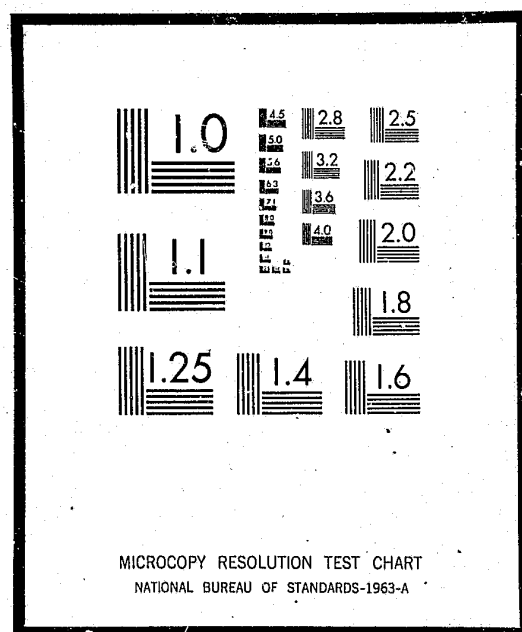


# NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.

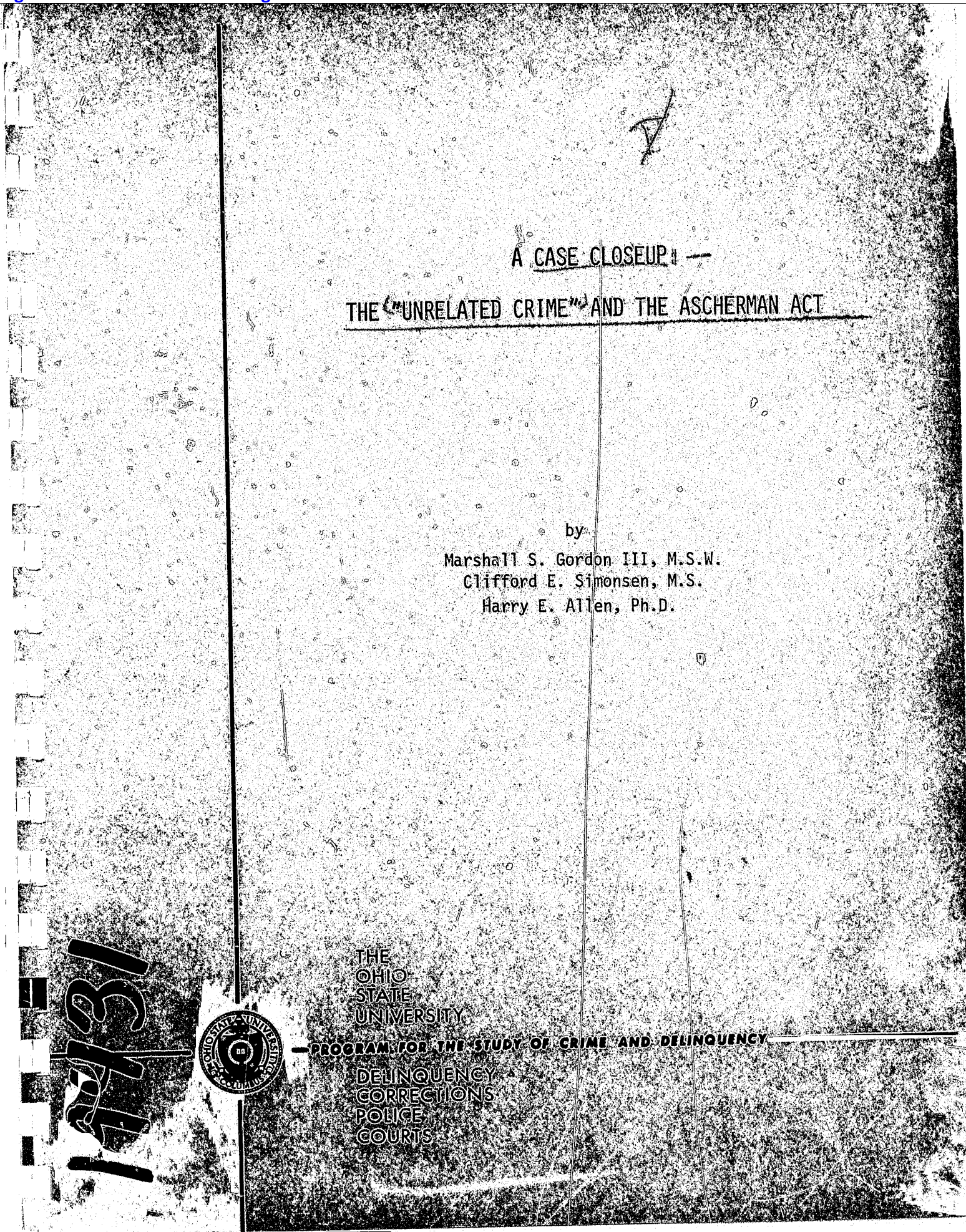


Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
WASHINGTON, D.C. 20531

Date filmed 2/10/76





5115175

Printed by the Program for the Study of Crime and Delinquency

1314 Kinnear Road, Suite 318

Columbus, Ohio 43212

1973

This study is supported by Grant 1514-00-F4-71 to the Division of Forensic Psychiatry, Ohio Department of Mental Health and Retardation from the Law Enforcement Assistance Administration through the Administration of Justice Division, Ohio Department of Economic and Community Development. Such support does not necessarily indicate concurrence with the findings and/or recommendations herein.

Abstract

The purpose of this research paper was to examine the implementation of Ohio's "psychopathic offender" law, commonly referred to as the Ascherman Act, as it applied to a specific sample of the total offender population committed under that Act.

The Ascherman Act was designed to be administered by the criminal courts in dealing with psychopathic or mentally retarded offenders in cases in which the court found that these offenders presented a menace to society, and that the imposition or continued enforcement of the applicable penal sentence would not afford to society such protection from these offenders as was needed.

A preliminary analysis of data collected by the Program for the Study of Crime and Delinquency in an overall examination of the implementation of the Ascherman Act revealed that there were several offenders to whose offense the intent and wording of the Act did not seem to apply, leading to the formulation of the research hypothesis: Persons convicted of crimes "unrelated" to the Ascherman Act and thereafter ordered to be evaluated and subsequently committed to Lima State Hospital under the provisions of that Act, will be found to be neither mentally ill, mentally retarded, or psychopathic offenders, nor will they have a prior record of arrests, convictions and/or psychiatric treatment (which might have given an indication of menace to themselves and the public).

A sample of eleven offenders was drawn from the total committed Ascherman population for the period 1965 to 1972. Each of these offenders had been convicted of a crime that this study has defined as "unrelated" to the intent of the Act (i.e., disturbing the peace and giving false information to an official).

The case records, kept at LSH, for each of the offenders were examined to determine three main points:

1. What factors may have existed so that the court would order an offender of this type to be evaluated under the provisions of the Ascherman Act in the first place?
2. What factors existed regarding the offender and/or his past record that would have had a determining effect on the evaluating facility's diagnosis and recommendation?
3. In considering the content of these first two questions, why did the court, after considering the offender's record and his diagnosis, adjudge him to be either a mentally ill, mentally retarded or psychopathic offender and subsequently commit him under the provisions of the Ascherman Act?

The above mentioned case records and the Log Book of Ascherman Offenders at LSH were the major sources of data for this study.

Examination of the case records of the eleven offenders, in respect to the three major areas previously mentioned, revealed a preponderance of evidence against acceptance of the research hypothesis.

The basic conclusions were:

1. The courts relied heavily on the offender's past arrest and/or psychiatric treatment records in deciding to order an evaluation.
2. The examining facility also relied on the past records, and in each case made a diagnosis whose definition fit the offender's behavioral pattern.
3. In deciding commitment, the courts followed recommendation offered by LSH and adjudged the offender according to their diagnosis.
4. All eleven offenders were found to be either mentally ill, mentally

retarded or psychopathic, and all eleven did have prior arrest and/or psychiatric treatment records.

These conclusions are not to be extended to include the general population and reflect an examination of only those eleven offenders included in the sample of this study. It appears, however, that this group did receive an evaluation, commitment and treatment within the intent and wording of the Ascherman Act.

TABLE OF CONTENTS

	<u>Page</u>
Abstract . . . . .	i
List of Tables . . . . .	v
History and Background . . . . .	1
Problem Definition . . . . .	3
Limitations of the Study . . . . .	9
Assumptions . . . . .	10
Operational Definitions and Discussion . . . . .	10
Mentally Retarded Offender . . . . .	10
Mentally Ill Offender . . . . .	11
Psychopathic Offender . . . . .	11
Antisocial Reaction . . . . .	12
Schizoid Personality . . . . .	12
Schizophrenia (Paranoid Type) . . . . .	13
Due Process . . . . .	13
Case Disposition . . . . .	13
Treatment . . . . .	14
Hypothesis . . . . .	18
Methodology . . . . .	19
Period of Time Involved . . . . .	19
Population . . . . .	19
Sample . . . . .	19
Instrument and Data Gathering . . . . .	20
Analysis and Discussion . . . . .	20
Summary, Conclusions and Recommendations . . . . .	39
Reference . . . . .	43
Appendix I, Data Display by Court Judgment . . . . .	45
Appendix II, Each Crime as it Appears in the Ohio Revised Code . . . . .	48

LIST OF TABLES

<u>Table</u>	<u>Page</u>
I Treatment Type and Number of Patients . . . . .	15
II Offense and Number of Offenders . . . . .	20
III County-by-County Comparison . . . . .	22
IV Crime by: Prior Arrest, Conviction and/or Psychiatric Treatment Record; Commitment Date, and Diagnosis . . . . .	24
V Diagnosis by Crime, Ranked According to Severity of Penalty . . . . .	29
VI Crime by: Diagnosis and Court According to Judgment Type . . . . .	34
VII Timetable Data on Each Offender . . . . .	37
VIIIA Psychopathic Offender (2947.24B) . . . . .	45
VIIIB Mentally Ill Offender (5122.01) . . . . .	46
VIIIC Mentally Deficient Offender (Retarded) (5125.011) . . . . .	47

A CASE CLOSEUP: THE "UNRELATED CRIME" AND THE ASCHERMAN ACT

History and Background

Even a cursory review of the history of laws will reveal that man has generally made laws to fit his needs as they arose. Fortunately or unfortunately, many of these pieces of legislation have remained on the law books year after year, decade after decade.

An example of such laws was evidenced in the late 1930's, when there was a general public clamoring for legislation to protect people from the "heinous" sexual offender. The justification for such laws rested as a series of explicit and implicit assumptions. It was generally assumed that: 1) there was great danger to women and children, 2) the number of these endangering sex crimes was rapidly increasing, and 3) they were usually committed by the "sexual psychopath", who has a high degree of offense persistence throughout his life. Further, it was assumed that psychiatrists were able to diagnose and to identify their type of deviancy; that "sexual psychopaths" who were so identified should then be confined as irresponsible and dangerous persons; and that they should not be released until pronounced cured of their "malady" by a court of law.

To cope with this offender group, Ohio (and several other states) enacted specific statutes to deal with the so-called "sexual psychopath". The Ohio Act is entitled "Judgment and Justice: mentally deficient and psychopathic offenders". It is most commonly referred to as the "Ascherman Act," and hereinafter shall be referred to as such. The Act bears the name of State Senator Leo Ascherman, the man who introduced the bill into the

Ohio Senate where it was passed in 1939.

