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STATE OF NEW JERSEY

FIRST REPORT

TO THE

LEGISLATURE

(PURSUANT TO SCR 90 of 1974)

THE COMMISSION TO STUDY AND REVIEW THE PENALITIES IMPOSED UPON INDIVIDUALS CONVICTED OF USING CERTAIN SUBSTANCES SUBJECT TO THE PROVISIONS OF THE "NEW JERSEY CONTROLLED DANGEROUS SUBSTANCES ACT," P.L. 1970, c.226 (C. 24:21-1 et seq.) AND TO STUDY THE NATURE AND SCOPE OF DRUG TREATMENT PROGRAMS.

OCTOBER, 1974

LETTER OF TRANSMITTAL

OCTOBER, 1974

The Honorable, Members of the Senate
and General Assembly

Ladies and Gentlemen:

The Commission to study and review the penalty provisions of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.), and to study the nature and scope of the State's drug treatment programs, created pursuant to Senate Concurrent Resolution 90 of 1974, herewith respectfully submits its first report in compliance with the terms of the resolution.

(s)
ALEXANDER J. MENZA
CHAIRMAN

(s)
KITTY WILSON
VICE-CHAIRPERSON

(s)
WYNONA M. LIPMAN

(s)
GARRETT W. HAGEDORN

(s)
C. GUS RYS

(s)
MICHAEL F. ADUBATO

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COMMISSION TO STUDY AND REVIEW THE PENALTY PROVISIONS OF THE "NEW JERSEY CONTROLLED DANGEROUS SUBSTANCES ACT," P.L. 1970, c. 226 (C. 24:21-1 et seq.), AND TO STUDY THE NATURE AND SCOPE OF THE STATE'S DRUG TREATMENT PROGRAMS

MEMBERS

Senator Alexander J. Menza, Chairman
District 20 (Part of Union County)

Assemblywoman Betty Wilson, Vice-Chairperson
District 22 (Part of Union and Morris Counties)

Senator Wynona M. Lipman
District 29 (Part of Essex County)

Senator Garrett W. Hagedorn
District 40 (Part of Bergen County)

Assemblyman C. Gus Rys
District 40 (Part of Bergen County)

Assemblyman Michael F. Adubato
District 30 (Part of Hudson and Essex Counties)

Peter P. Guzzo
Secretary

Thomas Lescault
Research Consultant

Diana Johnston
Research Consultant

Christy Schmidt
Research Consultant

CHAPTER 1

INTRODUCTION

This Commission, commonly referred to as the "Drug Study Commission," was originally created pursuant to Assembly Concurrent Resolution 2001 of 1973* (filed May 7, 1973), with a broad authorization to study and review the penalties imposed upon individuals convicted of using certain substances currently subject to the provisions of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.).

Public hearings were held on April 24, May 11, and June 15 of 1973, and a number of Commission meetings were held prior to the expiration of the effectiveness of the concurrent resolution creating the Commission at the end of the Second Session of the 195th Legislature. The "Drug Study Commission" was reconstituted under Senate Concurrent Resolution 90 of 1974* (filed March 4, 1974), with the same broad authorization as provided in Assembly Concurrent Resolution 2001 of 1973;** in addition, the Commission was also charged to study the nature and scope of drug treatment programs. In the course of its work since its reconstitution, the Commission held public hearings on May 15 and July 2 of 1974, as well as a number of Commission meetings.

* See appendix to this chapter.

** Members of the 1973 Commission were: Senator Garrett W. Hagedorn; Senator Wynona M. Lipman; former Senator Jerome M. Epstein; former Assemblyman Peter J. Russo; Assemblyman James J. Florio; and Assemblyman (now Senator) Alexander J. Menza.

The Commission interpreted its mandate to include, among others, the following broad objectives:

1. To study the need for revising criminal penalties concerning the possession and/or use of marihuana and hashish (P.L. 1970, c. 226; C. 24:21-20a.(3) and b.).

2. To study criminal penalties concerning the possession and/or use of narcotic drugs (P.L. 1970, c. 226; C.24:21-20a.(1) and (2) and b.); i.e., to revise said penalties to provide for the diversion of possessors and/or users to community-based treatment programs, and to consider including weight or quantity thresholds for differentiating controlled dangerous substances offenses.

3. To study criminal penalties concerning the sale of controlled dangerous substances (P.L. 1970, c. 226; C. 24:21-19) with an emphasis on differentiating--for purposes of criminal penalties--drug-dependent pushers and non-drug-dependent pushers, and to consider including weight or quantity thresholds for differentiating controlled dangerous substances offenses.

4. To study criminal penalties for drug-dependent persons who are accused of "non-drug related crimes."

5. To study criminal penalties for illegal wholesale (non-drug-dependent) distributors of controlled dangerous substances.

6. To study the "impact" of the New York State Drug Law on the sale, use and/or possession of controlled dangerous substances in New Jersey.

7. To study the expungement law (P. L. 1970, c. 226; C.24:21-28) with regard to the age levels for eligibility provided for therein.

8. To study the conditional discharge law (P.L. 1970, c. 226; C. 24:21-27) concerning its applicability to first offenses only, the removal therefrom of offenses for the possession of marihuana and hashish (P.L. 1970, c. 226; C. 24:21-20a.(3)), and for the use or being under the influence of any controlled dangerous substances (P.L. 1970, c. 226; C. 24:21-20b.); and the inclusion therein of offenses for the unlawful manufacturing, distributing, or dispensing of controlled dangerous substances (P.L. 1970, c. 226; C. 24:21-19).

9. To redefine "narcotic drug" to omit therefrom "non-narcotic drugs"--as used in the "New Jersey Controlled Dangerous Substances Act" (P.L. 1970, c. 226; C. 24:21-2).

10. To study "constructive possession" charges regarding controlled dangerous substances offenses.

11. To evaluate the various forms of drug treatment programs, and study the need for "budgetary oversight of the Division of Narcotic and Drug Abuse Control."

12. To recommend other changes deemed necessary in the "New Jersey Controlled Dangerous Substances Act."

Because of the sundry objectives falling within the Commission's mandate, a decision was made to divide the Commission's study into a number of reports. This will allow the Commission to issue its recommendations as they are finalized instead of awaiting the conclusion of all studies being prepared by its staff. In this, the Commission's first report, a study of the marihuana problem, the intervention process, and the impact of stricter drug laws is presented. The Commission has listed--in Chapter V--what its future objectives are. Furthermore, the Commission hopes to provide in

the future the results of a drug use and abuse questionnaire submitted to the New Jersey Narcotic Enforcement Officers Association; the Administrative Office of the Courts; and County Prosecutors of New Jersey.

In arriving at its findings and recommendations the Commission was materially assisted by--and wishes to extend its thanks to--Peter P. Guzzo, a Research Associate in the Division of Legislative Information and Research, for serving as Secretary; and Thomas Lescault, Diana Johnston and Christy Schmidt, who served as Research Consultants.

The Commission also extends its gratitude to the following people who, among others, testified to the Commission at private or public hearings: Albert C. Wagner, former Director of the Division of Corrections and Parole, State Department of Institutions and Agencies; Robert B. Stites, former Director, Gerald M. McAteer, and David J. McLaury, of the Division of Narcotic and Drug Abuse Control, State Department of Health; David S. Baimes, of the Office of the Attorney General of the State of New Jersey; Karl Asch, Prosecutor for Union County; Donald W. Merkelbach, who heads up the heroin, hard narcotic strike forces in Boston, Buffalo, Hartford and Newark with the United States Department of Justice; Dr. Robert F. Hickey, former Project Director, Division of Drug Abuse and Assistant Professor of Preventive Medicine, College of Medicine and Dentistry of New Jersey; Michael R. Sonnenreich, Executive Director, National Commission on Marihuana and Drug Abuse; John Finlator, former Deputy Director of the United States Bureau of Narcotic and Dangerous Drugs; Detective Lieutenant Paul W. McKenna, former President of the New Jersey Narcotic Enforcement Officers Association; Dr.

Dorothy Wipple, pediatrician and author of Is The Grass Greener? Willis O. Thomas, Eastern Regional Director, National Council on Crime and Delinquency; and many others.

The Commission wishes to extend special thanks to Professor Jameson Doig of the Woodrow Wilson School of Public and International Affairs' Criminal Justice Workshop, and the following students of the workshop, for allowing the Commission to make use of their reports: John Heintz, author of The Addict and the Legal Process: Diversion to Community-Based Treatment (January, 1974); Kenneth Miller, author of The Effects of Stricter Laws and/or Law Enforcement on the Heroin Distribution System (January, 1974); and Thomas Lescault, author of The Impact of Stricter Drug Laws Upon The Criminal Justice System (March, 1974). Similarly, the Commission acknowledges its use of portions of the Report On The Controlled Dangerous Substances Act (1973), prepared by David S. Baime of the Office of the Attorney General of the State of New Jersey and of the Furor Created By Recent Marihuana Studies Questioned (1974), prepared by Dr. Thomas E. Bryant, President of the Drug Abuse Council.

Background

The creation of the Commission was motivated by the feeling of the Legislature that the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.), enacted in 1970, should be reviewed and, when appropriate, revised, to keep pace with current scientific and medical understanding, criminal justice studies, and the community's expectations--with a primary, but not exclusive, emphasis upon the criminal law perspective. In addition, section 44 of the "New Jersey Controlled Dangerous Substances Act" (P.L. 1970, c. 226; C. 24:21-44) provides that

> within 1 year after the date the Federal Commission on Marihuana and Drug Abuse submits its report to the President and the United States Congress, the Legislature shall conduct a comprehensive study and review of the penalties established in this act concerning offenses relating to the use and possession of marihuana.

The final report of the Federal Commission on Marihuana and Drug Abuse was issued in March of 1973 while this Commission was conducting its research.

The work of the Commission--and of its predecessor Commission created pursuant to Assembly Concurrent Resolution 2001 of 1973--was undertaken amidst a widespread acknowledgement of the effectiveness of the "New Jersey Controlled Dangerous Substances Act" as an enlightened approach to the drug problem in this State. The Commission premised its work on the feeling that while certain changes are needed, they can be accomplished through legislative action within the "New Jersey Controlled Dangerous Substances Act."

Procedure

The Commission was, from its inception, aware of and studied the plethora of material available on the causes and cures of the drug problem; scientific and medical reports on the effects and dangers, or lack thereof, of certain controlled dangerous substances on users; and whether existing maximum criminal penalties and fines are adequate to deter--or even if criminal penalties do deter--violators of the "New Jersey Controlled Dangerous Substances Act." Specifically, the Commission was oriented for this report towards determining: (1) the scientific and law enforcement basis for the proscription on the distribution, possession and use of

marihuana and hashish; (2) if drug dependency should be classified, both medically and legally, as a disease requiring treatment; and, (3) if the criminal justice system, while effectively utilized as a mechanism for detecting drug-dependent persons and securing their entry into treatment, should be minimally involved thereafter? Thus, the Commission worked on the premise that while its effort might not contribute new input to the ongoing study of the causes or cures of the drug problem in this State, it at least could propose--and, hopefully, rationalize--a redirection of State priorities with regard to coping with and alleviating the drug problem and its effect on drug-dependent persons, drug users, citizens, and the court and prison systems of this State.

Recommendations

The following recommendations--repeated and placed in the context of the Commission's findings in this report--have been adopted by the Commission:

A. For Chapter I:

1. RECOMMEND, that the penalties for the unlawful possession of marihuana or hashish, pursuant to P.L. 1970, c. 226, § 20 (C.24: 21-20 a. (3)), should be decriminalized in the following manner. The unlawful possession of 28 grams (1 ounce) or less of marihuana -- which includes any adulterants or dilutents thereof -- or 6 grams or less of hashish would be considered a nuisance offense, subject to the confiscation of the marihuana or hashish, and a $50.00 fine payable without a court appearance through a procedure similar to non-moving traffic violations. The unlawful possession

of less than 56 grams (2 ounces) and more than 28 grams (1 ounce) of marihuana, or the unlawful possession of less than 12 grams and more than 6 grams of hashish, would be considered a disorderly persons offense, subject to not more than 6 months imprisonment, a fine of not more than $500.00, or both. The unlawful possession of more than 56 grams of marihuana or more than 12 grams of hashish would be considered a misdemeanor, subject to not more than 3 years imprisonment, a fine of not more than $1,000.00, or both.

2. RECOMMEND, that the penalties for the unlawful manufacturing, distributing, or dispensing of marihuana or hashish, pursuant to P.L. 1970, c. 226, § 19 (C.24:21-19) should be amended in the following manner.

Any person who violates the provisions of P.L. 1970, c. 226, §§ 19 (C.24:21-19) with respect to 28 grams (1 ounce) or less of marihuana or 6 grams or less of hashish would be guilty of a misdemeanor and subject to not more than 3 years imprisonment, a fine of not more than $1,000.00, or both. Any person who violates the same provision with respect to more than 28 grams of marihuana or more than 6 grams of hashish would be guilty of a high misdemeanor and subject to not more than 5 years imprisonment, a fine of not more than $1,500.00, or both.

3. RECOMMEND, that the unlawful cultivation of any amount of marihuana or hashish would remain a disorderly persons offense pursuant to P.L. 1952, c. 106 (C.2A:170-25.1).

4. RECOMMEND, that if the above "decriminalization" proposal is enacted and signed into law, section 20b. of P.L. 1970, c. 226

(C.24:21-20b.) should be amended to exclude therefrom the "use" or "under the influence" of marihuana or hashish as a disorderly persons offense.

5. RECOMMEND, that P.L. 1970, C. 226, S. 2 (C24:21-2) should be amended so that the term "marihuana" be defined as "Genus Cannabis L" instead of the present definition of Cannabis sativa L.

The Commission believes that the present definition of "marihuana" promotes a conflict in the interpretation of the law. The divergence of opinion concerning the definition of "marihuana" has to do with whether or not the plant Cannabis is a monotypic genus. The term monotypic genus denotes a genus with one specific.

"Marihuana" is defined in P. L. 1970, C. 226, S. 2 (C24:21-2) as "Cannabis sativa L." This raises questions by defense counsels as to whether there are any other species besides Cannabis sativa L. in genus Cannabis. What are the differences between Cannabis sativa L., Cannabis indica, Cannabis ruderalis and Cannabis americana and how do you prove the specimen you examined is Cannabis sativa L.? Well known experts have recently testified that there are more than one species of marihuana. This question is a legitimate point of argument among botanists.

In a number of cases defense experts argued that there is more than one species of marihuana and that these species are not covered within the narrow scope of the statutes that define "marihuana" as "Cannabis sativa L."*

* United States v. Honeyman No. 71-1035 (N.D. Cal. 1972)

State of Wisconsin v. Johns No. 1-1-1467 (Milwaukee County Circuit Court, March 26, 1971)

State of New Jersey v. Gower and Robinson (Allentown Boro Municipal Court, February 28, 1974)

To avoid these problems during the judicial processing of a case, it is recommended that the New Jersey statute should be amended so that the term "marihuana" is defined as "Genus Cannabis L." instead of the presently used "Cannabis sativa L." This change will include all possible species of Cannabis under the term marihuana.

6. RECOMMEND, that the previous addition of the definition of hashish to the "New Jersey Controlled Dangerous Substances Act" (P. L. 1971, c. 367, S. 1; C. 24:21-2) necessitates the deletion of the phrase, "the resin extracted from any part of such plant," from the definition of marihuana (P. L. 1970, c. 226, S. 2; C. 24:21-2) -- which is the definition of hashish.

Overlapping definitions cause confusion since distinctions are presently made in the penalties imposed for possesion of marihuana and hashish based on the type and amount of the substances possessed (P. L. 1970, c. 226, S. 20; C. 24:21-20a. (3)).

7. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be amended to provide that within 3 years of the enactment of the decriminalization scheme for marihuana and hashish, the Legislature shall conduct a comprehensive study and review of the penalties established in the recommendation based on current scientific and medical understanding, criminal justice studies, and community expectations.

B. For Chapter II:

1. RECOMMEND, that a supplement to the "New Jersey Controlled Dangerous Substance Act" should be enacted to implement the diversionary treatment process recommended by the National Conference of

Commissioners on Uniform State Laws in its proposed "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 to provide that:

(A) The treatment process must be substituted, formally or informally, for the criminal process if a person charged with any offense -- whether previously convicted of any offense under the provisions of the "New Jersey Controlled Dangerous Substances Act" or any law of the United States, this State or of any other state, relating to controlled dangerous substances--under section 19 of P.L. 1970, c. 226 (C.24:21-19); section 20a. and b. of P.L. 1970, c. 226 (C. 24:21-20a. and b.); section 26 of P.L. 1970, c. 226 (C. 24:21-26); section 29 of P.L. 1970, c. 226 (C. 24:21-29); section 1 of P.L. 1966, c. 12 (C. 2A:96-5); P.L. 1952, c. 95 (C. 2A:108-9); section 1f. of P.L. 1962, c. 201 (C.2A:119-8.1); section 1 of P.L. 1955, c. 277 (C. 2A:170-77.3); section 3 of P.L. 1955, c. 277 (C.2A:170-77.5); and section 7 of P.L. 1966, c. 314 (C.2A:170-77.15), among other statutes, is diagnosed as drug-dependent and requests that these procedures be invoked. A defendant should not be denied treatment by being charged under a habitual criminal statute. This procedure would be initiated at the request of the defendant to the prosecutor who then must petition the court for commitment in lieu of prosecution. The court would hold a civil hearing to determine: (1) if the defendant is drug-dependent; (2) if he has cooperated with the preliminary screening and treatment program thus far; and (3) if adequate treatment is available. If the court decides in

favor of treatment, criminal charges are held in abeyance until dismissed or reinstated by the court, but for no longer than the lesser of 18 months or the maximum permissible period of incarceration for the offense charged. If the defendant fails to cooperate with the treatment program, he is returned to the court for a hearing and is scheduled for trial if the court so determines. If a defendant completes treatment, charges may be dismissed by court order and the record expunged.

(B) If a drug-dependent person is charged with a non-violent crime, e.g., petty property offenses, and so requests of the prosecutor, the treatment process may be substituted for the criminal process in one of two ways: (1) by treatment in lieu of prosecution. This provides for an informal process whereby the prosecutor may withdraw or hold the charges in abeyance and so notifies the court. The charges are automatically dismissed after expiration of the lesser of 180 days or the maximum permissible period of incarceration, and expungement is mandatory; or (2) commitment in lieu of prosecution. This provides for a formal process whereby the defendant requests treatment, the prosecutor peititions the court and the court holds a civil hearing and orders commitment. The criminal charges are held in abeyance until either dismissed or reinstated by the court but no longer than the lesser of 18 months or the maximum permissible sentence for the offense charged; expungement is mandatory.

(C) If the prosecutor elects not to use the diversion procedure and the defendant is found guilty or pleads guilty and he is drug-dependent, the defendant may move the court to order civil commitment in lieu of an entry of judgment. Again, the time period is the lesser of 18 months or the maximum permissible period of incarceration for the offense charged. If the defendant fails in treatment, the court may enter judgment. Expungement is at the discretion of the court, except as provided for in section 28 of P.L. 1970, c. 226 (C. 24:21-28).

(D) Substitution of the treatment process for the criminal process should not be available to persons who are drug-dependent and charged with, or found guilty of, violent crimes, e.g., murder, forcible rape, kidnapping, voluntary manslaughter, etc., but participation in a treatment program may be made a condition of probation or, if the person is sentenced, treatment must be provided in the correctional institution.

