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Criminal Law Survey

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CRIMINAL LAW SURVEY

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This survey obviously does not include all the cases reported and all the laws passed during the period of review.[1] Material was included if, in the opinion of the writer, it was related to a significant change or need thereof, a point of first impression, a clarification or complication of ambiguity or controversy, a possible trend, an amplification of an important area, or matters of potential social significance.

SENTENCE

I. *Deferment of sentence by trial judge.*

By statutory modification and clear judicial interpretation the power of judges to defer sentencing has been limited. In one instance the trial judge deferred passing sentence and released the convicted defendant on his recognizance. More than two years later the defendant was sentenced to a term of two years in the State Penitentiary. On appeal, the District Court[2] considered that older cases wherein such deferments were approved are not controlling because they were not decided in the light of the Florida Constitution as affected by the present parole and probation law,[3] which provided for suspension and probation only if the defendant were placed in the custody of the Parole Commission.[4] The court ordered that the defendant be discharged because the trial judge's procedure, which was tantamount to placing the defendant on unsupervised probation, went beyond the court's jurisdiction and was a denial of due process. The District Court adopted this view in subsequent cases.[5]

II. *Reduction of sentence by appellate judge.*

In *Stanford v. State*,[6] the Supreme Court held that it would not reduce or modify a sentence which is less than the maximum fixed by law. The majority reasoned that since the constitutional issue of cruel and inhuman punishment relates to the statute, the statute, not the sentence, should be attacked. Further, the court noted that if the sentence be harsh or unjust, relief is available from the parole authorities. The dissent stated that

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1. The survey includes cases reported in 96 So.2d through 113 So.2d 224, and laws enacted by the Florida Legislature Special Session 1957 and the 1959 General Session.
2. Bateh v. State, 101 So.2d 869, 876 (Fla. App. 1958).
3. FLA. STAT. § 948.01 (1957).
4. FLA. STAT. § 949.03 (1957).
5. Cameron v. State, 112 So.2d 864 (Fla. App. 1959); DeLoach v. State, 111 So.2d 458 (Fla. App. 1958); Williams v. State, 101 So.2d 877 (Fla. App. 1958).
6. 110 So.2d 1 (Fla. 1959).

the sentence was in issue because an appellate court has the general power to correct an abuse of discretion, and the particular statute involved specifically provided for "any lesser term of years at the discretion of the court." Several out-of-state cases approving the reduction of sentence on the basis of abuse of discretion were cited.[7] Contra Florida cases were distinguished by showing that they were decided on the issue of cruel and inhuman treatment rather than on abuse of discretion.[8] In the particular instance, the defendants were teenagers; they did not deliberately plan the robbery ($5.00), and none of them had a criminal record. The sentences were from six to ten years. The dissenting judges noted that long sentences, in some instances, may be more likely to produce hardened criminals than rehabilitated citizens. It is implicit in their position that although the parole and pardon authorities may consider this problem, appellate judges also have responsibility in the matter. The writer appreciates the position of the dissenting judges — that judges have responsibility for the results of their decisions.

III. *Modification of sentence by appellate judge.*

The defendant was sentenced in the Criminal Court of Record to 90 days in the county jail. On appeal, the circuit judge changed the sentence to a $100 fine. The District Court of Appeal[9] extended the holding in *Krauss v. Chillingworth*,[10] that a circuit judge may not modify the sentence of the judge of the County Court, by including within its scope the sentence of a judge of the Criminal Court of Record.

ACCUSED AS A WITNESS

The statutory procedural rights of the defendant are protected carefully by the courts.[11] Most actions by the state which would jeopardize these rights are prohibited. Most attempts by the state to force the defendant to choose between two rights are defeated by giving the defendant full benefit of both. The tendency seems to be to expand these rights, and

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7. State v. Jackson, 30 N.M. 309, 223 Pac. 49 (1924); State v. Ramirez, 34 Idaho 623, 203 Pac. 279 (1921); State v. Olander, 193 Iowa 1379, 186 N.W. 53 (1922); Aabel v. State, 86 Neb. 711, 126 N.W. 316 (1910); State v. Ross, 55 Ore. 450, 106 Pac. 1022 (1910).

