. To restore the law to its pre-revision stature, adults would have to behave in a responsible way that led the young by example, and children would have the privilege of growing up in a stable environment with a mother and father who were married to each other. If the legislator can't fathom forbidding children to fornicate, then history cannot teach us the truth about fornication and its devastation on marriage, women, and children.

There could also be a predictable decrease in costs and an increase in safety when the consequences of minor infractions are enforced. A study last year by the Manhattan Institute demonstrated that enforcing penalties against minor crimes prevented over 60,000 violent crimes in New York City from 1989 to 1998. The tough-on-crime stance some call "broken-windows policing," was "significantly and consistently linked to declines in violent crime."²¹ We would look for a correlational decrease in more violent crime, when fornication was proscribed, and its consequences speedily applied to the offender.

The hard data are in. The legal efforts of the last fifty plus years by the sexual freedom cadre of legal academic elites has been to co-opt the sexually conservative public direction of the 1930s which sought to restrict sexual conduct and eliminate sex offenders in society by permanent incarceration, up to and including capital punishment in 18 states. The effort of this Kinsey-led, Model Penal Code cohort was highly successful, leading to pandemic rates of child sexual abuse and rape far beyond anything imaginable 50 years ago.

Abolishing the fixed law of America has been accomplished through the American Law Institute's Model Penal Code. Now, the resulting scientific fraud and experimental proposals must be examined in light of the factual lack of safety and well-being of women and children. Law has pointed the way, and that way is now deeply entrenched in programs of rehabilitation and therapy; there are conflicting precedents, plea bargaining loopholes, systems for welfare, Medicaid, and shelters for victims; and little thought or consideration of the time when women and children were safe, and disease, violence and dysfunction were low.

²¹ See George Kelling & William Sousa, Jr. Do Police Matter? An Analysis of the Impact of New York City's Police Reforms. Civic Report No. 22, December, 2001. The Manhattan Institute for Policy Research.

~Twelve~

ALI New Family Order, Brave New World

*The ALI removes legal protections for Marriage in 1955
Families Dissolve in 2001, and the ALI Ushers in Guidelines for Sodomite Unions*

Marriage: The act of uniting a man and woman for life ; wedlock ; the legal union of a man and woman for life. Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children.

Webster's American Dictionary of the English Language, 1828

The family as we have known and defined it for centuries is being rendered officially obsolete. According to the **New York Times**, December 5, 2002, the American Law Institute (ALI) "has wielded an extraordinary influence over American legal practices, since its founding in 1923." There is no greater understatement in light of this research. This May, the ALI published yet another a guide book for lawyers and courts, after spending 10 years evaluating Family Law. According to the *NYT* report on the ALI Recommendations:

- A person's sexual orientation should not be considered by courts in custody matters.
- Homosexual couples in long-term relationships should have to make alimony or child- support payments if they split up.
- Among other recommendations, the institute said judges should not consider marital conduct during divorce proceedings. {For decades, courts frequently punished cheating spouses by burdening them with higher alimony payments or denying them custody of their children.}
- The institute said judges should instead divide up property and decide alimony based on how long a couple had been married and how much each spouse was dependent on the other for financial support.

The *NYT's* article goes on to say, proposals to repeal sodomy laws give same-sex partners inheritance rights and extended health benefits to "partners" which have stalled in many states, but the ALI's "findings may carry tremendous weight in U.S. courts." "Even before its formal publication, the report had been cited in more than 100 law review articles and two dozen court decisions." Despite some 35 state legislatures having passed laws to define and defend marriage as between a man and a woman, the ALI has hardwired "gay marriage" onto American life through the courts.

The ALI's principal author, Arizona State University law professor Ira Mark Ellman, said the goal was to "close holes in family law that have left judges guessing as to how to deal with nontraditional families." That is interesting since the ALI created the non-traditional family in law. It's time for law to catch up with human progress. Doesn't law mean a fixed set of principles in all languages?

Despite the negative consequences resulting from the states adopting ALI's Model Penal Code, its failure, as billed to reduce crime, has not been laid at ALI's door and taxpayers continue to pay. The ALI continues to be the trusted shepherd to the law field through its A-class board of legal luminaries, publications and continuing legal education programs. Now the ALI method is being plied to family law.