(E) The defendant who has been convicted of a non-violent crime may petition the court to defer sentencing or to sentence him to a term of probation, on condition that he participate in a treatment program. Expungement would be at the discretion of the court, except as provided for in section 28 of P.L. 1970, c. 226 (C. 24:21-28).

Distinctions, therefore, should be made regarding the relationship between treatment and the criminal process, not regarding the availability of treatment.

Furthermore, the Commission is aware that such a treatment process may require additional funds; however, under

the provisions of the "Uniform Drug Dependant Treatment and Rehabilitation Act" of 1973, whether treatment is available is a State-specific determination involving such factors as the extent to which the treatment program is funded and the physical availability of adequate facilities and trained personnel for treating a particular type of drug dependence. None of the judgments pertain to a specific drug-dependent person; whether adequate treatment is available for a person diagnosed as drug-dependent is a judgment made by a court on the basis of recommendations by treatment personnel.

2. RECOMMEND, that the treatment program provided for in P.L. 1970, c. 334 (C.26:2G-21 et seq.) should be supplemented to include all provisions of the "Uniform Drug Dependenct Treatment and Rehabilitation Act" of 1973. These include:

(A) Mandating that any person, whether an adult or minor, who needs emergency services as a result of using a controlled dangerous substance, or who desires preventive services or drug dependence treatment, can apply directly to a treatment facility for either emergency or preventive services or drug dependence treatment. Minors should be included to avoid any implication that either admission, diagnosis or treatment requires parental consent. Minors who seek assistance, whether voluntarily or under commitment, are often reluctant to have their drug usage known to their parents, and the possibility of such notification may in fact deter them from seeking treatment. This is especially true of runaways. A provision for treating

minors would be superceded by the Federal Regulations concerning methadone, however, which require that any person under 18 years of age must have written parental consent before methadone can be administered.

(B) The consensual nature of both the voluntary program and the commitment program requires that notice be given to an applicant that he need not submit to medical examination and diagnosis or provide a complete personal history unless he chooses to do so; however, he should be informed that refusal to comply with the conditions of diagnosis and treatment vitiates his opportunity to participate in the program. Should the applicant consent to examination, he may be required to submit to reasonable chemical surveillance procedures, such as urinalysis or other medically reliable means of detecting the presence of controlled dangerous substances in the body. Persons who are diagnosed but not found to be drug-dependent must be referred to other public or private agencies for appropriate assistance.

Furthermore, a voluntary entrant should not become an involuntary patient. But, in recognition of the fact that the efficacy of treatment depends on patient cooperation, "reasonable conditions" for each type of treatment shall be established. Also, a voluntary patient's participation can be terminated for repeated failure to cooperate with the treatment program.

Furthermore, patients should be required to contribute toward the cost of services rendered to the extent that they are financially able to do so, but contributions are not required

by the parent or legal guardian of a minor patient. For many youths, the desire for confidential treatment extends even to keeping the matter from their parents. Requiring parental contribution toward the cost of treatment would require notification and would therefore frustrate the policy encouraging voluntary entry by drug-troubled youths. At the same time, however, financial information from all patients, including minors, should be obtained as part of the treatment record.

(C) The rights and protection afforded a person in treatment should be mandated, such as: (1) the person does not lose any civil rights or liberties as a result of being treated; (2) he may not be a subject for experimental research or treatment without expressed and informed consent; (3) he may not be administered any chemical or maintenance treatment without expressed and informed consent, except in an emergency; (4) his mail may not be censored; and (5) records of private physicians shall remain confidential regarding a person's drug problem, among other rights and protections.

3. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be supplemented to implement those provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 applicable to the following persons: (1) persons in police custody for purposes of being charged with a crime who need emergency treatment as a result of drug usage or addiction. In effect, this provision begins the formal intervention pro-

cess described in Recommendation 1. It is designed to discharge the State's and municipality's obligation to treat persons in custody who need such treatment, and it is the defendant's first contact with treatment personnel; (2) persons in police custody or who have come to the attention of the police, their families, and/or others who are in need of short-term involuntary emergency treatment because they are incapacitated by a controlled dangerous substance. Such persons shall be civilly committed after a civil hearing, where they are represented by counsel and have a private physician at their disposal, for no longer than 15 days after the date of commitment. This provision, in light of current drug abuse patterns, appears warranted and of value. It is expected that such a provision would not be used frequently and could be invoked only after a civil hearing in which the court must find by clear and convincing evidence that the person is incapacitated and needs such treatment (refer to proposed amendment of definition section in Recommendation 5 regarding "persons incapacitated by a controlled dangerous substance"); (3) persons in police custody, who, after screening and/or diagnosis of drug dependency, may ask the court that either in lieu of bail or as a condition of release or bail, they be referred to a treatment facility for complete diagnosis and treatment. As stated above, this procedure is designed to secure medical diagnosis and initiate treatment as soon as possible after a defendant is taken into custody for

the purpose of being charged with a crime. The diversionary process outlined in Recommendation 1 is thus begun at an early stage. To operate effectively, criminal justice personnel must be reasonably certain that the defendant will appear for further proceedings; thus, a secure treatment facility is provided for, if needed, in individual cases. It also means that treatment and criminal justice personnel must cooperate.

In addition, the provision mandates that any person in police custody is entitled to receive treatment for his drug problem. In many counties this is no problem, but some counties offer no treatment or inappropriate treatment, and treatment in State penal institutions is often not available or, again, medically inappropriate; and (4) persons in police custody who, at any time before trial, state that they are drug-dependent or appear to be so to the police. Such persons shall be screened for drug dependency and shall be referred after screening, upon their request, for diagnosis and treatment. In addition, any person who is diagnosed as drug-dependent shall be notified of his right to request treatment.

4. RECOMMEND, that a screening agency should be established as part of the network of facilities operated by the State Division of Narcotic and Drug Abuse Control. It should be independent of the individual treatment agencies operated by the Division and of the criminal justice system. The establishment of such an independent system might prove costly in certain counties should

a new system be needed. In this case, the Division should make use of all available resources to insure adequate screening. "Screening" is to be conducted by trained medical personnel, social service staff and para-professionals to (1) determine if the defendant is drug-dependent; (2) obtain a complete social and legal history; and (3) recommend an appropriate treatment plan. It is necessary for the effectiveness of the program that the screening agency work closely with the treatment agency and the criminal justice system.

5. RECOMMEND, that if Recommendation 1 is adopted, section 2 of P.L. 1970, c. 226 (C. 24:21-2) should be amended to include the following definitions descriptive of the diversionary treatment program described in Recommendation 1:

(a) "Commitment" means the relationship established by a court order that places a drug-dependent person or person incapacitated by a controlled dangerous substance in the custody of the [appropriate person or agency] for purposes of treatment under this Act.

(b) "Court" means [insert appropriate court or courts].

(c) "Dismiss" or "dismissal" means the termination of a criminal action with prejudice to its reinstitution by the state.

(d) "Intermediate services" means treatment services for drug dependence for a part-time resident patient in a treatment facility.

(e) "Nearest relative" means, in the order or priority stated, a person's legal guardian, spouse, natural or adopted adult child, parent, adult sibling, or any other person with whom the person resides.

(f) "Outpatient services" means treatment services for drug dependence for a patient who is not a resident of a treatment facility.

(g) "Persons incapacitated by a controlled dangerous substance" means a person who, as a result of the effects of one or more controlled dangerous substances, needs treatment and either is unconscious or his judgment is so impaired that he is incapable of making a rational decision with respect to his need for treatment.

(h) "Police" means [law enforcement officers] authorized by law to arrest a person without a warrant for the commission of a criminal offense.

(i) "Private facility" means a facility providing treatment services that is not operated by the federal, State, or local government, whether or not it receives public funds or operates for profit.

(j) "Public facility" means a facility providing treatment services that is operated by the federal, State, or local government.

(k) "Residential services" means treatment services for drug dependence for a full-time resident patient in a treatment facility.

(l) "Treatment" means (1) emergency services for a drug-dependent person, a person incapacitated by a controlled dangerous substance, or a person under the influence of a controlled dangerous substance; (2) the full range of residential, intermediate, and outpatient services for drug-dependent persons designed to aid them

to gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community; and (3) community-based prevention services designed to reduce the likelihood of drug dependence. Treatment includes but is not limited to diagnostic evaluation; medical, psychiatric, psychological, and social services; drug maintenance services; vocational rehabilitation, job training, and career counseling; educational and informational guidance; family counseling; and recreational services.

(m) "Treatment facility" means a narcotic and drug abuse treatment center as defined in section 2 of P.L. 1970, c. 334 (C. 26:2G-22).

6. RECOMMEND, that various other provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 be adopted for inclusion within the "New Jersey Controlled Dangerous Substances Act." These include appropriate services for the prevention and treatment of drug dependency among State and local employees as well as encouraging private industry to develop treatment services within the State; and non-discriminatory admission of drug users and drug-dependent persons to private and public hospitals and to private and public mental institutions. Another provision protects the drug-dependent person by providing for the termination of commitment orders upon a civil hearing and the confidentiality of records and a defendant's testimony in civil hearings.

7. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be supplemented to encompass the provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 applicable to persons not involved formally in the criminal process but who come to the attention of families, the police or public health officials. These provide for non-criminal responses for persons under the influence of a controlled dangerous substance who are incapacitated and need emergency treatment. This treatment may last no longer than 48 hours without the person's consent unless further commitment is authorized by the court with appropriate safeguards. The police may be informed of the person's incapacity and take him to a treatment facility--but the taking is not to be an arrest.

8. RECOMMEND, that the Conditional Discharge Statute of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c.226 (C.24:21-27) should be amended so that its provisions apply to that class of defendants described as drug users who are not yet, or may never be, drug-dependent, and that second or subsequent offenders -- rather than only first offenders -- be eligible for treatment through conditional discharge, which should be mandated. Supervisory treatment should not exceed one year or the maximum period of confinement for the offense with which the individual is charged -- if it is less than one year. It is further recommended that the term "supervisory treatment," as contained in section 27, be amended to read "appropriate

supervision," which will allow the court greater flexibility in determining the proper course of action for each individual. Defendants eligible for conditional discharge should also be subject to screening by the screening agency established in Recommendation 4, so that the court will have a professional and reliable basis on which to make its decision.

9. RECOMMEND, that drug users charged with crimes other than those outlined in Recommendation 8 should be eligible for diversion under Court Rule 3:28. In order to make this provision more widely available, it is further recommended that programs certified by the Division of Narcotic and Drug Abuse Control be approved for operation under the Court Rule 3:28.

10. RECOMMEND, that if the recommendations contained in this chapter are enacted and signed into law a provision should be contained therein to require (1) ongoing research and evaluation as to the effectiveness of the diversionary program and (2) that the Legislature review and study the program within 3 years of its creation to determine if legislative revisions are needed.

C. For Chapter III:

1. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" be retained as a more rational and realistic approach to deal with the drug problem, but should be revised--as recommended elsewhere in this report--to keep pace with current scientific and medical understanding, criminal justice studies, and the community's expectations.

APPENDIX

(CHAPTER I)

Filed May 7, 1973

ASSEMBLY CONCURRENT RESOLUTION No. 2001

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1973 SESSION

By Assemblymen MENZA, J. J. HORN, RUSSO and DE KORTE

A CONCURRENT RESOLUTION creating a commission to study and review the penalties currently imposed upon individuals convicted of using certain substances currently subject to the provisions of the "New Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.).

WHEREAS, Serious questions are being raised about the appropriateness and effectiveness of fining and imprisoning users of certain controlled dangerous substances; and

WHEREAS, Rehabilitation of the unfortunate users of controlled dangerous substances, rather than punishment, should be New Jersey's guiding principle in her efforts to cope with the burgeoning drug crisis; and

WHEREAS, New Jersey's statutes still provide for the fining and imprisoning of users of controlled dangerous substances; now, therefore

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. There is hereby created a commission to consist of six members, three to be appointed from the membership of the Senate by the President thereof, no more than two of whom shall be of the same political party and three to be appointed from the membership of the General Assembly by the Speaker thereof, no more than two of whom shall be of the same political party, who shall serve without compensation. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the commission.

3. It shall be the duty of said commission to study and review the penalties currently imposed upon individuals convicted of using certain substances currently subject to the provisions of the "New Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.). The commission shall also study the feasibility and advisability of changing the present emphasis in New Jersey's laws from one of punishment to one of rehabilitation.

4. The commission shall be entitled to call to its assistance and avail itself of the services of any head of any department of the State of New Jersey, and of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

5. The commission may meet and hold hearings at such place or places as it shall designate during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

Filed March 4, 1974

SENATE CONCURRENT RESOLUTION No. 90

STATE OF NEW JERSEY

INTRODUCED JANUARY 28, 1974

By Senators MENZA and LIPMAN

Referred to Committee on Institutions, Health and Welfare

A SENATE CONCURRENT RESOLUTION reconstituting the commission to study and review the penalties imposed upon individuals convicted of using certain substances subject to the provisions of the "New Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.) and to study the nature and scope of drug treatment programs.

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. The commission to study and review the penalty provisions of the "New Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.) and to study the nature and scope of the State's drug treatment programs, created by Assembly Concurrent Resolution No. 2001 of 1973, is hereby reconstituted and continued with the same membership, powers and duties as heretofore provided.

2. Any vacancy in the membership of the commission shall be filled in the same manner provided for the original appointment.

STATEMENT

The six-member legislative commission authorized in 1973 to study and review the State's drug law penalties and treatment program began its work last spring. Three public hearings were conducted and the commission received substantial recommendations concerning penalty and treatment aspects of drug control from national, State and local law enforcement officers, and from public and private agencies concerned with drug treatment and with prevention of drug abuse.

Because of the range and complexity of the commission's charge, there is a need to reconstitute the commission so that it may pursue its examination of the penalty and treatment provisions in our law.

Several recent developments support this request to continue the commission, notably the major drug law revision which went into effect in New York State on September 1, 1973. The new law includes several mandatory criminal sanctions intended to deter drug use and drug sales. The commission would evaluate its recommendations in light of the developments in New York. Other recent matters for review by the commission include the Drug Abuse Treatment Information Project report released on January 16, 1974, which consists of a study of 19 methadone and therapeutic drug free treatment programs funded by the State Law Enforcement Planning Agency. Review of this study would be part of the commission's recommendations on changes in drug treatment program and policy. The commission will also examine the Comprehensive Drug Abuse Prevention Plan released recently by the Division of Narcotic and Drug Abuse Control and continue its analysis of proposals made by law enforcement and correction officials to divert more drug users from the prisons.

CHAPTER II

AN ANALYSIS OF THE MARIHUANA PROBLEM

Introduction

Marihuana, the popular term for the mixture of leaves, stems and resin of the common male and female hemp plant, Cannabis Sativa L., has been used for recreational purposes in the United States for more than fifty years. In 1937, marihuana was classified as a narcotic substance and prohibited in this country. Since marihuana at that time was indigenous to certain minority groups, the general public was not concerned with the classification and criminalization of the cannabis plant.

The past decade has evidenced an unprecedented increase in the use of marihuana which has generated widespread interest and concern among the American populace. Federal and state marihuana statutes prescribed severe penalties but failed to deter the incidence of marihuana use. New Jersey was no exception. Thousands of New Jersey residents, primarily young people, were arrested, convicted and imprisoned for marihuana violations under the "Uniform Narcotic Drug Law" (R.S. 24:18-1 to 24:18-49). Conviction of possessing any quantity of marihuana subjected the offender to a term of imprisonment ranging from a minimum period of two years to a maximum period of fifteen years. Yet, the tide of marihuana use had continued to rise unabated.

In 1970, the New Jersey Legislature became increasingly aware that the "Uniform Narcotic Drug Law" was not serving as an effective deterrent to the use of marihuana and that thousands of otherwise law abiding citizens were being imprisoned due to the

absence of judicial discretionary powers and the means to sentence in accordance with the merits of each case. Furthermore, medical studies unequivically concluded that marihuana had been erroneously classified as a narcotic substance, and medical evidence was unable to substantiate several of the myriad allegations that marihuana was in fact physiologically or psychologically harmful.

In order to alleviate some of the social problems emanating from the proscription of marihuana and to implement a more equitable and rational marihuana policy in view of the medical knowledge available, the Legislature enacted a new marihuana statute as part of the "New Jersey Controlled Dangerous Substance Act." Pursuant to P.L. 1970, c. 226 (C. 24:21-2) marihuana was deleted from the category of narcotic drugs, and marihuana and hashish, a concentrative cannabis substance, were separately defined. Additionally, the penalty for possession of marihuana and hashish was reduced (P.L. 1970, c. 226; C. 24:21-20a.(3)). Both substances were classified as Schedule I drugs, and persons convicted of possession of more than 25 grams of marihuana or more than 5 grams of hashish were subject to imprisonment for a maximum of 5 years and/or a fine of up to $15,000. More importantly, possession of 25 grams or less of marihuana and 5 grams or less of hashish was defined as a disorderly persons offense with the maximum penalty being 6 months imprisonment and/or a fine of up to $500. The reduction in the criminal penalties for the unlawful possession of marihuana and hashish in quantities of 25 grams or less and 5 grams or less, respectively, was founded on the premise that such quantities were intended for personal consumption rather than for

pecuniary gain. Although the Legislature did not condone the personal consumption of marihuana and hashish, it contended that possessors and users of marihuana had a low degree of moral culpability and should be subjected to a criminal penalty which correlates to that level of culpability. The Legislature asserted that individuals in possession of more than 25 grams of marihuana and more than 5 grams of hashish were probably intending to distribute the substances for pecuniary profit. These individuals, according to the Legislature, had a high degree of moral culpability and therefore should be subject to a more severe penalty than the mere possessor. More importantly, the "New Jersey Controlled Dangerous Substance Act" provided the Courts with the discretionary powers and the judicial means to sentence in accordance with the merits of each case.

Three years after the enactment of the "New Jersey Controlled Dangerous Substance Act," the "Drug Study Commission" has been authorized to re-evaluate the marihuana laws within the "New Jersey Controlled Dangerous Substance Act" to determine the efficacy of the laws in view of current scientific and medical understanding, criminal justice studies, and the community's expectations and public sentiment regarding marihuana.

This chapter succinctly reports on the material and evidence examined by the Commission and upon which it has relied in making its recommendations concerning a revision of the existing marihuana laws in this State. The Chapter is divided into five principal areas. The first section provides a historical perspective on marihuana use in the United States.

The second part reviews the most recent and comprehensive national and state marihuana studies. The last three sections outline the testimony presented before the Commission during five public hearings, states the conclusions of the Commission and presents its recommendations.

History

Cannabis has been used for centuries in the Far and Middle East for religious, medical and recreational purposes.[1] Marihuana was introduced into North America by the Jamestown settlers in 1611. The Virginia colonists cultivated the hemp plant for its fibrous content.[2] From the Colonial Period until the Civil War, marihuana was a major cash crop in the United States and was cultivated in the majority of southern states, Nebraska and New York.[3]

In 1832, the medical properties of marihuana were recognized in the United States. Physicians administered cannabis preparations as a central nervous system relaxer.[4] In 1860, the Committee on Cannabis Indica of the Ohio State Medical Society reported success in treating pain, childbirth and psychosis with marihuana.[5] Other studies revealed that cannabis preparations were also prescribed for the relief of such other ailments as migraine headaches, poor appetites and chronic cough.[6] As with the opiates during this period, there were no restrictions imposed on the distribution of marihuana. The drug was legally available at any apothecary shop or grocery store.