8. Hutley v. State, 94 So.2d 815 (Fla. 1957); Emmett v. State, 89 So.2d 659 (Fla. 1956); La Barbera v. State, 63 So.2d 654 (Fla. 1953); Walker v. State, 44 So.2d 814 (Fla. 1950).

9. State v. Atwell, 97 So.2d 125 (Fla. App. 1957).

10. 88 Fla. 468, 103 So. 120 (1924).

11. FLA. STAT. § 918.09 (1957): "Accused may make himself a witness. — In all criminal prosecutions the accused may at his option be sworn as a witness in his own behalf, and shall in such case be subject to examination as other witnesses, but no accused person shall be compelled to give testimony against himself, nor shall any prosecuting attorney be permitted before the jury or court to comment on the failure of the accused to testify in his own behalf, and a defendant offering no testimony in his own behalf, except his own, shall be entitled to the concluding argument before the jury."

ambiguities are usually construed in the defendant's favor. The tendency reaches beyond the statute and affects the interpretation of rules in other areas of law.

I. *Closing arguments.*

"If the defendant were charged with two separate homicides, he would have the option of offering evidence other than his own in one charge and preserving the closing argument in the other. In such a case the option was preserved by prohibiting consolidation.[12] Consolidation however, was allowed where the two causes arose from the same event so that the evidence in each would be identical,[13] and where the defense to both causes was insanity.[14]

A. Joint Defendants

1. *Common counsel.*

Carter and Faulk were co-defendants represented by common counsel. Carter called a witness whose testimony was beneficial to Faulk as well as to himself. Faulk did not present evidence other than his own. The District Court of Appeal held that Faulk had lost his right to the closing argument.[15] Faulk brought the problem to the supreme court by writ of certiorari.[16] The judges noted that the state exercised its option to consolidate for its own purposes, and this should not have the effect of jeopardizing either the defendant's procedural right, or of limiting his choice of counsel. To protect the defendant in both matters, the state is made to assume the risk that the evidence for one might be beneficial to the other. Therefore, the court held that where two defendants are tried jointly and are represented by the same counsel and one presents evidence other than his own that is beneficial to his co-defendant, the co-defendant does not thereby lose his closing argument. The court referred to *Fuller v. State*[17] wherein the two defendants were represented by the same counsel. There a witness was placed on the stand "for the defense." After the testimony the prosecution stated that it had no questions. Then, at this advanced stage of the proceedings, the defense announced that the witness was called for the benefit of only one defendant, and that the other was still entitled to the closing argument. The announcement there was held to have come too late. In the present case the witness was called specifically for only one defendant.

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12. Meade v. State, 85 So.2d 613 (Fla. 1956).
13. Blackwelder v. State, 100 So.2d 834 (Fla. App. 1958).
14. McClure v. State, 104 So.2d 601 (Fla. App. 1958).
15. Carter v. State, 101 So.2d 911 (Fla. App. 1958).
16. Faulk v. State, 104 So.2d 519 (Fla. 1958).
17. 159 Fla. 200, 31 So.2d 259 (1947).

2. *Different counsel.*

An interesting variation of the problem arose where joint defendants had different counsel.[18] Counsel for the defendant in question cross-examined a witness placed on the stand by the co-defendant. The state argued that the cross-examination had gone beyond material covered on direct and, thus, the defendant had made the witness his own and thereby had lost the closing argument. The court held that a defendant has the right to cross-examine any witness whether offered by the state or co-defendant without losing the closing argument, and further noted that the state could have objected to any improper questions on cross-examination.