The Ascherman Act is presently an integrated part of the Ohio Revised Code, sections 2947.24 through 2947.29. The original Act has been amended many times, the most significant in 1945, 1967 and 1969.<sup>2</sup>

According to records from Lima State Hospital, hereinafter referred to as LSH, the first commitment under the provisions of the Ascherman Act was made in November of 1943. Since that time and until late December, 1972 (a total of 29 years), 10,500 cases have been admitted to LSH for observation. Of these, over 3,500 were subsequently committed by the courts to LSH for an indefinite time period.

The Ascherman Act was originally written to be applied only to felony cases. The 1945 amendment intended this application to include certain misdemeanors. The alternative of probation in dealing with all offenders (except those disqualified under section 2951.04) was given to the courts in the 1967 amendment. And finally, the amendment of 1969 changed the language of "mentally deficient offender" wherever it appeared in sections 2947.24 through 2947.28, to "mentally retarded offender", although "mentally deficient" was retained in the title. This 1969 amendment also brought under inclusion persons convicted of abusing, beating, or otherwise causing physical injury to a child, according to the mandatory examination provision of section 2947.25.

Over the years since it was passed, the Ascherman Act has also come to be commonly called "Ohio's Sexual Psychopath Law." In actuality, the Act does not contain within its language either the word "sex" or "sexual psychopath". The sexual connotation is created in section 2947.25. This section spells out the offenses for which a psychiatric examination prior to sentencing is mandatory. These offenses are: 1) assault upon a minor

(2903.01), 2) rape (2905.01), 3) rape of daughter, sister or female under twelve (2905.02), 4) carnal knowledge of a female under sixteen (2905.03), 5) attempt to have carnal knowledge of a female under sixteen (2903.04), 6) incest (2905.07), 7) sodomy (2905.44), and most recently 8) all persons convicted of child abuse as provided for in section 2947.25.

#### Problem Definition

Considering this stereotype of the Ascherman Act as "Ohio's Sexual Psychopath Law," the Program for the Study of Crime and Delinquency began preliminary investigation and research in order to evaluate the effective implementation of the Act and related statutes. During the latter part of 1972, gross data were gathered at LSH, from what is referred to as "The Admission's Log Book for Ascherman Offenders." Data were obtained on those persons committed to LSH under the Ascherman Act from early 1965 through late 1972. Some data for the years 1943 through 1965 were already available from what has come to be known as "The Crist Study."<sup>3</sup>

In a preliminary analysis of the data for the 1965-1972 period, it was found that approximately three-fourths of those persons committed to LSH under the provisions of the Ascherman Act had been convicted of non sex-related crimes. This means that only one-fourth of the committed population had in fact been convicted of what would be considered to be appropriate sex-related crimes.

Obviously therefore, the Ascherman Act includes many more kinds of offenders than just sex offenders.

"Sections 2947.24 through 2947.29 inclusive, of the Revised Code shall be administered by the criminal courts in dealing with mentally retarded offenders and psychopathic offenders in cases in which the court finds that the imposition or continued enforcement of the applicable penal sentence will not afford to the public proper protection against possible future criminal conduct of such mentally retarded or psychopathic offenders."<sup>4</sup>

The Act then, is intended to keep dangerous mentally retarded and psychopathic offenders off the street and receiving "treatment". This is done through a civil commitment to the Department of Mental Health and Mental Retardation, by ordering the commitment of the offender indefinitely until such offender is recovered or restored to reason. To do this, the evaluating agency is also attempting to predict the possible menace of an offender to society. This is a heavy responsibility; the reader must ask himself if the provisions of the Act are able to handle this task adequately.

"After conviction and before sentencing, a trial court shall refer for examination all persons convicted under sections 2903.01, 2905.01, 2905.02, 2905.03, 2905.04, 2905.07 or 2905.44 of the Revised Code, and all persons convicted of child abuse to the department of mental health and mental retardation or to a state facility designated by the department, or to a psychiatric clinic approved by the department; or to three psychiatrists."<sup>5</sup>

"Prior to sentence the court may refer for such examination any person who has been convicted of any felony except murder in the first degree where mercy has not been recommended, or any misdemeanor when it has been suggested or appears to the court that such person is mentally ill, or a mentally retarded offender or a psychopathic offender."<sup>6</sup>

This means that at the court's discretion almost anyone brought to its attention can be ordered to an evaluative examination of up to sixty days length, after that person has first been convicted of almost any crime or offense. Cases in which a plea of insanity might rule out a conviction do not come under the Ascherman Act.

Such authority to order an examination gives the courts an extremely broad discretionary power. If it appears or has been suggested to the court that a person convicted of a crime is a mentally retarded, a mentally ill or a psychopathic offender, the court can require an appropriate examination of that person to determine the proper disposition of the case. Eighty-eight

counties in Ohio each have a system of courts; each court is charged with the above mentioned task.

If, after an examination of 30-60 days by the appropriate facility, the person is in fact diagnosed in a manner that a judgment of mentally ill, mentally retarded or psychopathic offender might logically follow, the court is charged with another task:

"The court shall conduct a hearing thereon not earlier than ten nor later than thirty days after the service of the examiner's report . . . . .

If upon consideration of such report and such other evidence as is submitted, the court finds that such person is mentally ill . . . or is a mentally retarded offender or a psychopathic offender, the court shall enter such findings on the Records, and shall either:

(a) Place the defendant on probation under sections 2951.02 to 2951.12 inclusive of the Revised Code.

(b) Impose the appropriate sentence for the offense of which the person was convicted. At the same time the court shall enter an order of indefinite commitment of such person to the department of mental health and mental retardation, during the continuance of which the sentence shall be suspended. Thereupon such person shall be sent to an appropriate institution designated by the department . . . Such orders of indefinite commitment shall show the offense of which such person was convicted and the minimum and maximum penalties therefore. Certified copies of said order and the reports of the examiners, unless submitted by the department, shall be sent to the department. Every order of indefinite commitment is a final order."<sup>7</sup>

It is possible for an offender who has been referred for an examination at the discretion of the court, and who then has been properly committed by that court, to spend a considerable period of time in confinement at LSH prior to recovery and removal from that institution. Once removed from LSH, the offender is usually either placed on probation by the courts or can be transferred to an appropriate penal institution to serve the remainder of his suspended sentence. This latter course of action is mandatory in the



case of the non-probationable offenses (e.g. incest, rape, arson).

With all of the preceding information in mind, and the fact that the Ascherman Act can be applied to a very wide range of offenders, we would now like to focus on the more specific problem as defined here.

When preliminary data analysis was begun, a decision was made to examine a specific group of offenders: those whose offense, on the surface, did not seem to logically apply to the intent of the Ascherman Act.

This offender group consists of people who have been convicted of what will hereinafter be referred to as crimes apparently "unrelated" to the intent of the Ascherman Act. The operational definition of crimes "unrelated" to the Act, is as follows:

- (a) Crimes not specifically mentioned in section 2947.25 of the Ohio Revised Code, for which examination is mandatory.
- (b) Crimes generally of a non-violent nature, where personal physical harm to a victim (other than the offender) was not a factor.
- (c) Crimes which were found in a preliminary review of gross data to have had few, usually only one, person convicted of each.
- (d) Specifically these "unrelated" crimes selected for analysis are:
  - 1. Burning property to defraud - 2907.03
  - 2. Pocket picking - 2907.29
  - 3. Issuing checks without credit - 2911.111
  - 4. Defrauding a garage owner - 2911.13
  - 5. Defrauding an innkeeper - 2911.14
  - 6. Disturbing the peace - 2923.41
  - 7. Tampering with a motor vehicle of another - 4549.06
  - 8. Obtaining/selling exempted drugs - 3719.16
  - 9. Giving false information - 2923.42
  - 10. Possession of a firebomb - 2907.02
  - 11. Uttering obscene language - 2905.301<sup>8</sup>

If a person were convicted of an "unrelated" crime, before he could be committed to LSH under the provisions of the Act, he would normally have to

be adjudged as a mentally retarded, mentally ill, or a psychopathic offender by the court. In most cases identifiable reasons why the courts do or do not commit an offender to LSH can be found. Some judges always seem to agree with the examiner's report and give their judgments accordingly, but a few seldom concur with the pre-sentence evaluation.<sup>9</sup>

However, if an offender is convicted of an "unrelated" offense, the question arises as to what guides the court to exercise its option of requiring a pre-sentence evaluation? The only "hint" that one actually gets from the Ascherman Act is given in the section which states that any felony but murder in the first degree where mercy has not been recommended, and any misdemeanor where it appears or is suggested that the offender is mentally ill, mentally retarded or psychopathic offender may be referred for examination. Unless appearances of deviant behavior by the offender are very obvious, or unless the court is trained in or counseled by psychiatry, it seems highly unlikely that the court will be able to make this assumption of "need" based solely upon appearances. The existence of "suggestibility" here is one that would become a more significant factor. There are varying sources that could suggest this examination as an appropriate course of action to the court.

One such source might be the defendant's counsel. The defense counsel may feel that his client is in need of treatment and thus suggest evaluation to the court. Also the defense counsel in his endeavor to get a client's charge reduced to a lesser offense may offer to make this suggestion of examination as a stipulation for such plea bargaining.

Another source is the prosecutor's office. The prosecution might also feel that the offender should be evaluated for the possibility of treatment. Prosecution may make this a definite term of any plea bargaining that would

be done as well.

Possibly, police or correctional authorities who have knowledge of the offender's prior record could suggest that there is something "wrong" with the offender that should be examined. Actually, anyone with the knowledge of the offender, his past and/or his present status could offer testimony to the court which might suggest something "wrong" with that offender.

And, finally, the court after hearing the testimony may decide an evaluation is in order for any of the above reasons. But above this, we must remember that the very first paragraph of the Act gives the courts a task to which even appearance and suggestibility may succumb to "hunch" or "vision". Here the courts are asked to predict the concept of menace.

This concept of menace has been interpreted in the Ascherman Act as a potential rather than actual phenomenon. The existence of menace is inferred from the "criminal tendencies" of the offender and must be controlled in order to "avoid possible future criminal conduct."<sup>10</sup> This potential menace to the public constitutes one of the assumptions on which involuntary hospitalization for the mentally ill, under the State's Code,<sup>11</sup> is established.

The Ascherman Act does not require a differentiation of degree of dangerousness of crimes for which examination can be ordered (any felony . . . , and any misdemeanor). Therefore, an offender convicted of "defrauding a garage owner" for example, could be ordered to be evaluated and could be subsequently indefinitely committed to LSH because he is considered a "menace" to the public.

This entire concept is ambiguous by nature, resting on the assumption that the probable recurrence - beyond any doubt - of a crime can be predicted.

"The concept of menace cannot in any sense be regarded as a clinically observable symptom of a proposed patient."<sup>12</sup> And if this phenomenon cannot be predicted by trained clinicians, then one has to wonder if it therefore can be predicted by anyone.

One might counter by saying that menace in the case of the psychopathic offender can be predicted simply by the defined nature of a psychopathic offender. Even if this were possible, it would only account for less than one-half of all the persons committed to LSH under the Ascherman Act. In the present study of offenders convicted of "unrelated" crimes, this would account for only five of the eleven cases. One can see that not everyone committed to LSH under Ascherman is diagnosed as a psychopathic offender.

To find out precisely why a certain offender convicted of an "unrelated" crime is ordered to be evaluated and subsequently committed to LSH, one would have to place himself inside the "head" of the court in each instance. This possibility is far removed from the ex post facto nature of this paper, if at all. One is left with an alternative and reasonable procedure of reviewing the case records of those offenders committed to LSH following conviction of seemingly "unrelated" crimes. Hopefully this would make possible a qualitative look at the individual offender. This might tell us what there was about him that gave the courts cause to order an evaluation and then subsequently commit him to LSH. This then is the specific problem to which this paper is addressed.