The 2001 two-thousand page tome entitled "Principles of Family Dissolution," without "marriage" listed in the book's index, but inclusive of strong top-down instruction to legislators to adopt its guidance, is devoid of America's founding morality, opting instead for the trendy notion of, "...a nation's family law to reflect its cultural values."¹ The legal elite's definition of America's cultural values is as revolutionary on this round as their 1955 fiasco. Take advantage of judicial activism if the legislatures don't cooperate--

Clearly, statewide consistency can be achieved only through the action of a body with statewide authority. In some jurisdictions, the existing statutory framework would accommodate the adoption of statewide guidelines through a decision by the highest court that adopted at least portions of this Chapter. In other jurisdictions, legislative action would be required.²

Every American should be on notice; the ALI intends no less than the title states: the dissolution of the family. The ALI's provision for the courts' recognition of "gay adoption" or what it calls, "certain stable, cohabitating relationships between two unmarried persons" is a feature of "family dissolution." The ALI Reporter states the recommendations have been adopted in one state, and parallel Canadian and other foreign jurisdictions. Canada is illustrative of what the ALI contemplates as a lower court has already ruled there the "Canadian law is unconstitutional because it recognizes only opposite-sex unions."³ This same everybody's-doing-it argument was used in the criminal code revision regarding sodomy, the age of consent, and the redefinition of rape and abuse, introduced to state revision commissions in 1955.

If Europe has already accepted these things, then progressives argue America is behind the times, and needs to modernize! The ALI solution is "legislative enactment [that] would permit a more comprehensive approach to the subject."

The American Law Institute is, in and by this tome, declaring that there is no common good that comes from stable marriage, and therefore heterosexual marriage should have no special status as a unit of society. The standard of "best interests for the child" is condemned because "of the room it allows for those who apply it to express biases based on gender, race, religion, unconventional behaviors and life choices, and economic circumstances."⁴ The ALI argument that these assumptions "run counter to the commitment this society avows toward family diversity," flies in the face that "gay rights" advocates have repeatedly been defeated in the courts and the legislatures in their attempts to establish civil unions:

¹ Ira Mark Ellman, Chief Reporter, American Law Institute, 2002. *Principles of the Law of Family Dissolution: Analysis and Recommendations*. Newark: LexisNexis, p. xvii.. (Hereinafter cited as "Dissolution").

² Dissolution, p. xix.

³ Marriage based on two genders, Ottawa argues: Government appealing lower court decision clearing way for same-sex marriage. The Toronto Star, April 22, 2003.

⁴ Dissolution, page 2.

Sound testimony to the fact that our society has no such commitment to the American Law Institute's definition of "family diversity."

The studies supporting marriage and family (FRC)

Legislatures have long recognized that marriage is good for people and good for the society and economy. Over 80% of long term child poverty occurs among children reared in never-married or broken families. The welfare system exists primarily as a response to the collapse of marriage. Seventy-five percent of our welfare aid goes to single parent families. In December, 2002, the Georgia supreme Court **unanimously** agreed to let stand a ruling from the Georgia Court of Appeals that concluded that a Vermont civil union is not the equivalent of marriage, and could not be recognized as such in Georgia.⁵

In 1996, Senator Don Nickles issued a statement defending marriage in which he explained,

The definitions of S. 1999 are based on common understandings rooted in our nation's history, our statutes, and our case law. They merely reaffirm what Americans have meant for 200 years when using the words "marriage" and "spouse." The current United States Code does not contain a definition of marriage, presumably because most Americans know what it means and never imagined challenges such as those we are facing today.

The unsubstantiated claim that homosexual and heterosexual behaviors are equally beneficial for individuals and that societal acceptance under girds the current ALI legal maneuver is reckless. The ALI claims this false premise is an accepted best practice as a legal and cultural guideline, and law changes are proposed based on the same. In 1955, when the American Law Institute released their Model Penal Code to state revision committees, they served up false statistics from the Kinsey Reports to legislatures claiming criminal behavior was in fact being committed by 95% of American men. Statistics to support the ALI's "family diversity" construct will, no doubt, also be simple to manufacture.

Here is an example of how an organization with an extreme political agenda produces statistics to support their position. In 2002, Planned Parenthood did a survey of their financial supporters in which they appeal,

"The struggle we face with anti-choice fanatics is truly life-threatening—we cannot afford to lose this battle. That's why I hope you will complete your survey and return it to our offices right away."

The mainstream press reported the results of their "survey" as serious scientific inquiry.⁶

ALI has introduced a new and foreign family vocabulary, "de facto parents," "co-parent," "domestic partnership," and "commitment ceremonies." As Denver Post columnist Al Knight pointed out, the only beneficiary from this latest law revolution

⁵ PCANews.com, January 2, 2003.