Two major factors led to the decline of hemp cultivation after the Civil War. The competition from cheap imported hemp made the domestic cultivation of the plant unprofitable. Furthermore, the medical demand for marihuana diminished. Cannabis was not water soluble, thus making it impossible to dilute the substance for the purpose of injection.[7] Since the hypodermic syringe became the popular means of administering drugs during and after the Civil War, marihuana preparations were replaced by opiates which could be administered intravenously.

It should not be inferred, however, that hemp cultivation was completely abandoned in the United States after 1865. As late as 1937, the commercial crop was estimated in this country at 10,000 acres.[8] The primary reasons for the continuation of hemp cultivation were the demand for marihuana seeds from the bird seed industry and for marihuana from the medical profession which still prescribed the drug for minor ailments.[9]

The recreational use of marihuana during the nineteenth century was limited to a small number of writers and artists. American writers, inspired by such European artists as Baudelaire and Gautier with hashish, started writing about the hallucinogenic properties of cannabis.[10] The most noted of these American authors were Bayard Taylor, who wrote an account in 1885 about his personal experiences smoking hashish in Damascus, and Arthur Ludlow, who published a similar study entitled the Hashish Eater in 1857.

With the exception of these writers, the recreational use of marihuana was practically negligible. There were no newspaper and magazine articles or medical studies published during the nineteenth century concerning the non-medical use of marihuana.

In 1910, however, marihuana use appeared in southern port cities, such as New Orleans, and in the majority of south-western border states. The influx of Mexican immigrants entering the United States at the turn of the century appears to have been the principle reason for the emergence of recreational marihuana use.[11] Marihuana use had been a popular Latin American social custom for centuries and,naturally,the practice accompanied the Mexican itinerant laborers to the United States. The indigent Mexican immigrant introduced marihuana to other lower social-economic groups, and marihuana smoking became popular among the Black population, particularly the jazz musicians in the urban areas.[12] Although American troops stationed at the Panama Canal around 1915 reportedly came into contact with cannabis, the use of marihuana remained confined to a minimal number of Mexican-Americans and a fewer number of urban Blacks. In fact, the use of marihuana appeared to go virtually unnoticed until racial prejudice against Mexican-Americans intensified in the 1930's.

During the 1920's approximately 500,000 Mexicans entered the United States.[13] The majority of these were indigent and in search of employment as agricultural field workers and unskilled laborers. After 1923, there was a labor shortage in the Southwest, and employers welcomed the cheap migrant labor force.[14] As the Mexican-Americans spread throughout the Midwest, marihuana was introduced to other groups. The majority of marihuana smokers, remained, however, Latin Americans and Negroes.

The first signs of public concern with the use of marihuana appeared in those states with large populations of Mexican-Americans during the Great Depression. After 1930, Chicanos became an unwelcomed labor surplus in regions devastated by unemployment. The white population blamed the economic problem upon the Mexican-Americans and formed such organizations as the Allied Patriotic Society. These societies argued that Mexicans were not being assimilated and advocated the restriction of Mexican immigration. In order to discourage further immigration, a series of repressive measures were enacted which were designed to relegate the Mexican-Americans to a subordinate position. The prohibition of marihuana was one of these measures.

The proponents of Mexican immigration restriction maintained that the drug produced temporary insanity and induced violent acts and was the primary causation of crime. Furthermore, the vicious habit was reportedly spreading among white school children.[15]

In 1934, an article published in the New York Times stated:

> Although as appalling in its effects on the human mind and body as narcotics, the consumption of marihuana appears to be proceeding virtually unchecked in Colorado and other Western States with large Spanish-American populations. The Drug is particularly popular with Latin-Americans and its use is rapidly spreading to include all classes. [16]

These sensational reports circulated throughout the Southwest, and generated fear among the white population, providing an impetus for the prohibition of marihuana. In Colorado, upon the urging of the general public, the Colorado Legislature enacted an anti-

marihuana statute.[17] The sentiments of the Colorado press and the citizens of that state were expressed in a letter addressed to the Treasury Department from the editor of the Alamosa, Colorado Daily Courier:

> I wish I could show you what a small marijuana cigarette can do to one of our degenerate Spanish-speaking residents. That's why our problem is so great: the greatest percentage of our population is composed of Spanish-speaking persons, most of whom are low mentally, because of social and racial conditions.
>
> While marijuana has figured in the greatest number of crimes in the past few years, officials fear it, not for what is has done, but for what it is capable of doing. They want to check it before an outbreak does occur.[18]

Despite the lack of medical evidence to substantiate these assertions, marihuana prohibition was enacted in the majority of states with large Mexican-American populations. By 1931, all but two states west of the Mississippi had made the possession of the weed a criminal offense.[19]

The Federal Bureau of Narcotics played a major role in the formation and perpetuation of the stereotype marihuana user. The federal narcotic authorities expounded upon the Southwestern image of the marihuana user and portrayed the user as a sexual maniac as well as a criminal. The image provided the impetus for the enactment of federal anti-marihuana legislation, and remained implanted in the minds of millions of Americans for more than thirty years, dictating, in a large measure, our approach to marihuana use during that period.

The reason for the federal authorities' involvement with the marihuana issue appears to have been the result of a reorganization of the Federal Narcotic Division, and the personality of the Commissioner of the Federal Bureau of Narcotics. On January 1, 1932, the Federal Narcotic Division was removed from the Prohibition Unit of the United States Treasury Department, and the Federal Bureau of Narcotics was established under the leadership of former Assistant Prohibition Commissioner Harry J. Anslinger. The Bureau was given the authority to enforce the Harrison Act, the first major federal anti-drug legislation in the United States which was enacted in 1914. Although the Act did not proscribe marihuana, Commissioner Anslinger had an intense personal interest in the prohibition of the drug.[20] Anslinger, while working in the prohibition unit, repeatedly displayed his personal belief that increasing the severity of the penalty decreases the number of violators. The Commissioner's intention of applying this principle to marihuana was evidenced in the Bureau's first Annual Report under Anslinger's aegis. The Report warned that marihuana, dismissed as a minor and irrelevant problem by the Treasury Department one year before, had now "come into wide and increasing abuse in many states, and the Bureau of Narcotics had therefore been endeavoring to impress the various States of the urgent need for vigorous enforcement of the local cannabis laws."[21]

Anslinger had wasted no time in urging states to enforce or enact marihuana statutes. In 1932 the majority of states had adopted, upon the request of Anslinger, the Uniform Narcotic Drug

Act, which designated marihuana within the classification of narcotics although marihuana, in a medical sense, was not a narcotic substance. The severity of the penalties prescribed to violations of the marihuana statute varied among states, but in most cases were identical with those covering morphine, opium, heroin and cocaine.[22]

The Bureau's anti-marihuana campaign was based upon the Southwestern premise that marihuana use caused temporary insanity, the commission of violent acts, and was threatening to corrupt the morals of America's youth. The campaign succeeded in alarming state legislatures into passing anti-marihuana legislation. By 1937, ninety-six percent of the states as well as the District of Columbia and Puerto Rico had enacted anti-marihuana laws.[23]

The Bureau's next step was the enactment of a federal prohibition of marihuana. The anti-marihuana campaign was intensified with numerous articles describing alleged atrocities committed by marihuana users. Sociologist Howard Becher documented the number of national magazine articles on marihuana before and after the Bureau's prohibition movement. Becher noted a definite increase in such articles during the period following the establishment of the Federal Bureau of Narcotics. Between 1925 and 1935 not a single article was written on marihuana use while twenty-one such articles appeared between 1935 and 1939.[24] The Bureau's role in circulating these stories is best exemplified in an article entitled "Marihuana Crimes." The article reported several cases of marihuana users committing immoral sexual acts and such atrocities

as, "in Chicago recently, two boys murdered a policeman while under the influence of marihuana." The authenticity and validity of these reports are questionable since the article also included a brief paragraph which disclaimed any responsibility for the accuracy of the reports on the grounds that "the Bureau of Narcotics is not in possession of full details regarding some of these cases which were not reported in connection with seizures of the drugs."[25]

There was no medical evidence on marihuana which substantiated the Bureau's assertions. In fact, the few studies conducted on the possible deleterious effects of marihuana reported that the drug was not physically or mentally harmful. One such report entitled "Marijuana Smoking in Panama" studied the effect of marihuana among the American troops stationed at the Panama Canal Zone. The study concluded that:

> There was no evidence that marihuana as grown here is a "habit forming" drug in the sense in which the term is applied to alcohol, opium, cocaine, etc., or that it has any appreciably deleterious influence on the individuals using it....[26]

These reports, however, were either criticized severely by the Bureau or completely ignored. In 1937 the Treasury Department submitted a draft of a bill to Congress which prohibited the use of marihuana.

House Bill 6385 was patterned after the Harrison Act. The bill was a revenue measure which imposed a tax on all transfers of marihuana at the rate of one dollar per ounce if the transfer of marihuana was made to a taxpayer registered under the Act. A tax of $100 per ounce was levied if the

transfer was made to a person not registered under the Act. Since certain professionals were the only ones eligible to register, the provisions of the Act made it essentially impossible for an average citizen to secure the drug for personal use. The maximum penalties prescribed to violations of the Act were a fine of $2,000 dollars and 5 years in prison without probation.[27]

At the Congressional hearings before the House and Senate Ways and Means Committees, Commissioner Anslinger appeared as the chief witness. The Commissioner testified that the use of marihuana was more dangerous than the use of opiates:

> But here we have a drug that is not like opium. Opium has all of the good humor of Dr. Jekyll and all the evil of Mr. Hyde. This drug is entirely the monster Hyde; the harmful effect of which cannot be measured.[28]

Anslinger then went on to relate numerous accounts of such atrocities as the mass murder of a Florida family by a marihuana addict in order to convince the committees that the drug does lead to violent crimes and other anti-social behavior.

The other witnesses who testified, with a single exception, supported the passage of the bill. As a result the Marihuana Tax Act was passed in 1937.

John Kaplan argues in Marihuana, the New Prohibition, that the horror stories citied by Anslinger were often unfounded and in some cases completely distorted and that the testimony did not establish the connection between violence and marihuana. Kaplan illustrates this point with the purported case of Victor Licato, the alleged marihuana addict who murdered his family in

Tampa, Florida while under the influence of the drug. Kaplan argues that Anslinger failed to mention that the defendant had a history of mental illness and that the court had withdrawn prosecution and had placed him in a state mental hospital.[29] There was no evidence which indicated that the youth was using marihuana at the time of the murders or that he had ever used the drug at all.

During the decade following the passage of the Marihuana Tax Act several medical reports disproved the Bureau's assertions in regard to the effects of marihuana.[30]

In 1945, Herbert Gaxkill reported the results of the effect of marihuana upon American troops stationed in India during the Second World War. Of one hundred and fifty marihuana users observed, there was not a single case which indicated a connection between violent crimes and marihuana use. The report, however, suggested that the use of marihuana intensifies the abnormal characteristics of mentally disturbed individuals.[31] Another military medical study concluded that:

> The smoking of the leaves, flowers and seeds of Cannabis Sativa is no more harmful than the smoking of tobacco or mullein or sumac leaves....The legislation in relation to marihuana was ill-advised... it branded as a menace and a crime a matter of trivial importance....It is hoped that no witch hunt will be instituted in the military service over a problem that does not exist.[32]

Probably the most extensive and controversial study conducted between 1939 and 1944 was the New York Mayor's Committee on Marihuana. New York City Mayor Fiorello La Guardia, concerned with the sensationalism of newspaper articles on

marihuana use and subsequently the public alarm, appointed a committee to research the problem. The committee, under the aegis of the New York Academy of Medicine, included sociologists, psychiatrists and physicians. The committee's report was published in 1944 and concluded that (1) "the practice of smoking marihuana does not lead to addiction in the medical sense of the word"; and (2) "the drug is not the determining factor in the commission of major crimes and is not widespread among youths."[33]

This study was severely criticized by the Federal Bureau of Narcotics and the American Medical Association.[34] An editorial in the Journal of the American Medical Association stated:

> The book states unqualifiedly that the use of this narcotic does not lead to moral, physical or mental degeneracy and that permanent deleterious effects from its continued use were not evidenced in 77 prisoners. This statement has already done great damage to the cause of law enforcement. Public officials will do well to disregard this unscientific, uncritical study, and continue to regard marihuana as a menace whenever it is purveyed. [35]

As a result of such articles and the continuous campaigning of the Federal Bureau of Narcotics, these types of medical studies were discredited and ignored.

Despite the consistent allegations that marihuana smoking was penetrating into white communities, the majority of marihuana users between 1910 and 1960 were Blacks and Latin Americans.[36] The Mayor's Committee, for example, ascertained that the use of marihuana in New York City around 1940 was confined to the ghetto areas.[37] The public, fearing the spreading of this "slum vice," supported the enactment

of more stringent anti-marihuana statutes during the 1950's and remained generally indifferent towards the plight of the marihuana user.[38]

The 1960's witnessed a spectacular and unprecedented increase in the usage of marihuana. Marihuana was no longer indigenous to certain underpriviledged socioeconomic minorities in urban areas and such insulated groups as jazz musicians and artists. For various enigmatic reasons, marihuana became a common and accepted form of recreation for youths from middle and upper class families. As the use of marihuana spread from the urban ghettos into the affluent suburbs, the prestigious colleges and the armed services, the American public became increasingly alarmed and concerned about the purported deleterious effects of the drug upon the user and the severity of the penalties prescribed to marihuana violations. As a result of the increased concern among the general public, sundry medical and scientific studies were initiated to determine the validity of the traditional allegations upon which the prohibition of marihuana was justified. As the National Commission on Marihuana and Drug Abuse stated:

> . . . new scientific and medical interest in marihuana and its use was stimulated by the sudden public interest. For the first time in the American experience, the drug became the subject of intensive scrutiny in the laboratories and clinics. Unfortunately, this research was conducted in the spotlight of public controversy. Isolated findings and incomplete information have automatically been presented to the public, with little attempt made to place such findings in a larger perspective to analyze their meanings....[39]

In order to assimilate and evaluate the "array of conflicting anecdotal reports" two major national commissions

(in the United States and Canada) were appointed. These Commissions have prepared the most comprehensive studies on the contemporary use of marihuana, the recent medical and scientific evidence on the subject, and the social costs of prohibiting the drug.

National Commission Reports and Other Current Studies on Marihuana

In 1972, the National Commission on Marihuana and Drug Abuse, in accordance with the mandate contained in Section 601 of the Public Law 91-53, submitted its report and recommendations entitled Marihuana: A Signal of Misunderstanding. According to the Commission's national survey, 24 million people in the United States had smoked marihuana and approximately 8.3 million were current users. Other studies indicated that at least 40 per cent of the college population has experimented with the drug. These surveys not only substantiated the increase in the number of marihuana users in America during the previous decade, but revealed that the use of the drug was no longer confined to any one socioeconomic group in the counrty. "The stereotype of the marihuana user as a marginal citizen has given way to a composite picture of large segments of American youth, children of the dominant majority and very much a part of the mainstream of American life."[40]

In regard to the effects of marihuana, the National Commission concluded that there was no evidence that experimental or intermittent use of marihuana causes physical or psychological harm. Marihuana does not cause physical dependency. There are no withdrawal symptoms following the sudden cessation of chronic, heavy usuage. Some evidence indicates that long-term users may develop a psychological dependence on the drug. However, the Commission cautions placement of too much emphasis upon this point, for although evidence indicated that heavy, long-term cannabis users may develop psychological dependence, even then the level of psychological dependence is no different for the syndrome of anxiety and restlessness seen when an American stops smoking tobacco cigarettes.[41]

The immediate effects of marihuana intoxication on the individual's organs and bodily functions are transient and have little or no permanent effect. However, there are definite deprivations of psychomotor control and a temporary impairment of time and space preceptions.

The Commission noted that there has not been any reliable documented evidence relating to marihuana use and brain damage or birth defects. A national health survey indicated that there are no proven human fatalities attributable soley to the use of marihuana. Several studies and experiments on monkeys have demonstrated that the amount of marihuana required for an "overdose death" is enormous and for all practical purposes unachieviable by humans. Nor was there any reliable evidence

available which indicated that marihuana causes genetic defects in man. Furthermore, the incidence of psychosis from marihuana use was exceedingly rare, and such reactions tend to occur in predisposed individuals.

In regard to public safety, the evidence examined by the National Commission indicates that marihuana does not cause violent or aggressive behavior:

> In sum, the weight of evidence is that marihuana does not cause violent or aggressive behavior; if anything, marihuana generally serves to inhibit the expression of such behavior.[42]

Furthermore, the Commission, recognizing that one of the most controversial issues surrounding marihuana concerns its relationship to the use of other drugs (the stepping-stone hypothesis), ascertained that the overwhelming majority of marihuana users do not progress to other drugs, although statistically marihuana users are more inclined to experiment with drugs than non-users. Addressing the general question of whether or not marihuana posed a serious threat to society, the Commission concluded:

> When the issue of marihuana use is placed in this context of society's larger context, marihuana does not emerge as a major issue or threat to the social order.[43]

In regard to the impact of current Federal and state anti-marihuana statues upon the criminal justice system, the Commission studied six metropolitan jurisdictions located in different geographical areas. The results revealed that 93 per cent of marihuana arrests in the six metropolitan areas were for mere possession. Approximately two-thirds of the

defendants were arrested for possession of one ounce or less. Upon reviewing the final marihuana case dispositions (48 per cent of the adult cases and 70 per cent of the juvenile cases were dismissed by either the police, the prosecution or the judiciary), and the number and length of imprisonment of those convicted (29 per cent were incarcerated generally for one year or less), the Commission concluded that the criminal justice system had adopted a de facto "policy of containment":

> Although effort is sometimes expended to seek out private marihuana use, the trend is undoubtly to invoke the marihuana possession laws only when the behavior comes in the law.[44]

Upon considering the effects and social impact of marihuana consumption, the Commission examined four alternative social control policies for the drug: (1) approval; (2) elimination; (3) neutrality; and (4) discouragement. The Commission maintained that society should not approve or encourage the recreational use of any drug. Conversely, the Commission concluded that the elimination of marihuana and the prohibition of its use were unachievable, and that the drug's relative potential for harm to individuals and society does not justify a social policy designed to apprehend and severely punish those individuals who use it.

The Commission's next step was to consider three legal responses as a means of implementing a discouragement policy: (1) total prohibition; (2) partial prohibition; and (3) regulation. The Commission defined total prohibition as the current policy in effect which proscribes all marihuana -

related behavior, including possession for personal consumption. Partial prohibition (decriminalization) would prohibit cultivation and distribution of the drug but would not forbid private consumption or acts relating to consumption. The salient feature of a regulatory scheme (legalization) would be that the distribution of the drug would be legalized and regulated, such as is the case with alcohol.

The Commission, rejecting both the present system and the regulatory policy, was of the unanimous opinion that marihuana use does not constitute a sufficiently grave problem to subject users to stringent sanctions, but that legalization was inadvisable for a drug which does alter short-term perception, which has uncertain long-term effects and which may be of transient social interest. Rather, the Commission recommended a partial prohibition scheme which symbolized a continuation of societal disapproval of marihuana use, yet removes the criminal stigma and threat of incarceration for users, and also maximizes the flexibility of future public responses as new medical evidence comes to light.

The major features of the recommended scheme are that: (1) production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially; (2) marihuana would be considered contraband subject to confiscation in public; (3) criminal sanctions would be removed from private use and possession incidental to such use, but at the state level, fines would be imposed for use in public; (4) in order to keep use private, possession of more than one ounce in public would be prohibited; and (5)

in addition, casual, not-for-profit transfers of small amounts, permitted in private, would be prohibited in public.

