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"Ravished by Some Moron": The Eugenic Origins of the Minnesota Psychopathic Personality Act of 1939

Abstract: Twenty U.S. states permit the indefinite detention of civilly committed sex offenders after the end of their prison sentences if their dangerousness is due to a "mental abnormality." This article explores the origins of one such law by examining its predecessor, the Minnesota Psychopathic Personality Act of 1939. Passed in the wake of a panic over sex crimes and upheld by the Supreme Court in 1940, Minnesota's psychopath statute extended a 1917 eugenics law providing for the compulsory civil commitment and institutionalization of "defectives" to persons alleged to have a psychopathic personality. Analyzing the 1917 and 1939 laws together shows how one state's psychopath statute had less to do with psychiatric authority than with the legal and administrative framework established by Progressive-era eugenics. From the 1910s until today, dubious claims about the ability of science to identify potential criminals legitimized politically popular, but constitutionally questionable, forms of administrative and social control.

Keywords: eugenics, sex crimes, psychiatry, law

In June 2015, U.S. District Judge Donovan Frank issued a stunning decision: the Minnesota law that allowed the state to keep "sexually dangerous persons" in custody after the end of their prison sentences was unconstitutional.

Special Note: In this article, I use words that readers may find offensive, such as *moron*, *feebleminded*, *defective*, and *psychopath*, without quotation marks. I have retained the historical terminology used by experts and public officials because it illustrates the scientific and cultural assumptions behind involuntary commitment policies.

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Although twenty states have civil commitment laws and the U.S. Supreme Court affirmed their constitutionality in *Kansas v. Hendricks* (1997), the court ruled that Minnesota's civil commitment statutory scheme had a punitive effect contrary to the purpose of legitimate mental health commitment. At the time of the decision, the Minnesota Sex Offender Program held more than seven hundred men in indefinite custody, more per capita than any other state, and not one person had been fully discharged in the program's twenty-year history. "One reason we must be so careful about civil commitment is that it can be used by the state to segregate undesirables from society by labeling them with a mental abnormality or personality disorder," Judge Frank wrote, alluding to history. "It is fundamental to our notions of a free society that we do not imprison citizens because we fear that they might commit a crime in the future." While civil libertarians cheered the decision, it generated intense political opposition and was reversed on appeal. The U.S. Supreme Court declined to hear the case.[1]

This article examines the predecessor of the Minnesota law, the Psychopathic Personality Act of 1939, and its origins in the legal and administrative structures of Progressive-era eugenics. Although legal scholars often distinguish the punitive character of today's sex offender policies from the therapeutic orientation of first-generation sex psychopath statutes, which supposedly provided an alternative to prison for individuals "too sick to deserve punishment," this article highlights the similarities.[2] The story of the 1939 law—a tale of partisan politics, populist punitiveness, and questionable science used in the service of administrative ends—is depressingly familiar.

The Minnesota law was the third sex psychopath statute enacted in the United States and the first to be upheld by the U.S. Supreme Court. While earlier statutes passed in Michigan (1937) and Illinois (1938) provided for the psychiatric examination and, if necessary, indefinite detention of individuals charged with criminal sex offenses, Minnesota created an entirely civil procedure that allowed the state to permanently institutionalize *potential* offenders before they committed a crime. It did this by extending a 1917 law permitting the compulsory eugenic commitment of persons "alleged to be feeble minded, inebriate or insane" to persons having a "psychopathic personality."[3]

Most historians have studied sex psychopath statutes as part of the history of sexuality. In a pioneering 1987 essay, Estelle Freedman analyzed the concept of the sexual psychopath as a reaction to cultural anxieties over economic disruption, masculinity, and changing sexual norms in Depression-era America. The panic over sexually dangerous men reflected a significant shift away from the Victorian preoccupation on maintaining female sexual

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purity and toward a modern emphasis on the problem of male sexual violence. Although the most insistent demands for legislative action came from the press, activist citizen groups, and law enforcement, the focus on the psychopath boosted the authority of psychiatry and reconfigured the boundaries of "normal" sexual behavior. The rhetorical emphasis on extreme acts of violence and sex with children ultimately "helped legitimize nonviolent, but nonprocreative, sexual acts, within marriage or outside it," Freedman wrote, but it also established a legal apparatus that extended state regulation of nonnormative sexual behavior.[4]

Subsequent historians built on Freedman's arguments, showing how popular concerns about homosexuality, "normal" gender roles, and the protection of children contributed to a series of moral panics. In the wake of these panics, twenty-nine states enacted sex psychopath statutes between 1937 and 1957.[5] Many scholars, noting that "psychopath" was often a code word for homosexual, have emphasized the connections between the national panic over sex crimes, the growing influence of psychiatrists, and state efforts to regulate sexuality and remove gay people from public view.[6] This article has a somewhat different emphasis. While most histories trace the story of sex psychopath statutes forward from the 1930s to the 1950s, I look back at one state law's foundation in Progressive-era eugenics.

A state-level study can illuminate the mundane political-institutional steps toward legislation that can easily go unnoticed in national cultural histories. For example, Minnesota's sex-crime panic reflected national trends, but the legal foundation of its psychopath statute lay specifically in the eugenic provisions of the state's probate code. Analyzing Minnesota's psychopath law alongside the eugenic commitment of "defectives" brings into focus the ways in which "psychopathic personality" functioned as a legal and administrative classification arising from eugenics. Examining the 1917 and 1939 laws together raises questions about the extent of psychiatrists' authority while highlighting the centrality of crime to modern welfare governance and the state-building process. Several scholars have shown that the policing and prevention of crime helped to legitimize a dramatic expansion of government power during the New Deal, and it is not a coincidence that the first sex psychopath laws appeared toward the end of this turbulent period.[7]

The idea of preventing crime through the permanent detention of potential criminals was rooted in eugenicists' turn-of-the-century crusade against mental defectiveness, pauperism, and crime. Between the 1870s and the 1920s, eugenics—the science of improving the human race through better breeding—fused with the biological theories of crime associated with the

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Italian criminologist Cesare Lombroso, with the result that persistent criminality came to be seen as an innate defect, a manifestation of hereditary degeneration. As criminologist Nicole Hahn Rafter points out, eugenicists regarded habitual criminality as a form of intellectual disability, rather than a manifestation of insanity that developed later in life and could be cured. Although today the eugenics goal of eliminating undesirable traits like criminality and feeblemindedness is associated with sterilization, eugenic "segregation" in a public institution for the feebleminded was a far more pervasive strategy. Removing "defectives" from the community controlled behavior as well as reproduction.[8]

Institution superintendents, seeking both professional legitimacy and political support for institutional expansion, were the most forceful exponents of the idea that feeblemindedness and criminality were entwined. As Superintendent Walter E. Fernald of the Massachusetts School for the Feeble-Minded wrote in an influential 1909 essay, "Every imbecile, especially the high-grade imbecile, is a potential criminal," and so lifelong segregation was the only way to control these "criminals who have committed no crime."[9] Fernald later recanted this harsh claim, but the policy trajectory was set. In 1923, nearly 43,000 individuals were confined in custodial institutions for the feebleminded, more than double the number in 1910, and a dozen states had passed eugenic sterilization laws that specifically applied to the "criminal classes," including habitual criminals, rapists, moral degenerates, and sexual perverts.[10] When the U.S. Supreme Court ruled punitive sterilization unconstitutional in *Skinner v. Oklahoma* (1942), the case in question involved armed robbery, not a sex crime, and it is revealing that the decision left "eugenic" sterilization laws intact.[11]

