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NARCOTICS LEGISLATION – A TOTAL APPROACH

IRVING LANG *

GOVERNOR NELSON ROCKEFELLER'S 1966 narcotics program, recently passed by overwhelming majorities in both houses of the state legislature, represents New York's first attempt to deal with its most pernicious criminal and social problem on a truly massive scale.

Despite the fact that the bill received massive bipartisan support (passing 59-3 in the senate and 151-7 in the assembly), a storm of controversy was fomented by the statute. A member of the assembly, opposed to the bill, conjured up images of concentration camps. The New York Civil Liberties Union proclaimed that the "narcotics war threatens liberties" and reflects a "prohibition mentality . . . the most serious attack on individual freedom now pending in the legislature." Promising a quick constitutional attack on the program, it asserted that the eighth amendment "protects the addict who is poised and ready to plunge the needle in his body." Ironically, these broadsides were aimed at a small portion of the legislation, the effect of which will be minimal in comparison with the other provisions of the statute.

The purpose of this article is twofold: 1) to explain what the bill actually provides, and 2) to discuss the legal justification for the most controversial section—the civil certification of the non-arrested addict.

Narcotic Addiction Control Commission

The act, which is actually an amendment to the 1962 Metcalf-Volker Bill (Article 9 of the Mental Hygiene Law), provides for the creation of a Narcotic Addiction Control Commission within the Department of Mental Hygiene. The Commission is to have broad powers encompassing the entire field of narcotic addiction. It will

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establish and operate rehabilitation centers and other facilities for the care, custody, treatment, and aftercare of narcotic addicts certified to its custody. It will establish, maintain, and operate medical examination facilities to determine whether an alleged narcotic addict is, in fact, addicted. (Under the terms of the bill an "addict" is defined as a person addicted to an opiate, *i.e.*, opium, morphine, heroin, or any synthetic drug of a similar nature.) In addition to the right to approve private and local facilities for the treatment of addicts, the Commission will have the power to assign and transfer addicts to facilities which it establishes, or to other state, local, federal and private agencies. It can conduct experimental programs involving the administration of addicting substances, and can give grants to and accept grants from private and governmental units. The Commission is also directed to conduct broad programs of public education, and with the advice of the New York State Council on Drug Addiction, which is continued in existence, to devise long range programs for the prevention and control of drug abuse.

Commitment of Arrested and Convicted Addicts

The provisions of the statute relating to arrested and convicted addicts constitute the heart of the program. In order to understand these sections, it is necessary to briefly outline both the prior law and the reasons for its failure.

Under the original Metcalf-Volker Bill, an arrested addict who was not otherwise ineligible (and a high percentage were ineligible as a matter of law) could apply

for civil commitment to the Mental Hygiene Department in lieu of prosecution. If accepted, the charges would be held in abeyance during his period of rehabilitation. Upon successful "graduation" from the program and after a lapse of three years, the charges would be dropped. If the addict "failed" he would be returned to the court for belated prosecution of the charge. If an "eligible" addict desired treatment, he had to surrender his right to bail as well as his right to a trial regarding his guilt or innocence. In point of fact, the vast majority of addicts who were eligible for the benefits of the program did not even apply for it, apparently preferring a prison term to the alternative of undergoing meaningful treatment.

The new statute mandates treatment for addicts. It provides that every person who is arrested and who is possibly addicted must undergo a medical examination to determine whether he is in fact addicted. Even if he is admitted to bail while the charges are pending, he must report for this examination. If he is convicted of a misdemeanor, and the medical report indicates that he is an addict, a hearing will be held to determine that fact. The court, after a finding of addiction, *must* commit the defendant to the custody of the Narcotic Addiction Control Commission for a period of three years from the date of sentence. However, if the Commission decides that the addict has been rehabilitated, it can discharge him at any earlier date.

Where an addict has been convicted of a felony, the court has the discretion of committing him to the custody of the Commission (here the term is five years),

or it can sentence the defendant to a penal institution. Addicts convicted of a crime punishable by death or life imprisonment are not eligible for this program.