The Commission recommended the following penalty scheme for state anti-marihuana statutes:

1. Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies.

2. Possession in private of marihuana for personal use would no longer be a criminal offense.

3. Distribution in private of small amounts for no remuneration would no longer be an offense.

4. Possession in public of one ounce or under of marihuana would not be an offense, but marihuana would be considered contraband subject to summary seizure and forfeiture.

5. Possession in public of more than one ounce of marihuana would be a criminal offense punishable by a fine of $100.

6. Distribution in public of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would be a criminal offense punishable by a fine of $100.

7. Public use of marihuana would be a criminal offense punishable by a fine of $100.

8. Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail and/or $100.

In summary, the National Commission on Marihuana and Drug Abuse, upon careful examination of the voluminous amount of literature, medical studies and national surveys, concluded that the present policy of total prohibition was not medically justified and engenders sundry irreparable societal costs. At the same time, the Commission believed that no drug use should be encouraged, and since the long-term effects of marihuana are not exactly known, cannabis should not be legalized. The Commission ascertained that the most viable policy alternative was the enactment of a partial prohibition scheme --the decriminalization of marihuana.

In May 1969, the Government of Canada appointed a Commission of Inquiry into the Non-Medical Use of Drugs. The Commission became known as the Le Dain Commission after its Chairman, Dean Gerald Le Dain. The 320-page Interim Report was published in the spring of 1970.

The Le Dain Commission, as did the National Commission on Marihuana and Drug Abuse, reviewed the myriad allegations traditionally attributed to marihuana which have substantiated the prohibition of the drug. The Canadian Commission reached the same conclusions as the National Commission in the United States did the following year. The Interim Report concludes, for example, that marihuana is not an addictive drug. Physical dependence on marihuana, the report asserts, has not been demonstrated; it would appear that there is normally no adverse physiological effects or withdrawal symptoms occurring with abstinence from the drug, even on regular users.[45]

The short-term physiological effects of marihuana use, the Report continues, "are usually slight and apparently have little clinical significance."[46] Even an overdose of the drug engenders minimum acute physiological toxiciety; sleep is the usual consequence of an overdose. The Commission substantiated this argument by revealing the fact that there was not a single fatality recorded in Canada which attributed the cause of death to marihuana use.

The Commission also debunked the popular myth that marihuana use leads to the use of other, more serious dangerous drugs:

> In Canada ... it appears that heavy use of sedatives rather than cannabis has most frequently preceded heroin use.[47]

The Le Dain Commission recommended that "serious" consideration should be given to the legalization of marihuana, for medical and scientific evidence does not substantiate the alleged harmfulness of the drug upon the user and society. Therefore, the Commission concluded, the current penalities prescribed to marihuana violations are unjust and warrant removal.

Other comprehensive but less recognized marihuana studies have reached conclusions similar to those of the Le Dain Commission and the National Commission on Marihuana and Drug Abuse. For example, the Consumer's Union, the non-profit publisher of the monthly magazine, Consumer Reports, published an account on marihuana in Licit and Illicit Drugs in 1972. The study recommended that possession and use of marihuana

should be legalized, and that the drug should be marketed commercially, subject to governmental regulation.[48]

Despite the exhaustive research and substantiated recommendations of these voluminous marihuana studies, the American public still has reservations about the effects of marihuana and the advisability of decriminalizing or legalizing cannabis. This may be attributed, in part, to the fact that marihuana has been the subject of castigation and prohibition for more than fifty years and national commission reports are not going to change social attitudes overnight. However, there are numerous facts which reinforce unsubstantiated fears concerning marihuana, and subsequently serve as impediments to the enactment of a more rational and enlightened marihuana policy. One of the major sources which helps to discredit the findings of the National Commission and the Le Dain Commission are the periodic issuance of isolated medical and scientific reports which allege that new evidence indicates that marihuana in fact does have deleterious effects upon man.

Although not foreclosing the possibility that new and relevant studies may disprove current medical knowledge on the subject, Dr. Thomas E. Bryant, President of the independent, non-profit Drug Abuse Council, has recognized the detrimental impact of the recent medical disclosures and has written a rebuttal to the proponents of marihuana prohibition who have based their argument upon such information. According to Dr. Bryant:

> Some of the recent reports on the effects of marihuana have been exaggerated and misleading. Some researchers are drawing conclusions about the harm from marihuana which far exceed the data presently available and, in some cases, the researchers themselves appear to have set out to support a preconceived notion. The result has been a series of reports, some of which resemble propaganda more nearly than scientific research.... The Department of Health, Education and Welfare is charged with the continuing responsibility of drug research and evaluation for the federal government. Each year it submits a report to Congress which includes an evaluation of all major medical research concerning possible harm from marijuana use. When an individual researcher reports what appear to be significant findings, H.E.W. attempts to replicate the research. Because of inadequate controls or for other reasons, startling claims originally made by individual researchers are often later disproved. Unfortunately, the public is usually left with the original, unfounded impression.[49]

Dr. Bryant cited a number of examples of recent reports which he said had been given credibility and application far exceeding that which they deserved without additional research:[50]

1. Dr. Morton Stenchever, University of Utah, has claimed that

> persons using marijuana on any regular basis take the chance of having abnormal offspring or developing forms of cancer, and that the blame that has been placed on LSD as a chromosome breaking agent may indeed have belonged to marijuana.

Professor Hardin Jones, University of California, Berkeley, before a U.S. Senate Subcommittee stated that

> the chromosome damage found by professor Stenchever, even in those who use cannabis 'moderately,' is roughly the same type and degree of damage as in persons surviving atom bombing with a heavy level of radiation exposure (approximately 150 Roentgens). The implications are the same.

In contrast, the third H.E.W. Report to Congress, Marihuana and Health (1973), states:

> The possibility that cannabis preparations might cause genetic or birth defects has been a source of concern although there has been little evidence to support it. The bulk of present evidence, particularly that of well controlled studies, suggests that the liklihood of genetic or neonatal abnormalities arising from cannabis use at present social levels of use is low. There is no convincing evidence that chromosomal abnormalities arise from marijuana use. The Jamaican study of chronic users as well as other studies of the effects of the THC on chromosomes in human lymphocytes (a type of white blood cell) indicate no changes related to cannabis use. Although there have been isolated case reports of abnormal offspring born to mothers who have used marijuana and other illicit drugs during pregnancy, more systematic controlled investigation has not borne this out. As has been indicated, animal research at substantially higher dosage levels than those likely to be employed by users showed no evidence of hazard to fetal development.

2. Dr. Robert G. Heath, Tulane University, asserted that marijuana causes brain damage:

> Given as testimony before a U.S. Senate subcommittee, and reported on nationwide television news, the researcher failed to note that the dosage levels used in his experiments with rhesus monkeys were apparently extraordinarily high, approximating from 20 to 240 marijuana cigarettes per day.

In contrast, the H.E.W. Report of 1973 offers this conclusion:

> Definitive conclusions regarding cannabis use and possible brain damage cannot be reached at this time. Thus far, such a causal connection remains unproven but neither can cannabis be completely exonerated on the basis of present evidence. It does seem likely on the basis of the Jamaican study that brain damage is not

> an inevitable nor even a likely result of chronic cannabis use when at a level that would be considered heavy (e.g., an average of 7 cigarettes per day) by American standards. In general, there continues to be little evidence to suggest that light or occasional use of cannabis has serious deleterious physical effects.

3. Dr. Gabriel Nahas, Columbia University, has reported that marijuana renders the user more susceptible to infectious diseases. Given sensational nationwide coverage, this study has now been challenged by a number of other researchers for procedural defects, and is unsupported to date by other research. In addition, a study of chronic, long-term use, funded by H.E.W., reached an opposite conclusion.

According to this H.E.W. Report of 1973:

> The Jamaican study of long-term chronic ganja smokers found no deleterious effects that could be attributed to cannabis. The potency of ganja (marijuana) normally smoked in Jamaica is much higher than that of 'pot' and the frequency and duration of ganja smoking is far greater than in the U.S. There was no difference in the incidence of disease and no 'adverse effects' were reported for the offspring of smokers.

Dr. Bryant also challenged the statements of Dr. David Harvey Powelson of Berkeley. Dr. Powelson recently called marihuana "the most dangerous drug we must contend with," claiming that marihuana "leads to a deterioration in body and mental functioning which is difficult and perhaps impossible to reverse."[51]

Dr. Bryant commented, "Dr. Powelson offers no scientific data whatsoever to support his allegations. While he certainly

has a right to his opinions, they should not be confused with medical research."[52]

The Drug Abuse Council is itself undertaking a number of projects aimed at gathering needed data concerning marihuana, according to Dr. Bryant. A current nationwide usuage and attitudinal survey is underway, as is a comprehensive critique of the major marihuana studies reported since the National Marihuana Commission issued its final report in March of 1973.

"We must continue to investigate the possible harmful consquences from marijuana use," Dr. Bryant said. "But we cannot allow science to become a political tool, perverted in order to achieve a desired result. And most importantly, we should not permit a medical debate to frustrate the decriminalization policy recommended by the Marihuana Commission. Even if marijuana were eventually shown to be as dangerous as alcohol or tobacco, giving a criminal record to the user only exacerbates the potential harm."[53]

It should be mentioned that the aforementioned studies are not the only commissions and private agencies which have recommended the decriminalization of marihuana. Decriminalization of the private use of marihuana has now been endorsed by the following as well:

1. Governing Board of the American Medical Association.
2. Two Committees of The American Bar Association.

3. National Council of Churches.
4. American Academy of Pediatrics.
5. American Public Health Association.
6. D.C. Mayor's Advisory Commission.
7. San Francisco Committee on Crime.
8. William F. Buckley, Jr.
9. James J. Kilpatrick.

The Marihuana Problem in New Jersey

Despite the empirical data, substantiated conclusions and recommended proposals of the aforementioned studies, marihuana remains one of the most controversial issues in America. The drug has become a fashionable form of recreation for millions of youths and thousands of prominent citizens, including professional athletes, entertainment celebrities and legal and medical professionals. Marihuana usage has spread from the avant garde movement to the media arena where references to the effects of the drug are often portrayed in a comical manner. However, while entertainers and prominent citizens espouse the use of the drug, and, consequently, indirectly encourage the use of cannabis, hundreds of thousands of individuals are arrested and convicted of marihuana violations. For example, in 1973, there were approximately 420,700 people arrested on marihuana charges in the United States.[54]

Once again, New Jersey has not been an exception to this trend. Although the marihuana provisions within the "New Jersey Controlled Dangerous Substance Act" were conceived as a rational and enlightened approach to the problem in 1970, statistics reveal

that thousands of individuals are arrested annually for marihuana offenses in New Jersey and subjected to criminal sanctions. In fact, the number of marihuana arrests has increased substantially since the passage of the "New Jersey Controlled Dangerous Substance Act". In 1971, controlled dangerous substance arrests accounted for 9.6 per cent of the total number of arrests in New Jersey. Of the 25,953 narcotic arrests, 41.1 per cent, or 10,641, were marihuana violations. In 1973, narcotic arrests accounted for 11.6 per cent of the total number of arrests, and 73.7 per cent, or 25,500, were marihuana offenses. Thus, there has been an increase of 32.6 per cent in the number of marihuana arrests since the passage of the "New Jersey Controlled Dangerous Substance Act". [55]

These arrest statistics are valuable for two major reasons. First, these figures indicate that either the use of marihuana has continued to increase among large segments of the New Jersey population, especially the young, or law enforcement officials are spending an inordinate amount of resources and manpower to apprehend marihuana violators. Secondly, but not of less importance, the high number of arrests verify that thousands of individuals are annually being subjected to the degradation of the criminal process and stigmatized as criminals for using the recreational drug of their choice.

Additionally, marihuana arrests have generated widespread disrespect for law enforcement officials and distrust of the criminal justice system in New Jersey. Law enforcement officials are entrusted to enforce the marihuana statute, and as a result have become the symbol of suppression in the eyes of thousands of marihuana users which has had a detrimental effect upon community-police relations. Furthermore, the incidence of marihuana arrests has placed an additional criminal court case backlog upon the already overburdened court system. Not only have marihuana arrests crowded the dockets of criminal courts in New Jersey, but the disparity in sentences have caused defendants to become distrustful and cynical of the criminal justice system. Although the Office of the Court Administrator does not record the final dispositions of marihuana cases, evidence suggests that the severity of the penalty meted out for marihuana violations correlates to the locale of the court and the extent of the drug problem within the jurisdiction of the court

For example, individuals arrested for possession of more than one ounce of marihuana in Newark and other Northern New Jersey urban areas where the drug problem is extensive, would more than likely receive a more lenient sentence than if the individual was arrested for the same offense in the rural areas of Central and Southern New Jersey where the drug problem is less prevalent. The disparity of sentences, according to some sources, has been a primary causation in the alienation of large numbers of the New Jersey population. The second factor which has contributed to the mistrust of the criminal process emanating from marihuana

arrests has been that a marihuana offender, regardless of the sentence, has to be subjected to the humiliation of being finger-printed and imprisoned prior to arraignment and appearance in criminal court -- not to mention the cost of legal counsel and the sundry adversities of having a criminal record.

In 1973, the Division of Criminal Justice of the New Jersey Attorney General's Office prepared a comprehensive report on the Controlled Dangerous Substance Act. The report gave special attention to the marihuana provision, and the aforementioned consequences emanating from the State's current marihuana policy. Based upon the findings of the National Commission on Marihuana and Drug Abuse, which had not been available prior to the enactment of the "New Jersey Controlled Dangerous Substance Act," and the information obtained from state surveys of law enforcement officials, prosecutors and others, the Attorney General concluded that "there is strong support for the view that possession of maraihuana and hashish for personal use should no longer be subject to criminal penalties." [56] Decriminalization of possessory offenses, the report continues, would better comport with common notions of fairness and current scientific evidence relating to the effect of marihuana upon the user and society.

The Attorney General's survey indicated that the majority of law enforcement officials and prosecutors in New Jersey "doubt the efficacy of incarceration with respect to possessory and use offenses and considered that imprisonment was unduly punitive in light of current attitudes and scientific knowledge ...." [57]

Therefore, the Attorney General advocated the abolition of the 25 and 5 gram marihuana and hashish quantity limitations which presently appears in our statute. Under the view of the Attorney General, possession of marihuana and hashish for personal use would be reduced to a disorderly persons offense regardless of the quantity involved. The report recommended that the maximum penality for the possession of marihuana and hashish should be a $500.00 fine. Habitual offenders, the report suggested, should be subject to a maximum fine of $1,000.00. [58] In essence, the Attorney General recommended that the possession of any quantity of marihuana would not be an indictable offense, but rather a disorderly persons violation not subject to the penalty of incarceration.

While the Attorney General's report recommended the decriminalization of possessory marihuana and hashish violations, it advocated the retention of criminal penalties with respect to the offense of possession of marihuana or hashish with the intent to distribute to others and the actual offense of distribution. At present, both offenses are categorized as high misdemeanors subject to the maximum penalty of five years imprisonment and/or $15,000. [59] The report did not, however, specify a quantity amount which unequivocally determined that level which constituted mere possession and possession with intent to distribute. Rather, the report argued that:

> One can envision the commission of technical offenses where imposition of such harsh penalties would not be appropriate; i.e. distribution among friends without renumeration, etc. Incarceration under these circumstances would obviously serve

> little purpose. But judicial discretion on sentencing such offenders would alleviate the more punitive aspects of our current statute. And of course, there is little defense for the predatory marihuana or hashish seller who exploits others for profit, or combines these substances as an attraction to other, more dangerous wares. 60

Thus, possession of marihuana and hashish with the intent to distribute and actual distribution would not be decriminalized.

The report recognizes that difficult evidentiary problems would be presented with respect to the prosecution of possession with intent to distribute. However, the report concludes that these problems of proof are not insurmountable, for possession of several pounds of marihuana is obviously not for personal consumption. "But this is a proper subject for prosecutional summation and the common sense of the jury."[61] The report concludes its argument with the assertion that "amendatory legislation should not include a presumption with respect to the offender's intent based upon the quantity possessed."[62]

The Attorney General's report concluded that the decriminalization of marihuana and hashish possession was the most rational approach toward handling the problem with respect to public attitude, medical knowledge and the adverse social consequences emanating from the existing prohibition policy.

Synopsis of Public Hearings

The "Drug Study Commission," in addition to reviewing the major studies on the subject of marihuana, held five public hearings during the past twenty months in order to elicit public and professional responses toward the penalty provisions contained within

the "New Jersey Controlled Dangerous Substance Act" and toward the drug treatment programs in the State. A large proportion of the testimony presented to the Commission at these public hearings concerned the issue of marihuana.

Although several laymen, law enforcement officials and drug treatment supervisors adamantly oppossed the decriminalization and legalization of marihuana, the vast majority of individuals appearing at the public forums recommended either the partial or total removal of criminal sanctions from marihuana and substantiated their arguments upon medical and legal grounds. The suggested marihuana policy recommendations ranged from decriminalizing the offense of possessing a certain amount of marihuana to the legalization and regulation of the drug.

Lt. Detective Joseph Delaney of the Bergen County Narcotic Task Force, for example, suggested that possession of 18 grams or less of marihuana and 1 gram or less of hashish should be decriminalized, at the public hearing held in Bergen County on May 15, 1974.

On May 11, 1973, Mr. Michael Sonnerich, Executive Director of the President's National Commission on Marihuana and Drug Abuse, testified, on the other hand, that any amount of marihuana intended for personal use should not constitute a criminal offense. Mr. Sonnerich stated that the National Commission "felt that as a matter of public policy the use of the drug should be discouraged, we should certainly not make it legally available as we do with alcohol, but the

possession for private use of the drug should not be a criminal offense." The recommendations of Mr. Sonnerich and the National Commission were supported by several other individuals appearing at the public hearings, including Mr. John Finlator, former Deputy Director of the Federal Bureau of Narcotics and Dangerous Drugs, Dr. Dorothy Whipple, Professor at Johns Hopkins University and Mr. David Baime, of the New Jersey Attorney General's Office.

Other individuals, such as Dr. Lester Grinspoon, Harvard University Professor and author of Marihuana Reconsidered, advocated the legalization of marihuana. Dr. Grinspoon argued that "the present legal approach to marihuana is counterproductive and has seriously jeopardized our credibility with young people about other drugs."

Although there was no consensus of opinion among those who spoke at the public hearings, the diverse testimony complemented the documented research examined by the Commission and permitted members of the Commission to question proponents of each alternative policy recommendation.

Conclusions

Based upon the medical and sociological documented evidence examined and the testimony presented during the public hearings, the "Drug Study Commission" has reached the following conclusions:

1. Marihuana does not pose a serious threat to the user or society.

a. Scientific evidence overwhelmingly proves that the

traditional beliefs that marihuana causes sundry deleterious effects upon man have been generally mendacious and medically erroneous. Experimental or intermittent use of marihuana does not engender physical or psychological dependency, brain or genetic damage, or cause or precipitate the graduation to other more onerous drug substances. The single exception is the inconclusiveness of the evidence relating to the effect of marihuana use upon long-term chronic users of cannabis.

b. Comprehensive studies have unequivocally disproved the assertions that marihuana is the primary causation for myriad types of anti-social behavior including the commission of violent crimes, insanity and deviant sexual promiscuousness.