⁶ Read the results of the Zogby International study and its analysis by the Coalition for Adolescent Sexual Health at www.whatparentsthink.com.

will be those legal professionals involved in the "divorce industry," swollen since the ALI recommended the legalization of divorce, adultery, fornication and cohabitation.

The American Law Institute describes the new terminology reconceptualizing the parenting of children of divorced parents as "richer and fuller." They explain,

The changes in terminology cannot be expected, by themselves, to **revolutionize** how custody allocations are viewed, but they may contribute to a broader **reconceptualization** of the enterprise from who will possess and control children to what adjustments in family roles will be most appropriate for the child. It affirms that the options are not limited to one or two prescribed models but, rather, are spread out along a continuum.⁷ (emphasis added)

The American Law Institute argues that anyone who has given a child care is categorized as a "de facto parent" who has continuing custody and visitation rights. This could include stepparents, grandparents, and parental "partners" who function as "co-parents." While freely admitting that this revolutionary structure "may serve to weaken the commitment society has to legal parents," these other relationships may be "fundamental to the child's sense of stability." How this could play out in a courtroom could only be imagined. How typical of American Law Institute thinking—legal experts and an array of therapeutic experts must determine a child's needs, as parents are only one of many equal influences in the child's development.⁸

Because parents can be relied upon to have gender and race biases, the courts must intervene in a family on the child's behalf to protect them from the "evil of intolerance."

In case there was any doubt about the ALI's position, there are "Prohibitions against discrimination based on race, ethnicity, sex, religion, sexual orientation, sexual conduct, and economic circumstances of a parent." The ALI insists, despite the lack of scientific support, that there is such a thing as "sexual orientation" not recognized in most state law. Sodomy is still an act, not an orientation, or state of being, in most states. However, they claim that treating homosexuality is detrimental to the child's interests,

reflects a moral judgment, not a scientific one, and even as a moral matter, is subject to considerable societal debate....Chapter 2 requires that sexual orientation should not be a consideration and that homosexual conduct, like heterosexual, extramarital conduct, should be disregarded unless shown to be harmful to an individual child.⁹

Chapter 6 is based on laws from Canada, Australia and New Zealand as well as case law from Washington and Oregon and thereupon the ALI demands that all domestic partnerships be treated equally as the Institute's elite values are boldly and undemocratically imposed upon the American people with a footnote to a 1979 study of Sweden:

⁷ Dissolution, p. 7.

⁸ Dissolution, p. 5.

⁹ Dissolution, p. 12.

As the incidence of cohabitation has dramatically increased and cohabitation has become socially acceptable at all levels of society, it has become increasingly implausible to attribute special significance to the parties' failure to marry.¹⁰

Do we really want to change our laws based on conditions in Sweden in 1979? Apparently, the ALI thinks that is adequate authority for throwing out marriage in exchange for "two persons of the same or opposite sex, not married to one another, who for a significant period of time share a primary residence and a life together as a couple."¹¹

The use of case law from the courts, over statutory law approved by legislatures--the people's voice, hobbles the American people in their own self government. Elected representatives, accountable to the people, and whose vote on an issue is open to public scrutiny is less likely to make a radical judicial decision, to which others cite as case law, setting bad precedent. A judge's record dealing with criminal acts or civil conflicts, is more difficult to track, and even more difficult to pressure a judge to represent the will of the people.

New Jersey is in the middle of a tug of war between the courts and the legislature, in a lawsuit filed by seven same sex couples demanding the right to marry. Attorney General Peter C. Harvey wrote,

[T]he power to define marriage rests with the Legislature, the branch of government best equipped to express the judgment of the people on controversial social questions such as the recognition of same sex marriage.

The response from Lambda Legal Defense, a "gay rights" legal advocacy group in the courts, identifies the plan to shut out the will of the people. Their attorney responded,

The plaintiff couples argue they have a constitutional right to marry, a constitutional right to equal treatment, and it's the courts, not the Legislature, that determines what the constitution means.

Similarly in Nebraska in a case brought by the ACLU, 70 percent of the voters approved a constitutional amendment defining marriage as between a man and a woman, and barring government employed sodomy partners from marriage benefits. Buoyed by the ALI's "dissolution of marriage," the ACLU has filed suit in federal court demanding a "level playing field" for same-sex marriage, civil unions, and domestic partners.¹² Devoid of accountability to the voters, the courts guided by the ALI are silencing opposition and redefining the American way of life.

For the ALI, marriage is one of a number of optional commitment ceremonies, or registration as domestic partners, which would then constitute a legal "couple." This "couple" would then qualify as a "family" with accompanying legal rights and

¹⁰ Dissolution, p. 33, footnote 47.