B. Meaning of "testimony except his own."

At one stage of the law's development, the defendant was entitled to the closing only if the defense had not offered any testimony. The rule was expanded to allow the defendant the closing if he did not offer "testimony except his own." A further expansion has resulted by broadening the meaning of this concept. In a case of first impression the court held that where the testimony of a character witness for the defendant was restricted to the latter's reputation for truth, the defendant did not lose the closing argument.[19] Such limited evidence was not considered to be "testimony other than his own." Previously the courts have had occasion to determine whether objects such as maps,[20], photographs,[21] and shirts,[22] which were introduced in evidence deprived the defendant of the closing argument. This case may open a new area for interpretation — types of statements made by the witnesses for the defendant.

C. Effect on other areas of the law.

In an abortion case[23] the defendant wanted to impeach the prosecutrix by showing that she had made statements at the trial which were inconsistent with her previous statements. The state claimed that according to the best evidence rule the defendant would be required to introduce the previous statements into evidence. The court noted that such an application of the rule would be unfair because it would force the defendant to lose his closing argument in order to cross-examine adequately. The problem was resolved by holding that the best evidence rule does not apply where the purpose is impeachment rather than proof.

A defendant's option of introducing evidence, or of preserving the closing implies that he has information upon which to make a choice. This

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18. Beard v. State, 104 So.2d 680 (Fla. App. 1958).
19. Anderson v. State, 107 So.2d 785 (Fla. App. 1958).
20. Barkley v. State, 152 Fla. 147, 10 So.2d 922 (1943); Haddock v. State, 121 Fla. 192, 163 So. 482 (1935).
21. Kennedy v. State, 83 So.2d 4 (Fla. 1955); Talley v. State, 36 So.2d 201 (Fla. 1948).
22. Birge v. State, 92 So.2d 819 (Fla. 1957).
23. Urga v. State, 104 So.2d 43 (Fla. App. 1958).

information includes knowledge of whether or not the state has sustained the burden of presenting a prima facie case of guilt beyond a reasonable doubt. Therefore, the court in *Adams v. State*[24] held that where the defendant made a motion for a directed verdict at the close of the state's evidence, it was error for the trial judge to hold his decision in abeyance.

II. *Comment by Prosecution.*

A literal interpretation of the statute would indicate that if the defendant testified at all, the protection of the statute against comment would be lost. In *Odom v. State*,[25] the defendant testified to his name, age and grade completed in school. The court found this testimony sufficient to justify comment by the prosecution to the effect that the defendant did not deny guilt.

However, the fact that the defendant testified at the trial does not necessarily preclude the protection of the statute. In *Hathaway v. State*,[26] the court held that it was error for the prosecution to bring out on cross-examination of the defendant that he did not testify during the preliminary hearing. This case not only places the preliminary hearing within the statute, but also incorporates cross-examination of the defendant within the scope of "comment by the prosecution."

An apparent conflict may occur between the statute and other rules. The rule with respect to stolen goods is that the unexplained possession of the goods by the defendant is a circumstance from which an inference of guilt may be derived. Obviously, the state should have the right to refer to this law, but at the same time must avoid commenting on the defendant's failure to testify. In a recent case[27] the prosecution misstated the law to the jury by indicating that the burden shifted to the defendant to explain his possession. Then, the prosecuting attorney continued, "I ask you today if a reasonable explanation has been forthcoming?" The court held that the misstatement coupled with the question amounted to a comment on the defendant's failure to testify. The court was not required to consider whether or not a correct reference to the law on unexplained possession necessarily involves comment on the defendant's failure to testify, but the judges seem to imply that the two are not mutually exclusive.

Directed Verdict

Wiggins v. State[28] is particularly important in that it resolves an ambiguity that has been apparent on the face of the statute but had not been considered by the courts. The defendant made a motion for a directed

24. 102 So.2d 47 (Fla. App. 1958).
25. 109 So.2d 163 (Fla. 1959).
26. 100 So.2d 662 (Fla. App. 1958).
27. Ard v. State, 108 So.2d 38 (Fla. 1959).
28. 101 So.2d 833 (Fla. App. 1958).

verdict at the close of the state's evidence. Although the statute[28a] provides that the motion must be renewed at the close of all the evidence, it also states that the motion is not waived by subsequent introduction of evidence on behalf of the defendant. The court resolved the ambiguity in favor of the defendant and allowed him to raise the issue of failure to grant a directed verdict on appeal.