2. Marihuana has become a popular and accepted form of recreation for a large segment of the national population, including residents of New Jersey.

Marihuana arrest statistics and other empirical data demonstrates that the use of marihuana continues to increase and a large segment, especially the youth, of the population views the practice of marihuana smoking as an accepted and enjoyable form of recreation. Marihuana use is no longer indigenous to certain isolated minority groups, but prevails throughout all socioeconomic, ethnic and religious segments of our population.

3. The present policy of criminalizing marihuana use in New Jersey has failed to act as an effective deterrent and has engendered various social adversities.

a. The current criminal penalties prescribed to marihuana violations are ineffective as a deterrent to the

use of marihuana as evidenced in the increasing number of marihuana arrests, and national statistics of large numbers of users who do not come in contact with the criminal justice system.

b. As a result of the incidence in marihuana arrests during the past five years, the following social adversities have resulted:

(1) The widespread disrespect for the judicial process and the diminishment of respect for law enforcement officials.

(2) The imposition of an additional burden upon the already overcrowded criminal court dockets with the processing of thousands of minor arrests.

(3) The diversion of law enforcement time and resources away from more serious crimes such as assault, robbery and murder.

(4) The lack of credibility in those officials who attempt to educate the young about the dangers of the stimulants, depressants, hallucinogens and the opiates. If youths experiment with marihuana and discover the results to be the opposite of the alleged, they will foreafter mistrust authorities when the matter concerns such other drugs as heroin.

(5) The arrest of thousands of marihuana users has subjected a large number of otherwise law abiding citizens to the moral and social degradation of the criminal process, resulted in the imposition of a criminal record, and alienated innumerable youthful offenders from their families and the "older" generation.

4. The societal costs of attempting to enforce the existing New Jersey anti-marihuana statutes, in light of medical knowledge and public expectation, far outweigh the possible benefits which may be derived from the continuation of such a policy.

5. In order to alleviate the social adversities emanating from our present marihuana policy, and to provide a rational and enlightened social policy, in light of medical knowledge and public expectation, marihuana legislation reform is needed.

The "Drug Study Commission" does not encourage the use of marihuana or any other drug. However, upon the realization that our present anti-marihuana policies are irrational and often counterproductive, the Commission members examined three policy alternatives:

(1) Increasing the penalties prescribed to marihuana violations in order to more effectively deter the use of marihuana.

(2) Decriminalizing the use and possession of marihuana, as the National Commission on Marihuana and Drug Abuse and the New Jersey Attorney General's Office have recommended.

(3) Legalizing and regulating the distribution and use of marihuana, similar to our present social policy regarding alcoholic beverages, and as recommended by the Le Dain Commission et al.

The Commission rejected the proposed policies for the imposition of more stringent marihuana penalties and the legalization of the drug. The Commission ascertained that increasing the severity of the penalties prescribed to marihuana will not deter

the use of cannabis as evidenced and documented during the last decade; rather, the enactment of such a proposal would only augment the various social problems which emanate from our present approach toward the problem. Legalization, on the other hand, was considered inadvisible in light of the uncertainty surrounding the long-term effects of marihuana.

Therefore, this Commission recommends the enactment of a partial prohibition scheme, the decriminalization of small amounts of marihuana intended for personel comsumption, as the most rational approach toward the marihuana problem in New Jersey. Decriminalization, the Commission beleives, would symbolize a continuation of societal disapproval of marihuana use as indicated in the retention of severe penalties for possession of large quantities of the drug and for dispensing the substance. But by removing the criminal sanctions from personal use of small quantities of marihuana and imposing a nuisance offense, thousands of New Jersey residents will not have to be stigmatized as criminals and subjected to the threat of incarceration. In addition, the reduction in marihuana cases will alleviate the overburdened criminal court system. Furthermore, decriminalization will obviate some of the myriad adversities emanating from our present policy, and maximize the flexibility of future public responses as new medical evidence comes to light.

The questions which the Commission addressed at this point concerned the quantity level which distinguishes between possession for personal use and possession with intent to sell, and the penalty scheme which must be imposed. In so doing, the Commission examined the two decriminalization schemes adopted in other jurisdictions in the United States.

In September, 1972, the City Council of Ann Arbor, Michigan passed an ordinance which prescribed a $5.00 fine for the possession of any amount of marihuana. Although the ordinance makes the offense a misdemeanor, the judicial procedures used are similar in practice to those of traffic violations. Violators of the ordinance are issued citations. The District Court Clerk accepts any plea of guilty which is made in the same manner as pleas of guilty are accepted at the Parking Violations Bureau. Persons pleading guilty to a violation of the ordinance are allowed to tender $5.00 to the District Court Clerk as a "full and complete satisfaction of liability; and no appearance before a District Judge is required."

To obtain information relating to the history and effectiveness of the marihuana ordinance, the Commission contacted the offices of the city attorney and the police chief of Ann Arbor. With the single exception of the legal question whether the city can classify as a misdemeanor an offense which the state classified as a felony, both the city attorney and the police chief believe that the enactment and enforcement of the marihuana ordinance has not created any serious social or legal problems. Although there have not been any studies undertaken to determine the effectiveness of the ordinance in reducing the number of narcotic court cases, the city attorney felt that there had been an appreciable reduction since the enactment of the ordinance. The police chief stated that there has been no evidence of the statute precipitating an incidence in the use of marihuana or a detectable increase in the number of young people migrating to the city. The chief also added that the marihuana statute has not been detrimental to the

morale of the police force, but in fact has been beneficial. The police are now able to concentrate more time and manpower on the apprehension of drug traffickers and users of such "hard drugs" as heroin and cocaine.

The only reservation the chief had about the ordinance concerned the absence of a quantity level and the moral issue this involved. As stated earlier, the possession of a <u>certain</u> amount of marihuana does not constitute a violation, but <u>any</u> amount. Subsequently, a person convicted of possessing one pound or more of the drug, ostensibly for sale rather than for personal use, would receive the same fine as the person convicted of possessing one marihuana cigarette. The lack of a quantity level, therefore, engenders the moral issue concerning whether or not the seller of the drug is more culpable than the user. Another problem emanating from an indefinite amount concerns the adverse effect it places upon the law enforcement officials to apprehend individuals trafficking in large quantities of marihuana.

On October 5, 1973, the Oregon law reducing the penalty after conviction for possession or use of less than one ounce of marihuana to a maximum fine of $100 became effective. Later revisions excluded hashish from the definition of marihuana. The new law does not legalize, but does decriminalize, possession and use of marihuana in amounts up to one ounce. It is still a crime to knowingly and unlawfully manufacture, cultivate, transport, possess, furnish, prescribe, administer, dispense or compound a narcotic drug. As Oregon's law still classifies marihuana as a narcotic, possession of less than one ounce is specifically exempted

from the criminal penalties. Therefore, a person performing any of the prohibited acts except possession could still technically be charged with a felony even when the quantity of marihuana involved is less than one ounce. For example, it is logically possible to be charged with a felony for cultivating or transporting less than one ounce of marihuana.

Oregon's Legislative Research has prepared a preliminary report on the effects of the law covering the first few months after the enactment. The report sought to answer the following questions:

1. What have been the effects on court docket crowding?
2. What have been the effects on the use of marihuana and on heavy drugs.

Personnel of mental health, alcohol and drug clinics responded that they had seen no effects of the law on marihuana usage. This could be attributed to the fact that marihuana abuse is rarely presented to them as a problem except, as one clinic replied, "when it provides counselling to families who contact the clinic after discovering marihuana in a child's room." All clinics cited an increase in alcohol and poly drug abuse as a current problem but noted that this trend had begun prior to the law and was not attributable to it.

6. Immigration of "drug culture" persons

Although immigration of drug-dependent persons as a result of the passage of the new law was a frequently expressed fear, such a phenomenon has not been observed.

7. Effects on legislative races

There were no measureable effects on any primary race as a result of passage of the marihuana law. This issue was mentioned in one senatorial race and in one judicial election. Of the responding county representatives of both parties, all indicated that their organizations had not taken a stand on the law. This may be due to the fact that the limited decriminalization law enjoyed bipartisan support in both houses of the legislature.

Recommendations

After due consideration, the "Drug Study Commission" recommends the "decriminalization" of the present marihuana and hashish penalties in the following manner:

1. RECOMMEND, that the penalties for the unlawful possession of marihuana or hashish, pursuant to P.L. 1970, c. 226, § 20 (C.24:21-20 a. (3)), should be decriminalized in the following manner. The unlawful possession of 28 grams (1 ounce) or less of marihuana -- which includes any adulterants or dilutents thereof -- or 6 grams or less of hashish would be considered a nuisance offense, subject to the confiscation of the marihuana or hashish, and a $50.00 fine payable without a court appearance through a procedure similar to non-moving traffic violations. The unlawful possession of less than 56 grams (2 ounces) and more than 28 grams (1 ounce) of marihuana, or the unlawful possession of less than 12 grams and more than 6 grams of hashish, would be considered a disorderly persons offense, subject to not more than 6 months imprisonment, a fine of not more than $500.00, or both. The unlawful possession of more than 56 grams of marihuana or more than 12 grams of hashish would be considered a misdemeanor, subject

to not more than 3 years imprisonment, a fine of not more than $1,000.00, or both.

2. RECOMMEND, that the penalties for the unlawful manufacturing, distributing, or dispensing of marihuana or hashish, pursuant to P.L. 1970, c. 226, § 19 (C.24:21-19) should be amended in the following manner.

Any person who violates the provisions of P.L. 1970, c. 226, § 19 (C.24:21-19) with respect to 28 grams (1 ounce) or less of marihuana or 6 grams or less of hashish would be guilty of a misdemeanor and subject to not more than 3 years imprisonment, a fine of not more than $1,000.00, or both. Any person who violates the same provision with respect to more than 28 grams of marihuana or more than 6 grams of hashish would be guilty of a high misdemeanor and subject to not more than 5 years imprisonment, a fine of not more than $1,500.00, or both.

3. RECOMMEND, that the unlawful cultivation of any amount of marihuana or hashish should remain a disorderly persons offense pursuant to P.L. 1952, c. 106 (C.2A:170-25.1).

4. RECOMMEND, that if the above "decriminalization" proposal is enacted and signed into law, section 20b. of P.L. 1970, c. 226 (C.24:21-20b.) should be amended to exclude therefrom the "use" or "under the influence" of marihuana or hashish as a disorderly persons offense.

5. RECOMMEND, that P.L. 1970, C. 226, S. 2 (C24:21-2) should be amended so that the term "marihuana" be defined as "Genus Cannabis L" instead of the present definition of Cannabis sativa L.

The Commission believes that the present definition of "marihuana"

promotes a conflict in the interpretation of the law. The divergence of opinion concerning the definition of "marihuana" has to do with whether or not the plant Cannabis is a monotypic genus. The term monotypic genus denotes a genus with one specific.

"Marihuana" is defined in P. L. 1970, C. 226, S. 2 (C. 24:21-2) as Cannabis sativa L." This raises questions by defense counsels as to whether there are other species besides Cannabis sativa L. in genus Cannabis: What are the differences between Cannabis sativa, Cannabis indica, Cannabis ruderalis and Cannabis americana and how do you prove the specimen you examined is Cannabis sativa L.? Well known experts have recently testified that there are more than one species of marihuana. This question is a legitimate point of argument among botanists.

In a number of cases defense experts argued that there is more than one species of marihuana and that these species are not covered within the narrow scope of the statutes that define " "marihuana" as "Cannabis sativa L."*

To avoid these problems during the judicial processing of a case, it is recommended that the New Jersey statute should be amended so that the term "marihuana" is defined as "Genus Cannabis L." instead of the presently used "Cannabis sativa L." This change will include all possible species of Cannabis under the term marihuana.

* United States v. Honeyman No. 71-1035 (N.D. Cal. 1972)

State of Wisconsin v. Johns No. 1-1-1467 (Milwaukee County Circuit Court, March 26, 1971)

State of New Jersey v. Gower and Robinson (Allentown Boro Municipal Court, February 28, 1974)

6. RECOMMEND, that the previous addition of the definition of hashish to the "New Jersey Controlled Dangerous Substances Act" (P. L. 1971, c. 367, S. 1; C. 24:21-2) necessitates the deletion of the phrase, "the resin extracted from any part of such plant," from the definition of marihuana (P. L. 1970, c. 226, S. 2; C. 24:21-2) -- which is the definition of hashish.

Overlapping definitions cause confusion since distinctions are presently made in the penalties imposed for possesion of marihuana and hashish based on the type and amount of the substances possessed (P.L. 1970, c. 226, s. 20; C.24:21-20a. (3)).

7. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be amended to provide that within 3 years of the enactment of the decriminalization scheme for marihuana and hashish, the Legislature shall conduct a comprehensive study and review of the penalties established in the recommendation based on current scientific and medical understanding, criminal justice studies, and community expectations.

FOOTNOTES

CHAPTER II

1. The earliest record of hemp cultivation is found in China, dated ca. 3000 B. C.

2. Richard Brotman and Alfred M. Friedman, "Perspectives on Marihuana Research," unpublished report, 19, as cited in Edward M. Brecher, et al., Licit and Illicit Drugs (Boston, 1972), 403.

3. George Andrews and Simon Ven Kenoog, eds., The Book of Grass: An Anthology of Hemp (New York, 1967), 35-36.

4. F. A. Ames, "Clinical Intoxication with Cannabis Sativa and Its Role in the Model Psychosis," Journal of Mental Science, 104 (1958), 972-999.

5. T. H. Mikuriya, "Historical Aspects of Cannabis Sativa in Western Medicine," New Physician, 18 (1969), 902-908.

6. F. A. Ames, "Clinical Intoxication with Cannabis Sativa and Its Role in Model Psychosis," 975.

7. T. H. Mikuriya, "Historical Aspects of Cannabis Sativa in Western Medicine," 904.

8. Robert Walton, Marihuana, America's New Drug Prohibition (Philadelphia, 1938), 45.

9. Alonzo Calkins, Opium and the Opiate Appetite (Philadelphia, 1871), 326.

10. See R. H. Blum, et al., Society and Drugs (San Francisco, 1961), 63.

11. United States Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding (March, 1972), 33.

12. See Milton Mezzrow and B. Wolfe, Really the Blues (New York, 1946), 72.

13. Leo Grebler et al., "The Ebb and Flow of Immigration," H. Russell Bernard, ed., Introduction to Chicano Studies (New York, 1973), 213.

14. Ibid., 214.

15. New York Times, September 16, 1934.

16. Ibid.

17. Robert Walton, Marihuana, America's New Drug Prohibition, 37.

18. Edward M. Brecher, et al., Licit and Illicit Drugs (Boston, 1973), 254.

19. United States Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding, 14.

20. David Musto, The American Disease (New Haven, 1973), 210-213.

21. Bureau of Narcotics, U. S. Treasury Department, Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1932 (Washington, D. C., 1933), 13, as cited in Edward M. Brecher, Licit and Illicit Drugs, 413.

22. Edwin M. Schur, Narcotic Addiction in Britain and America: The Impact of Public Policy (Bloominton, 1962), 106.

23. David Solomon, ed., The Marihuana Papers (New York, 1966), 40.

24. Ibid., 62.

25. Bureau of Narcotics, U. S. Tresury Department, Traffic in Opium and Other Dangerous Drugs for the Year Ended December 31, 1937 (Washington, D. C., 1937), 65.

26. "Marihuana Smoking in Panama," Military Surgeon, XV (1933), 606.

27. For a more detailed account of the penalty scheme see R. C. Smith, "United States, Marihuana Legislation and The Creation of a Social Problem," D. E. Smith, ed., The New Social Drug (New York, 1970), 107.

28. Committee on Ways and Means, House of Representatives, "Taxation of Marihuana" (Washington, D. C., 1937), 19.

29. John Kaplan, "Marihuana and Heroin Addiction," Marihuana, the New Drug Prohibition (New York, 1969).

30. Eli Marcovitz and Henry J. Meyers, "The Marihuana Addict in the Army," War Medicine, 6 (December, 1944), 382-391. Walter Bromberg and Terry Rogers, "Marihuana and Aggressive Crime," American Journal of Psychiatry, 102 (May, 1946), 825-827.

31. Herbert S. Gaskill, "Marihuana, An Intoxicant, American Journal of Psychiatry, 102 (September, 1945), 282-294.

32. Colonel J. M. Phalen, "The Marihuana Bugaboo," Military Surgeon (July, 1943).

33. Mayor's Committee on Marihuana, The Marihuana Problem in the City of New York (Metuchen, 1973) 14-20.

34. See New York Times, January 12, 1945.

35. Editorial, Journal of the American Medical Association, 127 (1945), 1129.

36. See Sol Charen and Louis Perelman, "Personality Studies of Marihuana Addicts," American Journal of Psychiatry, 102 (March 1, 1946), 674-688.

37. Mayor's Committee, The Marihuana Problem in the City of New York, 25.

38. National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding (Washington, 1972) 7.

39. Ibid.

40. Ibid.

41. Ibid., 62

42. Ibid., 73

43. Ibid., 102

44. Ibid., 112

45. Interim Report of the Commission on Inquiry into the Non-Medical Use of Drugs (Ottawa, 1970), 83.

46. Ibid., 76.

47. Ibid., 85.

48. Edward M. Brecher, Licit and Illicit Drugs (Boston, 1972).

49. See Drug Abuse Council, Furror Created By Recent Marihuana Studies Questioned (Washington, D. C., July 17, 1974).

50. Ibid.

51. Ibid.

52. Ibid.

53. Ibid.

54. 1973 Federal Bureau of Investigations Uniform Crime Reports (Washington, 1974).

55. These figures were obtained from the Annual New Jersey Uniform Crime Reports with the exception of the 1973 statistics which were procured, with authorization, from the preliminary 1973 Uniform Crime Report which has not been published to this date.

56. New Jersey Department of Law and Public Safety, Report on The Controlled Dangerous Substance Act (Trenton, 1973), 52.

57. Ibid., 53.

58. Ibid.

59. P. L. 1970, c. 226, c. 19 (C. 24:21-19A(2)).

60. Report on the Controlled Dangerous Substance Act, p. 59.

61. Ibid.

62. Ibid., 55.

CHAPTER III

THE INTERVENTION PROCESS

Introduction

Senate Concurrent Resolution 90 of 1974 states that the "Commission shall also study the feasibility and advisability of changing the present emphasis in New Jersey's laws from one of punishment to one of rehabilitation." Under this mandate, the Commission studied the legal means whereby drug-dependant persons* and drug users can be placed in treatment programs, if treatment is needed, rather than being incarcerated, and analyzed present diversionary and conditional discharge programs; various state and federal reports; and the findings from the various public hearings held by the Commission.

By definition, the intervention process refers to an effort by the state to intervene in the life of an individual--legally and medically--who comes into conflict with the law as a result of his drug involvement. The primary goal of such a program is to reduce the self-destructiveness or dysfunctional behavior of the individual as well as to reduce the problems communities encounter as a result of the drug problem.

For the purposes of this report, the Commission has used the following terms (and has defined them somewhat arbitrarily) in order to lessen confusion:

1. Diversion refers to intervention in the criminal justice system, which may occur after arrest and at various stages in the

*Drug-dependant person is defined in P. L. 1970, c. 226, s. 2 (C. 24:21-2)

criminal justice process--but before a verdict is entered and sentence imposed.

2. Conditional discharge allows the accused to enter supervisory treatment in lieu of a prison term after trial and a finding of guilt or after a guilty plea, but prior to an entry of judgment.