Sex crimes were considered fundamentally different in kind. According to a 1936 study, sex offenders accounted for less than ten percent of new inmates in Minnesota prisons, and the vast majority were first-time offenders. Nevertheless, a St. Paul community group decried habitual sex offenders as "by no means *ordinary* criminals; they are psychopathic cases and in many cases definitely feeble-minded."[12] The slippage between psychiatric and eugenic discourse is jarring, for a superficial psychiatric discourse was placed on top of an older way of managing sexual transgressions and a twenty-year tradition of what historian Michael Willrich has called eugenic jurisprudence, "the aggressive mobilization of law and legal institutions in pursuit of eugenic goals." Writing about Chicago municipal courts, Willrich shows that Progressive reformers' success at bringing individualized treatment and professional expertise into judicial practice strengthened the discretionary power

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of local judges, whose responsibilities now included identifying and containing would-be criminals before they committed a crime. "The result was a new relationship between law and administrative statecraft and an unprecedented, sometimes violent expansion of government intervention into the lives of city people."[13]

Both the 1917 and 1939 commitment laws responded to concerns about children's vulnerability and relied on the concept of an incurable mental abnormality to justify the state's expanding power. The earlier law was part of Minnesota's highly acclaimed Children's Code, a package of laws that affirmed the state's role as protector of disadvantaged children and modernized its child-welfare apparatus. The Children's Code treated most delinquent and dependent children as basically innocent and in need of the state's protection, but defined "defectives" as a public menace. The code removed the stigmatizing term "bastardy" from the statute books, modernized adoption and illegitimacy proceedings, and extended the state's power of legal guardianship over dependent, neglected, and delinquent children committed to its care by a court. At the same time, it empowered probate judges to commit "defectives" to state guardianship regardless of the wishes of parents or kin. (The statute defined "defective" as the feebleminded, inebriate, and insane.) Individuals adjudged insane or inebriate were committed to a state hospital, but the so-called feebleminded were brought under the guardianship of the State Board of Control. As wards of the state, they could not vote, own property, or make their own medical decisions. The Board of Control decided if they should be institutionalized and, after the 1925 passage of eugenic sterilization law, sterilized.[14]

The story of eugenics is often told as a cautionary tale about the arrogance of experts and Progressive-minded elites, but the 1917 commitment law placed surprisingly little power in the hands of psychologists, psychiatrists, or eugenicists employed by the state. Any "reputable citizen" or family member living in the same county as the alleged defective could initiate commitment proceedings, and a local probate judge—an elected official not required to have any medical or legal training—decided if the individual was feebleminded. The probate judge was required by law to appoint two licensed physicians to join him in forming a board of examiners, unless the person was "obviously feeble-minded or an inebriate" (but not, significantly, insane). Then, with the consent of the county attorney, he could make the designation on his own. These flexible procedures, combined with the vague statutory definition of a feebleminded person—as someone "so mentally defective as to be incapable of managing himself and his affairs, and to require supervision,

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control and care for his own or the public welfare"—gave probate judges wide latitude in making commitment decisions that abrogated the alleged defective's political and civil rights.[15]

Local authorities had long had the legal means to imprison criminals and hospitalize the mentally ill, but compulsory institutionalization had not previously applied to people considered feebleminded. The new law thus made feebleminded commitment a convenient tool for the control of troublesome noncriminals who did not fit the criteria for insanity. While probate courts handled estates, wills, and insanity hearings, in rural Minnesota they also functioned as juvenile courts and administered mothers' pensions (later, Aid to Dependent Children). Probate judges routinely sent dependent or delinquent children to orphanages and reform schools, and judicial commitment was also the first step toward indefinite institutionalization in a state mental hospital or "school" for the feebleminded. I have argued elsewhere that local judges and welfare boards often used feebleminded commitment to obtain the institutionalization or sterilization of indigent county residents who were dependent on the county welfare rolls. They appear to have also used insanity commitment to compel the hospitalization of the indigent mentally ill; during the Depression, mental hospitals grew crowded with old people, often suffering from dementia, whose families could no longer care for them. In contrast, most of those committed to guardianship as feebleminded were young. The women were typically "sex delinquents," unmarried mothers, or women with large—and growing—families on relief. The men tended to be irregularly employed and exhibit antisocial or nuisance behaviors that either resulted in a very short prison sentence or did not constitute a crime.[16]

The framers of the 1917 commitment law emphasized its eugenic usefulness "for girls and women of child-bearing age," but in everyday practice probate judges used eugenic commitment to rid their communities of troublesome individuals of both sexes.[17] Compulsory commitment thus transformed both the character and purpose of the Minnesota School for the Feebleminded. Founded in 1879 and located in the town of Faribault about fifty miles southeast of the Twin Cities, the Faribault School was by 1916 a nationally renowned institution with 770 male and 669 female inmates.[18] Prior to the commitment law, placement at Faribault was voluntary. Decisions about admission and discharge were made by the superintendent, and families could usually take their adult relatives out of the institution if they wished. After 1917, "feeble-minded person" became a legal designation, and decisions about institutional placement were made by the State Board of Control. Under the law, even patients who had entered the School for the

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Feebleminded voluntarily could be detained as if they had been committed to state guardianship in probate court, and a court order was required for discharge.[19]

These new admissions policies precipitated a crisis in the Faribault School. In 1922, the institution had more than 1,900 inmates, and Superintendent Guy C. Hanna warned in his biennial report that the school could not handle the "large number of feeble minded being committed by the courts because of the trouble they have made in their communities." Many in this new class of inmates were "defiant, abusive, profane, disobedient, destructive and incorrigible generally," he complained; they felt unfairly confined, and their presence complicated the management of the institution. Only if these "desperate adult criminals" were contained in a special institution for defective delinquents "as strong and secure as a prison" could the Faribault School fulfill its mandate of caring for innocent feebleminded children.[20] Privately, Hanna told the Board of Control that a new secure institution was necessary because criminal defectives "not only run away and take feeble minded inmates with them, but they exert a sinister influence generally on the other inmates." In 1927, after a convicted criminal sent to the Faribault School over Hanna's objection escaped for a second time, taking four men with him, the superintendent warned his superiors that if the state continued on its present course "such crimes as robbery, arson or even murder might result."[21] Yet a new institution required considerable funding and legislative support, and the Board of Control considered it impractical to seek a costly political solution to what it saw as a managerial problem.