CHALLENGES

Two misdemeanor charges which involved the same set of circumstances and witnesses were consolidated over the defendant's objection. He then contended that he was entitled to double the number of peremptory challenges. One case[29] which contained dicta that seemed to substantiate the defendant's position was distinguished on the basis that it was concerned with two distinct homicides, one by a shot and the other by a beating. The judges noted that the courts have discretionary power over consolidation and that the statute[30] does not definitely declare that the number of challenges varies depending on whether the cause involves single indictment or information, or multiple charges which were properly consolidated. The court held that in either event, the number of peremptory challenges given to the defendant as a matter of right is the same, but that the court at its discretion may allow additional peremptory challenges in a consolidated case as seems just.[31]

EVIDENCE

1. *Evidence concerning previous criminal activities and convictions.*

In *Williams v. State*[32] the court made an extensive historical analysis of the general principle that although evidence of circumstances and events concerning previous crimes is not admissible, evidence of a course of conduct (which may involve a crime) is admissible to show plan, intent, purpose or knowledge. It was concluded that such evidence is not admissible for the sole purpose of reflecting upon the character of the defendant, but is admissible if pertinent to issues in point. On this basis, the court decided that in a rape charge, evidence of prior similar methods of operation was admissible to show acts and circumstances in common. Evidence of prior related acts was allowed in a "moonshine" charge,[33] and in a case under the Child Molester Act.[34] In a larceny case,[35] evidence of indecent exposure was unconnected and not admissible.

28a. FLA. STAT. § 918.08 (1957).
29. See note 12 *supra*.
30. FLA. STAT. § 913.08 (1957).
31. See note 13 *supra*.
32. 110 So.2d 654 (Fla. 1959).
33. Dixon v. State, 104 So.2d 122 (Fla. App. 1958)
34. Ross v. State, 112 So.2d 69 (Fla. App. 1958).
35. Gonzalez v. State, 97 So.2d 127 (Fla. App. 1957).

Evidence of prior convictions is generally admissible for the purpose of affecting the credibility of the defendant. A case of first impression[36] arose where the prior conviction was still on appeal. The court allowed the evidence because the conviction at the trial level had overcome the presumption of innocence and would stand until reversed. The court cited cases decided in other jurisdictions as well as text material to support its view.[37]

As a general rule, where the defendant has testified, he may be asked on cross-examination if he has ever been convicted of a crime. If he has been convicted once and denies it, the state may put the record of the conviction into evidence. If the defendant admits the conviction the state is prohibited from further questions in this area. The situation in *Lockwood v. State*[38] was complicated by the fact that the defendant had three prior convictions. On cross-examination he was asked if he had ever been convicted and he replied affirmatively. He was then questioned as to the number of times. The objection to this question was overruled, and the defendant admitted to one previous conviction. The state continued the questioning and accused him of other convictions and introduced records thereof. The defendant objected to the entire procedure. The court held that the procedure was proper, and cited cases which "indicated" agreement.

II. *Means and Types.*

A. Wire tapping of party line.

In *Griffith v. State*,[39] the defendant claimed evidence obtained by wire tapping a party line was inadmissible. The court held that the effect of the statute[40] is limited to its provisions for a penalty and does not invalidate evidence obtained by wire tapping. Since a person has a right to use his party line, wire tapping, which merely made the process more convenient, was not a violation of a constitutional right.

There was a short well-written dissenting opinion which stated that one purpose of Section 22 of the Declaration of Rights, Florida Constitution, is to protect the right of privacy. On a party line the user is warned of an intrusion upon his privacy by the "click" of the receiver. The wire tapping avoids the click and thus evidence so obtained constitutes an infringement.