3. Intervention refers to any process by which the defendant is placed in a treatment, rehabilitation or education program in lieu of incarceration.

History

A brief history of the narcotic problem in the United States lends some perspective to a study of the intervention process. Societies for centuries have used opium to ease their pain.[1] Opium smoking found its way into the United States by way of San Francisco soon after the Civil War, and was virtually uncontrolled, except for a few taxation measures, until the passage of the Harrison Act in 1914. The discovery of the hypodermic needle in the 1840's and its extensive use during the Civil War for injecting morphine led to widespread iatrogenically induced addiction. The problem spread over the next forty years through the patent medicine business--as many such medicines contained opium or opium derivatives.[2] Many "addicts" in the early 1900's were housewives, businessmen and children, who carried on relatively normal lives.

Both the medical profession and Congress became alarmed with the growing opium problem, however. The medical profession attempted to warn practitioners against the dangers of the indis-

criminate use of opiates and Congress, alarmed by the "red peril" spreading from the West Coast, passed the Harrison Act, which itself is a taxation measure designed to regulate the flow of narcotics into the country. Representative Harrison Reported for his Congressional Committee that

> there has been in this Country an almost shameless traffic in these drugs. Criminal classes have been created, and use of the drugs with much accompanying moral and economic degradation is widespread among the upper classes of society. We are an opium-consuming nation today.[3]

Physicians cooperated in the passage of the Act as they held there should be regulated control of the drug, but not criminalization.

The constitutionality of the Harrison Act was attacked in 1919 before the United States Supreme Court in United States v. Doremus[4] and was upheld by a 5-4 decision. John R. DeLuca reports that the

> ...Harrison Act began America's law enforcement approach to addiction that we continue to vigorously follow to this day. It set the model which would be emulated time and time again. If current penalties do not succeed in eliminating drug addiction, the answer lies in stronger, more onerous ones.[5]

Another significant development after 1914 was the successful prosecution (guided by Mr. Anslinger of the Federal Bureau of Narcotics of the United States Treasury Department) under the Harrison Act, in Webb v. United States, Jin Fuey Moy v. United States, and United States v. Behrman, of several physicians for

prescribing narcotics to known addicts.[6] There was nothing in the Act which expressly prevented physicians from dispensing narcotics to addicts, but this development led the medical profession to "wash its hands" of the problem. In the three cases cited above, the facts indicate there were flagrant abuses by physicians in dispensing narcotics. However, in the Behrman case, Justice Holmes (joined by J. McReynolds and J. Brandeis) wrote a dissenting opinion based on his view that the indictment was bad : ..."the Government preferred to trust to a strained interpretation of the law" [and]..."it seems impossible to construe the statute as tacitly making such acts, however foolish, crimes, by saying that what is in form a prescription and is given honestly in the course of a doctor's practice..."[7] should be criminalized. Several years later in Linder v. United States,[8] the Supreme Court upheld the physician's right to prescribe narcotics to addicts under the Harrison Act saying that "direct control of medical practice in the states is obviously beyond the power of Congress.[9] But the medical profession, by that time, had already withdrawn its support of the treatment of addicts, since physicians had no desire to risk their social, economic, and professional standing.

For a period of time between 1912 and 1923, a series of public narcotics clinics were established to treat the addict by providing him with narcotics. They were closed by Treasury agents, however, who threatened prosecution, on the grounds that there were many abuses in this program. The unfortunate result of their closing is that this country lost fifty years of valuable time which could have

been used for researching the long term effects of rehabilitation and maintenance programs for developing creative approaches to the problem. In addition, the addict had nowhere to turn except "underground" for his supply of drugs.

After 1923, narcotics laws and regulations multiplied rapidly under what many commentators saw as hysteria.[10] And in the 1940's and 1950's, those who were addicted and "caught" within the criminal network were by and large the ghetto youth.[11] It was not until the early 1960's when middle class youths began to get "hooked" that the middle class began to realize and respond to social problems caused by the addict. As a result, publically financed treatment programs for addicts began to appear, after some fifty years of a see-saw life on the streets and in jail. The first such program in New Jersey did not begin until mid 1965.[12] In the 1970's, there appears to have been a return, in certain respects, to the approach used in the early 1920's for dispensing narcotics. Today there are many drug addicts who are maintained in public clinics, often on a synthetic narcotic-methadone program of treatment--which is subject to strict federal controls.[13] Yet the mix of social policy, public expenditures, and legal sanctions shows a country with less than a coherent approach to drug addiction either practically or philosopically. Further legislative changes should have as a goal a more coherent and creative approach to this problem.

Intervention in the Criminal Justice System

Diversion or conditional discharge for criminal offenders rather than incarceration is not a new idea. It occurs in its most structured form under the probation system where a judgment of conviction leads to a suspended sentence with supervision rather than a period of incarceration. Such penal concepts are presently being encouraged by a variety of public officials, study commissions, and other interested parties.

For example, the President's Commission on Law Enforcement and Administration of Justice, in its report entitled The Challenge of Crime in a Free Society (1967), strongly recommends intervention policies and programs. The commission states:

> Each community should establish procedures to enable and encourage police departments to release, in appropriate classes of cases, as many arrested persons as possible promptly after arrest upon issuance of a citation or summons requiring subsequent appearance.
>
> ...Prosecutors should endeavor to make discriminating charge decisions, assuring that offenders who merit criminal sanctions are not released and that other offenders are either released or diverted to noncriminal methods of treatment and control by:
>
> > Establishment of explicit policies for the dismissal or informal disposition of the cases of certain marginal offenders[; and]
> >
> > Early identification and diversion to other community resources of those offenders in need of treatment, for whom full criminal disposition does not appear required.[14]

In the same vein, the Report on the Controlled Dangerous Substances Act, prepared by the New Jersey Division of Criminal Justice in 1973, and otherwise known as the Baime Report states: "Many responsible commentators have stressed the view that incarceration and compulsory in-patient commitment have generally proved unavailing in breaking the cycle of drug-related crime."[15] The report concludes that the diversion concept should be expanded to allow its application to drug-dependent persons charged with drug-related offenses beyond mere possession and use, and emphasizes that the goals of effective rehabilitation and resource conservation require that eligibility for diversion not be unduly restricted. Instead, the report recommends the screening of a wide range of defendants for participation in diversion programs.[16] This school of thought holds that differentiation for purposes of eligibility between consumption offenses and drug-related crimes ignores the integral relationship between drug dependency and both types of offenses.[17]

The "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973, drafted by the National Conference of Commissioners on Uniform State Laws, also calls for a rational wedding of the criminal process and therapeutic control. It is based on the proposition that the criminal process offers an appropriate mechanism for establishing and maintaining therapeutic control over drug-dependent persons who have not sought help on their own.

Civil and Criminal Commitment Programs of the 1960's

During the 1960's civil and criminal commitment programs were established in California and New York on a massive scale to deal with the substantial number of drug users and addicts who were either alleged or convicted offenders or were considered potential offenders. It has been argued that commitment programs not only raise serious constitutional issues but have failed to prove effective in treating drug users and addicts.*

The drug problem, real and perceived, remains. A substantial number of drug users are still coming into the criminal justice system. For example, there are currently 47,000 persons on probation in New Jersey; 23,000 of these are for drug or drug-related offenses; 3,000 of the 23,000 are known to be in drug treatment in a State certified program.** It is unknown how many of the remaining 20,000 persons need some form of treatment, rehabilitation, or educational assistance. Such statistics have led the Commission to explore legal alternatives to methods presently used to divert the drug involved person.

The purpose of such intervention is to achieve the very goals which long-term in-patient civil and criminal commitment failed to achieve--that is, to provide suitable treatment to as

*See John Heintz, The Addict and the Legal Process: Civil and Criminal Commitment. Criminal Justice Workshop. Woodrow Wilson School, Princeton, New Jersey. Heroin Policy Task Force (1974).

**Statistics are from the Administrative Office of the Courts and provided by the Division of Narcotic and Drug Abuse Control, State Department of Health.

many addicts as possible and to reduce the overall social costs of addiction--but without the punitive and dysfunctional aspects of long-term commitment to confinement.

The factors which contributed to the ineffectiveness of the confinement-type of commitment are instructive in structuring an intervention program. For instance, commitment assumed that narcotics addicts were best treated in a situation of confinement isolated from the community.[18] Nevertheless, many addicts released from the major commitment programs relapsed and returned to heroin use.[19] This pattern reveals a fundamental weakness in commitment programs: while it may be relatively easy to induce an addict to abstain from drugs while in confinement and removed from the community, it is quite difficult to prevent him from returning to drug use when returned to the community. Commitment programs directed their limited resources to treatment in confinement at the expense of treating and dealing with the individual and his problems in the community. Any alternative program should focus its efforts as far as practicable on direct placement and treatment of the addict in community based treatment centers.

The failure of commitment can also be attributed to the fact that many addicts viewed commitment as little or no better than criminal incarceration. It represented the same confinement, attached the same stigma, and resulted in the same loss of freedom as a regular jail sentence. Commitment, however, offered the possibility of longer periods of confinement for treatment. Any alternative to incarceration must be perceived by the addict as substantially better than jail. It must avoid long term confinement, and it must be essentially a voluntary choice by the defendant.

Commitment may have also failed because it treated the more visible problem--addiction--rather than the more fundamental problems, among them poverty and unemployment. Any program which seeks to treat addiction must also deal with the attendant social problems. The addict who cannot cope in his environment will find it difficult to stop using drugs. Certainly, then, the provision of social services, particularly job training and placement, must be an integral part of the treatment effort.

Finally, the treatment goal of total abstinence found in all commitment programs is unreasonably idealistic and, thus, unrealistic. If reduction of social costs is a major goal, then a more functional treatment goal would be stabilization of drug use to a degree which permits the user to lead a more normal life.[20]

It is a goal of the Commission to hopefully improve upon the type of civil commitment programs described above as well as remedying problems inherent in present New Jersey diversionary programs.

Present Intervention Programs in New Jersey

Various forms of intervention into the criminal process have been practiced for years through the discretionary powers of the various participants in the system--the police, the prosecutors, and the judges. Each of these participants uses his discretionary power to direct individuals into a treatment process.

There are also formal provisions which make it possible for the drug-involved person to accept treatment rather than to be incarcerated.

A. Probation As indicated above some 23,000 persons in New Jersey convicted of drug or drug-related offenses have been placed

on probation.

B. Conditional Discharge Conditional discharge is available under section 27 of the "New Jersey Controlled Dangerous Substances Act" (P.L. 1970, c. 226; C. 24:21-27) for those first offenders charged with use, being under the influence, or possession--under section 20 of the same Act (see appendix A to this chapter). The court may disallow the conditional discharge of an eligible defendent if it determines that he is a threat to the community or that he will not benefit from treatment. In addition, a defendant cannot be so discharged more than once. The discharge must be with the offender's consent and on the condition that he submit to a program of "supervisory treatment" set by the court.

Supervised treatment can include residential inpatient care limited to the maximum sentence allowable for the offense charged, but not more than three years.

Intervention can take place either between trial or after a plea or finding of guilt, but before entry of a judgment of conviction. Successful completion of the treatment program results in a dismissal of any pending judicial proceedings. If the defendant fails to successfully complete the program, "the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no pleas of guilt or finding of guilt, resume proceedings." In any event, the defendant is denied a second chance in supervised treatment. Successful completion and dismissal means that the court does not adjudicate guilt, and no conviction is entered against the individual.

Figures from the Statistical Division of the Administrative Office of the Courts show that 160 persons were diverted from

September 1, 1973 to June 30, 1974. These were indictable offenses handled in the Superior County Courts (see appendix B to this chapter). This number is quite small; counties such as Essex and Union--where there are large concentrations of addicts*--have made almost no use of this statutory provision.

At the municipal court level (non-indictable offenses), 3,622 persons were released under this statute in 1973. There is no statistical breakdown to indicate the drugs involved or the specific offense with which the defendant was charged. Given our knowledge regarding present court practices in New Jersey, it is safe to assume that many of these offenders were marihuana users or users of other substances who were not considered drug-dependent.

The New Jersey Division of Criminal Justice has found that the impact of this provision has been limited for a number of reasons: (1) judges and prosecutors prefer to obtain a finding of guilt before conditionally discharging a defendant;[21] (2) judges are reluctant to exercise the option of diverting a defendant to treatment without medical advice;[22] and (3) eligibility is restricted to a small percentage (e.g., first offenders) of the drug-using population.[23]

With regard to the option of diverting a defendant to treatment without medical advice, in addition to the lack of a medical screening facility to assist the court in making a decision, there is a lack of knowledge on the part of prosecutors and court

*Approximated at 20,000 by Donald Merkelbach at a public hearing held by the Commission.

personnel concerning treatment facilities and the quality of care they offer. Therefore, there is a reluctance to refer to treatment--particularly before a plea or finding of guilt.

C. Court Rule 3:28 The other major structured intervention program is provided for under New Jersey Court Rule 3:28 (see appendix C to this chapter). Under this rule, a person charged with any criminal offense may be eligible for diversion. The rule provides for pretrial intervention or diversion rather than conditional discharge. With regard to defendants who are dependent upon a controlled dangerous substance court proceedings may be postponed up to one year; with other defendants, only up to six months. There are no criteria or standards of eligibility contained in the rule. This allows for a great deal of flexibility to meet individual needs.

A unique feature of the rule is that no person may be diverted to a program unless that program is approved by the New Jersey Supreme Court, insuring that local courts and prosecutors will have confidence in those programs to which they refer defendants. This is an important feature of any intervention program.

Certain problems do exist with this rule, however; there is no State funding to effect the rule since it is a court rule rather than a legislative mandate. And the prosecutor has no decision making power, but only a veto power.

Under this rule, the Administrative Office of the Courts is conducting the following diversionary programs:

1. Newark Defendants Employment Project-1970.
2. Hudson County Pre-Trial Intervention Project-1971.

3. Jersey City Alcoholic Rehabilitation Project-1973.

4. Union County Alcoholic Rehabilitiation Project-1973.

5. Bergen County Pre-Trial Intervention Project-1974.

6. Newark TASC Pre-Trial Intervention Project-1974.

These are funded primarily through Federal LEAA funds. Another project for Newark has just received funding; others are in the planning stage in Camden County, Mercer and Middlesex Counties.

Intervention Programs Outside New Jersey

As indicated, the concept of diversion is not new and takes many forms. The Commission has looked at other programs outside of New Jersey in an effort to learn of their strengths and weaknesses.

Such programs are functioning in, among other places, Florida, Massachusetts, Washington, D.C. and California. The California program operates under Section 1000.-1000.4 of the Penal Code and provides for first-time drug offenders to be diverted--provided they would benefit from the "education, treatment or rehabilitation." The statute is intended to reach drug users who have recently become involved with the drug culture. Other intervention programs are available for the truly drug-dependent person.

The Commission has closely examined two other programs so that the major issues involved in administering such projects can be made clear. These are the Accelerated Rehabilitative Disposition (ARD) program, promulgated by Court Rules 175-185 of the Pennslyvania Rules of Criminal Procedure (see appendix D to this chapter) and the Court Referral Project (CRP) in New York City--

[illegible] in four boroughs of the City.

A. Pennslyvania ARD Program The Accelerated Rehabilitative Disposition program in Pennslyvania was modeled after an experimental project run by the District Attorney in Philadelphia. The present program provides that "the attorney for the Commonwealth may move that any case be considered for accelerated disposition" before or after an indictment has been returned. The program does not specify which defendants shall be eligible; rather, determination of eligibility is left to the discretion of each county prosecutor. After making such a motion, the attorney must notify the defendant and his counsel of the motion and inform them of the proceedings. Any victims of the alleged crime are also notified and are given an opportunity to make themselves heard at the ARD hearing. The hearing on the motion is heard in open court in the presence of the defendant, his attorney, the prosecuting attorney, and any victims who attend.

The defendant is asked three questions on the record. Does he understand: (1) "that acceptance into and satisfactory completion" of the program may earn a dismissal of the charges; (2) that, should he fail to complete the program, normal proceedings will be resumed; and (3) that he must waive his right to a speedy trial."

If the defendant responds in the affirmative and still seeks diversion, the record is closed. During the off-the-record portion of the hearing, "the judge thereupon shall hear the facts of the case as presented by the attorney for the Commonwealth, and

such information as the defendant or his attorney may present... but no statement presented by the defendant shall be used against him for any purpose in any criminal or civil proceeding." (Rule 179.) Generally the judge attempts to ascertain that the defendant is frank and honestly seeks treatment. If the judge then decides that ARD is warranted, the record is reopened and the judge sets the conditions of accelerated disposition. Such conditions usually include restitution and costs, if any, plus successful completion of a treatment program of up to two years.

If the defendant is diverted before indictment, "the judge shall order that no bill of indictment shall be presented to the Grand Jury" during the term of the program. If the defendant is diverted after indictment, the judge shall order further proceedings postponed during the term of the stipulated program. At the end of the program he can petition the court for a dismissal of the charges pending against him. Unless the prosecutor files his objections, based on evidence that the defendant violated the conditions of this program within 30 days, the charges are ordered dismissed.

On the other hand, if the defendant violated any of the stipulated conditions and the district attorney files a motion alleging such violation, the judge who entered the ARD order shall order a hearing at which the motion is considered. The motion must be timely filed during the term of the program. If the judge determined that the defendant indeed violated the conditions of the program, he shall order a resumption of the original proceedings against the defendant.

While the Pennsylvania program is not limited to narcotic addicts, the experimental Philadelphia program after which it was modelled accepted defendants charged with "primarily minor property crimes and small scale narcotics offenses" and excluded "all crimes of violence."[24]

B. New York City Court Referral Project The Court Referral Project (CRP) of the New York City Addiction Services Agency is similar to the Pennsylvania program. The two major differences are that the CRP process is initiated by a social agency from outside the court system and is specifically geared to addiction. The CRP process takes the following form. Eligible defendants are determined by a certain set of objective criteria, primarily age and type of offense limits, and are then interviewed and screened by a CRP staff member. The project presently excludes juveniles under 16 and defendants charged with violent crimes. If the defendant desires treatment, and the CRP interviewer approves, a court liaison of the project assumes the responsibility for the case and attempts to work out an acceptable agreement and treatment program with the district attorney and defense counsel. If they accept the recommendations of the project, the case is presented to the appropriate judge, who disposes of the case in one of two fashions. If the case is pretrial, the judge orders an initial three-to-four-week adjournment, after which the case is either adjourned or adjourned in contemplation of dismissal for four to six months. If the case is post-trial but prior to an entry of judgment, the judge generally orders adjournment for four to six months initially.

The project provides the court with periodic review of

treatment progress during the period of adjournment. If the client stays in treatment for the full period, the case is dismissed; if not, the case is resumed.

The following chart illustrates the major issues involved in diversionary programs and the differences in those programs discussed thus far, including Assembly Bill Number 1079 of 1974, introduced by Assemblyman William J. Hamilton:

	Bill 1079	New Jersey Court Rule 3:28	24:21-27
Time Frame	Allows up to 3 years before final decision not to prosecute	3 month maximum plus additional 3 months for most cases. 1 year for drug-dependent defendents	maximum-3 years
Control	Prosecutor	Court	Court
Eligibility	Defendant has only one chance. First offender only. Defendant charged with certain crimes excluded	No offenses excluded	Includes only use and possession of Controlled Dangerous Substances. First offenders only.
Program Approval	No requirement for any approval of program to which defendant diverted. At discretion of prosecutor.	Supreme Court must approve program to which defendant diverted.	No requirement of program approval. At discretion of Court.

