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LEGISLATIVE SOLUTIONS TO NARCOTIC AND DRUG ADDICTION

JOSEPH R. CORSO*

PERHAPS IN NO RECENT SESSION of the New York State Legislature has there been so much interest in the problem of narcotic and drug addiction.

This interest was heightened by a fresh realization of the growing menace of drug addiction, particularly among youths and adolescents. Newspapers throughout the state have reported on the growing incidence of narcotic experimentation—if not outright addiction—on the college campus, and authorities in suburban counties outside New York City have expressed increasing concern over the use of amphetamines and barbiturates—pep pills and goofballs—by high school students.

An awareness of this increasingly grave social question was first expressed in the closing moments of the 1965 session of the legislature, when by concurrent resolutions, the two houses created the Joint Legislative Committee on Narcotic and Drug Addiction.

Also the executive branch of the state government was not unmindful of the gravity of the situation. In the fall of 1965, Governor Nelson A. Rockefeller announced that he intended to press for remedial legislation in the 1966 session. Additionally, several senators and assemblymen disclosed their intention to deal with the problem through the medium of legislation. With all this legislative activity in the field of narcotic and drug addiction, it would appear helpful in a legal journal of this kind to discuss, evaluate and compare the various bills and measures submitted in Albany in 1966.

First, I would like to refer to the program proposed by Governor Rockefeller. In a special message to the legislature on Feb. 23, 1966, he declared that “the problem of addiction to narcotics is at

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the heart of the crime problem in New York State. Narcotic addicts are responsible for one-half the crimes committed in New York City alone—and their evil contagion is spreading into the suburbs.” The Governor cited statistics of the New York City Police Department which showed:

- a. a 75 per cent increase in the number of children under sixteen years of age taken into custody for criminal offenses who were admitted narcotic users;
- b. a 95 per cent increase in arrests for violation of the narcotics law by young people from sixteen to twenty years old; and
- c. a 49 per cent increase in arrests for murders by addicts.

In addition:

- a. 80 per cent of all women arrested for prostitution were narcotic addicts;
- b. 20 per cent of those arrested for felonies against property were narcotic addicts; and
- c. almost 50 per cent of all those arrested for serious misdemeanors and offenses were admitted narcotic users.

The Governor’s program contained four essential elements:

- (1) stiffer sentences for pushers;
- (2) compulsory treatment, rehabilitation and aftercare for addicts;
- (3) centralization of operating responsibility; and
- (4) full mobilization of resources.

The Joint Legislative Committee on Narcotic and Drug Addiction submitted its own proposals to the legislature on Feb. 3, 1966. The main features of the Committee bill were:

- (1) The establishment of a State Narcotic Control Commission within the Ex-

ecutive Department, consisting of a chairman and two other members who are not holders of any other state public office, with not more than two members belonging to the same political party. Each member of the Commission, including the chairman, would be appointed by the governor, by and with the advice and consent of the senate and would hold office until his successor is appointed.

(2) The transfer of all powers and duties of the Bureau of Narcotics of the State Department of Health to the proposed Commission. The bill would also repeal Section 3324 of the Public Health Law, which provides that certain medicinal preparations such as cough syrups may be dispensed without a prescription.

(3) A provision that the Commission formulate a comprehensive program of treatment, cure and rehabilitation leading to the resumption by the addict of his normal role in society.

(4) The granting to the Commission the power to request Congress to channel any federal aid to the state through the Commission, which would thereupon coordinate and supervise all such grants.

(5) The Commission would be empowered to initiate negotiations with the federal government for the use of discontinued facilities, such as Veterans Administration hospitals, for the treatment, cure and rehabilitation of the drug addict. The Commission would also be empowered to construct special hospital facilities for addicts and narcotic users.

(6) The Commission would be granted the power to select and acquire by purchase, condemnation, or other suitable means, sites for health camps for the study, care, cure, treatment and rehabili-

tation of those addicted to narcotic, depressant or stimulant drugs. Such health camps would provide comprehensive vocational training as well as an academic program, each leading to a high school equivalency diploma.