B. Truth Serum.

A new question concerning truth serum was considered in a prosecution for incest.[41] The defendant objected to evidence comprising statements made

36. See note 35 *supra*.
37. 58 AM. JUR. *Witnesses* § 745 (1948).
38. 107 So.2d 770 (Fla. App. 1958).
39. 111 So.2d 282 (Fla. App. 1959).
40. FLA. STAT. § 822.10 (1957).
41. Knight v. State, 97 So.2d 115 (Fla. 1957).

to a psychologist by the prosecutrix while she was under the influence of truth serum. The purpose of this evidence was to corroborate statements she had made to officials. The court held that the evidence was not admissible even for the purpose of corroboration because the serum does not guarantee truth, but on the contrary may produce fantasies.

SEARCH AND SEIZURE

The tendency in this area is to allow investigating officials considerable freedom of action. A case of first impression[42] in Florida increased the scope of official action by admitting evidence found in an automobile parked in the yard of the property designated in the search warrant.

The court seemed to employ quite a liberal policy (from the state's point of view) in the determination of the justification for an arrest. In one instance,[43] an officer suspected that the defendant was a bolita operator and obtained a warrant for arrest for vagrancy. The defendant was arrested and searched. The evidence so obtained was admissible on a bolita charge because the arrest was not merely a ruse since the defendant was also charged and convicted of vagrancy. In another case,[44] evidence concerning possession of illegal distilling equipment was admitted where obtained from the search of a car after an arrest for a defective tail light. The courts also held that an officer may stop a person to inspect the driver's license and during the process, if the officer sees evidence of a crime, he may legally arrest.[45]

JURORS

In a rape case[46] a juror failed to disclose that his daughter had been attacked in a similar fashion in the past. He also made a statement to the effect that he would not recommend mercy if the evidence supported a conviction. The trial judge concluded that any prejudice the juror might have had was not directed toward the defendant, and held that since the majority recommended mercy the defendant was not adversely affected, and was not entitled to a new trial. The court stated ". . . for it is abundantly clear from his statement that he would not convict an innocent man. . . ." This statement not only begs the question, but in the opinion of the writer, many people who study behavior professionally would not be quite so confident of this conclusion.

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42. Alexander v. State, 108 So.2d 308 (Fla. App. 1959).
43. Blake v. State, 112 So.2d 391 (Fla. App. 1959).
44. Self v. State, 98 So.2d 333 (Fla. 1957).
45. Cameron v. State, 112 So.2d 864 (Fla. App. 1959).
46. Russom v. State, 105 So.2d 380 (Fla. App. 1958).

Recommendations of Mercy

In one case[47] the State Attorney made the crass statement that the jury should refuse to recommend mercy in order to protect the State Attorney's family. The appellate court granted a new trial on the ground that the defendant was entitled to a fair trial relative to questions of mercy as well as to questions of guilt. In another instance[48] in which the jury did not recommend mercy, the State Attorney argued that the state had no right of appeal and that his staff considered that the death penalty was warranted. The appellate court noted that the prosecution should not advise the jury of a composite judgment of his staff based upon investigations made before the trial. Since the criteria of guilt are specific, the two errors might not require reversal if the evidence of guilt were great. On the other hand, since the standard for the recommendation for mercy is relatively less specific, the errors warranted a new trial. Two judges dissented.

Reading Penalty to the Jury

In *Younghans v. State*,[49] the statutory provision that the penalty must be read to the jury[50] was again held to be discretionary rather than mandatory. The rationale supporting this construction was set out in *Simmons v. State*,[51] as follows. With the exception of capital cases where mercy may be recommended, the jury has no concern with the penalty. The function of the jury is to resolve questions of fact and then to apply the law charged. Therefore, the only purpose of the charge is to inform the jury of rules of law. Legislation which hampers judicial function may be unconstitutional. If the word "must" in the statute is interpreted as an unqualified mandate, it becomes an unreasonable infringement upon the inherent power of the court to perform the judicial function because it imposes the burden of performing an empty and meaningless act. When a choice is possible, the statute should be construed so as to maintain rather than destroy its constitutionality. Therefore, the provision is interpreted as being directory, not mandatory.