To summarize the New York City program and the Pennsylvania program in this fashion:

	N.Y.C.-C.R. P.	Pa.-A.R.D.
Time Frame	Usually six months	Maximum-2 years
Control	Court	Prosecutor
Eligibility	No written criteria, but excludes violent crimes and those under 16	Not stated, excludes violent crimes. Not limited to narcotics addicts
Program Approval	No requirement for program approval. Special service screening agency makes recommendation.	At discretion of court. No requirement for approval of program.

Issues in Structuring Intervention

Consideration of several main issues is important in evaluating intervention programs. They are:

1. The objective eligibility requirements;
2. The stage of the proceedings at which intervention occurs;
3. The process by which eligible defendants are screened and selected;
4. The provision of and assignment to treatment;
5. The structure of a process for reporting and reviewing treatment; and
6. The effect diversion has on the proceedings and on the disposition of charges.[25]

A. Defining the Class of Eligible Defendants This is perhaps the most important decision a drug diversion project must make. A study conducted for the American Bar Association found, for instance, that eligibility criteria of some statutes focused on:

1. Whether the addict is a first offender and, if not, the number and nature of prior convictions;

2. The seriousness of the present charge--felony as opposed to misdemeanor, violent as opposed to non-violent;

3. Whether the present charge is merely a narcotics possession offense or a property crime;

4. Whether the defendant has a history of probation and/or parole violations;

5. Whether the defendant has ever been in treatment before and, if so, whether voluntary or compulsory and for how long; and

6. Whether the defendant is "likely to be rehabilitated" or is "a fit candidate" according to a subjective determination made at an initial interview.[26]

Furthermore, a formal determination of addiction or drug dependence is generally involved in the screening process.

Of the above-mentioned programs, Pennsylvania's ARD program, New York City's Court Referral Project and New Jersey's Court Rule program have rather open-ended eligibility criteria. The "Comment" which follows the Court Rules creating ARD noted:

> The practice in Philadelphia County has been to include in this program primarily minor property crimes and small-scale narcotics offenses and to exclude from the program all crimes of violence. Nevertheless, no attempt has been made in these Rules to specify what cases or classes should be eligible for inclusion in the program. It is believed that the district attorney should have discretion with respect to which crimes he wishes to prosecute....[27]

When eligibility criteria are unspecified, and when the prosecution has control, each prosecutor will be able to choose for himself. Obviously this should result in rather broad use by some and rather narrow use of the ARD by other district attorneys. In Philadelphia eligibility apparently is still limited to minor property and non-

trafficking drug offenses.[28]

The New York City Addiction Services Agency Court Referral Project also has rather elastic eligibility requirements because there are no written criteria. The project's directors choose not to specify criteria in written form in order to preserve as much flexibility as possible. Originally, the project limited its intake to persons charged with misdemeanors. As it became more established and accepted by the district attorneys and the judges, it slowly evolved to include a wide range of defendants. At the present time, only those persons charged with violent crimes or those who are under 16 years of age are automatically excluded.[29] The project also benefits from the medical examination process conducted in all city detention centers upon arrest. Thus, addicted defendants are already indentified among the larger defendant population before the Project starts interviewing individuals for diversion.

The conditional discharge program in New Jersey limits eligibility to first offenders charged with use or possession of controlled dangerous substances. Persons who are addicted but are charged with other crimes are not eligible nor are any defendants who have been through the program once before. The statute providing for conditional discharge does not require any medical determination of the defendant's drug addiction before that person is eligible for conditional discharge.

In its review of the conditional discharge program in practice, the New Jersey Division of Criminal Justice recommended that eligibility be expanded to include defendants who have been through the program once before, who are not drug-dependent, or

who are charged with first offenses of a non-violent nature.

Three issues with respect to eligibility criteria are particularly important. The choice of eligibility criteria will critically affect the success of the program in terms of the goals established for the program.

First, excluding all but first offenders or all but persons charged with possession or use of a controlled dangerous substance may severely limit the impact of an intervention project:

> ...the exclusion of all non-first offenders or recidivists with certain prior records may immediately disqualify those addicts who are most ready for rehabilitation. Similarly, differentiation for purposes of eligibility between drug offenders and drug-related crimes ignores the integral relationship between addiction and both types of offenses....[30]

This conclusion is based on the observation that younger addicts or drug users with no prior record may still not have "bottomed out" of the excitement experienced in getting high and will thus be more difficult to encourage to accept treatment. On the other hand, the older addict with a series of drug and drug-related offenses may be using drugs to avoid withdrawal rather than to get high. Having lost his enthusiasm, though not his compulsion for drugs, may make such an addict more receptive to overtures offering some form of treatment.

Second, excluding all but defendants determined to be drug-dependent or addicted may also limit the success of an intervention program. If the purpose is to intervene in the drug use cycle which involves periodic offenses, arrests and convictions, it should be done as early in the "career" of the person as possible.

Furthermore, the result of such discrimination against non-addicts is that "...non-dependent users are theoretically more harshly treated than dependent users...."[31] Such discrimination between dependent and non-dependent users may also encourage non-addicts to assert that they are addicted in order that they can be diverted out of the criminal process.[32]

Third, if the legislation or court rule does not establish standards and the prosecutor has total discretion, the program will most likely be applied unevenly. Such defects may be remedied by the inclusion of an independent screening agency in which the prosecutor has confidence and possibly by court approval of programs to which the defendant is referred.

To conclude, eligibility criteria should be as broad as possible so as to encompass the goals of intervention. Criteria should not be specified by statute or court rule or written agreement when such specification makes an expansion of the criteria at a later date more difficult. It is particularly important that recidivists, persons charged with non-drug crimes, and defendants who are not addicted or drug-dependent should all be eligible for intervention. On the other hand, persons charged with violent crimes or drug trafficking offenses should not be eligible for diversion, but in certain cases might be eligible for conditional discharge. The use of such broad eligibility requirements by personnel in the criminal justice system will in large part be dependent upon their confidence in the treatment programs.

B. The Stage of Intervention The stage of intervention is important to both the defendant and to society and thus to the goals of intervention. The New York City and Pennsylvania programs provide for intervention before trial. The New York City program also permits and utilizes conditional discharge after trial but before a verdict is entered and sentence imposed, but it emphasizes pretrial diversion.

Intervention before trial contributes to the fulfillment of certain goals. Diversion before trial reduces the social stigmatization of the defendant. If the defendant successfully completes the diversion program, he avoids a criminal record. Pretrial diversion also reduces the amount of time that elapses between arrest and trial and utilizes that time for treatment. In contrast, post-trial release to treatment makes little or no use of that period of time. Pretrial diversion also frees the courts and their resources to deal more effectively and efficiently with the cases which do go to trial.

C. Screening of Eligibles The screening phase determines who among the eligible class of defendants shall be diverted. In the Court Referral Project, this phase occurs early in the process. Staff of the project screen arrest sheets to identify eligible addict defendants. As soon as possible, usually within a day, a staff interviewer interviews the potential candidate at the detention center. During that interview, the interviewer must develop answers to fill out a standardized profile form on the individual. The interviewer must make a recommendation on whether the project should accept the candidate or not; that recommendation is generally based on the addict defendant's motivation, honesty and readiness

for treatment as revealed in the interview. The interviewer must also recommend an appropriate treatment program for the individual he interviewed based on his knowledge of available treatment and on the addict's preferences and experiences with treatment.[33]

On the other hand, in Pennsylvania's ARD program, the hearing judge acts as the motivational screener in the unrecorded segment of the diversion hearing. During that portion of the hearing the judge generally asks questions of the defendant aimed at ascertaining his drug use history, his motivation, honesty and "repentance" in order to develop a basis on which to make his ultimate diversion decision.[34] Of course, the district attorney in deciding which defendants to recommend for accelerated disposition, may do so through an informal motivational screening.

The New Jersey conditional discharge statute appears to provide for little formal screening. It is left to the presiding judge to determine if the defendant is likely to benefit from treatment without any medical examination or any explicit provision for ascertaining the extent and nature of the defendant's drug use. As the State's Division of Criminal Justice reports, since the court is "obviously ill-equipped to make the medical decisions, judges are understandably reluctant to utilize the provisions..." for conditional discharge to treatment.[35] The Division recommended that all defendants who may be conditionally discharged should be referred to a state medical authority for examination to determine if treatment is warranted.

The New Jersey Court Rule provides for an independent screening agency that advises the court concerning diversion in each case, monitors the program of the individual and provides

some counseling, if needed.

The screening itself is of great importance and is generally a difficult task. Interviewers must be experienced and knowledgeable about the drug culture and about the strengths and weaknesses of various treatment alternatives. This suggests that the interviewing and screening of defendants ought to be the fulltime responsibility of an independent, special, qualified staff, and not an additional responsibility for the prosecutor's office, judges, or the treatment agency itself. Such a staff would increase the capacity of a diversion program to develop sound treatment programs for diverted defendants.

The Commission has considered the use of the concept of motivational screening as outlined in the ARD program. Such qualities as "motivation," "repentance," and "honesty" are elusive and subjective. What constitutes "motivation," what constitutes "success," what makes "treatment" work? Rather than forcing "honesty" on an addict who has had to lie for so long, one goal of treatment should be to help the addict find more viable options than that of the drug culture. Many addicts initially screened for treatment will have as their only motivation to escape incarceration. This fact should be openly faced by the treatment agency and the criminal justice system; it should be seen as an acceptable starting point and assessed along with other facts in every defendant's life.

A medical screeing facility should be able to determine an individual's prognosis based on the composite picture of his total life situation. Other programs have reported that at initial inter-

views the defendant is often hostile and suspicious. This is not abnormal and does not necessarily predict success or failure in treatment.

D. The Determination of Treatment The next step in the intervention program must involve some determination of the appropriate treatment that should be provided to the defendant and what will be required of him should he be placed in treatment. Obviously, this issue must be resolved before the court can make a determination that the addict defendant is likely to benefit from treatment.

In the CRP project, the interviewer--from the interview of the potential divertee--seeks to identify the characteristics of the defendant's drug use, his prior treatment history and his preferences regarding various treatment alternatives. This latter point receives emphasis because the project will not recommend diversion to a treatment program to which the addict-defendant objects even if the project staff, the district attorney, and the judge think the particular program is the best alternative and even if it is the only program the district attorney and/or judge will approve. When the interviewer formulates a treatment program which the addict agrees to, the program is recommended to the court.

In the ARD program, the hearing judge, with the assistance of the defendant and with the assistance of a liaison person from a community treatment program who also attended the diversion hearing, determines the appropriate treatment program to which the addict should be diverted.

Under the conditional discharge provision in New Jersey, "... the burden of devising the appropriate medical response to a given patient is placed upon the judge...."[36] The judge is given little assistance or resources to evaluate the defendant's drug problem and to formulate a useful treatment program. It is unlikely that a judge will have sufficient knowledge of the various treatment alternatives to make an effective decision. As mentioned above, the New Jersey Division of Criminal Justice has recommended that a State medical authority examine defendants and recommend appropriate treatment.

As pointed out, careful screening of defendants coupled with a careful matching of defendants to suitable treatment modalities is an essential aspect of a diversion program. This requires that all eligible defendants be screened by well-trained personnel experienced in drug abuse treatment. Few judges or district attorneys have the necessary knowledge or the resources to assist them in making sound formulations of treatment programs.

An intervention project should be able to utilize as many treatment modalities as possible in order to fit treatment programs to individual needs. Flexibility is highly desirable. If such programs already exist in a community and they agree to accept referrals from the court, there should be little problem. Otherwise, additional funding to develop treatment programs in conjunction with an intervention project may also be necessary. In any event, an intervention project should be able to place the

drug-problemed person in any one of several drug treatment modalities and to call upon whatever additional social services are deemed important for the defendant, particularly job training, counseling and placement services. Insuring the availability and utilization of such services is vital to the goal of reducing the social costs of drug abuse, and a program to do so should be undertaken in conjunction with the establishment of an intervention project.

E. The Reporting and Reviewing of Treatment Diversion projects generally provide for some form of supervision or review of defendants once they are placed in a treatment program. Under the Court Referral Project, staff periodically reviews the treatment progress of all defendants referred to treatment; provides reports to the diverting court during the period of adjournment; and generally continues to follow up on all divertees for six months after the criminal charges against them have received final disposition. Thus, the court has sufficient information upon which to base its decision of whether or not to dismiss the charges.

In neither New Jersey, under the conditional discharge statute, or Pennsylvania is such review systematically provided to the court. In the original Philadelphia pilot program upon which ARD is based, the only supervision of treatment provided to the court was through the criminal justice system itself if and when a divertee was rearrested during the period of stayed proceedings. If a defendant was not rearrested, then he was deemed to have completed treatment successfully when his case came up for final disposition at the end of the period of stayed proceedings. In New Jersey,

defendants conditionally discharged are referred to "supervised treatment." The supervising agency is not required to make periodic reports to the court; it is, however, required to report any violations of the conditions of the discharge. A reporting system is included under New Jersey Court Rule 3:28.

Two considerations are involved in structuring a report and review process in intervention projects. From the perspective of the criminal justice system, the judge or district attorney needs to know when a defendant has terminated treatment unsuccessfully so that criminal proceedings may be expeditiously resumed, if necessary. Second, from the perspective of the addict-defendant, the defendant needs to be able to inform the court or the district attorney if and when he feels he has been rehabilitated before the end of the stipulated period of treatment or if the chosen treatment program no longer seems to be an appropriate one. Basically, both these considerations involve structuring an easy flow of critical information between the court and the defendant or the court and the supervising agency. The defendant should be allowed to petition the court after some minimum time--say, a month or two--for release or for transfer to another treatment program. While a request for early release should require a court hearing, the latter request should be facilitated and acted upon immediately. The supervising agency should also be required to make periodic reports to the court. The first report should be made soon after placement indicating whether or not the agency feels that the stipulated

treatment is the most appropriate one and recommending changes where necessary. Thereafter the supervising agency should be required to report at least every six months on the patient's progress. Periodic reporting will impose administrative burdens on the judge, the district attorney and the supervising agency. These burdens should be kept to a minimum through efficient reporting mechanisms and brief report forms, but not at the sacrifice of providing the most appropriate response to the defendant, including early release, when appropriate.

F. Disposition of the Proceedings and Charges The last element of a intervention project which merits discussion is the provision for disposition of charges. Under the Court Referral Project, the charges against a defendant who remains in treatment for the period stipulated are dismissed. If the defendant drops out of treatment, the project notifies the court, and proceedings against the defendant are resumed.

The rules governing Pennsylvania's ARD program provide that upon successful completion of the stipulated treatment program, the defendant can petition the court for a dismissal of the charges. The petition is granted unless the district attorney files an objection within thirty days. A defendant who has not been rearrested is generally deemed to have successfully completed the program; the district attorney generally will not object to the petition of such a defendant.

New Jersey's conditional discharge statute provides for dismissal of charges upon completion of the conditions of the discharge and for resumption of proceedings against the defendant if he failed to comply with those conditions.

Disposition of charges is one of the most difficult issues to resolve in establishing a diversion project. Most diversion projects suspend proceedings against the defendant in some manner until the period of treatment elapses, at which time if treatment is successful, the pending charges are usually dismissed. Yet this method of disposition poses a serious problem to the prosecutor. The longer the period between the commission of the offense and the actual trial, the more difficult it is to gain a conviction.[37] Thus prosecutors, if given the discretion on the diversion decision, may wish to secure a conviction or at least a plea or finding of guilt before allowing intervention to take place. In New Jersey both judges and prosecutors have indicated that the guilty plea gives them an added tool in inducing the defendant to enroll in and stay in treatment. "In short, prosecutors and judges are concerned with ensuring that the lever that compels submission to medical treatment does not become ineffective."[38]

On the other hand, allowing prosecutors to require a plea or finding of guilt before a defendant can be diverted would erode two major purposes of diversion -- avoiding the stigmatization that a conviction generates and reducing the burdens of the judicial system in dealing with drug abuse problems. One

solution that has been suggested is "... to make violation of a conditional discharge to a prescribed treatment program a distinct offense in and of itself punishable by up to a year imprisonment."[39] Such a penalty for violation of the conditions of diversion would surely increase the leverage the judge and the prosecutor have on the conditionally discharged defendant. At the same time, however, it could easily set up the diverted defendant for a more certain conviction than the original case. This is particularly true in light of the limited success of most treatment modes presently available. It is certainly unjust to encourage an addict to enter treatment and then penalize him for failing when the treatment available may not be adequate for him. The concern over the effects of delays on the effective prosecution of a case does not recognize that lengthy delays between arrest and trial already occur. If diversion took place soon after arrest, the time spent waiting for trial could be utilized for treatment. Many failures would be detected by the time the trial would normally take place.

In New Jersey a defendant would be in treatment an average of four to seven months before his case would come to trial.[40] Evidence from the Court Referral Project indicates that most failures will occur during the initial month of treatment. Thus, prosecutors would be able to proceed with prosecution without any time lost in most of the cases in which the defendant dropped out of treatment. The prosecutor would have significantly less need to prosecute those defendants who remained in treatment.

Obviously there is no easy solution to any of these problems. Diversion necessarily requires taking some chances -- chances that a defendant will commit another crime and chances of eroding the prosecutor's ability to successfully prosecute the case after a lengthy delay. Diversion must accept these risks if it is to accomplish its goals.

Since the above discussion indicated that the method of disposing of charges is related to the length of treatment required of the defendant, it is appropriate to turn directly to that issue. The CRP program generally requires a defendant to remain in treatment for six months; ARD can require up to two years. The ABA study suggests that the maximum period of required treatment should be one year for persons charged with misdemeanors and two years for persons charged with felonies. Another alternative is to simply limit the period of treatment to the maximum sentence the defendant could receive it he were convicted and sentenced as usual. A third alternative is to limit treatment to the average sentence each offense receives. Unfortunately, since there are few truly successful treatment modes, there is no reason to suspect that a given amount of time is necessary before a person could be deemed rehabilitated. Thus, one must rely on the more arbitrary constraints which the criminal penalty system offers.

One further consideration should be mentioned if longer treatment periods are required. If longer periods are used, provisions for periodic review of treatment progress and for

an earlier termination upon successful rehabilitation will have to be stronger in order to protect the individual from undue retention in treatment.

A second and final consideration in structuring treatment is the response to various degrees of failure in treatment. What should happen, for instance, if the defendant misses a treatment appointment or misses appointments for three weeks straight (if the program will allow him to miss that long before some type of sanctions are invoked)? What if urinalysis indicates a return to narcotic use? What if the defendant is rearrested for possession or use of narcotics, or for drug-related crimes? The answers to these sorts of questions are not easy to produce but must be developed before an intervention program can operate effectively.

In part the answers depend on the goals of diverting a defendant in the first place. The program's goals provide a predetermined definition of failure. If the goal is simply to reduce recidivism, then failure might be defined solely to mean a rearrest during the treatment period. The response to failure defined in this fashion would probably be automatic resumption of the proceedings against the defendant. Perhaps a second diversion should be allowed if both offenses were for use or possession, based on the premise that a positive response to treatment might take more than one try and/or an awareness of the possibility that the treatment to which the defendant is first diverted may not be the most appropriate one.

If the goal of the program is to stabilize the defendant's drug use rather than to achieve total abstinence, then a dirty urinalysis would not constitute failure. Indeed, it should probably be read to mean that though the addict could not resist using the drug, that did not reduce his desire to overcome his problems. Acceptance of the notion that many small failures do not imply total failure or a lack of effort on the part of the defendant will require less stringent guidelines as to the response of the program and will probably also require a larger staff to operate as an outreach to keep people from failing completely.