#### Limitations of the Study

The data used in this study were limited to two major sources: 1) preliminary statistics gathered by the Program for the Study of Crime and

Delinquency from the Admissions Log Book at LSH for Ascherman offenders and 2) from the personal case records held at LSH. Because of the exploratory and purely descriptive nature of this study, no inferences may be drawn as to the generalization of these findings. Since there is no control group or comparative data, the use of extensive statistical analysis was not possible, at least within the capabilities of the researcher.

#### Assumptions

There are several basic assumptions to this study; 1) that the data available are complete and reflect actual treatment or disposition of the patients involved, 2) that the participants in the implementation of the Act are aware of the legal intention of that statute and are free to act within or without its parameters, and 3) that review of case records at LSH will provide sufficient data for a descriptive analysis of their conformity to the wording and intent of the Act.

#### Operational Definitions and Discussion

Interdisciplinary semantics is a problem that clearly emerges when one examines the Ascherman Act. For example, the word psychopath and the word sociopath have been used interchangeably for the past eight years in the medical fields. Both describe the same type of person. The problems arise when the terms are thought to have different meanings; this happens quite often and causes problems in communication.

Mentally Retarded Offender: means any person who is adjudged mentally retarded as defined in section 5125.011 of the Revised Code, who exhibits criminal tendencies and who by reason thereof is a menace to the public. Section 5125.011 therefore defines "mentally retarded offender" as a person having subnormal intellectual functioning originating in the development

period prior to age eighteen and is characterized by reduced learning capacity including accompanying inadequate social adjustment as determined by comprehensive evaluation or as determined by a court of record upon such evidence as is deemed satisfactory by such court to establish the existence of mental retardation.

Mentally Ill Offender: a) "a mentally ill individual means an individual having an illness which substantially impairs the capacity of the person to use self control, judgment, and discretion in the conduct of his affairs and social relations, and includes lunacy, unsoundness of mind, insanity, and also cases in which such lessening of capacity for control is caused by such addiction to alcohol, or by such use of a drug of abuse that the individual is or is in danger of becoming a drug dependent person, so as to make it necessary for such person to be under treatment, care, supervision, guidance, or control," b) "mentally ill individual subject to hospitalization by court order means a mentally ill individual who, because of his illness is likely to injure himself or others if allowed to remain at liberty, or is in need of care or treatment in a mental hospital, and because of this illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization."

Psychopathic Offender: "means any person who is adjudged to have a psychopathic personality, who exhibits criminal tendencies and who by reason thereof is a menace to the public. Psychopathic personality is evidenced by such traits or characteristics inconsistent with the age of such persons, as emotional immaturity and instability, impulsive, irresponsible, reckless and unruly acts, excessively self centered attitudes, deficient powers of self discipline, lack of normal capacity to learn from experience, marked deficiency of moral sense or control."

The above is how the term is defined by the Ascherman Act and thus it sets the trend for evaluative guidelines of the offender. There are, however, several problems with this definition. Two of the major ones are semantic by nature: 1) the acceptance in the legal field of a medical term, whose own meaning has long been in dispute even among psychiatrists; and 2) the explanation and specification of a term medical by nature in a legal act.<sup>19</sup>

Antisocial Reaction: a form of "sociopathic personality disturbance" characterized by impulsive, egocentric, unethical behavior. The antisocial, or psychopathic, individual acts as if he has no conscience, no sense of responsibility, and no concern for the welfare of other people. He lives for the moment, fails to profit from experience, feels no genuine loyalty to any person, group or code of behavior. He is clearly abnormal, yet he cannot be classified as neurotic, psychopathic or mentally retarded.<sup>20</sup>

In 1952 the American Psychiatric Association gave a definition of "antisocial personality". This term refers to chronically antisocial individuals who are always in trouble, profiting neither from experience nor punishment . . .<sup>21</sup>

Schizoid Personality: "A personality pattern disturbance characterized by shyness, introversion, and a tendency to avoid social contact and close relationships." "Case histories show that schizoid individuals were timid and withdrawn in childhood, and became increasingly seclusive, detached, and 'shut-in' after puberty. If they work and live where only a minimal amount of contact with other people is required, they may reach a fairly stable adjustment. But if they are faced with threatening or overwhelming situations, they may retreat further from the world and develop schizophrenic reactions."<sup>22</sup>

Schizophrenia (Paranoid Type): "The major symptoms of this reaction type are poorly organized, internally illogical, changeable delusions, often accompanied by vivid hallucinations." "Paranoid reactions are the most common form of schizophrenia."<sup>23</sup>

In describing the disturbances of activity and behavior of the person with schizophrenia, Goldenson states the following: "There is a progressive loss of control by the higher rational brain centers, and behavior becomes infantile, primitive and disorganized. The disturbances in activity take many forms - lack of initiative and spontaneous activity, incapacity for sustained activity toward any goal, bizarre grimaces, silly giggling, stereotyped gestures and postures . . . Other behavior disturbances are: automatic imitation of the movements or utterances of others, extreme excitement and overactivity, stuporous inactivity, and impulsive violence."<sup>24</sup>

Due Process: As defined in the context of this paper, due process will have been accorded the offender if all of the following three factors are present: 1) the offender has been convicted of a crime; 2) the offender has been given a psychiatric evaluation in accordance with the provisions of the Ascherman Act, and 3) the offender has been given a court hearing prior to sentencing and after said evaluation.

Case Disposition: The major disposition discussed will be the offender's disposition of removal from LSH. Such a disposition usually occurs when the offender has been found to be "recovered", or when his condition appears to have improved to such an extent that he no longer needs the special custody, care or treatment of the institution to which he was committed."<sup>25</sup> Such disposition of removal is most often 1) returned to court for further legal proceedings or 2) directly transferred to a penal institution.

Parenthetically, for additional discussion on "Release and Recovery"



procedures of the Ascherman Act, examination may be made of sections 2947.26, 2947.27 and 2947.28 of the Revised Code.

Treatment: Black's Law Dictionary defines treatment as: "a broad term covering all the stages taken to effect a cure of an injury or disease; the word including examination and diagnosis as well as application of remedies."<sup>26</sup>

In searching the literature, very few specific definitions could be found of just what "treatment" is. It has not been until recently that treatment and a patient's right to treatment or non-treatment has been given any real attention. One recent brochure put out by the National Association for Mental Health has defined active treatment as follows: "active, preventive, diagnostic, therapeutic, supportive, or rehabilitative services shall mean that all treatment modalities consist of a planned and written program of daily activities or services based upon diagnosis and designed to prevent regression, improve adaptive capability, or maximize ability to live independently. Such services may include, but are not limited to: drugs, testing, nursing, psychotherapy, home visits, counseling, group therapy, casework, and other professional and paraprofessional services, which are a part of active care."<sup>27</sup>

For the purpose of this paper, in light of the fact that recent "treatment definitions" have been developed since the removal dates of the majority of offenders in the sample, treatment will be considered to have existed if most or all of the following have occurred. They are: 1) custody and confinement, 2) use of medication to alter behavior, 3) placement in the Ascherman Unit with involvement in that Unit's self government program, 4) various job assignments (one or more), or 5) involvement of offender in some form of counseling, either group, individual, or both.

A limit as to the use of drugs as a treatment tool is given in the following statement which is extracted directly from an offender's case record at LSH: "his mental condition has improved as the result of treatment with tranquilizing drugs and he is still taking . . . "

An analysis of treatment, as it is considered to have existed for these eleven offenders, is displayed in Table I.

TABLE I

<u>Treatment Type</u>	<u>Number of Patients</u>
Medication: Heavy	6
Light	5
At least once placed in the Ascherman Unit.	7
Never placed in the Ascherman Unit	4
Involved in counseling	7
No record of counseling	4
Given at least one job assignment	6
No record of job assignments	5
Confined under custody for an average of twenty months	11
Not confined under custody for an average of twenty months or at all	0

This table demonstrates that six of the eleven offenders who were convicted of "unrelated" crimes were given heavy medication over a long period of time. The term "heavy" medication is derived from the offender's case record medication charts. Where the chart indicated one or more drugs were being administered over a period of several months, medication was considered to be "heavy".

Seven offenders were found to have been placed in a ward of the Behavior Treatment Unit and involved in that Unit's self government program at one time or another. Also, seven of these eleven persons were found to have been involved at one period in some form of counseling. One or more job assignments

were given to six of the offenders at some time during their confinement at LSH.

All of the offenders were confined for an average period of twenty months, as compared to an average stay for the total committed Ascherman population of twenty-one months. This latter figure is based on preliminary statistical reports of the gross data for the period 1965 through 1972.

By definition therefore, "treatment" will be considered to have existed in some form for all eleven of the offenders committed for these "unrelated" crimes.

There have been many court cases around which the right to treatment for the "mental patient" has been the central issue. The following examples are offered to suggest major components:

1. "A person hospitalized in a public hospital for a mental illness shall be entitled to medical and psychiatric care and treatment; the hospital may be required to show that it is making a bona fide effort to cure or improve the patient and that the treatment provided is suited to his particular needs" [J. Covington v. D. W. Harris (1969 419 F 2d. 617, 136 U.S. App. D.C. 35)].
2. "Indefinite commitment under sexual psychopath law is justifiable only upon a theory of therapeutic treatment" [D.C. code 1961 § 21-562, 22-3503 to 22-3511, 22-3504, 22-3506, 22-3508] [M. I. Millard v. D.C. Cameron, Sup't etc. (1966 373 F 2d. 468, 125 U.S. App. D.C. 383)].
3. "One involuntarily committed to a public hospital as a sexual psychopath is entitled to relief upon showing that he was not receiving reasonably suitable and adequate treatment, and the

lack of such treatment can not be justified by lack of staff or facilities." [D.C. code 1961 § 22-3503 to 22-3511, 22-3504, 22-3506].

4. "One involuntarily committed to a mental hospital on being acquitted of an offense by reason of insanity has a right to treatment." [C. C. Rouse v. D. C. Cameron, Sup't etc. (1967 373 F 2d. 451, 125 U.S. App. D. C. 366)].
5. "Alleged denial of mental patient's right to treatment would require remand of habeas corpus petition for a new hearing." [S. A. Dobson and R. Stultz v. A. C. Cameron Sup't etc. (1967, 383 F 2d. 519, 127 U.S. App. D. C. 324)].

All of the above court examples point out that treatment is a right, but none really ever define exactly what treatment is or should be. A more recent court case, however, does offer guidelines for a treatment plan. That case is Wyatt v. Stickney (M.D. Ala. 1972). The court held in this case that a specific "treatment" standard applies; that standard (Number 26) is as follows.

Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate Qualified Mental Health Professionals, including a psychiatrist, and implemented as soon as possible . . . in any event, no later than five days after the patient's admission. Each individualized treatment plan shall contain:

- a) a statement of the nature of the specific problems and specific needs of the patient;
- b) a statement of the least restrictive treatment condition necessary to achieve the purposes of commitment;
- c) a description of intermediate and long range treatment goals,

- with a projected timetable for their attainment;
- d) a statement and rationale for the plan of treatment for achieving these intermediate and long range goals;
  - e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;
  - f) criteria for release to less restrictive treatment conditions, and criteria for discharge;
  - g) a rotation of any therapeutic tasks and labor to be performed by the patient in accordance with Standard 18.<sup>28</sup>

Wyatt v. Stickney is having widespread repercussions regarding mental hospital patients and the treatment that they may or may not be receiving. At the present time, there are several court cases pending where action has been brought by a patient or his attorney against a hospital for failure to provide treatment or meet treatment standards. For this and other valid reasons, it appears that LSH has been returning patients to the community as quickly as possible in recent months.<sup>29</sup> However, Wyatt v. Stickney does not apply to the majority of offenders being considered in this paper; most offenders had been removed from LSH prior to this 1972 decision.

