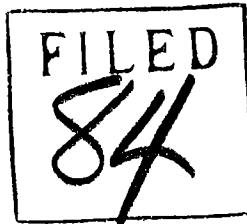


CRIMINAL LAW:
CRIMINAL SEXUAL PSYCHOPATH
MAY BE PROSECUTED; WHEN:

One found to be a criminal sexual psycho-
path within meaning of Sec. 202.700 RSMo
1949, of Criminal Sexual Psychopath Act
and committed to State Hospital No. 1,
against whom a criminal charge is pending
cannot be prosecuted on said charge during
probationary period or subsequent to
final discharge from hospital.

January 19, 1953



Honorable George A. Spencer
Representative
Boone County
Columbia, Missouri

Dear Sir:

This is to acknowledge receipt of your request for a legal
opinion of this department, which request reads as follows:

"Because there is some interest in the
criminal sexual psychopath law, Section
202.700 and particularly whether or not
the commitment in the Fulton Hospital is
the only punishment or if such a person
has been released they can be still prose-
cuted.

"The only case that I know of that is close
in point is State ex rel. Sweezer v. Green,
232 S.W. 2d 897, 360 Mo. 1249.

"I would appreciate an opinion from your
department as to whether or not the criminal
court jurisdiction continues and a person
would be subject to prosecution after being
released from the Hospital, first on pro-
bation and second, by final discharge."

The opinion request relates to Sections 202.700 to 202.770,
RSMO 1949, inclusive, and which sections have been designated the

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"Criminal Sexual Psychopath Act." For the purpose of our discussion herein we find it necessary to call attention to the methods outlined in said sections for the treatment of criminal sexual psychopathic persons charged with violations of the criminal laws of the state, or to quote certain sections of said Act verbatim, which are particularly applicable to the inquiries found in the opinion request.

Section 202.700, defines the term "criminal sexual psychopath," and we quote said section:

"All persons suffering from a mental disorder and not insane or feeble-minded, which mental disorder has existed for a period of not less than one year immediately prior to the filing of the petition provided for in section 202.710 coupled with criminal propensities to the commission of sex offenses, and who may be considered dangerous to others, are hereby declared to be 'criminal sexual psychopaths.'"

Section 202.710, in effect provides that when any person charged with a criminal offense appears to be a criminal sexual psychopath, within the meaning of the statutory definition, it then becomes the duty of the prosecuting or circuit attorney of the county in which the person is accused of being such psychopathic person to file a petition with the clerk of the court in which said person is charged with a criminal offense, and the petition shall state the facts showing the person to be a criminal sexual psychopath. Such petition may also be based upon facts constituting acts which indicate that the person accused may be a criminal sexual psychopath, as known by one who informs the prosecutor of such facts.

Upon the filing of the petition, a copy must be personally served upon the person accused, together with written notice that on a date specified in the notice (not more than 20 days), the court shall conduct a hearing to determine whether the person shall be given a medical examination, at a time and place fixed by the court.

Upon the hearing, if prima facie proof of the criminal sexual propensities to the commission of sex offenses be made, the court shall appoint two qualified physicians to examine the person accused of being a criminal sexual psychopath.

The details regarding what physicians may be appointed to make the examination, the time and place fixed for same, the compensation which shall be allowed said physicians, and a few other details of such procedure, are also provided by said section, but since we are not here primarily concerned with such details, we find it unnecessary

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to mention them further, except to state that the judge, may in his discretion dismiss the petition in the event he is of the opinion the facts do not justify further action. However, in the event the facts are sufficient to justify the appointment of the physicians to make the examination, and it appears from the written report of at least one of the physicians the facts are sufficient to establish the mental disorder and the criminal propensities of the person examined to commit sexual offenses, the court shall order a hearing to determine whether or not the person charged is a criminal sexual psychopath, and the issues may be determined either by the court or a jury. The rights of the accused are fully protected by the section which provides the kind of evidence that shall be admissible at the hearing, the privilege of representation by counsel, and full rights of appeal from a finding which the accused believes prejudicial to his interests.

Upon the finding having been made by the court or jury that the person accused is a criminal sexual psychopath, within the meaning of Section 202.700, supra, Sections 202.730 and 202.740 outline the procedure to be followed thereafter in properly disposing of said person.

Section 202.730, RSMo 1949, reads as follows:

"If the person is found by the court or the jury to be a criminal sexual psychopath, the court may commit him to State Hospital No. 1 at Fulton where he shall be detained and treated until released in accordance with the provisions of sections 202.700 to 202.770 or may order such person to be tried upon the criminal charges against him, as the interests of substantial justice may require. The hospital staff shall make periodic examinations of any such persons committed, with the view of determining the progress of treatment, and shall report to the court not less than once each year."

(Underscoring ours.)