Throughout the 1920s and 1930s, the Board of Control and Hanna's successors tried a variety of strategies to address overcrowding and the problem of control at the Faribault School. Sterilization, followed by institutional discharge, was one approach, and it worked fairly well at ridding the institution of disruptive women in the interwar years. Women's clubs and charities had run social programs and boarding homes for working girls since the 1910s, and these well-established services, combined with the steady demand for low-wage women workers in laundries and domestic service, convinced state authorities that they could monitor sterilized feebleminded women "on parole" from the institution. There were no comparable services for feebleminded men, who were considered harder to supervise, and the public generally opposed releasing men. For these reasons, women accounted for a staggering 89 percent of Faribault inmates "discharged as unimproved" in 1928, even though they made up only 49 percent of Faribault school population. Women ultimately accounted for about 80 percent of eugenic sterilizations

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performed in Minnesota.[22] Both men and women faced sterilization, but while trouble-making female inmates were generally sterilized and released, unruly men were often locked up more tightly.

The problem of institutional control worsened during the Depression, as unemployment, farm foreclosures, and homelessness spread. As more and more men (and some women) turned to tramping, bootlegging, begging, and bank-robbing, living outside of normal social controls, state officials stopped paroling inmates they would have considered law-abiding and capable of self-support in the past.[23] By mid-decade, Faribault's most secure building, the Main Boys' Annex, contained dozens of adult men with criminal records. Some of these men were sent to Faribault because they had lived there as children, but a large number had served time in prison and were committed as feebleminded and transferred to Faribault because "they were considered unfit to return to society upon completing their sentences." Then-superintendent Edward J. Engberg warned that "a dangerous condition exists because there is continuous dissatisfaction, unrest and disinterest, except for the constant desire to be transferred or released from the building and frequent plans and attempts to escape." More than a hundred men ran away from Faribault in the early 1930s, and at one point nearly 70 percent of inmates in the annex had tried to escape.[24]

The dramatic escape of eleven men from the Main Boys' Annex one night in October 1938 brought a heightened sense of urgency to the problem. Several inmates convinced two "boys" from an adjoining dormitory to steal two hacksaw blades from the kit of a workman and then sawed through the steel bars on the porch. Although all but two of the fugitives were caught and returned to Faribault within two months, their escape and the resulting publicity stoked public fears and bolstered the superintendent's claim that the existing situation was untenable. The superintendent and the Board of Control also knew what the public did not: eight of the eleven runaways were considered sex offenders, accused of incest, indecent assault, sex with children, "sexual perversion," and domestic abuse.[25]

While state officials struggled behind the scenes to contain and control disruptive inmates, the shocking murder of an eighteen-year-old beauty student in Minneapolis intensified public demands for tough new crime prevention measures. Early one Saturday morning in March 1937, Twin Cities newspapers reported, the battered body of Laura Kruse was found face down in the snow. Kruse was raped and strangled just steps from her home after attending a school party, and next to her body lay the ice cream and cake she had brought home as a treat. Photographs of the gruesome crime scene,

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reconstructed stories of the girl's last hours, interviews with her grief-stricken family, and tales of the hunt for the killer dominated the headlines for weeks, a constant reminder of the dangers of the city, the failure of the police, and the need for new sex crime laws.[26]

The brutal murder of a pretty teenager would have attracted attention at any time, but Kruse's death was particularly compelling because her life story was archetypical: she was an innocent farm girl who had to leave home for the big city because her family was poor and she needed to work. Tales of country girls being lured into prostitution or falling victim to sexual assault had been a staple of Minnesota's popular politics since the late nineteenth century, and Kruse's murder touched a nerve.[27] Thousands of curiosity seekers created a traffic jam by driving up and down the street where she died; one resident counted three hundred automobiles in less than half an hour.[28] Growing up in Minnesota, the author and memoirist Samuel Hynes read the front-page stories about Kruse's murder on his newspaper route and described her death as an emotional turning point. Kruse was the same age as Hynes's stepsisters, and they also needed to work. Unlike the mob hits of the gangster era, Hynes recalled, Kruse's murder was "not evil done in the distance, or in the movies, but right here, where decent folks lived. . . . I didn't know her, of course. And yet I did." Even respectable girls, Kruse's murder seemed to show, could fall victim to brutal sex crimes.[29]

Not surprisingly, the search for the "fiend killer" focused first on morons, defectives, and the insane. Hynes recalled that "a statewide hunt was begun for persons suspected of sex crimes, some of which I had never heard of: pederasts, exhibitionists, masochists, auto-eroticists were gathered up and questioned."[30] As the days and weeks passed and the police investigation faltered, the press reported on the public's mounting frustration and a growing willingness to stretch the boundaries of the law. A Hennepin County psychiatrist called for the end of doctor-patient confidentiality. Since the Kruse case was exceptional, he said, "so-called 'ethics'" rules should not apply. Meanwhile, in Laura's hometown, anger at the police's inability to catch the killer led to talk of vigilantism. "Maybe a lynching or two would help Minneapolis to clear up some of these brutal crimes," one man reportedly said.[31]

Kruse's murder and the reaction to it exemplify the moral panic that most scholars believe led to the enactment of sex psychopath statutes between the late 1930s and early 1950s.[32] The reaction to the crime was clearly out of proportion to the actual threat. Politicians and the press poured fuel on the public's fears. They portrayed Kruse's murder as the mark of a disintegrating social order and made extravagant claims about psychiatrists' ability to

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prevent future crimes, if only they had the legal means. Still, the psychopath law enacted in Minnesota was not only shaped by the demands of psychiatrists, the press, and a panicky public; it was equally a response to the unique political dynamics of 1930s Minnesota and the legal-institutional structures established in the eugenics provisions of the Children's Code.

Compared to other states, Minnesota was hit hard by the combined effects of the Great Depression, which began in the agricultural sector in the 1920s, and the law-breaking that accompanied Prohibition. Corrupt police and politicians in St. Paul had allowed criminal gangs to operate with impunity for decades, but the surge of bootlegging during Prohibition had cemented the state capitol's reputation as the "crime capital of the Midwest" and one of the "wettest" places in the country. Minnesota was also part of the FBI's "crime corridor," notorious in the early 1930s for its bank robberies, kidnappings, shootouts, and celebrity gangsters. In 1932, according to one report, more than 20 percent of the nation's bank robberies took place in Minnesota. Several high-profile kidnappings of wealthy businessmen and the brazen 1935 murder of journalist Walter Liggett further highlighted the moral and practical failures of the Twin Cities police, which historian Claire Bond Potter describes as "often indistinguishable from a criminal gang." At a time when law enforcement was corrupt and ineffective, and fear of crime in respectable neighborhoods was rising, Potter argues that the concept of the criminal psychopath became a way to make sense of gangsters who seemed to have an uncontrollable desire for law-breaking and violence—but whose daring crimes clearly demonstrated their intelligence.[33] When St. Paul's gangster era finally came to an end in 1936, the panic over psychopathic sex criminals began.