Since the penalty could be read to the jury in a few seconds, this hardly seems to be a "burden" which would impair the function of the court to such an extent as to involve a constitutional infringement. It has occurred to the writer that perhaps the basic objection is not to the "burden" placed upon the court, but to the concept that the jury should know the effects of their decisions and accept responsibility for the results.

47. Singer v. State, 109 So.2d 7 (Fla. 1959).
48. Pait v. State, 112 So.2d 380 (Fla. 1959).
49. 97 So.2d 31 (Fla. App. 1957).
50. Fla. Stat. § 918.10(1) (1957): "The presiding judge shall charge the jury only upon the law of the case at the conclusion of argument of counsel, and must include in said charge the penalty fixed by law for the offense for which the accused is then on trial."
51. 160 Fla. 626, 36 So.2d 207 (1948).

INDICTMENT AND INFORMATION

Two cases turned on the point that if a particular word in the information has a broader meaning than the corresponding word in the criminal statute, the information does not necessarily charge a crime, and is defective. In a case[52] involving fish and game regulations the word "hunt" used in the information was considered to be broader than the corresponding word "take" in the statute. The court pointed out that the person might hunt game for photographic purposes but not take any game in violation of the statute. This point was affirmed and used where in another information the word "title" was considered to be broader than the statutory words "any . . . evidence of debt, contract or property . . . ."[53]

MOTION TO QUASH

A problem of considerable importance arose in *State v. Schroeder*.[54] The attorney for the defendant was questioned by the State Attorney and the Grand Jury. The state subsequently indicted the defendant for murder. The trial judge quashed the indictment because the communications the defendant disclosed to her attorney were privileged and, in effect, the defendant had been forced to be a witness against herself. The appellate court reversed and said very explicitly: (1) The rule was affirmed that the court does not inquire into the sufficiency, legality or character of the evidence presented to the grand jury for the purpose of quashing an indictment; (2) Section 932.29 of the Florida Statute does not apply because it does not include murder; (3) The holding does not decide any issue concerning the defendant's constitutional rights or the admissibility of evidence at the trial. The dissent considered that the constitutional guarantee against self-incrimination was in issue and that the procedure constituted an infringement.

The effect of the decision was to prohibit a test of the constitutionality of the procedure by the means of motion to quash. From an operational point of view, if there is no pleading which would put the question in issue, the procedure is not unconstitutional.

In another case of considerable practical importance,[55] the defendant on appeal claimed that the information did not state a crime. The state argued that since the defendant did not move to quash, he had waived the objection. The appellate court held that although many objections may be waived in this manner, the rule does not apply here because the statute[56]

52. State v. Brown, 101 So.2d 599 (Fla. App. 1958).
53. Burton v. State, 107 So.2d 140 (Fla. App. 1958).
54. 112 So.2d 257 (Fla. 1959).
55. Fiske v. State, 106 So.2d 586 (Fla. App. 1958).
56. FLA. STAT. § 920.05 (1957).

which provides for a new trial if the substantive rights of the defendant had been prejudiced specifically includes the situation where a crime is not charged.

Conspiracy

In a very interesting opinion the appellate court reversed a conviction of conspiracy to violate gambling laws.[57] Conspiracy involves an agreement and intent to commit the offense. Since the other member of the alleged conspiracy was an officer acting according to a plan created by the government, the court held that there was neither agreement nor intent within the meaning of the statute. The court indicated that this view represents the weight of authority and cited cases from other jurisdictions. No Florida cases were cited and the writer found none. Three judges dissented without opinion.