(7) Psychiatric guidance and care programs would be established.

(8) The Commission would be charged with the responsibility for the aftercare and supervision of drug addicts, such powers being transferred from the Department of Mental Hygiene.

(9) Each public and private non-profit organization in any way connected with narcotic and drug addiction could be accredited by the Commission upon proof that it had complied with minimum standards established by the Commission's rules and regulations.

(10) The Commission would further be empowered to prescribe care for barbiturate and other types of drug addicts. The bill defines a "drug addict" as a person who, at the time of examination, or at the time of arrest, is dependent upon any narcotic, depressant or stimulant drug. The term "drug addict" would not apply to any person who uses or receives any of these drugs pursuant to a physician's lawful prescription.

(11) The Commission would be given the power to establish a firmer control over the legal distribution of drugs. All prescriptions containing a narcotic or a derivative thereof as well as certain types of drugs and barbiturates, would be made out by a physician in triplicate on forms supplied by the Commission. However, pharmacists could, in good faith, sell or dispense narcotics not otherwise restricted to written prescriptions, on the oral or

written order of a physician.

At this point, it would seem in order to present a comparative analysis of the legislation proposed by the Joint Legislative Committee on Narcotic and Drug Addiction and the Governor's legislation.

The Committee bill created a Commission of three members within the Executive Department whereas the Governor's legislation established a five-man Commission within the structure of the Department of Mental Hygiene.

It remains to be determined whether the Governor's creation of a Commission within a state department complies with pending federal legislation of a "single state agency" for the administration of a plan for the cure, care and rehabilitation of the addict.

The Committee bill specified that an addict was one who "is dependent upon any narcotic, depressant or stimulant drug." The Governor's bill merely defines an addict as one who "is dependent upon a narcotic."

It has been estimated by law enforcement officials that fifty per cent of addicts today are dependent upon depressant or stimulant drugs. Probably most of the remaining fifty per cent graduated from depressant and stimulant drugs to a narcotic.

It appears to this writer that to exclude this type of person from a program of narcotic control is to possibly ignore a major portion of the problem. It is submitted that the criterion should be "a person addicted to use of drugs who has lost power of self-control with reference to his addiction."

Section 712 of the Committee bill more effectively controls distribution of federal

grants, since it authorizes the proposed Commission to act as the agency to funnel federal grants-in-aid to the respective operating agencies. This control is vitally needed since there is little knowledge as to how much or for what purpose federal aid will be extended. The Governor's legislation simply provides that the Commission, with the approval of the Director of the Budget, accept on behalf of the state any grants or gifts.

In like manner, it would seem that the Committee bill furnishes more adequate guidelines for a program of rehabilitation. The Committee bill specified that a hospital be devoted solely to research in the field. It also called for the establishment of health camps providing comprehensive vocational and academic training, leading to a high school equivalency diploma, and accompanied by psychiatric guidance. The Governor's legislation refers only to rehabilitation centers or other facilities of the Commission, and the continued use of state mental hospitals.

The Committee bill also took into account an effective and realistic program for control of the legal traffic in drugs. This was done by strengthening Articles 33 and 33(a) of the Public Health Law by (1) creating a triplicate system of prescription, and (2) in general, requiring that all medicinal preparations containing any narcotic must be dispensed only by prescription. Effective enforcement of legal distribution is a necessary companion to effective control of drug addiction. The Governor's legislation does not contain any similar provisions.

The Committee bill was also more specific regarding the procedure for the commitment of an adolescent user of

drugs with adequate safeguards, *e.g.*, the Committee bill provided that such commitment would be made upon petition to a court of record by a peace officer, relative, or physician. The bill also ordered that adolescent drug users be segregated from other addicts. The Governor's legislation does not distinguish between adolescent addicts and others, and it permits *any person* to petition a court for a commitment.

The Committee bill extended the provisions of the Metcalf-Volker bill, in that a friend, relative or other interested person, may petition a court for commitment of an addict.