Partisan politics added to the tensions. In 1937, Minneapolis was a city torn apart by tumultuous labor disputes, battles over third parties and electoral politics, and the New Deal. After the charismatic Farmer-Labor governor Floyd Olson died in office in 1936, Elmer Benson, a leader of the party's left wing and supporter of the Communist Popular Front, became governor four months later. Benson faced relentless opposition from Republican newspapers and politicians, as well as moderates and anticommunists in his own party. Minneapolis mayor Thomas Latimer was also a polarizing figure, a Farmer-Laborite distrusted on both the left and the right because of his moderate socialist politics and deployment of the police in a bitter 1935 strike. Amid the intense political turmoil of the 1930s, the sex crimes panic served a unifying role. The failure of the police, the fiendishness of sex murderers, and the need for new measures to "protect women and children from thugs,

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morons, sadists or maniacs" were just about the only things on which Minneapolitans could agree.[34]

Almost as soon as Kruse was murdered, Twin Cities groups with very different political orientations used the tragedy to advance their long-standing aims. In a front-page editorial just two days after the murder, the *Minneapolis Star* decried state and city crime laws as "years behind definite medical knowledge concerning sex crimes." The paper claimed that psychiatrists were nearly unanimous that almost all potential sex murderers could be identified and taken into custody for minor offenses before they launched their sex crimes careers. "It is a tragic and shameful thing that the murder of an innocent girl should have been necessary to start action on the problem of the sex criminal," the paper editorialized a few days later, but the tragedy would be worse if the legislature failed to give psychiatrists the legal power to prevent brutal crimes.[35]

Women's organizations, too, used the crisis to step up their decades-old campaign for the "protection of women" and to remind politicians that for women, the problem of unsafe streets was "nothing new." Many of the women quoted in the press had been involved in the Progressive-era campaign for the Children's Code, but they were on opposite sides of subsequent political issues, such as Prohibition, labor strikes, and the New Deal. Yet at a mass rally two weeks after Kruse's death, Catholic and Republican women joined Farmer-Labor radicals to demand better policing, more women on city council, a secure institution for defective delinquents, and a legislative committee on sex crimes. After the rally, one attendee remarked that Laura Kruse was a "martyr to the cause of bringing the people of Minneapolis together."[36]

In the wake of the Kruse murder, both the county and state governments established "expert" committees to rewrite their sex crime laws. The most influential was Hennepin County's Committee of 25 on Prevention of Crime by Defective Delinquents (later renamed the Committee of 25), made up of judges, psychiatrists, criminologists, probation officers, and social workers (including four women). The committee used psychiatric language, but its focus was legislative action and administrative routines. It described defective delinquents and sex criminals as a "PSYCHIATRIC PROBLEM WHICH MUST BE SOLVED BY GOVERNMENT ACTION IN THE COURTS."[37]

The Committee of 25 was strongly influenced by Harvard criminologist Sheldon Glueck, whose short article, "Sex Crimes and the Law," was appended to one of its working documents. Glueck and his wife Eleanor were pioneers in the study of recidivism, well known for their massive studies of career

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criminals and multiple-factor theory of the causes of crime. The Gluecks were also influenced by psychiatrist William Healy, whose critique of simplistic eugenic explanations for juvenile delinquency also inspired Minneapolis reformers such as juvenile court judge Edward F. Waite, the driving force behind the Children's Code. Like most Minnesota officials, Sheldon Glueck attributed sex crimes to a variety of biological and social causes, ranging from feeblemindedness and "deep-rooted pathological impulse" to family disintegration and a sexualized popular culture. His insistence that in many instances "the aggressive sex offender is more a problem for psychopathology than for criminal justice" fit well with the pragmatic eugenic progressivism of the Minneapolis welfare establishment.[38]

"Sex Crimes and the Law" proposed a multipronged strategy to treat and prevent crime that included wholesome recreation programs, confronting sex sensationalism in motion pictures, "grappling with the slum problem," and entrusting sentencing to professionally-staffed "treatment tribunals" with the power to institutionalize potential offenders for life. "The battle cry of those who are seriously concerned with the criminal situation should be 'stoppage at the source,'" Glueck declared, using language with both eugenic and environmental implications that surely resonated with the Committee of 25.[39] The state's sterilization program was at its peak in the late 1930s, and no one needed to be told that indeterminate sentences prevented reproduction as well as crime.

Three aspects of Glueck's paper were particularly salient in Minnesota. First, his claim that sex offenders were often feebleminded, epileptic, alcoholic, or mentally diseased effectively endorsed the Minnesota law allowing the compulsory institutionalization of "patients" from these groups. Second, Glueck's insistence that "only the best-trained men and women, instead of political hacks" should serve on parole boards appealed equally to the professional interests of psychiatrists and criminologists, and to political opponents of the governing Farmer-Labor Party, who were waging a bitter partisan campaign against patronage, political corruption, and what they saw as the Farmer-Laborites' undue control of state agencies during the New Deal. Finally, Glueck's proposal for treatment tribunals with the power to detain sex criminals indefinitely without the "slow-moving cumbersome machinery of prosecution and trial" must have struck some state officials as an ideal solution to the difficulties seemingly caused by short prison sentences and jury trials. The only issue of concern to Minnesota officials that Glueck did not discuss was the need for a secure institution to contain "defective delinquents" and other troubled men.[40]

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The Committee of 25 finished its work in 1938, an election year in which the Republicans, led by Harold Stassen, defeated Benson's Farmer-Labor Party in a landslide.[41] Less than six weeks after assuming office, Governor Stassen appointed a new sex crimes committee of nine men, nearly all psychiatrists. Four of the nine, including the committee's chair, University of Minnesota criminologist George B. Vold, had served on the Committee of 25. The others came from outside Hennepin County. The governor's committee, like the Committee of 25, was charged with developing a legal solution to the sex crimes problem. With only two months to write a bill and secure its passage, it drew heavily on existing statutes and the work of the original committee. As a result, although psychiatrists dominated the governor's committee, its final recommendations did not reflect psychiatry's focus on diagnosis and treatment.[42]

The appointment of a sex crimes committee was a political response to violent crimes, such as the murder of Laura Kruse, but members also faced considerable pressure to deal with prostitutes, pornography, and "perverts." The St. Paul Council of Parents and Teachers, which struck its own committee on sex offenders after an apparent wave of molestations in its city, called for legislation that tightened parole and treated sex criminals as "psychopathic cases." The committee claimed that "much of the trouble" was caused by repeat offenders who were charged with disorderly conduct, given a brief or suspended sentence, and released. It wanted psychiatric examinations for all suspected sex offenders and assurance that those likely to reoffend "should never under any circumstances be released on parole." In a letter responding to these concerns, St. Paul psychiatrist Gordon Kamman, a member of the governor's committee, stressed the necessity of accurate diagnosis, but agreed that intelligent psychopathic personalities "whose transgressions against society take the form of sex perversion" constituted the largest group of recidivists. For many of these men, he added, "permanent segregation from society is the only solution."[43] Privately, committee chair George Vold assured Governor Stassen that a psychopathic personality commitment law would facilitate the detention of some of the "known sex perverts who are now a continual menace on the streets."[44]

The governor's committee claimed it was well aware of the danger of getting carried away by fear and emotion. Its final report, presented to the governor in March 1939, acknowledged the "vague and uncertain difference between criminal acts and behavior that is offensive only in the light of certain standards of morality or propriety" and admitted that "standards of decency and morality appear to be undergoing considerable change."