¹¹ Dissolution, p. 34.

¹² Nebraska Same-Sex Marriage Ban Challenged, Arizona Daily Star, April 30, 2003.

responsibilities. Note the ALI Reporter's admission regarding these radical proposals:

The law of cohabitation is a recent and dramatic example of family law's adaptation to changes in social mores. Again the reach is to foreign law— However, other closely related legal systems include nonmarital cohabitants within their definition of "spouse" for purposes of spousal-support obligations. (See discussion of Canadian and Australian law in § 6.03, Reporter's Note to Comment b.)

At this point in time, the informed question to be posed is simple: will the courts, like the state legislatures 50 years ago in the criminal law, accept the American Law Institute's radical experiment for the American family, and what will be the cost and burden to follow the abolition of traditional marriage?

HOW WILL IT WORK? THE ALI'S NEW FAMILY ORDER WITH COURTS AND THERAPISTS AS NEW SPIRITUAL OVERSEER

... it is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren, till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst and provide for it.

Patrick Henry, March 23, 1775, Second Virginia Convention

With the ALI's support, the State is poised to further flood the boundaries and trespass family government as the institution Russell Kirk called the "little platoon," is disintegrating.

In the early 1960s psychologist Abraham Maslow predicted that psychologists would soon seize control of values from religion and be able to create an ideal society made up of "self-actualized men and women." Maslow became the prophet of the new humanistic psychology movement. Government has embraced this work of "population control" and delegated to psychiatrists, psychologists and sociologists responsibility for the institution of Marriage and the insolvent rights reserved to Family government not constitutionally delegated to them. Additionally this group has been improperly trained in the fraudulent scientific Kinseyan model of human sexuality where pleasure is the measure. Since Professor Wechsler hardwired the therapeutic fields into the ALI's penal code and therapists became Government's full partner in the criminal court system, expect the same in the evolving family court system. Thanks to the ALI's Professor Ellman, these "experts" will "close the holes in family law that have left judges guessing how to deal with nontraditional families."¹³

From obscurity to the criminal courts in the middle of the 20th century, therapeutic "experts" are poised to minister to our troubled "relations." Top psychiatrists at the APA, no doubt sensing troubling disturbances from tampering with Marriage, are

¹³ <http://www.nytimes.com/aponline/national/AP-Family-Law.html?ex=1040089098&ei=1&en=07d9d751dec85434>.

proposing a new psychiatric disorder, "Relational Disorders," slated to be added to the next edition of the DSM.¹⁴ *The Washington Post* reports: Instead of treating individuals, psychiatrists propose treating groups:

In the proposed class of illness, an individual might be healthy except when it comes to certain relationships. For the moment, the new category of mental illness would apply only to family relationships... couples who quarrel and parents and children who clash could be diagnosed with mental illness and treated, possibly with drugs. Relationships with siblings could be next. Doctors hope that creating a new disease category would encourage systematic study, drug trials and insurance coverage.

Paralleling again the ALI revolution of the 1950's, when the therapeutic allies declared they could "cure" criminals from behavior they characterized as disease, the American Psychiatric Association has defined a new mental illness which will fit well with the courts new proposed authority over their new definition of family. "Relational Disorder" will be a billable disease in terms of health insurance, and can be used to create a costly treatment modality for people seeking "family dissolution." It is defined by "persistent and painful patterns of feelings, behavior, and perceptions involving two or more partners in an important personal relationship." Who better than the family courts can funnel customers based on that definition!

"BEFORE I MET RICK I WAS STRATE [SIC] BUT NOW I AM GAY," WROTE ALEX IN ONE NOTE."

Irreconcilably, the simple common law position is sodomy is an illegal act and not to be sanctioned. The American Psychiatric Association and the American Psychology Association long ago dropped "homosexuality," as a disorder, from the Diagnostic and Statistical Manual (DSM) the profession's official guide (bible) for defining emotional and mental illnesses. The National Association of Social Workers code of ethics requires social workers to embrace the practice. Given the therapeutic field's permissive position on sodomy, a recent murder in Florida is a prime example how the new "Relational Disorders" could be employed by the new family court overseers.