The enactment further provides that with certain exceptions and approvals, an arrested addict, who concedes his addiction, can apply for civil certification to the care and custody of the Commission. If the application is granted, the criminal charges will be immediately dismissed, and he will be under the supervision of the Commission for three years unless discharged sooner as "rehabilitated."

The advantages of the new provisions are quite evident. First, the addict, if he is recognized as a sick person, cannot, like other sick persons, dictate his own treatment. Second, once the initial proceedings are terminated, the courts no longer have jurisdiction. Thus, addicts are no longer exposed to the unhealthy prospect of being returned to a court to be tried on a state charge. It should also be emphasized, that the program does not involve automatic "confinement" for three or five years. The addict is certified or sentenced to the custody of the Commission and it determines the course of treatment best suited to the needs of both the addict and the community. For example, the addict could be placed initially in a rehabilitation center, a hospital or a halfway house. It is also possible that the addict would be allowed to remain at home provided that he periodically report to an aftercare center in the community. Naturally, if he reverted to drug use, he could be institutionalized.

Indeed, this bold concept of flexible rehabilitation has ramifications far beyond

the area of drug addiction. This "treatment" philosophy has implications which may affect all penology, and which could result in major changes in the treatment of all convicted offenders.

Certification of the Non-Arrested Addict

As has been indicated, the section of the program most severely attacked has as its core the provisions permitting certification of the non-arrested addict to the custody of the Commission. To quote the latest N.Y.C. Bulletin: "Rockefeller's war calls for the compulsory civil certification and incarceration of addicts for up to three years." This is misleading and inaccurate. Actually, the section does little more than amend existing law. Presently a parent or next of kin can move for the certification of the addict. Under the new statute anyone can move for certification. However, there are many safeguards in this law and, contrary to popular belief, an addict cannot be "swept off the streets" without due process of law. The statute provides that a person desirous of having an addict certified must file a verified petition to a county or supreme court stating the facts which cause him to believe that someone is an addict. The court, before issuing an order that an alleged addict be medically examined must be satisfied that the petition is based on "reasonable grounds to believe that such person is a narcotic addict." If the medical examination indicates that the person is an addict, he has the right to a formal hearing. If he cannot afford counsel the addict will be assigned an attorney by the court. Even if the court affirms the incarceration, the addict then

has the right to demand a jury trial. The new law also provides that an addict committed on civil certification for a period of three years forfeits no rights thereby, and cannot be transferred to a correctional institution. Also, an addict who was already undergoing treatments under an authorized private or governmental program cannot be certified under this section.

Are these provisions constitutional? If the clear mandate of the Supreme Court of the United States is to be our guide then the answer is qualifiedly in the affirmative. It is true that the Supreme Court of the United States in *Robinson v. California*¹ stated that the Constitution of the United States is violated by making the mere status of addiction a crime. However, in that same opinion the Court held that the state had the power to regulate the administration, sale, and use of dangerous drugs:

Such regulation, it can be assumed, could take a variety of valid forms. A State might impose criminal sanctions, for example, against the unauthorized manufacture, prescription, sale, purchase, or possession of narcotics within its borders. In the interest of discouraging the violation of such laws, or in the interest of the general health or welfare of its in-

habitants, a State might establish a program of compulsory treatment for those addicted to narcotics. Such a program of treatment might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory treatment procedures.²

In fact the Court pointed out that

California appears to have established just such a program in §§ 5350-5361 of its Welfare and Institutions Code. The record contains no explanation of why the civil procedures authorized by this legislation were not utilized in the present case.³

The California civil commitment law, which is more "punitive" than the New York law, has been recently tested and upheld.

Last year less than one hundred addicts were civilly committed under the California law and there is no reason to believe that the number will be higher in New York in view of the cumbersome procedures involved and the vast number of addicts who will be committed under the penal sections.

Why then is such a provision necessary? I believe that Governor Rockefeller summed it up when he recently said, "Do we have to wait for an addict to mug someone before he can be treated?"

¹ 370 U.S. 660 (1962).

² *Id.* at 664-65. (Emphasis added.)

³ *Id.* at 665 n.7.