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Literature and art produced in the late 1930s regularly dealt with subjects that were once taboo, and the bathing suits and revealing dress elite women wore in 1939 would, in the past, have led to arrests for indecency. Nonetheless, the committee reasoned, public safety should be given the benefit of the doubt in questionable cases. In the 1930s as today, political pressures and the principle of "better safe than sorry" justified the detention of potential criminals and a strengthening of state power.[45]

The committee made just two recommendations for new legislation. The first was a sweeping extension of the state's power to control potentially dangerous offenders without having to wait for them to commit a crime. Apparently unaware that the 1935 revisions to the probate code had removed the word "defective" from the commitment statute, the committee proposed extending the definition of "defective" in the 1917 law to include (in addition to the inebriate, feebleminded, and insane) "the individual with a psychopathic personality." Second, the committee proposed an Interim Committee of the Legislature to recommend future action, possibly on a broader sterilization law and a new institution for the dangerously defective and psychopathic. As Vold explained in a private letter to Stassen, "If we can gain the legal weapon with which to deal more competently with this class of offenders at this time, the problem of providing increased institutional facilities can come later."[46] The Annex for Defective Delinquents opened on the grounds of the St. Cloud Reformatory six years later.

The psychopathic personality act was signed into law less than five weeks after the governor's committee submitted its report. Henceforth all laws relating to insane or allegedly insane persons would apply with "like force and effect" to persons who had or were alleged to have a psychopathic personality. Although the law as passed contained no reference to defectives or the feebleminded, the commitment procedures it established were rooted in eugenics. As with the 1917 eugenics law, the power to make a diagnosis and commit a person to state guardianship for life rested in the hands of a probate judge. The judge was required to appoint two "duly licensed doctors of medicine" (not necessarily psychiatrists) to join him on an examining board, although as with insanity hearings, he could not legally dispense with the examining board. The "patient" could be represented by counsel and have the court subpoena witnesses on his behalf, but if he could not afford a lawyer, the court was not required to appoint a lawyer for him. There was no provision for a jury trial, and the judge could, at his discretion, exclude the public from the hearing.[47]

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As in 1917, the vague statutory definition of the psychopathic personality placed enormous power in the probate judge's hands. Not coincidentally, the statutory definition of psychopathic personality—the "existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons"—had much in common with the unofficial description of feeblemindedness then used by the Board of Control.[48] Disagreement over the meaning of feeblemindedness had led to the deletion of the statutory definition of a "feebleminded person" in 1935, whereupon the board distributed the following working definition to probate judges and county child-welfare boards: feebleminded persons "lack common sense, foresight, are unable to resist ordinary temptations, act on impulse, and have little or no initiative. They have about the same desires as normals, including sexual, but lack ability to control them. They usually have poor homes."[49] The chief difference between feeblemindedness and psychopathic personality—the psychopath's inherent dangerousness—reflected officials' rejection of Progressive-era ideas about the inherent criminality of the feebleminded. Even Fernald now believed that there were "both bad feeble-minded and good feeble-minded. . . . We have really slandered the feeble-minded."[50] Psychopaths were unambiguously "bad." Although having a psychopathic personality differed from feeblemindedness and insanity in that it was not a defense to a criminal charge, all three designations functioned similarly in probate court: they were legal and administrative categories of control.

Minnesota's psychopathic personality law was put to the test within a week of its passage. A St. Paul police officer petitioned the Probate Court of Ramsey County to commit Charles Edwin Pearson, a fifty-three-year-old married sheet-metal shop owner accused of taking "indecent liberties" with two thirteen- to fifteen-year-old girls. Pearson also faced a criminal charge for the same offense. He challenged the constitutionality of the new law, and his case went all the way to the U.S. Supreme Court, which upheld the Minnesota law in 1940.[51]

Pearson's legal challenge pivoted on the concept of psychopathic personality. According to his lawyer, Otis H. Godfrey, the concept of psychopathic personality was too uncertain and indefinite to constitute valid legislation. After all, he declared, impulsiveness is a common trait, many people lack customary standards of good judgment, and "we are all prone to fail to

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appreciate the consequences of our acts." Yet under the new law, "a perfectly sane man could be committed for life to an asylum for the dangerously insane . . . without benefit of jury trial, without benefit of counsel, and upon examination by two 'doctors of medicine' who were not experts in mental diseases." Furthermore, the fact that having a psychopathic personality was not a defense to a criminal charge proved that the civil commitment law was a "quasi criminal statute" that went beyond the jurisdiction of the probate court.[52]

The state's response, presented by Attorney General J. A. A. Burnquist, who ironically had signed the eugenic commitment law when he was governor in 1917, contended that the statute met a "long felt need."

> All too often and of recent years with growing frequency the public has been continually shocked at the vicious sex offenses that have been committed upon women and children. It is none too safe for grown women to be upon the streets after dark even in thickly settled portions of our large cities. Small children disappear and are subsequently found murdered after their body has been ravished by some moron. Parents live in constant fear that their child may be the next victim who may be enticed from their very doorstep or on their way to school.

Burnquist's reference to being ravished by a moron, the term for a "high-grade" feebleminded person, was not a diagnostic slip-up, but an intentional evocation of eugenics. He was reminding the court that although "society has long accepted the idea of permanent segregation for insane or feeble-minded sex criminals," prior to the enactment of a psychopathic personality law, Minnesota lacked the legal means to detain potential sex offenders who had a normal or even superior IQ. The new law allowed the state to manage these "twilight zone defectives" whose uncertain legal status had proved so confounding to police officers and the courts.[53]

Burnquist's appeal to fear was persuasive. Despite conceding that the psychopathic personality law was "imperfectly drawn," the Minnesota Supreme Court rejected Pearson's claim that the term *psychopathic* was too vague to constitute valid legislation. "It is true that the term 'psychopathic' is not a part of the working vocabulary of most people," Chief Justice Henry Gallagher wrote, "yet the reasonably well informed recognize it as having reference to mental disorders" that rendered the afflicted person "hopelessly immoral." Moreover, the new statute was "essentially the same" as the commitment law in effect since 1917. Still, the court backed away from the

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legislature's expansive definition of a psychopathic personality. Gallagher wrote that it would not be reasonable to apply the designation to every person who was "guilty of sexual misconduct" or had "strong sexual propensities." Instead, it should apply only to "those persons who by an habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulses and who as a result are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire."[54]

The U.S. Supreme Court upheld that decision in 1940. In *Minnesota ex rel. Pearson v. Probate Court*, a unanimous decision written by Chief Justice Charles Evans Hughes and signed by civil libertarians William O. Douglas, Hugo Black, and Felix Frankfurter, the court ruled that states had the right to control persons who constituted a "dangerous element in the community." At the same time, it affirmed the Minnesota court's narrowing of the statute to what came to be known as the *Pearson* standard of an "utter lack of power to control." Although it conceded the potential for abuse, the court dismissed Pearson's due-process objections as premature, since no abuses had (yet) occurred.[55]

The Minnesota law and the rulings affirming it were controversial from the beginning. Lawyer James E. Hughes worried about the potentially "harmful consequences" of such a far-reaching statute. He warned that the discretionary power given to probate judges and county attorneys, who were elected as members of a political party and not required to have any legal training, meant the law could easily be used against political opponents or homosexuals whose conduct was only considered irresponsible "with respect to sexual matters and thereby dangerous to other persons" under existing moral codes. "Some of the 'victims' of dangerous sexual conduct or sexual assault may not be victims in the true sense of the word," Hughes observed, but an alleged psychopath trying to fight his commitment in probate court did not have the right to a jury trial, and the public could be excluded from the commitment hearing. Hughes wrote, "We are treading on dangerous ground when, by considering a certain proceeding as an inquiry into behavior instead of the trial of a criminal charge, we dispense with the constitutional safeguards of our liberty."[56] The fact that a court order was required for discharge, but releasing an "undesirable" person into the community could be politically risky for an elected judge, meant that a psychopathic personality designation could lead to commitment—and institutionalization—for life.