Alex (12) and Derek (13) King were accused and convicted of bludgeoning their father, Terry King, to death with an aluminum baseball bat on November 25, 2001 because of his disapproval of his son's sodomy with their father's "long-time" friend Ricky Chavis. The CourtTV website has background:¹⁵

- Chavis, who was convicted and sentenced to six months in prison for molesting two teenage boys in 1984, is slated to stand trial for allegedly sexually abusing Alex King in October...
- Chavis admits to being gay, but claims that he has not been sexually active in years and denies that any relationship between him and Alex King took place...
- The brothers talked about their problems with their father, according to Derek, who said he promised Alex he would protect him.



Young Alex King

¹⁴ *The Courier Journal*, (from *The Washington Post*) Sunday September 1, 2002, p. 1.

¹⁵ <http://www.courtTV.com/trials/king/background.html>.

- The same night, according to the boys, Terry King allegedly threw Alex to the ground...
- According to Alex, he said he suggested to his younger brother that they kill their father so that they would not have to live with him anymore.
- Alex said that Chavis helped him come to the realization that his father mentally abused him, and Chavis had agreed to let the boys live with him...
- Both said that their father rarely struck them, but that he mentally abused them. When asked, they admitted being housed, clothed, fed, and only disciplined by Terry when they had done something wrong
- He [Chavis] also confessed that he had told the boys if Terry was gone they could live with him.¹⁶



Ricky Marvin Chavis,
Convicted Pedophile

In the future, by-the-book therapists will deal with this obvious "Relational Disorder." Remember, psychologists and psychiatrists will not find homosexuality a disorder in the DSM and in the DSM IV, since from 1995, pedophilia has not been a disorder unless the pedophile feels guilty or uneasy about his desires.¹⁷

From the few facts above, let's assume the father, Terry King, had a "relational disorder" particularly with his young son Alex, who was sexually abused by Chavis, a "long-time" friend who seems to have betrayed them all. Kinseyan-trained therapists would only be able to find in the DSM the intolerant father, who is obviously burdened by a "relational disorder" as he chafed over Mr. Chavis sodomizing his young son. Since most states have eliminated sodomy as a criminal act, and Kinsey claimed children are sexual beings from birth, you can see how the dots connect.

The day may come when all this sorrow, murder and mayhem can be avoided by a young Alex, who, through his school counselor or social worker, can access the family court system to avoid killing his father. The father, at the behest of his young "gay" son and the molester, could be brought before the court for the "mental abuse" of his young son. The therapeutic expert employed by the family court can diagnose the father with a "relational disorder." The court can then intervene and require treatment and/or medication for the father for "relational disorder." The bargain offered is simple. Take the treatment or lose your sons to the State. As many will find it too costly to mount a court battle to resist, and by then the father's insurance plan at work may be enlightened enough to pay for "relational disorder" therapy and the medication too. The future of the New Family Order seems bright indeed! Children don't need the protection of Father, when the Daddy Warbucks state is so much richer and stronger.



The boys' mother, Janet
French, a.k.a. Kelly Marino

¹⁶ <http://www.courtstv.com/trials/king/background.html>.

¹⁷ NARTH Bulletin, April 1995, p. 1.



Terry King, Alex's father

In time, as law and public policy "reconceptualizes" Marriage and Family giving way to the more inclusive and tolerant term "Relations," "affectional orientation" legislation, previously introduced in a few state legislatures, may finally get traction. This new "orientation" allows for unrelated adults to petition the court for visitation or custody of children, not their own. Thus further prying open the definition of family to the very most inclusive and thereby allowing the Constitutional guarantees of "domestic tranquility" through Marriage to completely fade for those foolish enough to participate in the New Family Order.

Finally, America can no longer boast, because according to today's law textbooks, America's founding law order is gone. The ALI's anti-law has given place to sodomites, feminists and other extreme groups putting a new song in America's mouth, a new anthem. The new savior of mankind, the State, is transfigured from merely functioning to facilitate Family to the Master of Family, flanked by the ALI, as the new lawgiver on one side, and the Therapeutic on the other, the new prophet explaining why things happen, but in foreign words and terms. This alliance, the ALI/family law and Therapeutics as rehabilitator of men's souls, enforced by the power of the State, is an unholy trinity, and the end of the Family, not to mention the end of the separation of Church and State because Humanism is the state religion.

The Law has institutionalized evolutionary paganism with an evolving man-centered law featuring a New Family Order with an array of non-traditional families, with total sexual freedom at any age unbound by biology and conception optional and not advisory, and to nurture the lives crushed by the grinding of the New Family Order, the new "Spiritual Overseers," the court will dispatch tax-supported ministers, a most tolerant therapeutic priest class, armed with legal pharmacopeias of soul-sedating soma. Write Ichibod above American Law, the majesty of the Law has departed.

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