#### Hypothesis

Since extensive, and assumedly accurate, background and clinical data were available from official sources, specific variables from an individual standpoint were selected for study. Each case was examined in detail to determine if there was a recognizable difference in the background and treatment of this group as compared to the wording and intent of the Act.

Accordingly, the following hypothesis was formulated: Persons convicted

of crimes "unrelated" to the Ascherman Act and thereafter ordered to be evaluated and subsequently committed to Lima State Hospital under the provisions of that Act, will be found to be neither mentally ill, mentally retarded or psychopathic offenders, nor will they have a prior record of arrests, convictions and/or psychiatric treatment (which might give an indication of menace to themselves and the public).

#### Methodology

Period of Time Involved: The cases considered by this paper have been for those offenders who were committed to LSH under the Ascherman Act between March 1965 and December 1972. Gross data collection thus far by the Program for the Study of Crime and Delinquency began with commitments of March 1965.

Population: During the period of time considered in this study, 3,082 offenders were admitted to LSH for psychiatric evaluation under provisions set forth by the Ascherman Act. The numbers of those not examined at LSH are not available for this particular paper.

Of the 3,082 offenders evaluated at LSH and of those evaluated elsewhere in Ohio, 1,133 were subsequently committed to LSH under the Ascherman Act. These 1,133 offenders are the population from which this sample was drawn.

Sample: After considering the preliminary data gathered from LSH records, we isolated those cases and subsequently randomly chose a number of cases which appeared to be "totally" unrelated to the intent of the Ascherman Act. These cases are those eleven previously listed as "unrelated" crimes. Table II shows each of these eleven offenses and indicates the number of persons who had been convicted of each and subsequently committed to LSH under the Ascherman Act during the period 1965 - 1972. The selection of these crimes

follows the same criteria by which they have been previously defined.

TABLE II

<u>Offense</u>	<u>Number of Offenders</u>
Burning Property to Defraud	2
Pocket Picking	1
Issuing Checks Without Credit	8
Defrauding a Garage Owner	1
Defrauding an Innkeeper	2
Disturbing the Peace	1
Tampering with the Motor Vehicle of Another	1
Obtaining/Selling Exempted Drugs	2
Giving False Information	1
Possession of a Firebomb	1
Uttering Obscene Language	1

The number of offenders exceeded one for each of four different offenses. Where this was the case, a simple random selection was made from among those involved in each of the four offense sub-groups. Where the number of offenders was only one, that offender was automatically included. Therefore, a total sample size of eleven different offenders for eleven different offenses was selected.

Instrument and Data Gathering: This study is wholly descriptive in nature. There was no instrument, questionnaire, or interview. All data were drawn directly from either the offender's case record kept at LSH or the Admission Log Book for Ascherman Offenders, or both. Any statistics which are quoted throughout this paper will be derived from data analysis done by The Program for the Study of Crime and Delinquency.

Data for both the total committed Ascherman population between 1965 and 1972 and for the eleven sample cases will be displayed and summarized. Most parameters examined will be of a demographic nature.

#### Analysis and Discussion

To begin, a general demographic breakdown of data according to Age, Race

Sex, County, Court and Commitment Type was compared between the total committed population and the sample.

Age: Among the total committed population, age at commitment ranged from 15 to 72 years. The modal age was 19 (107 offenders or 9.4%) while 69% of the offenders were under age 32. A sharp decline in numbers occurs after age 31 reaching a level of insignificant percentages.

The ages for the sample ranged from 21 to 42 years. The modal age was 21 (3 offenders or 27%); another 27% were between ages 21 and 30. The remaining 46% (five offenders) were 30 years or older. Eighty-one percent of the eleven offenders were under age 32.

In summary, the modal age of the sample appeared to be two years higher than that of the population. However, 81% of the sample were 32 years or younger as compared with 69% of the population. Therefore, although the modal sample age was older, the overall ages represented were younger for the sample than for the population.

Race: The race ratio in the population was 3:1 for whites as opposed to blacks (75.7% to 24.3%, respectively). The sample had 4 blacks (37%) and seven whites (63%). Therefore, more blacks were represented proportionately in the sample than in the general population.

Sex: The population was almost entirely male (1,118 offenders or 98%). Similarly, ten of the eleven offenders in the sample were male, or 91% of the sample. It could therefore be deduced that percentage-wise more females were found in the sample than in the population.

County: The population represented 77 of the 88 counties in Ohio. The majority of the commitments were from the following five counties: 1) Cuyahoga (161), 2) Lucas (131), 3) Franklin (89), 4) Hamilton (87), and 5) Summit (79). Thirteen counties (Allen, Butler, Clark, Clermont, Erie, Lake, Lorain, Mahoning,



Miami, Montgomery, Muskingum, Richland and Scioto) contributed an average of 10 - 50 commitments apiece. The remaining 59 counties accounted for less than 1% of the offender population.

The sample was represented by offenders from just eight counties. Ten of the eleven were from the largest 18 counties which comprised 99% of the population. See Table III for a County-by-County comparison between counties represented in the sample, and those in the population.

TABLE III

County	Sample (A)	Population (B)	A's % of B
Cuyahoga	2	161	1.2
Lucas	1	131	.8
Franklin	1	89	1.1
Summit	1	79	1.3
Butler	2	52	3.9
Montgomery	1	43	2.3
Miami	2	18	11
Sandusky	1	5	20
Total	11	578	2

Court: The population was adjudged almost exclusively by a Common Pleas Court (1,106 offenders = 97%), while 100% of the sample came before the Common Pleas Bench.

Commitment Type: Under the provisions of the Ascherman Act, all commitments to the Department of Mental Health and Mental Retardation under that Act were to be indefinite civil commitments. Such was the case for the population and the sample.

In attempting to determine how and why a particular offender, convicted

of an "unrelated" crime, might be ordered for psychiatric evaluation and subsequently committed to LSH by the court under the Ascherman Act, several factors were considered.

One of the initial areas into which the court might probe would be the offender's past record of arrest, conviction and/or psychiatric treatment. This prior record is displayed in Table IV; the crime leading to commitment to LSH is given, along with the offender's month and year of commitment and (for reference later in this paper), his diagnosis is also listed. After each listing as described above, you will find his prior record as constructed from available case material.

TABLE IV

CRIME BY: PRIOR ARREST, CONVICTION AND/OR  
PSYCHIATRIC TREATMENT RECORD; COMMITMENT DATE, AND DIAGNOSIS

Crime:	Burning Property to Defraud	Pocket Picking	Issuing Checks Without credit
Commitment Date:	12/68	1/72	1/70
Diagnosis:	Schizoid Personality	Antisocial Personality	Antisocial Reaction
Prior Record/s:	Arrested 8/68 for above offense: Released on bond: Re-arrested 8/68 for grand larceny: No prior treatment record indicated:	Resisting arrest & abusing an officer 1/71: Pocket picking 1/71: Resisting arrest & indecent exposure 12/70: Pocket picking 10/70: Parole violation (original charge of pocket picking 2/69): Indecent exposure 1/69: Robbery 3/68: Jostling 6/68: Aiding & abetting 1/64: Pocket picking 5/60: Pocket picking 3/60: Pocket picking 12/59: Pocket picking 5/56: Attempted pocket picking 4/56: Suspicious person 12/53: Habitual offender 12/53: Has spent 15 years in correctional institutions: Has prior history of drug addiction and treatment of such:	Vagrancy 6/69: Non-support 11/68: Checks - account closed 12/68: Checks-insufficient funds 10/68: Worthless checks 12/64: Issuing checks without credit 9/64: Checks-insufficient funds 2/64: Issuing checks without funds 3/60: AWOL Ohio National Guard 5/59: Checks-no account 2/59: All checks were usually for under \$30.00: No prior treatment record indicated:

TABLE IV (Continued)

Crime:	Defrauding a Garage Owner	Defrauding an Innkeeper	Disturbing the Peace
Commitment Date:	4/71	5/67	1/69
Diagnosis:	Antisocial Reaction	Schizoid Personality	Schizophrenic-Paranoid
Prior Record/s:	Assault with a dangerous weapon 6/70: Petty larceny: 2/70: Offender admits to ten previous arrests: Has juvenile record: Record shows no prior incarcerations: Offender is a drug addict and has been in hospitals for treatment:	Defrauding an innkeeper & forgery 4/66: Issuing fraudulent checks 8/64: Offender had attempted suicide while awaiting trial on current offense: No record of prior treatment indicated:	Aggravated battery 10/65: Conspire to injure Gov't officer 2/62: Transferring stolen auto 2/60: Conspire to injure Gov't officer 2/60: Assaulting officer with dangerous weapon on a Gov't reservation 2/60: Conspire to injure officers 8/57: Violation of Dyer Act 8/56: Offender has spent time in six Federal prisons: Offender has been in mental hospitals twice previously: Offender has a record of suicidal behavior:

TABLE IV (Continued)

Crime:	Tampering with Motor Vehicle	Obtaining Ex-empted Drugs	Giving False Information
Commitment Date:	3/71	8/65	5/68
Diagnosis:	Antisocial Personality	Antisocial-Drug	Antisocial-Drug
Prior Record/s:	Assault & Battery 3/71: Sodomy 11/70: O.M.V.W.O.C. 11/70: Breaking & entering a locked motor vehicle 12/69: Auto tampering 10/69: Auto tampering 8/69: Narcotics charge 1/69: Offender has admitted to the following - Five auto thefts, ten arrests for possession of barbituates, & other offenses i.e. driving without a license: No prior record of treatment indicated:	Unlawful obtaining of medicinal preparation 11/64: Drug charge 12/63: Suspicion of larceny 12/63: Theft 1/63: Breaking & entering & theft 9/56: Breaking & entering & theft 9/56: Sex offense - intercourse with a 13-yr. old girl 10/57: Strong armed robbery & parole violation 6/57: Offender has admitted to taking "paregoric" for past two years: Has spent time in two penal institutions: No prior treatment record indicated:	Offender has admitted to an extensive juvenile arrest record: Offender has nine adult arrests for car theft, bad checks, giving false information to police officers: Offender has been determined to be an active homosexual partner: No prior treatment record indicated:

TABLE IV (Continued)

Crime:	Possession of a Firebomb	Uttering Obscene Language
Commitment Date:	4/70	10/70
Diagnosis:	Schizophrenic-Paranoid	Alcoholism Disorder
Prior Record/s:	Aiding and abetting 10/69: Aiding and abetting 2/69: First degree manslaughter 11/62: Offender served three years in prison: No prior treatment record indicated:	Offender's records are vague: Offender has admitted to 25 prior arrests for intoxication: Offender has denied any penal incarcerations: Offender has been in and out of mental hospitals five times since 1947; and carries a prior diagnosis as "Chronic brain syndrome with alcoholic deterioration": Offender has openly admitted to being an alcoholic:

To summarize the contents of Table IV, all of the eleven offenders in the sample had police records prior to being arrested for their current offenses. Seven of these offenders had been arrested at least once in the past for the same offense for which commitment at LSH was ordered.

Only three of the eleven have had histories of prior psychiatric treatment, while the records of eight persons in the sample indicated past institutional incarcerations. The following quotation, however, from the Psychiatric Examination Section of an offender's case record at LSH illustrates that even prior arrests or convictions are not always needed in order for examination and subsequent commitment to occur:

"Presently the patient definitely shows psychotic symptoms and he is definitely committable as a mentally ill individual independent from the fact that he does not have any long standing official F.B.I. record."

Four offenders do have previous arrests resulting from crimes of a sexual nature. In each case, however, this occurred only once.