Critics also decried the law's arbitrary application and administrative (as opposed to therapeutic) function. A 1959 commission reviewing the

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legislation noted wryly that there were "87 interpretations of this law in Minnesota, one for each county in the state." The Hennepin County Attorney's office would not seek a psychopathic personality commitment unless a repeat offender actually had physical contact with a victim, but Brown County committed a married father of six who had an "uncontrollable craving" for sexual intercourse and masturbation, even though he had not made advances to any women other than his wife, and only one of the doctors who provided expert testimony thought he might become dangerous in the future. The Minnesota Supreme Court upheld this decision in *Dittrich v. Brown County* (1943).[57]

Dittrich is often cited to illustrate the absurdity of sex psychopath statutes and show that they were mainly used to regulate minor sexual offenses. This interpretation is compelling, but the case also hints at a more complicated story involving the social-welfare function of probate courts in rural Minnesota. Benno Dittrich, a forty-two-year-old farmer and father of six children was "mentally bright, capable, and a good worker," but also, in the eyes of the court, "emotionally unstable with regard to sexual matters and had an uncontrollable craving for sexual intercourse and self-abuse by masturbation." Benno's wife's health was impaired because of her husband's incessant sexual demands. She did not want any more children, but the couple could not use birth control because it violated their Catholic faith (as did divorce). The couple lived together until Benno was hospitalized following his commitment in probate court, but they were separated at the time of his trial in district court. One of the physicians on the examining board testified that Benno's separation from his wife meant that his craving for sexual intercourse and masturbation "would be like steam under pressure," and there was "reasonable danger" that he would molest other women. The other said this was unlikely, but the court ruled that the testimony of only one of the doctors was sufficient for a psychopathic personality finding. In this case, the designation of psychopathic personality, like a finding of feeblemindedness for someone considered less capable, may have been an expedient tool for local officials trying to manage family conflicts and child-welfare concerns.[58]

Minnesota tightened its grip over alleged psychopaths at a time when criticisms of eugenics and the state's program for the feebleminded were mounting. Officials had long distinguished the "good" and "bad" feebleminded, but this bifurcated approach intensified in the postwar years, a period of mental health reform. While feebleminded commitments and sterilizations declined and reformers campaigned for better conditions in state mental hospitals, hundreds of potentially dangerous men were committed to the Annex for Defective Delinquents and the St. Peter State Hospital Ward for

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the Dangerously Insane. In 1953, Minnesota enacted a second sex-offender statute, which authorized presentence mental examinations and hospital "treatment" for individuals convicted of certain sex crimes. Still, most critics believed that sex psychopath statutes were more dangerous in principle than in practice because the number of people affected by them were small. According to the sociologist Edwin Sutherland, only thirty-five men were committed in the first year of Minnesota's psychopathic personality law, and only ten commitments were made annually thereafter. Furthermore, he claimed, most men designated a psychopathic personality were charged with homosexuality and released after a few months.[59] Records are incomplete, however, and other reports stressed the difficulty of obtaining a court-ordered discharge. Between 1939 and 1969, at least 474 men were civilly committed as psychopathic personalities and placed in a mental institution.[60]

By the 1970s, changing sexual mores and a new appreciation for criminal defendants' and mental patients' rights led many experts to conclude that sexual psychopath laws were "social experiments that have failed and that lack redeeming social value." As the Group for the Advancement of Psychiatry (GAP) pointed out in an influential 1977 report, sexual psychopathy is not a psychiatric diagnosis. Although the sex psychopath statutes of the 1930s were infused with psychiatric jargon, they were actually "a manifestation of a political-legislative approach to a community problem." For the most part, psychopath laws empowered administrators, rather than clinicians, to make critical decisions about treatment and the disposition of individual patients. The GAP Report acknowledged that there were real dangers from which the public had to be protected, but stressed that predictions of sexual dangerousness were unreliable, and civil commitment laws deprived alleged psychopaths of their legal rights. When "community pressure to 'do something'" results in questionable legislation, the report concluded, "the integrity of everyone is compromised."[61]

Yet Minnesota's Psychopathic Personality Law remained on the books until a new sex crimes panic in the 1980s and 1990s led to a marked increase in civil commitments, and an aging offender named Dennis Linehan successfully challenged his commitment in court. Linehan had a history of violent assault before his 1965 conviction for the rape and murder of a fourteen-year-old girl. He served ten years of a forty-year sentence before he escaped from prison and attempted to sexually assault another girl. He was quickly caught and returned to jail. By 1992, Linehan had spent a total of twenty-seven years in prison and had a record of good behavior that legally entitled him to parole. Faced with the politically unpalatable release of a once-violent offender, the

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state moved to extend Linehan's incarceration indefinitely by committing him to state guardianship under the Psychopathic Personality Law of 1939. Linehan appealed, and won, on the grounds that the state failed to meet the *Pearson* standard. The Minnesota Supreme Court ruled in 1994 that the state had not proved that, after decades of treatment, a record of good behavior in prison, and the natural aging process, Linehan still suffered from the "utter lack of power to control" his sexual impulses.[62]

But the story did not end there. While newspapers and politicians whipped up public fears of sex predators on the prowl, the governor convened a one-day special session of the legislature, which unanimously passed a new sex offender law that specifically eliminated the *Pearson* standard. The state no longer had to prove an offender's "inability to control" his sexual impulses, only a record of harmful sexual conduct and a "sexual, personality, or other mental disorder or dysfunction" that made him likely to re-offend. The Minnesota Supreme Court upheld the new law.[63] A few years later, in *Kansas v. Hendricks* (1997), the U.S. Supreme Court upheld a Kansas law providing for the involuntary civil commitment of convicted sex criminals whose dangerousness was due to a mental abnormality. As in *Pearson,* it narrowed the class of persons eligible for confinement to those "unable to control their behavior."[64] After *Hendricks,* the Court ordered the Minnesota Supreme Court to reexamine its decision in *Linehan,* and the Minnesota court clarified its ruling: the state had to show that the offender had a mental disorder preventing him from "adequately" controlling his sexual behavior, but it did not have to prove that he met the *Pearson* standard of an "utter inability to control."[65]