Section 202.740 provides the procedure for the release of those detained in the state hospital, and reads as follows:

"At any time after the commitment an application in writing setting forth facts showing that such criminal sexual psychopath has improved to the extent that his release will not be incompatible with the welfare of society, may be filed with the committing court. Whereupon the court shall issue an order returning the person to the jurisdiction of said court for hearing. This hearing shall in all respects be like the original hearing to determine the

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mental condition of the defendant. Following such hearing, the court shall issue an order which shall cause the defendant either to be placed on probation for a minimum period of three years, or returned to the hospital; provided that upon the expiration of said probationary period and after further hearing by said court to be held in accordance with the other provisions of sections 202.700 to 202.770, said psychopath may be discharged."

From a careful reading of the provisions of the act it is apparent that the procedure provided therein for the detention of criminal sexual psychopaths in the state hospital is one which can be instituted only in connection with a pending criminal case against such person, since the act makes no provision for the institution of said procedure independent of a criminal case.

Under such circumstances the questions are presented as to whether the proceeding is a part of the criminal case; if the detention imposed upon the psychopathic person is a punishment for conviction of the crime with which he is charged; if such detention, is additional punishment for conviction of such crime, or whether such proceeding is civil in nature and the detention thus imposed is for some other purpose. We believe that these questions must be carefully considered, since they bear upon the subject matter of the opinion request, and the inquiries found therein.

In this connection we call attention to the only Missouri case involving the subject of the Criminal Sexual Psychopath Act, and in which above questions, as well as others regarding the act, are fully discussed and answered. We refer to the case of State ex rel. Sweezer v. Green, 232 S.W. (2d) 897. At l. c. 900, the court said:

"Is the inquiry and proceeding provided by the Act civil or criminal in character? As to that we can reach but one conclusion. Ordinarily a criminal proceeding is some step taken before a court against some person or persons charged with a violation of the criminal law. The purpose of a criminal proceeding is to punish. But this Act is but a civil inquiry to determine a status. It is curative and remedial in nature instead of punitive. One of its purposes is the treatment and cure of a present and existing mental disorder. It recognizes and classifies a criminal sexual psychopath as one suffering from 'a mental disorder* * * with criminal propensities to the commission of sex offenses'. The public policy of the

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State (as expressed in this Act) is to treat and cure such persons, not to punish them. Under the Act sex deviators are merely made subject to restraint and treatment because of their condition and their acts. One of the evident purposes of the enactment is to prevent persons suffering from this mental disorder, though 'not insane or feebleminded', from being punished for crimes they commit during the period of this mental ailment. In character the Act is not unlike statutes which provide for a civil inquiry into the sanity of a person. In principle an application it is not unlike our Juvenile statutes wherein certain minors, when charged with crime, are made a class apart and certain remedial substitutive procedures are provided for in lieu of their being prosecuted under the criminal laws. One purpose of the Act is to protect, treat and cure, and the State here is concerning itself with the future well being and return to normal living of a person so charged. Proceedings under the Act have none of the elements of a criminal proceeding. It is our conclusion that the Act is not criminal in character. * * *

* * * * *

"But this Act is not criminal in nature and any detention thereunder is not a punishment. And the Act provides that if one so charged is adjudicated a sexual psychopath the court may either commit him for detention and treatment, or the court may order him tried upon the pending criminal charge 'as the interests of substantial justice may require.' The act specifically provides, Mo. R.S.A. Sec. 9359.7, that 'Nothing in this act shall be construed as changing in meaning any portion of the criminal code, nor shall a finding of criminal sexual psychopathy under the provisions of this act constitute a defense in any criminal action.' The Act is curative, remedial and civil in character. Any proceeding thereunder, not being punitive in character, could not enlarge or increase a punishment."

(Underscoring ours.)

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From the holding in above cited case, particularly the quoted portion of the opinion, it is evident that the procedure relating to the charge of criminal psychopath characteristics of a person, his examination, the finding by the court or jury that he actually is such a person, and his ultimate incarceration in the State Hospital at Fulton, is a procedure civil, and not criminal in nature. Such detention in the state hospital is not imposed as punishment for the conviction of crime (since the person has not been convicted of any crime), but that he might be given treatment for a mental disorder not amounting to insanity and be finally rehabilitated when he has become sufficiently well of the mental disorder as not to constitute a menace to society by his continual violation of the criminal laws of the state relating to sex offenses, if he were allowed to go unrestrained.

It is also noted that the act contains no provision to the effect that when one charged with a criminal offense has been found to be a criminal sexual psychopath and committed to the State Hospital at Fulton for treatment, that such finding, detention, parole or discharge from that institution shall, or shall not be a bar to further prosecution on the criminal charge pending against him. After having carefully studied the act in detail, and the opinion of State v. Green, we conclude the intention of the legislature was that a person could not be prosecuted on the criminal charge after having been committed to the state hospital, paroled or finally discharged therefrom, and to construe the act in any other manner would serve to defeat the purpose for which it was passed.

CONCLUSION

It is therefore, the opinion of this department that one found to be a criminal sexual psychopath within the meaning of Section 202.700, RSMo 1949, of the Criminal Psychopath Act, and committed to State Hospital No. 1 at Fulton, and against whom a criminal charge is pending at the time of his commitment, cannot be prosecuted on said criminal charge during his probationary period or subsequent to his final discharge from said hospital.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General