It appears that prior arrest and/or psychiatric treatment record might well play a significant part in the court's decision to order an offender to be given a psychiatric evaluation under the provisions of the Ascherman Act. In addition to simply the existence of a prior record, the possibility of menace suggested by such a record is also a probable variable considered by the courts. Plea bargaining and the conditions it imposes are another source. Also, outside testimony by someone claiming knowledge of the offender, and suggesting the need for either evaluation and/or treatment, or simply having the offender removed from society has great impact.

The researcher had the opportunity to speak to several court judges

at a recent Southwestern Ohio Seminar on the Ascherman Act. At that time, it was suggested that there is no "rule of thumb" to guide them in terms of examination and/or commitment for offenders convicted of the non-mandatory crimes. Individual policy of one court may be to usually refer an offender for an evaluation while another court may seldom, except in the most flagrant cases, order such an examination.

In developing this individual policy, a judge may use as a major guide his attitude towards offenders and rehabilitation. One court may feel that an offender should go to a penal institution regardless of his prior record and thus not order an evaluation. Another court might feel that an offender might benefit from treatment in the hands of the Department of Mental Health and Mental Retardation, and therefore rule that the offender be examined in the event that the resulting diagnosis would suggest a need for such treatment. A third court may use a combination of the above, or both or only one in certain cases. However, for whatever reason, all eleven offenders convicted of "unrelated" crimes were ordered for psychiatric evaluation under the provisions of the Ascherman Act.

Nine of the offenders in the sample were examined at LSH; the two who were not, were examined at the facilities of The Cleveland Psychiatric Clinic. The average length of observation at LSH was 42 1/2 days. Figures for the Cleveland Clinic were not indicated in the offender's LSH case record.

Aside from prior record, much of the court's decision to commit an offender appears to be primarily based upon the diagnosis and recommendation received for such an offender from the examining facility. Once the offender has been sent to the examining facility, one might ask if his prior record has an influence on that facility's diagnosis. Based on conversation with a psychologist from LSH who conducts such evaluations, indication was that



the examiners do review the offender's prior record before making a diagnosis. As a matter of fact, most psychiatrists indicate that they must review the records before making a diagnosis. In many cases this could lead to biased labeling on the examiner's part; in others, it could give the examiner the insight necessary to arrive at a proper diagnosis. The latter could well have been the case with the "habitual" offender who was diagnosed as antisocial reaction.

Table V shows each of the eleven offender's diagnosis by crime.

TABLE V

DIAGNOSIS BY CRIME, RANKED ACCORDING TO SEVERITY OF PENALTY

<u>Crime</u>	<u>Diagnosis</u>
Disturbing the Peace - Fine only	Schizophrenic reaction - paranoid type
Uttering Obscene Language - 0-30 days	Alcoholism disorder with psychosis
Tampering with motor vehicle of another - 6 months	Antisocial personality
Giving false information - 0 - 1 yr.	Antisocial drug - psychoneurosis
Issuing checks without credit - 1 - 4 yrs.	Antisocial reaction with alcoholism
Defrauding a garage owner - 1 - 5 yrs.	Antisocial personality
Defrauding an innkeeper - 1 - 5 yrs.	Schizoid personality
Possession of a firebomb - 1 - 5 yrs.	Schizophrenic reaction - paranoid type
Pocket picking - 1 - 5 yrs.	Antisocial drug addiction - exhibitionism
Obtaining/Selling exempted drugs - 1-5 yrs.	Antisocial drug - psychoneurosis
Burning Property to Defraud - 1 - 10 yrs.	Schizoid personality - Sexual Deviation

Six offenders were diagnosed with various forms of "antisocial behavior," four with a form of "schizoid personality," and one with an "alcoholism disorder". The six offenders who were diagnosed as antisocial all had lengthy prior arrest records. Three of them had repeated the same crime on at least four different occasions. These crimes were either crimes against property or the so-called victimless crimes, except for "giving false information" which was considered to be a crime against society. The case histories of these six "antisocial" offenders did give an indication of past behavior that would classify them as "psychopathic offenders" according to the operational definition used in this paper: "impulsive, irresponsible, reckless, and unruly acts, excessively self centered attitudes, deficient powers of self discipline, lack of normal capacity to learn from experience, marked deficiency of moral sense or control." These characteristics were also represented in the operational definition of antisocial personality.

Of the four offenders that were diagnosed as schizoid personality or schizophrenic reaction, two were convicted of the only two crimes which might have been potentially dangerous to human life. The other two offenders had a history of suicidal behavior. Two of these four also had prior arrest records for crimes of a violent nature to persons. The diagnosis for these violent offenders was schizophrenic reaction-paranoid type, a term which has as one of its identifying characteristics "impulsive violence".

On the whole, prior arrest records were much longer for those offenders diagnosed "antisocial" than for those diagnosed "schizoid personality" or "schizophrenic reaction". Of these eleven cases, there was only one offender with a singular diagnosis: alcoholism disorder with psychosis. That case

record indicated at least twenty-five prior arrests for alcohol intoxication, a past hospital diagnosis as "Chronic brain syndrome with alcoholic deterioration", and seven previous hospital stays for alcoholism treatment.

In summary, it appears that the offender's evaluative diagnosis followed very closely the direction indicated by their prior records. In other words, the offenders' present crimes and their past arrest and/or treatment records were related to the types of behaviors as defined by each diagnosis. The reader here is again referred to Table IV for these past records.

Attention is now turned to a comparison of diagnoses between the population and the sample. Almost one half of the population (521 cases or 45%) was diagnosed as antisocial personality. The remaining relevant categories were identified as sexual deviations (212 cases or 18%), alcoholism disorders (47 cases or 4%), and mild mental deficiencies (20 cases or about 2%). The other categories such as paranoia, schizophrenia, neurosis and manic-depressive, made up a very small number of cases.

Over one-half of the sample (6 cases or 55%) was also diagnosed as antisocial personality. Here the only other diagnosis which fits into the main category group of the population is the one case diagnosed "alcoholism disorder". While schizophrenia accounted for an insignificant percentage of the population's diagnoses, it comprised 36% (4 cases) of the sample. This fact, along with that previously stated about those offenders diagnosed as schizoid personality or schizophrenic reaction gives some indication as to why these particular persons convicted of "unrelated" crimes might find themselves committed to LSH under the Ascherman Act.

Once the observation has ended and a diagnosis is made, the offender is

returned to the court for further disposition. The evaluation is made available to the court as is a narrative summary of the case in which the examining facility offers its findings and recommendations. It is also common procedure to have the examining physician present at this pre-sentence hearing.

Based upon the examining facility's evaluation and narrative summary, if available, the physician's testimony, any outside testimony and the offender's prior record, the court makes its decision whether to commit the offender to the Department of Mental Health and Mental Retardation under the Ascherman Act or some other disposition.

Many court judges with whom this writer has spoken have indicated that they invariably follow the recommendation offered by the evaluating facility; few did not. An example of such a recommendation taken from case record of one offender from the sample is, "It was the opinion of the staff that the patient has criminal tendencies and is a menace to the public. He is not a mentally ill offender, nor a mentally deficient offender. He is, however, to be considered a psychopathic offender and committable according to the Ascherman Law."

The court must conduct a pre-sentence hearing not earlier than ten nor later than thirty days after a certified copy of the examination report is served upon it. The court must then make a judgment as to whether or not the offender is a psychopathic offender, a mentally retarded offender or a mentally ill offender and therefore committable under the Ascherman Act. If affirmative judgment is reached and commitment is ordered, it must be an indefinite civil commitment with the applicable penal sentence suspended while the offender is confined at LSH. Such was the case for all eleven offenders in the sample.

A sentencing indictment might therefore read: "Upon consideration of the evidence and the law, the Court finds that the defendant is a psychopathic offender as defined in Section 2947.24 of the Revised Code of Ohio . . . The execution of sentence is suspended and the defendant is ordered committed indefinitely to the Department of Mental Hygiene for commitment to the appropriate institution to be designated by the Department; which is in this case Lima State Hospital, in accordance with the provisions of Section 2947.25 of the Revised Code of Ohio."

An important question regarding the commitment of the eleven offenders convicted of "unrelated" crimes should be considered. What was the courts' judgment in each of their cases, and in fact, was such a judgment made? For a look at the possible answer to this question, the reader is referred to Table VI. Here are displayed each of the eleven offenses by corresponding diagnosis and court judgment.

TABLE VI

CRIME BY: DIAGNOSIS AND COURT ACCORDING TO JUDGMENT TYPE

Crime	Diagnosis	Judgment
Obtaining exempted drugs	Antisocial drug-psychoneurosis	Psychopathic offender
Giving false information	Antisocial Reaction	Psychopathic offender
Issuing checks w/o credit	Antisocial reaction w/alcoholism	Psychopathic offender
Defrauding a garage owner	Antisocial personality	Psychopathic offender
Tampering w/motor vehicle	Antisocial personality	Psychopathic offender
Defrauding an innkeeper	Schizoid personality	Mentally ill offender
Burning property to defraud	Schizoid personality	Mentally ill offender
Possession of a firebomb	Schizophrenic reaction-paranoid	Mentally ill offender
Uttering obscene language	Alcoholism disorder w/psychosis	Mentally ill offender
Pocket picking	Antisocial-Drug	Mentally ill offender
Disturbing the peace	Schizophrenic Reaction-paranoid	Mentally retarded offender

Data in Table VI reveal that all eleven offenders were adjudged to be either psychopathic, mentally ill or mentally retarded offenders. Five were found to be psychopathic offenders, five were adjudged as mentally ill and one as mentally retarded.

According to the available case record material, all judgments were made in a court of law with the offender present. Each judgment specifically made reference to the Section of the Ohio Revised Code from which the definition for each judgment was taken. Section 2947.24 pertains specifically to the psychopathic offender, the mentally ill offender is defined in Section 5122.01, and the definition of the mentally retarded offender is found in Section 5125.011.

All of the five offenders adjudged to be psychopathic had been diagnosed as antisocial prior to their disposition hearings. This fact lends itself to the indication that the court did consider decisively the diagnoses and recommendations offered by the examining facility. This is especially plausible when one considers that the definitions of "antisocial personality" and "psychopathic offender" are almost identical in their phraseology.

Of the five offenders adjudged to be mentally ill, three had been diagnosed as either schizoid personality or schizophrenic reaction, one with an alcoholism disorder and one with antisocial drug addiction. Each of these individual diagnoses fits by definition into the characteristic status of the mentally ill offender.

The only one of the eleven to be adjudged as a mentally retarded had been diagnosed as schizophrenic reaction-paranoid type. A review of Table III will show that this individual has had a history of both assaultive and suicidal behavior, having been convicted of "Disturbing the peace" (a crime which carries only a penalty of a fine). This offender is still confined at

LSH with a very remote outlook for recovery.

In summarizing Table VI, it can be seen that each of the eleven offenders had been adjudged to be committable to LSH as outlined by the provisions of the Ascherman Act. Each was committed indefinitely to LSH according to procedures set forth in Section 2947.25 of the Ohio Revised Code.

The primary purpose of this paper has been to explore why the offenders convicted of "unrelated" crimes might have been ordered for evaluation and subsequently committed to LSH under the Ascherman Act. However, a look at the offenders' length of time confined at LSH, and their dispositions of removal will be briefly discussed. It has already been stated that the average length of this confinement was approximately twenty months.

Table VII presents data on a "timetable" for each offender, beginning with the date of current arrest (where available) to the date of removal from LSH.



