

statute place the obligation to pay such expenses upon the county with reimbursement by the first legislative body assembled pursuant to the charter adopted by the electors of the city.

FRANK J. KELLEY,
Attorney General.

661026.1

**CRIMINAL SEXUAL PSYCHOPATH:
MENTAL HEALTH, STATE DEPARTMENT OF:
COURTS:
CRIMES AND CRIMINAL OFFENSES:**

Criminal sexual psychopath may be extradited if he leaves the state without permission contrary to Act 217, PA 1963, and if he is the subject of a warrant issued for such offense.

No. 4341

October 26, 1966.

Robert A. Kimmich, M.D.
Director
Department of Mental Health
Lewis Cass Building
Lansing, Michigan

You have asked my opinion concerning the implementation of Act 217, PA 1963, which provides in full as follows:

"Any criminal sexual psychopathic person under lawful commitment pursuant to the provisions of Act No. 165 of the Public Acts of 1939, as amended, being sections 780.501 to 780.509 of the Compiled Laws of 1948, who leaves the state without permission is guilty of a felony."¹

The statute under which criminal sexual psychopathic persons are committed is Act 165 of the Public Acts of 1939, as amended, sometimes referred to as the Goodrich Act, and found at CL '48 and CLS '61 §§ 780.501 *et seq*; MSA 1954 Rev Vol and Supps § 28.967(1) *et seq*.

Section 1 of the Goodrich Act defines a criminal sexual psychopathic person as "Any person who is suffering from a mental disorder and is not feeble-minded, which mental disorder is coupled with criminal propensities to the commission of sex offenses. . . ."²

The constitutionality of the statute was upheld in *People v. Chapman*, 301 Mich 584 (1942), which also held that the statute relative to commitment of criminal sexual psychopathic persons is not a criminal statute (600), that commitment proceedings do not constitute conviction of crime (608), and that the purpose of the commitment is not punishment for crime but rather to place the patient in the care of the hospital commission until cured of the habit of committing sexual offenses (603). See also *In re*

¹ MSA 1965 Cum Supp § 28.394(2).

² CL '48 § 780.501; MSA § 28.967(1).

Kemmerer, 309 Mich 313 (1944), 317-318. Similarly, it was held in *People v. Piasecki*, 333 Mich 122 (1952), that the inquiry to determine whether a defendant charged with crime is a criminal sexual psychopathic person is not a criminal proceeding and commitment to the state hospital commission is not a sentence (142).

The term "Department of Mental Health" replaces the term "State Hospital Commission" pursuant to Act 271 of the Public Acts of 1945, which abolished the hospital commission, created the Department of Mental Health and vested the powers of the State Hospital Commission in the Department of Mental Health, and which provides that all references to the State Hospital Commission shall be deemed to be references to the State Department of Mental Health.³

The statutory procedure for commitment of a criminal sexual psychopathic person as follows: When any person is charged with a criminal offense, whether felony or misdemeanor, or has been convicted of or has pleaded guilty to such offense and has been placed on probation, or has been convicted or pleaded guilty to such offense but has not yet been sentenced, and it appears that such person is a criminal sexual psychopathic person as evidenced by mental disorder existing for a period of not less than four months, then the prosecuting attorney, attorney general, or someone on behalf of the person charged, may file in the same proceedings wherein such person is or has been before the court on the criminal charge, a written statement setting forth facts tending to show that the person is a criminal sexual psychopath. Thereafter three psychiatrists are appointed to make an examination and to report in writing to the court the results of their examination together with their conclusion. Thereafter a hearing is had before the court to ascertain whether or not such person is a criminal sexual psychopathic person, and if he is so found to be, he is committed to the State Department of Mental Health to be confined in an appropriate state institution until there are reasonable grounds to believe that such person has recovered from such psychopathy to a degree that he will not be a menace to others.⁴

The custody of the State Hospital Commission, the legal successor to which is the State Department of Mental Health, of such persons after commitment has been found to be lawful. *People v. Chapman*, 301 Mich 584 (1942).