Historians have been harshly critical of mid-twentieth-century sex psychopath and eugenics laws, but as Philip Jenkins wrote nearly twenty years ago, they have "scarcely responded" to similar measures in effect today.[66] Even scholars writing about recent sex panics and mass incarceration focus primarily on the mistreatment of racialized and LGBTQ youth and adults who commit nonviolent "offenses" and are unquestionably wronged by the punitive turn. This narrow approach is unfortunate, for while violent sex offenders like Linehan may be the "worst of the worst," as Linehan's lawyer Eric Janus wrote in 2006, the preventive detention of "sexually dangerous persons" today reveals troubling parallels with America's eugenics past. Sex predators now, like defective delinquents and psychopathic personalities in the last century, are seen as menacing, monstrous, and inherently abnormal. Experts still claim to be able to predict dangerousness and prevent crimes by assessing an individual's mental status. Civil commitment is still used to bypass the

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constitutional protections of the criminal-justice system and impose indefinite incarceration on the basis of "'who' a person is" and "what 'risk' he poses," instead of what he has done.[67] Further research into the eugenic foundation of sex-offender commitment laws and the ways that purportedly scientific diagnoses like feeblemindedness and psychopathic personality have been used as legal and administrative categories of control can bring a much-needed historical perspective to current policy concerns. We should not shy away from discussing these human rights abuses just because many of the people affected by them are less than savory.

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NOTES

1. *Karsjens v. Jesson*, 109 F. Supp. 3d 1139 (D. Minn. 2015) at 4, 3. News articles and documents pertaining to the case can be found at https://www.leg.state.mn.us/lrl/guides/guides?issue=msop and https://mitchellhamline.edu/sex-offense-litigation-policy/2017/07/20/karsjens-v-piper/.

2. Quoted in Eric Janus, *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* (Ithaca, 2006), 22.

3. *Laws of Minnesota 1917*, chap. 344; *Laws of Minnesota 1939*, chap. 369; Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, 1998), 81–82.

4. Estelle B. Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920–1960," *Journal of American History* 74 (June 1987): 85.

5. See, for example, George Chauncey Jr., "The Postwar Sex Crime Panic," in *True Stories From the American Past*, ed. William Graebner (New York, 1995), 160–78; Deborah W. Denno, "Life Before the Modern Sex Offender Statutes," *Northwestern University Law Review* 92 (1997): 1317–1414; Simon A. Cole, "From the Sexual Psychopath Statute to Megan's Law: Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949–99," *Journal of the History of Medicine and Allied Sciences* 55 (July 2000): 292–314; Stephen Robertson, *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill, 2005); Elise Chenier, *Strangers in Our Midst: Sexual Deviancy in Post-war Ontario* (Toronto, 2008); Marie-Emilie George, "The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States," *Journal of the History of Sexuality* 24 (May 2015): 225–61.

6. See especially William N. Eskridge Jr., *Gaylaw: Challenging the Apartheid of the Closet* (Cambridge, Mass., 1999), and Roger N. Lancaster, *Sex Panic and the Punitive State* (Berkeley, 2011).

7. Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York, 2007), 46–49; Claire Bond Potter, *War on Crime: Bandits, G-Men, and the Politics of Mass Culture* (New Brunswick,

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1998). See also Jonathan Simon, "Megan's Law: Crime and Democracy in Late Modern America," *Law and Social Inquiry* 25 (2000): 1111–50.

8. Nicole Hahn Rafter, *Creating Born Criminals* (Urbana, 1997), 7. The scholarship on eugenics is vast. The classic text is Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Heredity* (New York, 1985). A useful recent survey is Philippa Levine, *Eugenics: A Very Short Introduction* (Oxford, 2016).

9. Walter Fernald, "The Imbecile with Criminal Instincts," *Journal of Psycho-Asthenics* 14 (1909–10): 33. See James W. Trent Jr., *Inventing the Feeble Mind: A History of Intellectual Disability in the United States* (New York, 2017).

10. Mark Haller, *Eugenics: Hereditarian Attitudes in American Thought* (New Brunswick, 1984 [1963]), 129; Harry H. Laughlin, *Eugenical Sterilization in the United States* (Chicago: Psychopathic Laboratory of the Municipal Court of Chicago, 1922), 117–19.

11. *Skinner v. Oklahoma*, 316 U.S. 535 (1942); Paul A. Lombardo, *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell* (Baltimore, 2008), 229–33.

12. Sex Offenders Received at Minnesota State Penal Institutions, 1 May 1935 to 1 December 1936, typescript, 3 March 1939; Roscoe B. Moore, St. Anthony Park Safety Board, to Minnesota State Legislature, 31 January 1939, both in George Bryan Vold Papers, University Archives, University of Minnesota, Twin Cities.

13. Michael J. Willrich, "The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900–1930," *Law and History Review* 16 (Spring 1998): 66–67; Willrich, "The Case for Courts: Law and Political Development in the Progressive Era," in *The Democratic Experiment: New Directions in American Political History,* ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Princeton, 2009), 198–99.

14. Molly Ladd-Taylor, *Fixing the Poor: Eugenic Sterilization and Child Welfare in the Twentieth Century* (Baltimore, 2018), 53–55.

15. *Laws of Minnesota 1917,* chap. 344.

16. Ladd-Taylor, *Fixing the Poor,* chap. 3. On indigence and insanity commitment, see Mildred Thomson, "A Review of the Laws of Minnesota Relating to the Feebleminded" (1935), https://mn.gov/mnddc/past/pdf/30s/35/35-RLM-MNT.pdf, and the biennial reports of the Rochester State Hospital and the Fergus Falls State Hospital, housed in the Minnesota Historical Society, St. Paul (hereafter MHS).

17. Minnesota Child Welfare Commission, *Report of the Minnesota Child Welfare Commission* (St. Paul, 1917), 12.

18. Faribault State School and Hospital, *Biennial Report for the Year Ending July 31, 1916,* 142, 144, Faribault State School and Hospital Records, MHS (hereafter FSSH).

19. *Laws of Minnesota 1917*, chap. 344, sec. 2 and 3.

20. FSSH, *Biennial Report for the Year Ending June 30, 1922,* 5–6. Hanna was quoting Massachusetts superintendent Walter Fernald.

21. G. C. Hanna to Board of Control, 11 May 1926; Hanna to Board of Control, 20 March 1927, Superintendent Correspondence, FSSH.

22. FSSH, *Biennial Report for the Year Ending June 30, 1928,* 13; Ladd-Taylor, *Fixing the Poor,* 229.

23. See Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, 2009).

24. Edward J. Engberg to Board of Control, 1 December 1938, Superintendent Correspondence, FSSH.

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25. Ibid.

26. "Girl, 18, Attacked and Slain," *Minneapolis Star*, 20 March 1937; "They Lost a Daughter," *Minneapolis Star,* 24 March 1937.

27. See Elizabeth Faue, *Writing the Wrongs: Eva Valesh and the Rise of Labor Journalism* (Ithaca, 2002).

28. "Blood Stains Found on Coat, Face Bruised," *Minneapolis Tribune,* 22 March 1937, 1–2.

29. Samuel Hynes, *The Growing Seasons: An American Boyhood Before the War* (New York, 2003), 163–64.

30. Ibid., 167.

31. "Doctor Approves Giving Kruse Clues," *Minneapolis Tribune,* 31 March 1937; "Pine City Up in Arms as Murdered Girl Is Buried," *Minneapolis Star*, 23 March 1937. See also "Suspect Jailed in Girl's Murder," *Minneapolis Tribune*, 22 March 1937; "Unsolved," *Minneapolis Star*, 22 March 1937.