TABLE VII

	1	2	3	4	5	6	7	8	9	10	11
"Unrelated Crime Number"											
Date of Arrest	8/29/68	unk.	6/8/69	5/70	1/25/67	10/29/68	11/13/70	3/6/65	6/23/66	10/14/69	unk.
Date of pre-sentence trial	unk.	1/6/72	7/18/69	unk.	unk.	unk.	unk.	unk.	9/1/66	unk.	unk.
Date sent to Lima for evaluation	9/30/68	- - -	7/24/69	1/26/71	3/22/67	11/12/68	- - -	5/24/65	3/7/68	2/6/70	7/7/70
Date returned to court for Judgment	11/7/68	- - -	8/29/69	3/4/71	5/16/67	12/20/68	- - -	7/9/65	4/9/68	3/17/70	9/11/70
Date committed to LSH	12/20/68	1/14/72	1/21/70	4/9/71	5/19/67	1/8/69	3/18/71	8/18/65	5/2/68	4/9/70	10/7/70
Date removed from LSH	1/7/70	Still in LSH	3/2/71	4/24/72	10/1/68	Still in LSH	7/8/71	7/28/66	2/5/70	7/23/71	10/27/71
Total Number of days spent in observation	37	?	35	37	54	38	?	45	32	41	64
Above period exceeded 60-day limit	No	?	No	No	No	No	?	No	No	No	Yes
Total time spent in LSH after being committed	1 yr.	Still in LSH	1 yr. 1 mo.	1 yr.	1 yr. 5 mo.	Still in LSH	4 mo.	11 1/2 mo.	1 yr. 9 mo.	1-yr. 3 mo.	1 yr.

All but two of the offenders have been removed from LSH. Of the two remaining, the prognosis for recovery for one was good but for the other poor.

The "disposition of removal" for all the nine offenders was "returned to court for further disposition." This compares with only 61% of the population who were returned to court. Twenty-two percent of the population removed were transferred directly from LSH to a correctional institution. The fact that none of the offenders in the sample were transferred to a correctional institution was accounted for primarily by the fact that none of these offenders had been convicted of a non-probational offense. Transfer directly to a correctional institution from LSH usually occurs only in these instances. For a further explanation of the non-probational offenses and procedures see Sections 2947.27A and 2947.27B and Section 2951.04 of the Ohio Revised Code.

What happened to the offender once he had been returned to court is generally unavailable in the LSH case records for this offender sample. The case records do reveal, however, that seven of the nine offenders removed were recorded as having been "discharged without psychosis," while the other two were simply recorded "returned to court".

When these offenders were removed from LSH and returned to court, the indefinite civil commitment was also removed. As a rule, the court was usually provided a summary of the offender's "now recovered" condition, and also a recommendation for future disposition. LSH recommended probation for three offenders, parole for another, and imprisonment for three more. No recommendation could be located for the remaining two offenders of the sample who were removed from LSH. Whether the court followed these recommendations was information not available for this study. Case records have indicated

only that one offender was placed on probation and one was placed on trial visit from LSH. Other than "being returned to court for further disposition," what happened to the other seven offenders is data that are not available.

#### Summary, Conclusions and Recommendations

How does an offender in Ohio come to be committed to Lima State Hospital under the provisions of the Ascherman Act? There are certain offenses which require mandatory evaluation, which is one of the steps in the process of commitment. There are also a number of offenses of a sexual nature to which the Act appears to have been originally directed. But what of the offenses for which the courts are given no specific guidelines? Here the Ascherman Act simply states, "Prior to sentence the court may refer for such examination any person who has been convicted of any felony except murder in the first degree where mercy has not been recommended, or any misdemeanor when it has been suggested or appears to the court that such a person is mentally ill, or a mentally retarded offender or a psychopathic offender". This pre-sentence examination can therefore lead to the subsequent commitment of such persons.

In order to gain insight into the how and the why of commitment under Ascherman where specific guidelines are not readily apparent, a sample of eleven offenders convicted of crimes defined as "unrelated" to the Ascherman Act was drawn. On initial examination, they are the crimes which seem to be atypical and give greatest cause to raising the question: "Why these people?"

This paper has explored three major points which would lead to an offender's being committed to LSH under Ascherman. They are: 1) What is there about the offender's prior arrest, conviction or psychiatric treatment records which might give the courts the notion that this particular offender

should be examined in the first place?, 2) Once the offender has been ordered to be evaluated, what is there about him which might influence the examining facility to make a diagnosis and/or recommendation which could lead to his subsequent commitment?, 3) Once the offender is returned to court for "further disposition" after being evaluated, what factors are considered which would lead the court to find the offender eligible for indefinite commitment under the Ascherman Act and so rule?

Keeping each of these points in mind, the individual case records of the offenders were explored, and the following conclusions were made regarding the sample. First of all, it was found that all eleven offenders did have prior arrest, conviction and/or psychiatric treatment records. Seven of them had been arrested in the past for the same offense which lead to their commitment to LSH. It also appeared that the courts did use this prior record, along with outside testimony and their own observations as tools in guiding them to order the evaluation of the offender. Secondly, it appeared that the examining facility was also influenced by the offender's prior record, and in all eleven cases gave a diagnosis which by definition fit the behavioral patterns suggested by this prior record. And lastly, the courts in every case gave a ruling in accordance with the examining facility's diagnosis and recommendations. The court found five of the eleven offenders to be "psychopathic" offenders. All five of these persons had been diagnosed "antisocial". The judgment given to another five offenders was "mentally ill"; three of these people had been diagnosed as "schizoid personality" or "schizophrenic reaction." In other words, the judgment made by the courts and the diagnosis offered by the examining facility are both easily equated according to their respective definitions.

The overwhelming preponderance of evidence from the information and

figures gathered and presented in this study does not support the stated hypothesis: that persons convicted of crimes "unrelated" to the Ascherman Act and thereafter ordered to be evaluated and subsequently committed to LSH under the provisions of that Act were found neither mentally ill, mentally retarded or psychopathic offenders, nor did they have a prior record of arrests, convictions and/or psychiatric treatment (which might have given an indication of menace to themselves and the public). Actually, since all of these offenders were adjudged as either mentally ill, mentally retarded or psychopathic and all had prior arrest and/or psychiatric treatment records from which "menace" could be interpreted, it appears that they were handled within the intent and wording of the Act.

Whether or not these offenders were, in fact, a "menace" to society and were actually mentally ill, mentally retarded or psychopathic was not the purpose of this paper. The fact that they were "found to be" the above was sufficient under law to warrant their commitment to LSH under the Ascherman Act.

The data in this paper raised several questions, all of which could well be the subject of future research. For example, while it was stated that according to the definition used in this paper all eleven of the offenders were considered to have received treatment, one wonders if that treatment was suited to their particular individual needs? Further, did they benefit from such treatment? One final point concerning treatment is that while it has been ruled that patients in a mental hospital have the "right to treatment", should this right also be extended to corrections?

Another question that might be raised is whether the courts should be given more specific guidelines to use when dealing with offenders, such as those discussed in this study. There are many other issues that could be explored in regard to the total Ascherman population, beyond those convicted

of "unrelated" crimes. These are to be dealt with in a study of the implementation of the Ascherman Act, to include detailed statistical analysis of data, being conducted by the Program for the Study of Crime and Delinquency at The Ohio State University. This study is funded by a contract from the Ohio Division of Forensic Psychiatry, Department of Mental Health and Retardation. Results of this study will be used to suggest changes in the statute and bring its implementation in line with both modern legal and medical concepts.

In conclusion, it should be repeated that this paper has been intentionally of a purely descriptive nature. All data developed came from either case records at LSH, or from the references noted throughout.

It is the hope of the writer that this paper will suggest who can be committed to LSH and why, especially in the case of the offender convicted of the "unrelated crime". It has not been the intention of this study to initiate change, but rather to simply analyze and describe what has happened in regards to eleven offenders who found themselves committed indefinitely to LSH under the Ascherman Act, citizens who had probably never heard of the Ascherman Act prior to such commitment.

The results of this study are of a theoretical nature and are offered to help educate and acquaint the reader with the Ascherman Act and its workings. This legislative act could affect any citizen of Ohio. An awareness of its implications could prove beneficial notably to the persons having contact with the Act, such as judges, lawyers, doctors, parole officers and social workers, but also to any citizen who might someday come in contact with the law.

References

1. A Social - Legal History of Sexual Psychopath Laws - Beyond Sutherland; Clifford Schausen, Aldo Piperno; Program for the Study of Crime and Delinquency; February, 1973, pp. 1-2.
2. Ibidem, p. 3.
3. Unpublished Printings of J. G. Criss, Superintendent of State State Hospitals from 7/1/36 and 2/1/38.
4. Ohio Revised Code 2961.20.
5. Ibidem, 2961.25.
6. Ibidem, 2961.25.
7. Ibidem, 2961.25.
8. "See Appendix II for a copy of each crime as stated in the Revised Code."
9. Southwestern Ohio Seminar on the Ascherman Act, unpublished transcripts, May, 1973.
10. Ohio Revised Code 2961.24.
11. Ibidem, 5122.01.
12. The Mental Health Process; W. Miller and others, New York; The Foundation Press, 1971; p. 1522.
13. Southwestern Ohio Seminar on the Ascherman Act, unpublished transcripts, May, 1973.
14. Ohio Revised Code 2961.24 (A).
15. Ibidem, 5125.011.
16. Ibidem, 5122.01 (A).
17. Ibidem, 5122.01 (B).
18. Ibidem, 2961.24 (B).
19. A Social - Legal History of Sexual Psychopath Laws - Beyond Sutherland; Clifford Schausen, Aldo Piperno; Program for the Study of Crime and Delinquency; February, 1973, p. 6.
20. The Encyclopedia of Human Behavior: Psychology, Psychiatry, and Mental Health; Robert Goldenson; Volume Two, p. 1258, Doubleday and Company, Inc., Garden City, N.Y. 1970.

21. Ibidem, p. 86.
22. Ibidem, p. 1148.
23. Ibidem, p. 1157.
24. Ibidem, p. 1168.
25. Ohio Revised Code 2947.27.
26. Black's Law Dictionary; Revised Fourth ed., St. Paul, Minn., West Publishing Co., 1968, p. 1623.
27. "A Plan of Coverage for the Mentally Ill in National Health Insurance." The National Association for Mental Health, Inc., Bulletin #4, November, 1972.
28. Wyatt v. Stickney 344 F. Supp. 373 and 344 F. Supp. 387 (M.D. Ala. 1972).
29. Southwestern Ohio Seminar on the Ascherman Act, unpublished transcripts, May, 1973.
30. Quoted directly from the case record of an offender included in the sample.