One of my predecessors has ruled that the expense of transporting the committed criminal sexual psychopath to the state institution is a state charge. OAG 1941-42, p. 624.

The individuals with whom your questions are concerned are therefore criminal sexual psychopathic persons who have been committed to the custody of the State Department of Mental Health in civil as distinguished from criminal proceeding and who have left the state without permission

³ CL '48 § 330.1; MSA 1956 Rev Vol § 14.861(1) and see OAG 1957-58 Vol 2, No. 3213, p. 55.

⁴ Under Act 175, PA 1966 (MSA Cur Mat § 14.801 *et seq*) to become effective 90 days after adjournment of the current legislature, the use of Ionia for criminal sexual psychopaths may be superseded.

of the department, therefore being not within the custody and control of the department as required by the court commitment.

Turning now to your first question, you ask what legal action should ensue and which agencies should initiate action when the Department of Mental Health has verified that such a patient has indeed left the state without permission.

From what has been said hereinabove, it is clear that the criminal sexual psychopathic person has been committed by the court into the custody of the State Department of Mental Health, which is therefore responsible to the court for the physical whereabouts and control of the patient. It must therefore follow that the State Department of Mental Health, the custody of which has been inadvertently terminated by the unauthorized action of the patient by leaving the state without permission, is legally responsible to re-establish custody, and is not only authorized, but obligated to take such action as is necessary to re-establish custody.

In *In re Kader*, 334 Mich 339, 343 (1952), it was held that the Director of the Department of Mental Health was within his rights in issuing a warrant for the return of a criminal sexual psychopathic person as a parole violator when that individual was arrested for an alleged act of burglary, when the director's attention was called to the evidence, which disclosed that the offense appeared to have the characteristics of a planned sex crime rather than simple larceny. The court said at page 343:

"Kader was committed in the first instance until he should have fully and permanently recovered from his psychopathy, and when the director decided that he should be returned for further treatment, he acted within his authority to confine Kader until he had recovered."

Attention is again called to the civil nature of statutory criminal sexual psychopath procedures. In *In re Maddox*, 351 Mich 358, 370 (1958) it was held that the incarceration of the criminal sexual psychopath in a state prison cannot constitutionally be based upon either medical diagnosis or administrative decision of a state administrative agency, since the procedure allows for commitment upon medical diagnosis without any constitutionally adequate finding as to guilt upon the criminal charge. Therefore the hearing and custody pursuant to hearing under the criminal sexual psychopathic statute is treated as a civil matter.⁵

Having been committed to the custody of the State Department of Mental Health upon civil proceedings, and having escaped from the civil custody of the State Department of Mental Health, while committed thereto, the criminal sexual psychopath who leaves the state without permission is not, *per se*, a fugitive from justice, and hence not thereby subject to extradition. The felony with which we are concerned is the felony which is created and established by Act No. 217, PA 1963. In *People v. McMurchy*, 249 Mich 147 (1930) in discussing the constitutionality of a statute, the court said at page 162:

"The law is well settled that the legislature, in the exercise of its

⁵ See cases cited on pages 1 and 2, *supra*. *Herron v. Birzgalis*, 235 Fed Supp 982 (1964).

police power in order to preserve the health, morals, and safety, may constitute something to be a crime that theretofore was not criminal.

...

The appropriate procedure is therefore for the superintendent of Ionia, as the official custodian of the patient, to inform the prosecuting attorney of the fact of the alleged commission of the felony, namely, leaving the state without permission while being a criminal sexual psychopathic person under lawful commitment pursuant to Act 165, PA 1939, as amended. Once a warrant has been issued constituting the patient who has left the state without permission a fugitive from justice, the normal extradition processes may be placed in motion.