The Governor's legislation provides for a civil commitment of up to thirty-six months. The procedure is initiated by an *ex parte* order, and a hearing is thereafter held for certification of a person. The Governor's legislation goes further than the Committee bill only in the area of the convicted addict. In such a case, if the conviction is for a misdemeanor or for prostitution, the court shall certify the person to the care of the Commission for thirty-six months. If convicted of a felony, the court may send the addict to the care of the Commission for a period of up to five years.

Four other bills dealing with the problem of drug addiction were submitted in the 1966 session of the legislature. They were sponsored by Senator Manfred Ohrenstein and Assemblyman Jerome Kretchmer.

The first would have amended the Mental Hygiene and the Public Health Laws, so as to authorize physicians to administer narcotics under the supervision of the Commissioner of Mental Hygiene.

This bill would have also amended Section 203 of the Mental Hygiene Law to provide that the Commissioner could, in conjunction with the various medical societies, certify "physicians competent to treat narcotic addicts."

The second Ohrenstein-Kretchmer bill would have amended the Mental Hygiene Law so as to finance community rehabilitation facilities "to the extent of the actual approved cost per patient as certified by the Department of Mental Hygiene."

The third proposal would also have amended the Mental Hygiene Law. This bill would have defined a narcotic addict as a person who was "in a state of periodic and chronic intoxication from the use of narcotic drugs" and who is "physiologically and physically dependent upon such drugs and has an overpowering compulsion to continue taking them."

The fourth bill would have established a state university center devoted entirely to a comprehensive attack on narcotic addiction. The proposed center would serve as an interdisciplinary training school offering degrees in psychiatry, psychology, nursing, social work and education. It would train personnel in the latest treatment, theories of treatment, research techniques and use of research findings; and concern itself with medical care, the psychology and sociology of addiction and related areas such as poverty, economics, biology and education. The center would also train specialists in community organization who would be made available to community groups for the purpose of implementing programs dealing with narcotic addiction. It would include as part of its equipment, facilities for a data processing and statistical center. The ex-

penses of the center would be paid from appropriations and available federal grants.

The Ohrenstein-Kretchmer bills, which were defeated when put to a floor vote in both houses, in effect represented an adaption of the British system of treating drug addiction. This method has not been successful in Great Britain and there are reports that the system will undergo examination and change.

Governor Rockefeller's own experts, after a survey of this system in Great Britain last fall, reported that there was no possibility of successfully adapting it to the needs of New York State. In addition, in a comprehensive report in 1956, the Committee of the Judiciary of the United States Senate had this to say about the British system:

The so-called clinic plan for legal distribution of narcotics is totally unworkable, completely contrary to accepted medical practice and theory, and would aggravate rather than solve the problem of drug addiction.

Under the provisions of the clinic plan, the drug addict would be given drugs free, or sold drugs at a minimum cost, for the continued support of his addiction. This would be without hospitalization or other confinement. Thus, not only would the drug addict have available his regular supply of drugs at the clinic, but he would have access to additional drugs on the illicit market.

Without absolute control of the patient and his complete isolation from clandestine sources of supply, there is no hope of cure. Ambulatory treatment is foreordained to failure as long as there are secret and illegal methods of obtaining the drug. Under the present conditions, it is believed it will be a very rare instance indeed when a patient is cured outside a hospital, or in the absence of equally well-

controlled conditions.

It is apparent that inherent in the plan for 'free drugs' is the idea that the federal government would be maintaining in society the agent of contagion—the drug addict himself.

Addicts who testified [before the committee] or who were interviewed, repeatedly emphasized that the only way to be cured of narcotic addiction is absolutely to forego the continued use of drugs. They even scoffed at the idea that the addict could be 'weaned away,' saying that 'it is a matter of the addict making up his mind, once and for all.'

In conclusion, the Committee report said:

We are opposed to all types of so-called ambulatory treatment. We believe that initial treatment must take place within a special institution, and that rehabilitation of a drug addict should not begin until he is off narcotic drugs and has undergone extensive physical and psychiatric treatment within an institution.