Appendix I

Data Display By Court Judgement

Table VIII A

PSYCHOPATHIC OFFENDER  
(2947.24 B)

Age	25	24	31	28	21
Race	white	white	white	black	black
Sex	male	male	male	male	male
Marital Status	married	single	married twice	divorced	single
No. children	one	none	two	two	none
Yrs. Edu.	eight	nine	nine	eleven	ten
Usual occ.	sheet metal worker	grill cook	machinist	laborer	asphalt spreader
Referral County	Butler	Miami	Summit	Lucas	Cuyahoga
Admission Date	5/24/65 obs.	3/7/68 obs.	7/24/69 obs.	1/26/71 obs.	3/18/71
Crime	Obtaining exempted drugs	Giving false Info.	Issuing Cks w/o credit	Defrauding Garage Owner	Tampering w/motor car of another
Crime Code	37.9.16	2923.42	2911.111	2911.13	4549.06
Penalty	1-5 yrs	0-1 yr	1-4 yrs.	1-5 yrs	6 months
Diagnosis	Antisocial drug Psychoneurosis	Antisocial Reaction	Antisocial Reaction w/alcohol	Antisocial personality	Antisocial Personality ncrmal
I.Q.	115	89	96	122	
Date re:court	7/9/65	4/9/68	8/29/69	3/4/71	Not examined at Lima 3/18/71
Date Comm:Lima	8/18/65	5/2/68	1/21/70	4/9/71	
Ward Placements	3,18,20,2	3,C,18,20	3,C,D,15,18,21	3,C,20	C,B
Due Process	Plead guilty		counsel present	plead guilty	had counsel
Date Removed	7/28/66	2/5/70	3/2/71	4/24/72	7/8/71
Disposition	Return to court	Return to court	Return to court	Return to court	Return to court
Follow up Disp.	Return to court	trial visit	unknown	unknown	unknown
Rec. of Lima	Return to court	probation	probation	imprisonment	imprisonment
Final Notes Lima	Discharged w/o psychosis	Discharged	Discharged w/o psychosis	No longer needs Lima	Discharged w/o psychosis

Appendix I

Table VIII B

MENTALLY ILL OFFENDER  
(5122.01)

Age	21	21	32	42	42
Race	White	White	Black	White	Black
Sex	male	male	female	male	male
Marital Status	single	single	separated	divorced	separated
No. Children	none	none	two	two	none
Yrs. Edu	ten	twelve	five	eight	twelve
Usual Occ	none	plumber	clerk	unemployed	bookkeeper
Referral County	Montgomery	Miami	Franklin	Sandusky	Cuyahoga
Admission Date	3/22/67 obs.	9/30/68 obs.	2/6/70 20 dys obs.	7/7/70 obs.	1/14/72
Crime	Defrauding an innkeeper	Burning property to defraud	Possession of a firebomb	Uttering Obscene Language	Pocket Picking
Crime Code	2911.14	2907.03	2907.02	2905.39	2907.29
Penalty	1-5 yrs.	1-10 yrs.	1-5 yrs.	0-30 days	1-5 yrs.
Diagnosis	Schizoid personality	Schizoid personality sexual deviation	Schizophrenic reaction - paranoid normal	Alcoholism disorder with psychosis	Antisocial-Drug Addiction - exhibitionism
I.Q.	118	94	98	117	
Date re:court	5/16/67	11/7/68	3/17/70	9/11/70	not examined at Lima
Date Comm:Lima	5/19/67	12/20/68	4/9/70	10/7/70	1/14/72
Ward Placements	3,C,12,4,13,18	3,C,D,MH,D	23,22	3,18,19	C,20,A
Due Process		had counsel	plead guilty	no plea	had counsel
Date removed	10/7/68	1/7/70	7/23/71	10/27/71	still at Lima
Disposition	returned to court	returned to court	returned to court	returned to court	
Follow up Disp.	unknown	probation	unknown	unknown	
Rec. of Lima	imprisoned til can be paroled	probation	imprisoned	ret. to court	imprisoned
Final Notes Lima	discharged w/o psychosis	discharged w/o psychosis	discharged w/o psychosis	discharged w/o psychosis	none



Appendix I

Table VIII C

MENTALLY DEFICIENT OFFENDER  
(Retarded)  
(5125.011)

Age	30
Race	White
Sex	male
Marital Status	divorced
No. Children	1
Yrs. Edu	nine
Usual Occ	laborer
Referral County	Butler
Admission Date	11/12/68 obs.
Crime	Disturbing the peace
Crime Code	2923.41
Penalty	Fine only
Diagnosis	Schizophrenic reaction-paranoid
I.Q.	93
Date re:court	12/20/68
Date Comm:Lima	1/8/69
Ward Placements	16,7.18,12.15.10
Due Process	plead guilty
Date removed	Still at Lima
Disposition	
Follow up Disp.	
Rec. of Lima	outlook very remote
Final Notes Lima	must remain indefinitely in Lima

Appendix II

Each Crime Code As It Appears in The Ohio Revised Code\*

\*In the same order as listed  
in the operational definition  
for "unrelated" crimes.

Crime 1

§ 2907.03 Burning property to defraud (CC § 12433-1)

No person shall willfully and maliciously or with intent to defraud set fire to or burn or cause to be burned or aid or procure the burning of any barn, stable, or other building, the property of himself or of another, not a parcel of a dwelling house, or any shop, storehouse, warehouse, factory, mill, or other building, the property of himself or of another, or any church, meetinghouse, courthouse, workhouse, school, jail, or other public building, or any public bridge.

Whoever violates this section shall be imprisoned not less than one nor more than ten years.

HISTORY: CC § 12433-1; 113 v 341(512), § 2. Eff 10-1-55.

Comparative Legislation

Arson:

- Cal.—Decring, Penal Code, § 447a
Ill.—Smith-Hurd Rev Stat, ch 38, § 48 et seq
Ind.—Burns' Stat, 1912 Repl, § 10-301 et seq
Ky.—KRS 433.010
Mass.—Ann Laws, ch 26B, § 1
N.Y.—Consol Laws, Penal, § 221
Penn.—Pardon's Stat, tit 18, § 4905
Tenn.—Williams' Code, § 10893
W.Va.—Code 1919, § 5951(1)

Forms

Arson, Schneider No.113.

See case note 10 under RC § 2907.02.

Crime 2

§ 2907.29 Pocket-picking (CC § 12449)

No person shall, otherwise than by force and violence, or by putting in fear, steal and take from the person of another anything of value.

Whoever violates this section shall be imprisoned not less than one nor more than five years.

HISTORY: CC § 12449; RS § 6818; S&C 406; 33 v 33, § 15; 80 v 38. Eff 10-1-55.

Cross-References to Related Sections

Robbery, RC § 2901.12.

Comparative Legislation

Pocket-picking:

- Penn.—Pardon's Stat, tit 18, § 4821
Tenn.—Williams' Code, § 10927

Forms

Pocket-picking, Schneider No.154; Instructions to jury on pocket-picking, Fess § 116.1 et seq.

Research Aids

- Pocket picking:
Page: Misc. Off. § 15
O-Jur: Pocket Picking § 1 et seq
Am-Jur: Pocket Picking §§ 44, 90

INDEX TO CASE NOTES

- Error, 25 et seq
Evidence, 11 et seq
Refusal to charge, presumption of insufficient evidence, 11
Robbery or pocket-picking, how determined, 12
Nature of offense, 1 et seq
Attempt not crime, 6
Distinguished
Robbery, 3, 12
Force construed, 5
Force or putting in fear not required, 3, 4
Indictment for pocket-picking precludes finding on petit larceny, 1
Municipal corporation, pocket-picking as offense, 2
Verdict, 18 et seq
Offense against property, 19
Value, 18, 29

CASE NOTES

- Nature of offense
1. One indicted for pocket-picking cannot be convicted of petit larceny: State v. Whitten, 82 OS 174, 92 NE 79.
2. This section does not prevent a municipal corporation from making it an offense to attempt to pick pockets: Greenburg v. Cleveland, 98 OS 282, 120 NE 829.
3. The offense of pocket-picking is the same as that of robbery, except that it lacks the ingredient of force or violence or putting in fear, and a defendant indicted for robbery and convicted of pocket-picking cannot complain that he was not notified of the charge against him: Brown v. State, 2 CC(NS) 409, 15 CD 130 [affirmed by supreme court].
4. An indictment for pocket-picking does not include either assault and battery or assault: Whitten v. State, 12 CC(NS) 313, 21 CD 398 [reversed on other ground, State v. Whitten, 82 OS 174].

Crime 3

2911.111 Fraudulent check, draft or order on bank or depository.

(A) "Credit," as used in this section, means any contract or agreement with a bank or depository for the payment, when presented, of a check, draft, or order for the payment of money.

(B) No person, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of sixty dollars or less upon any bank or other depository if such person, at the time, has insufficient funds or credit with such bank or depository.

(C) No person, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of more than sixty dollars upon any bank or other depository if such person, at the time, has insufficient funds or credit with such bank or depository.

(D) As against the maker or drawer, the making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused by the drawee bank or depository, shall be prima facie evidence to intent to defraud and of knowledge of insufficient funds in, or credit with, such bank or depository.

(E) Whoever violates division (B) of this section shall be fined not less than fifty nor more than two hundred dollars or imprisoned not more than six months,

or both, for a first offense; for any subsequent offense such person shall be fined not less than fifty nor more than two hundred dollars or imprisoned for not less than one nor more than seven years, or both.

(F) Whoever violates division (C) of this section shall be fined not less than fifty nor more than two hundred dollars or imprisoned not less than one nor more than seven years, or both. (132 v S 97. Eff. 1-1-65)

\* Should this read "of".

CROSS REFERENCES

See Baldwin's Criminal Manual, Text 592(3); 55.21

Jur 2d: 7, Banks § 212

Annotations from former RC 1115.23

The making of an instrument purporting to be a check with intent to defraud, signed by the maker with his own name but drawn on a bank in which such maker has no "checking account" constitutes the false making of a check and is prohibited as defined by 2912.01. In re Clemons, 168 OS 83, 151 NE(2d) 553.

A postdated check is a check within the meaning of 1115.23, and the delivery of a postdated check by a drawer who at the time of delivery had never had any funds in the drawee bank and never made a deposit prior to the date of the check constitutes prima facie evidence of fraud. State v De Nicola, 163 OS 140.

The sufficiency of funds in respect to a postdated check is determinable at the time of presentation of the check for payment. State v De Nicola, 163 OS 140.

It is no defense to a charge of issuing checks with intent to defraud that the defendant was acting as an officer of a corporation. In re Hertz, 161 OS 70.

Prima facie evidence of intent to defraud is insufficient to convict. Koenig v State, 121 OS 147, 167 NE 385.

Making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused by the drawee, is prima facie evidence of the intent to defraud, and the mere fact that the check was given for a past consideration does not justify the court in taking the case from the jury upon the admission of that fact in the opening statement of counsel for the state. State v Lowenstein, 109 OS 293; 142 NE 297.

In the absence of any supporting evidence, the statutory presumption contained in 1115.23 will not sustain a conviction for contempt for violation of a child support order based on the issuance of a worthless check in payment thereof. Pennsylvania v Brown, 9 App(2d) 131 (1964).

The giving, in payment for property bought, of checks which are not honored by the drawee bank because of insufficient funds creates a presumption of liabilities for obtaining money or property by false representations or false pretenses, which presumption must be overcome by the drawer's evidence, to release the debt of such checks. Richland Farm Bureau v Durbin, 8 App(2d) 312 (1966).

"Intent to defraud" is an essential element of the crime of drawing checks with intent to defraud, and in a prosecution for that offense, where the evidence shows that the drawer of the check upon which the prosecution is based had theretofore drawn other checks with knowledge that they would clear the bank and deplete the account before the check in question could be presented for payment, an inference of "intent to defraud" arises, but a reasonable expectation on the part of the drawer that the bank will honor the checks when presented for payment constitutes a good defense. State v Stemen, 90 App 309, 106 NE(2d) 692.

A corporate officer owning all but two shares of the corporation's stock, who issues all orders relevant to management, and at all times is the directing head of the corporation, is guilty of issuing checks with intent to defraud where an employee, acting within the scope of his employment, and under the direction and with the permission of such officer, draws and issues checks in the corporate name with no reasonable expectation that such checks will be honored when presented for payment. Under such circumstances the law will pierce the corporate entity. State v Stemen, 90 App 309, 106 NE(2d) 692.

In prosecution for issuing check without sufficient funds, validity of check given for automobile was sufficiently established, where defendant received possession of car, notwithstanding failure to deliver bill of sale. Guttridge v State, 37 App 1, 173 NE 117.

In prosecution for issuing check without sufficient funds, evidence as to other checks issued by defendant was competent. Guttridge v State, 37 App 1, 173 NE 117.