Article IV, Section 2, Cl. 2, of the Constitution of the United States provides as follows:

"A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

The process of extradition would be handled as in any ordinary case. See Chapter 16 of the Michigan Code of Criminal Procedure, Section 6 (CL '48 §776.6; MSA 1954 Rev Vol § 28.1263); CL '48 §§ 780.1 *et seq*; MSA 1954 Rev Vol §§ 28.1285(1) *et seq*. The individual extradited will be returned to the county in which the warrant was issued and there held for action by the court before which the charge of violating Act 217, PA 1963, is pending.

Your next question relates to the responsibility of the department in arranging for the return of the patient. You indicate that it is obviously impossible for the State Department of Mental Health to carry out the indicated police function and therefore state you would depend upon the specific county law enforcement agency to arrange for the physical return of the patient. You ask about your responsibility in making reimbursement to the police agency returning the patient for the actual incurred expenses and from what funds you could legally make such reimbursement.

Your question is based upon a misapprehension as to the nature of the department's responsibility for a patient who has been legally committed to the custody of the Department of Mental Health, and for whom the Department is legally and financially responsible to the court and to the people of the State of Michigan. Since the Department of Mental Health is required by law to maintain custody, it is incumbent upon the Department to take whatever action is necessary to re-establish custody whenever broken, whether by the unauthorized act of the patient in leaving the state, or otherwise.

The expense of transporting the criminal sexual psychopath to the state institution to which he has been committed is a state charge. See OAG 1939-40, p. 314. Custody of the criminal sexual psychopathic person is vested in the State Department of Mental Health, the successor to the State Hospital Commission, under Section 5 of the Goodrich Act.⁶

⁶ CLS '61 § 780.505; MSA 1954 Rev Vol § 28.967(5).

The procedure for payment for cost of apprehension and return of patient escaped from the state mental hospital is set forth at CL '48, § 330.34; MSA 1956 Rev Vol § 14.824. This section specifically provides that the expense of recapture of a private patient shall be paid by the person responsible to the state for his care and maintenance and if a public patient it shall be paid by the state. See also CLS '61 § 330.25; MSA 1956 Rev Vol § 14.815 providing that the state shall pay all expense incurred by any state institution operated by the State Department of Mental Health in the care, maintenance, custody and treatment of any person admitted to an institution operated by the State Department of Mental Health. This includes the facility at Ionia.

With respect to the expenses of extradition, should this be necessary, the statute specifically provides that the expenses of extradition shall unless otherwise directed by the Governor, be audited by the Auditor General and paid out of the state treasury.⁷

This answers all of your questions. Because of the variety of circumstances that may arise in dealing with criminal sexual psychopathic persons who have left the state without permission with particular reference to the geographic areas from which each may leave the state and the status of each such patient with regard to criminal charges other than those involved in Act 217, PA 1963, I stress the importance of furnishing the criminal division of my office with a list of all such patients who have left the state without permission, of keeping such list current at all times and of working closely with the criminal division to be sure that prompt and appropriate action is taken to reinstate the custody of the State Department of Mental Health as required by the commitment and the statute under which the patient is committed to your care.

FRANK J. KELLEY,
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66/114.2

LIBRARIES: Cooperative and Federated Systems.
SOCIAL SECURITY:

Cooperative or federated library systems, as defined in Act 286, PA 1965, Section 2(b) (3), have no power to employ personnel, also they are not "juristic entities" for purposes of obtaining social security coverage.

No. 4546

November 14, 1966.

Miss Genevieve M. Casey
State Librarian
Lansing, Michigan

You ask whether cooperative or federated library systems established under Section 2(b) (3) of Act 286, PA 1965¹ have power to employ personnel to carry out their approved plans of service; and, if so, whether the library system board may secure social security coverage and retirement

⁷ CL '48 § 776.6; MSA 1954 Rev Vol § 28.1263.

¹ MSA 1965 Cum Supp § 15.1791(102).