Despite all this official and medical evidence to the contrary, the New York Civil Liberties Union, at a hearing by the Legislative Committee on Narcotic and Drug Addiction in Albany on March 16, 1966, supported the Ohrenstein-Kretchmer bills. They endorsed:

(1) Promulgation of medical standards for administering narcotics in the treatment of addicts by the medical profession.

(2) Authorization to specially certified physicians to administer narcotics and thus medically treat addicts.

(3) Establishment of clinical facilities to implement and further these two proposals.

Another significant piece of legislation introduced at the current session of the legislature was a bill sponsored by Sena-

tor Norman Lent. This measure basically amends Sections 510 and 1192 of the Vehicle and Traffic Law to make it a misdemeanor for a person to operate a motorcycle or motor vehicle while the operator's ability is impaired by the use of narcotic or other addictive drugs.

In testimony before the Joint Legislative Committee on Narcotic and Drug Addiction, District Attorney William Cahn of Nassau County, a constituent of Senator Lent, announced his strong backing of the Senator's bill.

Subsequently, Senator Lent's bill was passed by both houses of the legislature and at this writing was awaiting action by the Governor.

Only recently, another noteworthy piece of legislation was introduced by Assembly Speaker Anthony J. Travia. This bill would outlaw the illegal traffic in the hallucinogenic drug LSD.

This bill was an outgrowth of a conference called by the District Attorney of Kings County, Aaron E. Koota. The conference was convened in response to widespread public shock and outrage over the murder of a woman by a man under the influence of LSD, and the hospitalization of a young child who had accidentally taken this terrifying drug. Speaker Travia's bill would seem assured of prompt and favorable action by both houses of the legislature.

Significantly, when Speaker Travia announced that he was submitting his "LSD bill," he indicated that the Joint Legislative Committee on Narcotic and Drug Addiction, which had been scheduled by legislative resolution to terminate its existence on March 31, 1966, would be given

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an extension to study this new and growing menace of hallucinogenic drugs. In its report of March 31, 1966, the Committee had requested such an extension of its life. In its request, the Committee noted that much investigation remained to be done in two main areas—education and penology. The Committee report indicated:

In the field of education alone, there are many provocative and far-reaching proposals that merit intensive investigation. The Committee believes that an attempt should be made to answer these significant questions:

- (1) Could a state-wide program in the schools, beginning on the junior high school level, of instruction against the evils and deleterious effects of experi-

has been informed by qualified authorities that, on the whole, the incarceration of an addict in a penal institution for a time rarely leads to a permanent cure. In fact, testimony at public hearings held by the Committee repeatedly brought out the fact that many addicts voluntarily institutionalize themselves—which, to them, is in effect a form of self-incarceration—to kick their habits during the commitment, and then return to the world of addiction but on a smaller, less expensive level of dosage.

The Committee strongly believes that these two areas—education and penology

mentation with, and addiction to, narcotics and drugs, produce a major breakthrough on the problem as a whole?

- (2) Could a detailed survey on selected college campuses throughout the state, of the growing fad of smoking marihuana and experimenting with LSD and hallucinogens, furnish the proper authorities with an insight into why supposedly intelligent young men and women, few if any of them underprivileged, are exposing themselves to these admittedly dangerous, addiction-inducing narcotics and drugs?

In the matter of the punitive approach to the addict, there are many facets of such treatment which are worthy of a fresh and exhaustive exploration by a joint legislative committee such as this.

In its study thus far, the Committee

—call for a continuing investigation, which, with the inquiry the Committee has already accomplished, will produce not only a rounded evaluation of the problem, but suggest additional areas for study and possible legislation.

This, then, in summary, is an account of the various pieces of legislation that have been considered at the 1966 session of the legislature. Also, an attempt has been made here to indicate what lies ahead in the field of legislation relating to the problem of narcotic and drug addiction.