Conviction for issuing check with insufficient funds or credit with intent to defraud, sustained as to one having no funds in or credit with bank, who funded another had and ordered to deposit money to his account; "credit" being defined by a contract with the bank. Juhay v State, 30 App 410, 143 NE 573.

No person shall, with intent to defraud, hire from the owner or keeper of a livery stable or garage, a horse, mare, stallion, filly, gelding, pony, mule, hack, carriage, buggy, surrey, wagon, sleigh, sled, bicycle, motor vehicle, or trailer. Whoever violates this section shall be fined not more than two hundred dollars or imprisoned in jail or a workhouse not more than three months or both, or in the penitentiary not less than one nor more than five years.

Forms: Defrauding innkeeper, Schneider No.288. Research Aids: Defrauding innkeepers, etc.: O-Jur: Innkeepers § 47. Am-Jur: Innkeepers §§ 151, 152.

INDEX TO CASE NOTES: Defrauding innkeepers: Defense, failure to post notices as to, 6. Fictitious registration, 7. Month-to-month basis, 3-5. Sufficiency of affidavit charging, 1, 2.

CASE NOTES: 1. Where affidavit charged plaintiff with defrauding lodging house owner, the fact that justice of peace, when making out commitment, used term "defraud an innkeeper," did not cure defect in affidavit: Kuhn v. McNeal, 41 App 455, 181 NE 153. 2. Affidavit charging that plaintiff, with intent to defraud, obtained accommodations at certain lodging house did not charge offense, and justice of peace was without authority to issue warrant based thereon: Kuhn v. McNeal, 41 App 455, 181 NE 153. 3. A guest occupying a room in a hotel under an agreement to pay a certain rate per month, who paid only part of his bill, is amenable to the provisions of this section: New Southern Hotel Co. v. Kingston, 23 OLA 115. 4. The mere fact that a guest contracted to take his room for a month and continued to hold it thereafter for three months, did not, in and of itself, indicate a purpose on the part of the hotel keeper nor the guest to relinquish any right which accrued by reason of the relationship of innkeeper and guest: New Southern Hotel Co. v. Kingston, 23 OLA 115. 5. In the absence of something in writing tending to charge the relationship of innkeeper and guest, or to delay the payment as provided by this section, it must be presumed that the usual relation attended, thereby warranting the hotel in holding the baggage of the guest upon which it has a lien under CC § 5954 (RC § 4721.04): New Southern Hotel Co. v. Kingston, 23 OLA 115. 6. Failure to post notices, as required by this section, is not a proper defense to a prosecution for a violation of the provisions of this section: 1931 OAG No.2951. 7. The giving of a false or fictitious address at the time of registration in a hotel is not enough to subject the person giving same to any penalty under the General Code; however, if it is combined with any of the elements of a fraudulent intent set out in this section or with the giving of a false, fictitious or assumed name provided for in CC § 813-1a (RC §§ 3731.17, 3731.99), then it may be subject to the respective penalties provided for in those sections: 1950 OAG No. 1980.

§ 2911.14 Defrauding innkeeper. (CC § 13131)

No person shall, with intent to defraud, obtain food, lodging, or other accommodations at a hotel, inn, boardinghouse or eating house or private room or ward of a hospital or sanitarium. Whoever violates this section shall be fined not more than two hundred dollars or imprisoned not more than three months, or both; or imprisoned not less than one nor more than five years. Obtaining such lodging, food, or other accommodation by false pretense, or by false or fictitious show of pretense of baggage or other property, or refusal or neglect to pay therefor on demand, or payment thereof with negotiable paper on which payment was refused, or absconding without paying or offering to pay therefor, or surreptitiously removing or attempting to remove baggage, is prima-facie evidence of such fraudulent intent. This section does not apply where there has been an agreement in writing for more than ten days' delay in such payment. The proprietor of such hotel, inn, boardinghouse, hospital, or sanitarium shall keep a copy of this section printed in distinct type posted conspicuously in the office, ladies' parlor or sitting room, washroom and five other conspicuous places therein or not less than ten such places in all.

HISTORY: CC § 13131; RS §§ 7076a, 7076b, 7076c; § 138; 91 v 20; 99 v 115, 116; 110 v 29. I.A. 10-1-55.

Cross-References to Related Sections: Innkeepers, RC § 4721.01 et seq.

Comparative Legislation

Guest defrauding innkeeper—penalty: Cal.—Deering, Penal Code, § 537. Ill.—Smith-Hurd Rev Stat, ch 38, §§ 300, 301. Ind.—Burns' Stat, 1919 Repl, § 37-201 et seq. Ky.—KRS 431.290. Mass.—Ann Laws, ch 140, § 12. N.Y.—Consol Laws, Penal § 606.

§ 2923.41 Disturbance of the peace.]

No person shall, after a request to desist, make, continue or cause to be made by the use of any horn, bell, radio, loud speaker, or by the operation of any instrument or device, any unreasonably loud, disturbing, and unnecessary noise or noises of such a character, intensity and

duration as to disturb the peace and quiet of the community or to be detrimental to the life and health of any individual, and no person shall willfully conduct himself in a noisy, boisterous or other disorderly manner by either words or acts which disturb the good order and quiet of the community. Any person so offending shall be fined for each offense not less than ten dollars nor more than fifty dollars.

HISTORY: 125 v 528. Eff 10-2-53.

Cross-References to Related Sections

Disorderly conduct and breach of the peace, RC § 3773.01 et seq.

§ 4549.06 Tampering with the motor vehicle of another. (CC § 12619-2)

No person shall: (A) Purposely and without authority from the owner, start the motor of any motor vehicle; (B) Maliciously and purposely shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle;

(C) Purposely cut, mark, scratch, or damage the chassis, running gear, body, sides, top, rol covering or upholstering of another person's motor vehicle;

(D) Purposely destroy any part of such vehicle with or by any liquid or other substance, or cut, mash, mark, or in any other way destroy or damage the cylinder, radiator, steering gear, fire extinguisher, fan, belt, valve, pipe, wire, cap, lamp, gas or oil tank, cup, signal device, clock, chain tool, coil, spring, speedometer, starter, battery, spark plug, brake, tool box, oiler, pump, swivel nut, casting, tire, rim, tube, box, basket, trunk carrier, rod, bolt, shield, fender, bracket, gaiter glass, hood, lock, cap, screw, carburetor, magnetic license number, electric bulb, or any device, emblem, monogram or other attachment, fastener or other appurtenance of a motor vehicle, without the permission of the owner thereof;

(E) Purposely drain or start the drainage any radiator or oil tank upon another person's motor vehicle;

(F) Purposely put any metallic or other substance or liquid, in the radiator, carburetor, tank, grease cup, oilers, lamps, or machinery of a motor vehicle, with the intent to injure or damage the same or impede the working of the machinery;

(G) Maliciously tighten or loosen any bracket, bolt, wire, screw, or other fastening on a motor vehicle;

(H) Purposely release the brake upon a standing motor vehicle, with the intent to injure said machine.

HISTORY: CC § 12619-2; 107 v 52 (325), I.A. 10-1-55. Penalty, RC § 4549.09(F).

Research Aids

What constitutes offense of "tampering" with "motor vehicle" or contents. 42 A.L.R.2d 621.

§ 3719.16 Sale of exempted drugs.

No person shall dispense or sell, under the exemptions of section 3719.15 of the Revised Code to any one person, or for the use of any one person or animal, any preparation included within such section, when he knows, or can by

reasonable diligence ascertain, that such dispensing or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed or sold, within any forty-eight consecutive hours, with more than two grains of opium, or more than one-half of a grain of morphine or any of its salts, or more than four grains of codeine or of any of its salts, or more than two grains of dihydrocodeine or any of its salts, or more than one-half grain of ethylmorphine or any of its salts, or will provide such person or the owner of such animal, within forty-eight consecutive hours, with more than one preparation exempted by the provisions of section 3719.15 of the Revised Code.

No person shall obtain or attempt to obtain, under the exemptions of section 3719.15 of the Revised Code, more than one preparation exempted by the provisions of that section within forty-eight consecutive hours.

The provisions of this section shall not apply to Class M narcotics as defined in section 3719.15 of the Revised Code.

HISTORY: CC § 12672-7; 116 v 491 (496), § 7; 126 v 178 (187); 127 v 290; 128 v 1041 (Eff 10-22-59); 129 v 1796. Eff 10-13-61.

For discussion, see Schneider TEXT §§ 35.105, 35.109.

Cross-References to Related Sections: Penalty, RC § 3719.99 (A), (N).

Forms

Schneider: Obtaining excessive exempted drugs. No.125.

Research Aids

O-Jur2d: Drugs § 16

CASE NOTES AND OAG

See case note 2 under RC § 3719.15.

1. Except as otherwise specifically provided in the uniform narcotic drug act, a physician, dentist or veterinarian may administer or dispense, and an apothecary may sell at retail the kind and quantity of narcotic drugs listed in paragraphs (1) and (2) of CC § 12672-7 [pars. (A) and (B) of RC § 3719.15] without complying with the general requirements of said act, providing such persons meet the conditions set forth in paragraphs (a) and (b) of said section [pars. (A) and (B) of RC § 3719.16]: 1912 OAG No. 491-4.

2. When a physician, dentist, or veterinarian administers or dispenses, or an apothecary sells narcotic drugs of a kind not listed in CC § 12672-7 (RC §§ 3719.15, 3719.16), or in excess of the quantity permitted in said section, such persons must comply with the general requirements of the uniform narcotic drug act: 1912 OAG No.491-4.

Crime 9

2923.42 Giving false information to officials.

No person shall knowingly give or assist in giving a false or fictitious call or report to the state highway patrol or to any police department, fire department, sheriff, constable, or other law enforcement officer, or to any person dispatching or operating an ambulance or other emergency vehicle with intent to mislead, misdirect, or improperly summon said officer or person.

No person shall knowingly give a false or fictitious call or report to school officials or other persons in charge of locations where groups of persons assemble when the nature of such false or fictitious call or report results in law enforcement action.

Whoever violates this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both. (129 v 376. Eff. 9-23-61. 129 v 552; 128 v 623)

CROSS REFERENCES

See Baldwin's Ohio School Law, Text 103.00, 121.15  
OJur 2d: 43, Police § 13; 49, Sheriffs, etc § 10

Crime 10

2907.021 Manufacture, distribution or possession of fire bombs.

No person shall possess the materials for the manufacture of fire bombs with the intention of using such materials for the manufacture of fire bombs.

No person shall manufacture, distribute, possess, or use fire bombs.

For purposes of this section, a "fire bomb" means a container containing gasoline, kerosene, fuel oil, or similar substance with a flash point of one hundred seventy degrees fahrenheit or less, having a wick or other device capable of igniting such liquid, but no device commercially manufactured and used for the purpose of illumination shall be deemed to be a fire bomb.

Nothing in this section shall prohibit the authorized manufacture, use, or possession of any material, substance, or device by a member of the armed forces of the United States, firemen, or law enforcement officers; nor does this section prohibit the manufacture, use, or possession of any material, substance, or device to be used solely for scientific research, educational purposes, or any lawful purpose.

Whoever violates this section shall be imprisoned not less than one nor more than five years.  
(1969 H 1. Eff. 3-18-69. 132 v H 179)

CROSS REFERENCES

See Baldwin's Criminal Manual, Form 7.021  
Automatic dismissal from state university upon conviction, readmission, 3545.23

Crime 11

2905.301 Obscene language.

No person eighteen years of age or over shall use obscene or licentious language in the presence or hearing of a female or a child under twelve years of age.

Whoever violates this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both. (130 v S 160. Eff. 10-1-63)

**END**