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CONSTITUTIONAL LAW - PSYCHOPATHIC PROCEEDING - DUE PROCESS AND JURY TRIAL

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CONSTITUTIONAL LAW — PSYCHOPATHIC PROCEEDING — DUE PROCESS AND JURY TRIAL — Proceedings were brought against appellant under a Minnesota statute¹ providing for commitment of psychopathic persons who showed habitual sexual misconduct. Appellant appealed to the state supreme court for a writ of prohibition, claiming denial of due process. Appellant's contentions were overruled and he appealed to the United States Supreme Court. *Held*, the statute did not deny due process. *Minnesota ex rel. Pearson v. Probate Court*, (U. S. 1940) 60 S. Ct. 523.

The constitutional problems raised by the statute in the instant case are similar to problems raised in sterilization and insanity statutes² which have been held constitutional. Beginning with the landmark case of *Smith v. Wayne Probate Judge*,³ state and federal courts⁴ alike have recognized sterilization

¹ Minn. Laws (1939), c. 369. The principal case is also noted in 24 MINN. L. REV. 687 (1940).

² These statutes are not criminal in their nature. They are designed in scope and purpose to protect the public from sex offenders. Though such statutes are included under different titles in the statute books, they all aim at the correction or segregation of sexually delinquent persons.

³ 231 Mich. 409, 204 N. W. 140 (1925). See Shartel, "Sterilization of Mental Defectives," 24 Mich. L. Rev. 1 (1925), for discussion of sterilization statutes.

⁴ *Buck v. Bell*, 274 U. S. 200, 47 S. Ct. 584 (1927).

of sex delinquents as a valid police power measure. Likewise, sex offender legislation providing for commitment of the insane has been recognized as valid in a majority of the states.⁵ On the substantive side such a statute is constitutional if it was enacted for a legitimate purpose and the means of effecting that purpose bears a reasonable relation thereto.⁶ Incarceration is the means chosen to protect the public from sex offenses. The relation of the means to the end is quite direct. Each statute also defines the class of persons to whom it applies. In the instant case, the statute selects those psychopathic personalities who evince habitual sexual irresponsibility likely to be dangerous to other persons.⁷ The Supreme Court held that the Minnesota statute does not deny due process or equal protection of the laws because the legislature is free to recognize degrees of harm and can confine the force of its legislation to the place where the need is most urgent. As to the procedural aspect of due process, if it be admitted that the statute provides for a criminal proceeding then it must follow that all constitutional requirements incident thereto must be observed.⁸ But the statute in

⁵ See WEIHOFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 333-397 (1933), for a discussion of non-trial aspects of insanity proceedings together with references to state statutes.

⁶ *Treigle v. Acme Homestead Assn.*, 297 U. S. 189, 56 S. Ct. 408 (1936).

⁷ Some statutes require that the defendant be accused or convicted before he can be proceeded against. See Mich. Comp. Laws (1929), § 17241, as amended by Pub. Acts (1931), No. 317, and Pub. Acts (1937), No. 196. A recent Michigan statute, Pub. Acts (1939), No. 259, provides for a psychiatric examination of persons charged with murder, and automatic commitment of persons charged with murder and acquitted by reason of insanity. A similar statute has been held constitutional in Massachusetts ever since it was enacted in 1873. Mass. Acts (1873), c. 227, Gen. Laws (1932), c. 123, § 101. See also Mass. Acts (1921), c. 415, as amended, Gen. Laws (1932), c. 123, § 100A. However, almost identical statutes in Michigan have had a more stormy history. Mich. Pub. Acts (1873), No. 168; Mich. Pub. Acts (1905), No. 175. For constitutional objections voiced by the Michigan Supreme Court, see *Underwood v. People*, 32 Mich. 1 at 4-6 (1875); *People v. Dickerson*, 164 Mich. 148, 129 N. W. 199 (1910). It is a hope of the legislature that knowledge of modern scientific penology will furnish a basis for upholding the new Michigan statute. See WEIHOFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 294-332 (1933). But the statute in the instant case does not require prior accusation or conviction. While it may seem more justifiable to proceed against persons who have already committed a wrong, and while it may seem a violation of liberty to proceed against those who have as yet committed no wrong, the statute in the instant case requires sufficiently stringent proof of dangerous sexual irresponsibility based upon evidence of a "habitual course of misconduct" to warrant commitment upon such proof being demonstrated. See Shartel, "Sterilization of Mental Defectives," 24 MICH. L. REV. 1 at 15-21 (1925), where the constitutional power of the legislature to provide for sterilization of defectives is discussed. It is submitted that legislative power to provide for commitment of psychopathic personalities who evince dangerous sexual propensities comes within the scope of the reasoning there set forth.

⁸ Minn. Const., art. 1, § 6: "In all criminal prosecutions the accused shall enjoy the right to a speedy, public trial, by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusa-

the instant case does not provide for a criminal trial.⁹ The statute is only a police power regulation with a sanity hearing as its *modus operandi*. The Fourteenth Amendment to the federal Constitution has been held not to require a state to conduct such proceedings in any particular manner.¹⁰ The states are left free to choose their own procedure so long as due notice and right to be heard are provided. The United States Supreme Court has held that due process does not require trial by jury.¹¹ The statute in the instant case provides for a hearing and examination, the right to counsel and witnesses, commitment without term subject to a right to petition for release at any time, and the right of a defendant to appeal to the district court from an adverse judgment. Under this procedure it is difficult to see how the statute deals arbitrarily with a defendant's rights. It is true that the statute does not specifically require notice to be given, and in some jurisdictions this in itself is sufficient basis for declaring the statute invalid.¹² However, it seems that most courts would not declare a statute invalid for that reason alone, but would hold that the requirement of notice is implied unless the tenor of the statute forces a contrary conclusion.¹³

tion, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel in his defence."

⁹ It is often a question of sheer conjecture as to what tests the court will apply in determining whether a proceeding is a criminal trial. In *Schick v. United States*, 195 U. S. 65, 24 S. Ct. 826 (1904), the United States Supreme Court, speaking in general terms, said that a criminal prosecution was a process carried on in the name of a state against an individual for a crime against society. Apparently, where the defendant is not to be punished for a wrong, the proceeding is not criminal. However, the Michigan Supreme Court held a preliminary insanity proceeding to be a criminal trial requiring a jury merely because the statute which authorized it was included within the criminal code. *People v. Frontczak*, 286 Mich. 51, 281 N. W. 534 (1938), commented on in 37 MICH. L. REV. 613 (1939), 18 MICH. S. B. J. 83 (1939). But in *People v. Janek*, 287 Mich. 563, 283 N. W. 689 (1939), the same court held a similar proceeding not to be a criminal prosecution.

¹⁰ For due process requirements in state proceedings, see *Palko v. Connecticut*, 302 U. S. 319, 58 S. Ct. 149 (1937).

¹¹ *Simon v. Craft*, 182 U. S. 427, 21 S. Ct. 836 (1901).

¹² *Beveridge v. Baer*, 59 S. D. 563, 241 N. W. 727 (1932).

¹³ *Tatlow v. Bacon*, 101 Kan. 26, 165 P. 835 (1917).