32. See Jenkins, *Moral Panic,* 6–7; Chauncey, "Postwar Sex Crime Panic," 175.

33. Sharon Park, "Gangster Era in St. Paul, 1900–1936," MNopedia, Minnesota Historical Society, http://www.mnopedia.org/gangster-era-st-paul-1900-1936; Potter, *War on Crime,* 179.

34. "Curb on Sex Crime Studied," *Minneapolis Tribune*, 26 March 1937; John E. Haynes, *Dubious Alliance: The Making of Minnesota's DFL Party* (Minneapolis, 1984), 24–25.

35. "New Laws Needed [editorial]," *Minneapolis Star,* 22 March 1937; "Lawmakers Must Act [editorial]," *Minneapolis Star,* 25 March 1937.

36. "Capture of Kruse Slayer Demanded at Women's Rally," *Minneapolis Tribune*, 2 April 1937.

37. Donald C. Bennyhoff, Memorandum from Executive Steering Committee to Subcommittee, 28 September 1937, Vold Papers.

38. Sheldon Glueck, "Sex Crimes and the Law," Exhibit C, in Donald C. Bennyhoff to Committee of 25, 19 February 1938, Vold Papers. The committee decided against legislation modeled on the 1921 Briggs Law, a Massachusetts statute that authorized mandatory psychiatric examinations for habitual offenders and indefinite detention for sex offenders diagnosed as defective, because it applied only to convicted criminals. "Insanity and the Criminal Law," Exhibit D, in Donald C. Bennyhoff to Committee of 25, 19 February 1938, Vold Papers.

39. Glueck, "Sex Crimes and the Law," 4.

40. Ibid., 1, 3, 4. The 1935 revisions to the Minnesota Probate Code extended compulsory commitment to epileptics for the first time. *Laws of Minnesota 1935,* chap. 72, article 18, sec. 174.

41. John E. Haynes, "Reformers, Radicals, and Conservatives," in *Minnesota in a Century of Change: The State and Its People Since 1900* (St. Paul, 1989), 378–81.

42. Joseph H. Ball, "Stassen Names Group to Study Sex Criminals," *St. Paul Pioneer Press-Dispatch*, 12 February 1939; Memo Notes, First Meeting, Governor's Committee on the Problem of the Criminal Insance (*sic*) and the Sex Criminal, typescript, 2 March 1939 (approved 21 April 1939), Vold Papers. Vold recalled in 1949 that psychiatrists numerically dominated the governor's committee, but did not play a major role in the passage of the psychopath law, which he attributed to "the drive by some attorneys for more power under

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which to prosecute." John F. Galliher and Cheryl Tyree, "Edwin Sutherland's Research on the Origins of Sexual Psychopath Laws: An Early Case Study of the Medicalization of Deviance," *Social Problems* 33 (1985): 107.

43. Mrs. E. E. Morath and Mrs. R. N. Cunningham, "Resolution to Be Presented to the Stassen Legislature"; Gordon Kamman to Mrs. R. N. Cunningham, 2 February 1939, Vold Papers.

44. George B. Vold to Harold Stassen, 23 March 1939, Vold Papers.

45. "Report of the Governor's Committee on the Care of Insane Criminals and Sex Crimes," typescript, 1939, Vold Papers.

46. Report of the Governor's Committee; Vold to Stassen, 23 March 1939, Vold Papers.

47. *Laws of Minnesota 1939*, chap. 369, sec. 1 and 2.

48. *Laws of Minnesota 1939,* chap. 369, sec. 1. The draft bill also stipulated that "political or religious belief or activity, racial origin, or behavior occurring in connection with a labor dispute or a strike shall not in any case be considered a basis for a finding of psychopathic personality," but this proviso was removed. See "A Bill for an Act Relating to Persons Having a Psychopathic Personality," enclosed in Chester S. Wilson to George B. Vold and Dr. J. C. McKinley, 5 April 1939, Vold papers.

49. "Report on Census of the Feeble-Minded," typescript, n.d. Department of Public Welfare Library, MHS. On the removal of the definition of a feebleminded person from the 1935 probate code, see Robert J. Levy, "Protecting the Mentally Retarded: An Empirical Survey and Evaluation of the Establishment of Guardianship in Minnesota," *Minnesota Law Review* 49 (1965): 826–27.

50. Fernald quoted in Rafter, *Creating Born Criminals,* 190.

51. "Court Upholds New Sex Law," *Minneapolis Tribune,* 1 July 1939; *State of Minnesota ex rel. Pearson v. Probate Court of Ramsey County*, 309 U.S. 270 (1940).

52. Relator's Brief, *State of Minnesota ex. Rel. Charles Edwin Pearson vs. Probate Court of Ramsey County*, 1939, Minnesota Supreme Court Case #32163, MHS.

53. Respondent's Brief, Minnesota Supreme Court Case #32163.

54. *State ex. rel Pearson v. Probate Court of Ramsey County*, 205 Minn. 545, 287 N.W. 297 (1939).

55. *State of Minnesota ex rel. Pearson v. Probate Court of Ramsey County* (1940).

56. James E. Hughes, "The Minnesota 'Sexual Irresponsibles' Law," *Mental Hygiene* 25 (1941): 81, 83. Newspapers described the law as "the subject of a great deal of controversy." See "Psychopathic Personality Law Upheld," *Minneapolis Star,* 30 June 1939.

57. Minnesota Legislature Interim Commission on Public Welfare Laws, *Report of the Minnesota Legislative Interim Commission on Public Welfare Laws, Sex Psychopath Laws* (St. Paul, 1959) 4, 7–8.

58. *Dittrich v. Brown County*, 9 N.W.2d 510 (Minn. 1943). See C. Peter Erlinder, "Minnesota's Gulag: Involuntary Treatment for the 'Politically Ill,'" *William Mitchell Law Review* 19 (1993): 108, 127.

59. Edwin Sutherland, "The Sexual Psychopath Laws," *Journal of Criminal Law and Criminology* 40 (1950): 553.

60. *Report of the Minnesota Legislative Commission on Sex Psychopath Laws,* 4; William Hausman, "Report on Sex Offenders: A Sociological, Psychiatric, and Psychological Study," 1 November 1972, A3, MHS. See also Frank T. Lindman and Donald M. McIntyre, eds., *Mentally Disabled and the Law: The Report on the Rights of the Mentally Ill* (Chicago, 1961), chap. 10.

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61. Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s,* vol. 9, no. 98 (1977), 840, 853, 858, 940–41.

62. Janus, *Failure to Protect,* 30–32.

63. Laws of Minnesota 1994, 1st Special Session, chap. 1, sec. 3; Janus, *Failure to Protect*, 36.

64. *Kansas v. Hendricks* 521 U.S. 346 (1997).

65. Janus, *Failure to Protect,* 38–40.

66. Jenkins, *Moral Panic,* 6.

67. Janus, *Failure to Protect,* 33.

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