Rape

The trial court quashed the information charging statutory rape because the prosecutrix was unchaste due to prior intercourse between the parties within the Statute of Limitations but in a different jurisdiction. On appeal,[58] the state cited *Hunter v. State*[59] where the parties had had previous intercourse within the Statute of Limitations and within the jurisdiction. There, the court held that since the exact time of the intercourse is immaterial, a prior act within the Statute of Limitations could form a basis of conviction and thus should not be available as a defense. The appellate court limited the *Hunter* case to its facts and held that prior out-of-state acts could not be used as the basis for conviction in Florida and therefore could be used to prove unchaste character. A dissenting judge argued that the *Hunter* case stood for the broad proposition that the defendant should not be allowed to assert lack of chastity as a defense where he was the one responsible. In the writer's opinion, the intent, purpose and policy of the statute are critical factors which deserve attention. It is unfortunate that the court's opinion does not contain more discussion that would reflect consideration of these matters.

Legislation

The most significant statutory changes were an amendment to the Child Molester Law[60] and the enactment of the Criminal Sexual Psychopath Law.[61] This legislation represents major steps towards an attitude that has been proposed by psychologists and psychiatrists for quite some time. The

57. King v. State, 104 So.2d 730 (Fla. 1957).
58. State v. Capps, 98 So.2d 745 (Fla. 1957).
59. 85 Fla. 91, 95 So. 115 (1923).
60. Fla. Laws 1957, ch. 57-1990.
61. Fla. Laws 1957, ch. 57-1989.

emphasis is placed upon the person, not the crime. The persons are considered individually, not as a class. Remedy is seen in terms of therapy for the person rather than punishment, and in protection for society rather than revenge.

THE CHILD MOLESTER LAW

The Child Molester Law now provides for a Florida Research and Treatment Center to be supervised by a chief psychiatrist, a chief psychologist and a chief psychiatric social worker. The personnel at the center are hired by a Board of Commissioners of State Institutions on recommendation by the Citizens Therapy Advisory Board. This consists of the heads of the departments of psychology and psychiatry at Florida State University, University of Florida and University of Miami. The function of the center is not only to treat patients but to conduct research in the field. The Mental Health Staff Board was created for the dual purpose of considering the patients' degree of response to treatment with a view to discharge, and studying ways to improve the effectiveness of the law. The amendment also provides for treatment of prisoners not under the act and of individuals in society who seek therapy. The amendment provides that the accused may ask the court to subject the complaining witness to the same psychological tests as he himself undergoes. The option of the 25 year prison term was deleted.

THE CRIMINAL SEXUAL PSYCHOPATH LAW

A Criminal Sexual Psychopath, as defined by the statute, is a person who is not insane or feeble-minded but is suffering and has suffered for at least four months from a mental disorder coupled with criminal propensities to the commission of sexual offenses, and is dangerous to others. The act may be applied to anyone charged with a non-capital crime or convicted of a crime. The Circuit Court may conduct a hearing and receive a report from a court appointed psychiatrist. If the person is found to be a criminal sexual psychopath, he is committed for treatment in an appropriate institution. He must be examined at least once a year and if subsequently it should be determined by a circuit court that he is no longer a menace to society, he is either discharged, or (if criminal proceedings against him still are pending) he may then be tried.

The act characterizes itself as civil, not criminal. The person must answer questions by the psychiatrist or be subject to contempt proceedings. Evidence of previous crimes involving sexual motivation is admissible. The person is entitled to representation by counsel and the usual rights regarding objections to testimony and cross-examination apply. Appeal is not mentioned.

An excellent comment on this type of legislation[62] indicates that there are difficulties involved. From a practical point of view, such statutes have had little application due to unsympathetic officials and lack of facilities. Further, when the statute has been applied, the person involved usually has not been the type who is a substantial menace to society. From a legal point of view, such legislation has been attacked on constitutional grounds.

62. KARPMAN, THE SEXUAL OFFENDER AND HIS OFFENSES 215 (1954).