Constitutional Issues

Three constitutional issues are particularly important with regard to diversion. The first involves the equal protection of all addict offenders. The second involves the defendant's right to a speedy trial. The last involves the defendant's privilege against self-incrimination.[41]

A. Equal Protection It has been suggested that the automatic exclusion of certain offenders from eligibility for diversion, on the basis of a previous criminal record or on the basis of types of offenses for which the defendant is charged, may violate the equal protection clause of the Constitution.[42] That clause requires that any "classification must be reasonable rather than arbitrary; it must situate offenses and offenders in classes bearing some substantial relation to the public purpose to be served by the statutue; and it must treat all persons within a given class in a similar manner."[43]

Since the purpose of diversion is primarily rehabilitation, the exclusionary criteria must be reasonably related to it. Neither an addict's past record or present charge necessarily indicates his potential to succeed in treatment.[44] As stated above, those addicts who are most likely to be excluded--those with past records or charged with more serious offenses--may be the best candidates for treatment. Thus, broad eligibility criteria are most likely to pass the requirements of the equal protection clause.

The Pennsylvania and New York City programs best meet the standard. Both place very few restrictions on eligibility; rather, they allow the court to decide which defendants would benefit from diversion to treatment. On the other hand, New Jersey's conditional discharge program excludes all but first offenders even though second offenders may be just as likely to succeed in a treatment program.

Additionally, the Criminal Justice Division of the Attorney General's Office has raised the equal protection question: are drug involved persons a permissible class? Because this Commission is charged only with dealing with the drug laws and drug-problemed persons, it cannot make recommendations concerning intervention for all who commit crimes, but the Commission does recommend that the State re-evaluate its laws and programs with regard to offenses committed by those not drug-problemed. Legislative recommendations for intervention programs for drug involved persons are not intended to imply that other persons--by being excluded--should not be diverted in certain cases under present provisions, such as Court Rule 3:28, and the more informal procedures.

B. Speedy Trial The impact of the right to a speedy trial is rather straightforward. Since diversion generally involves a suspension of the criminal proceedings and a delay of the final disposition, a defendant's right to a speedy trial may be violated. A simple solution would be to require that the defendant intelligently waive this right after the purpose of the waiver has been explained to him and after he has had an opportunity to discuss it with his defense counsel. It is important that the defendant waive his right to a speedy trial knowingly and voluntarily.

Such a waiver is implicit in the New York City program and under New Jersey's conditional discharge statute because the defendant must explicitly consent to diversion. The Pennsylvania program requires an "intelligent" written waiver of the right to speedy trial by the defendant and his counsel, and is probably the best of the programs mentioned here.

C. Self-Incrimination The possibility exists that statements or admissions made by the defendant during a diversion hearing or for purposes of diversion may be used against him in other civil or criminal proceedings. A diversion program should specifically provide safeguards against such use of a defendant's statements. The Pennsylvania ARD program provides that no statement made by the defendant may be used against him in any civil or criminal proceeding. The Court Referral Project and the conditional discharge statute in New Jersey do not provide such guarantees.

Synopsis of Public Hearing

In the several public hearings held by the Commission, the question of intervention in the criminal justice system for the drug-dependent person was addressed. The majority of speakers held that treatment rather than incarceration was needed, but there were differences as to how the program of intervention should be established and differences as to eligibility requirements. It was instructive to the Commission to hear from Mr. Albert Wagner, former Director of the Division of Correction and Parole in the New Jersey Department of Institutions and Agencies, that in 1972, 39% of those admitted to Trenton, Rahway, and Leesburg prisons had a history of drug abuse, mostly with heroin, In the youth complex, Annandale, Yardville, Bordentown, 52% of those admitted had a history of drug abuse, also mostly with heroin. In the prison complex, in 1972, 20% of admissions were for narcotic law violations, mostly possession. In the youth correctional system, 22% were for such violations. This indicated quite a load on the prison system for drug problems. Mr. Wagner indicated that he felt those charged with possession who were users should be diverted to community treatment centers as they are misplaced in a State institution.

Treatment personnel who testified felt generally that rehabilitation should be the first option offered the drug users, and incarceration used only as a last resort. These professional opinions, while not based on statistical studies, are the result of a total of many years in working with incarcerated drug users.

Mr. Robert B. Stites, former Director of the Division of Narcotic and Drug Abuse Control, stated there were, in 1973, 2,500 methadone maintenance patients and 2,000 to 2,500 other persons regularly participating in out-patient programs. These figures represent a significant increase from early 1970; however, if one is to rely on the figures given by Donald W. Merkelbach that there are 20,000 addicts in the Newark area alone, treatment has reached only a fraction of those involved in the drug world. Mr. Stites recommended to the Commission that legislation be enacted (he referred to Assembly Bill No. 594 of 1972) to permit selected inmates to become eligible for early parole to treatment programs. He also recommended legislation to implement a diversionary program for defendants in non-violent cases, allowing a treatment alternative at the point of entering the criminal justice system. In addition, Mr. Stites indicated the need for flexibility in treatment alternatives to meet individual needs. Others who testified indicated a need for more experimental and creative approaches to the drug abuse problem, possibly the inclusion of a heroin maintenance program such as that proposed by the Vera Institute.

Mr. Michael J. Sonnenreich, Executive Director of the National Commission on Marihuana and Drug Abuse, strongly endorsed passage of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 as a method whereby the criminal justice system can be utilized to get addicts into treatment. He indicated that national studies show that "for a large segment of the drug-dependent population the stick is as important at the carrot":

Therefore, what we have recommended and what is being recommended to the National Conference of Commissioners on Uniform State Laws is the utilization of the criminal justice system as a method of detection. In other words, utilizing the system, the police, the law enforcement officials, to reach out and pick up people who are drug dependent if they are committing a crime. And if the crime is possession, then I might go into that in a minute, they can reach out and pick these people up. But once they pick them up and the people are drug dependent, then the State has a responsibility not to put them in jail but to put them into treatment, and it can be residential, it can be outpatient, it can be intermediate. We feel that by holding the threat of a criminal sentence over them, provided that it is a rational criminal sentence, you can at least get the person to the doctor. We cannot guarantee we can cure him, we cannot guarantee we can really help him, but at least the state is taking the step of at least making that facility, that service, available to that individual. Anybody who talks in terms of success in this area is talking pie in the sky. We can tell you with absolute certainty that there has been no evaluation of rehabilitation and treatment programs that has resulted in national guidelines; we do not know at this point in time what is very successful and what isn't. And I would caution you to be terribly, terribly skeptical about statistics that you are getting about a cure rate either with methadone maintenance or a cure rate in therapeutic communities. I can show you how to prove that it is either successful or not successful. Whether these programs are aimed at solving crimes, I think crime is just one part of a larger picture. I think that people are tending to forget a very important thing, and the important thing is that we're not just interested in crime, we're interested in the togetherness of the family, the structural support for other institutions, and something that everybody seems to forget and that is productivity.

I should point out that you should be aware of this fact that the statistics presently are that we have 194,000 people in every federal, state and local jail throughout the United States. We have presently civilly committed 428,000 to mental institutions. And we have to be absolutely certain, as the Supreme Court has stated, that the rights of that 428,000 people are at least the same as those we put in jail.

This is a very major point and it's something that has to be faced squarely by the Legislatures of the various states.

> We have to design treatment acts, civil commitment acts, that do abide by constitutional standards.[45]

Overall, personnel from the Criminal Justice System, including police officers, prosecutors, etc. have indicated they favor a rehabilitative approach, with some preferring civil commitment.

In line with the concept of providing treatment, Mr. Donald Meckelback stated that "the Legislature owes it to the State to make sure that facilities are provided so that we can give an addict the opportunity to be treated under court controlled sanctions." He recommended a diversion program.

Testimony from inmates in Rahway State Prison reflects the general tone of previous statements made at various public hearings--that incarceration is at best non-productive in treating the drug problemed person and, at worst, re-enforces the anti-social behavior of the individual.

Given these recommendations, the Commission has concluded that informed public opinion upholds in many instances what is happening in an informal, non-structured manner in the criminal justice system, that is, the diversion and conditional discharge of addicts.

The "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973

The "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973, drafted by the National Conference of Commissioners on Uniform State Laws, and reviewed by this Commission, is a well thought-out plan to encourage the treatment of certain drug-dependent persons in lieu of incarceration.

As stated in the prefatory note to the Act, "The central purpose of this Act is to adapt the criminal justice system to the task of providing treatment by assuring that the treatment process is parallel to, but independent of, the criminal process, and is subject to its own network of controls to protect the rights of the patients." The Act is based on the proposition that drug-dependent persons are suffering from an "illness" and that, for those who have not sought help on their own, the criminal process currently offers the best mechanism for getting the person into treatment. The Act does not recommend involuntary civil commitment (such as the New York and California programs) because of the constitutional issues raised by such programs; it is also believed that such an approach is unnecessary where penalty schemes exist for controlled dangerous substances* and can be invoked to help the person get into treatment. Article I of the Act includes definitions of the key words used throughout the Act. It is important to note that the term "commitment" is used not in a physical sense but in a broad supervisory sense, because "civil commitment" has commonly been associated with physical confinement, especially in drug and mental illness areas.

Article II, which establishes a comprehensive state-wide drug treatment program, is presently analogous to P.L. 1969, c. 152 (C. 26:2G-1 et seq.) which provides for the establishment of a Division of Narcotic and Drug Abuse Control. It is more comprehensive than the present New Jersey law and is necessary for implementing the following articles.

*The Act does not deal with those persons dependent on alcohol; because of the immensity of the alcohol problem the National Conference adopted a separate "Uniform Alcoholism and Intoxication Treatment Act" in 1971.

Article III provides for the voluntary treatment of drug-dependent persons and others--that is, persons not formally within the criminal justice system. It is akin in philosophy to present New Jersey statutes (P.L. 1964, c. 226; C. 30:6C-1) but far more comprehensive and sets out certain patient rights--such as: (1) the person must consent to treatment; and (2) he shall be informed of any diagnosis of his condition.

Also, under this Article minors may be treated without parental consent and any person may apply for treatment; the comments to the Act suggest that the prosecutor may choose not to prosecute and refer the person for treatment informally.

Article IV provides for various intervention programs to which this chapter has addressed itself thus far. Its main strength is that it offers the criminal justice system and the individual charged with crimes a great amount of flexibility; i.e., a variety of options to meet the needs of protecting society and to meet the needs of individuals who require treatment. The system established by the Act is structured so that offenders may be distinguished and dealt with according to the combined judgment of the court, the prosecutors, treatment personnel, and the individual offender. Criminal offenses are divided into three groups:

A. <u>Violence-oriented crimes</u>

The court is given discretion to place an individual on probation if he is decreed treatable and if not considered a threat to the community. Actually, this happens in many instances under the present probationary system.

B. Simple possession and other consumption-related offenses

The court must mandate treatment if the individual requests it. It is an innovative and bold approach in the minds of some, but is based on the rationale in Robinson v. California 370 U.S. 660 (1962), that addiction is an illness and the "badges" of addiction require treatment rather than incarceration. Such criminal charges as "under the influence," "use," and "possession" are the inevitable consequences of addiction. (See Watson v. U.S. 439 F2d. 442 (1968).) As ruled in the Watson case, possession by an addict of a day's supply of heroin should not subject him to harsh criminal penalties.

C. Other crimes

Intervention in the criminal process for those charged with non-violent crimes indirectly related to drug dependency is provided for.

To summarize, the Act in establishing intervention programs provides for:

1. Diversion - with the prosecutor having control of the process. Expungment of records is included and appears to meet the objection raised by many prosecutors -- that if a defendant fails, they will have a stale case on their hands. The criminal charge is held in abeyance and automatically dismissed after the expiration of 180 days or after the maximum permissible period of incarceration for the offense charged, whichever is earlier. This from all comments surveyed should provide the appropriate time to determine if the defendant is progressing in treatment.

2. Conditional discharge - with the court having control. Treatment may be substituted after an adjudication or plea of guilt but before entry of judgment. Expungement of the record is also provided for but at the discretion of the court. Under the diversion procedure above, expungement is mandatory. As with diversion, the types of criminal offenses are not enumerated.

Drug-Dependent Persons and Drug Users

The intervention program established in the aforementioned "Uniform Drug Dependence and Rehabilitation Act" of 1973 applies only to those persons diagnosed to be drug-dependent. This excludes a large number of individuals who are not drug-dependent but who are drug involved--or drug users--and who come into contact with the criminal justice system.

It is the consensus of the Commission, however, as well as many others involved in either treatment programs or in the criminal justice system, that a diversion program should also exist for the drug user who is not drug-dependent (i.e., addicted). The drug user is presently eligible for diversion under Court Rule 3:28 and under the conditional discharge statute of the "New Jersey Controlled Dangerous Substances Act."

Accordingly, the goal of the Commission is to provide the most appropriate method of diverting the casual user--whether it be to treatment, education, employment, counseling, rehabilitation, traditional mental health facilities or other options. This will require creative and innovative approaches as well as close cooperation between various administrative agencies designated to deal with these problems. Such cooperation is essential to insure the maximum use of available resources and quality services.

Cost Analysis

The Commission, in considering the need for new intervention programs, has also considered the financial cost for such programs. As noted elsewhere in this chapter, the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 applies primarily to a relatively small class of people--those who are drug-dependent. It establishes two requirements for diverting drug-dependent persons: (1) no one may be committed for treatment unless the court finds that adequate treatment is available; and (2) the administering agency must carefully define the types of drug dependence for which treatment is feasible and available. The court would be guided by the diagnosis and screening in individual cases and by the treatment defined as feasible and available by the administering agency when it (the court) determines adequate treatment is available. Thus, if the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 were adopted in New Jersey, it would not require large expenditures of funds to make its provisions available immediately to the eligible class.

A cost analysis is somewhat complicated and financial predictions are difficult to make. Certain statistics are not available, such as: the number of eligible defendants who would choose the intervention process, and at what point in the process they would invoke their rights? What percentage would wait until after trial to request intervention, thus, not reducing court costs or burdens? What percentage of those arrested would be acquitted, have charges dropped, or perhaps not even be charged? and What percentage is presently being diverted de facto? - in which case,

the adoption of the Act would only give legislative approval and a procedural form to an existing situation.

Certain statistics are helpful in determining those who are "drug-involved" and might enter an intervention process.

1. Figures from the Statistical Division of the Administrative Office of the Courts indicate that 160 persons were diverted under our present conditional discharge statute (P.L. 1970, c. 226; C.24:21-27(2)). These were for only indictable offenses handled in the Superior County Courts from September 1, 1973 to June 30, 1974.

At the municipal court level (non-indictable offenses), 3,622 persons were released under the conditional discharge statute to "supervisory treatment". There are no statistics available to indicate the drug involved or the specific offense with which the defendant was charged. An intelligent guess is that many of these persons were charged with marihuana offenses and would not be considered drug-dependent within the meaning of "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 and, therefore, not in need of treatment.

2. Another statistic included in one report is the number of persons on probation in New Jersey; 47,000 persons, of which 23,000 are for drug or drug-related offenses; and 3,000 of the 23,000 are known to be receiving treatment in a certified drug treatment agency. Many of these may be in "supervisory treatment" under the conditional discharge statute for marihuana offenses. No statistics are available as to those on probation who may need treatment.

3. A third statistic which is instructive is that given by Albert Wagner, former Director of the Division of Correction and Parole

in the Department of Institutions and Agencies, at the Commission's public hearing on April 24, 1973, concerning 1972 admission statistics to:

(a) The prison complex (Trenton State, Rahway, Leesburg).

39% of a total of 1711 admissions had a history of drug abuse, primarily heroin; 21% of admissions were for narcotic law violations, primarily possession.

(b) The youth complex (Yardville, Bordentown, Annandale and their satellites).

52% of a total of 3527 admissions had a history of drug abuse, primarily heroin; 22% admitted were for narcotic law violations.

4. A fourth figure is the arrest data for 1971, provided by the New Jersey State Police, and included in the State Plan prepared by the Division of Narcotic and Drug Abuse Control. These figures indicate a total of 1065 drug law violators admitted to the prisons in 1971. The Commission estimates that perhaps 80% of these would choose to be eligible for intervention.

A. Arrest Data

In recent years arrests for violation of narcotic and dangerous drug laws have dramatically increased in New Jersey:*

Narcotic and Dangerous Drugs Law Arrests

1967-1971

Year	Number of Arrests
1967	5,045
1968	7,896
1969	13,364
1970	22,941
1971	27,092
1972	28,313

*See figures 1 and 2 of the chapter for a breakdown of the 1971 arrests by drugs and the nature of offenses.

The most recent information from the "New Jersey Controlled Dangerous Substances Registry" disclosed that State Police and Juvenile Courts reported 11,655 instances of drug abuse related cases for the period of January 1 to April 1, 1973. Projections suggest that the courts and police may handle 35,000 drug abuse cases in 1973.

This arrest and juvenile court data is not, in and of itself, indicative of an increasing drug problem. It may also reflect increased enforcement activity. For instance, the State Police narcotics squad was tripled from 26 to 70 men in 1971 so that the actual number of State Police arrests per officer decreased from 121 in 1970 to 46 in 1971. Also, nearly one-third of the arrests in 1971 involved marihuana which because of its social acceptance in some circles may not be a true indicator of the abuse problem in the State, except in enforcement terms.

As can be seen from figure 1, marihuana and heroin are clearly the two major drugs abused, accounting for 16,985 arrests out of a total of 27,092 arrests in 1971. Possession of a hypodermic needle also accounted for 3,816 arrests in 1971, a significant portion of the arrests. Possession offenses occur most frequently, numbering 18,911 arrests out of the total of 27,092 arrests.

While a breakdown of arrest statistics was not available for the succeeding years, the percentage breakdown for drug arrests in 1972 is as follows:

Marihuana, Opium, Cocaine,	57.9%
and their derivatives	25.0%
Non-narcotics (barbiturates, etc.)	11.3%
Synthetic Narcotics	5.8%
	100%

The following table displays the 1971 arrests by offense and drug charged.

FIGURE 1

Arrests by Drug and Nature of Offense (1971)

	Opiates									
	Heroin	Metha-done	Other	Barbi-turates	Amphet-amines	Cocaine	Hallucino-gens	Mari-juana	Other	Total
Use	699	17	1,272	70	28	15	93	738	1,969	4,901
Possession	6,524	229	476	446	474	359	515	6,814	3,074	18,911
Distribution	1,512	12	111	21	160	46	151	562	301	2,876
Aid and Abet Distribution	32	0	2	1	4	0	1	11	67	118
Dispensing	53	0	4	9	8	7	6	36	50	173
Administering	1	0	1	0	0	0	0	1	4	7
Unlawful Obtaining	1	5	19	5	3	1	1	1	70	106
Total	8,822	263	1,885	552	677	428	767	8,163	5,535	27,092

Other Drug Offenses - 1971

Forgery of Prescription	84
Possession of Hypodermic Needle	3,816
Growing Marihuana	41
Involving juvenile in a narcotic offense	223
Conspiracy	264
Maintaining dwelling for narcotic use	238
Other	258
Total	4,924
Total for all arrests	32,016

For the 32,016 arrests in 1971 there were 27,989 defendants. The sex ratio of defendants was 24,665 males to 3,324 females or 6:1.

Clearly marihuana and heroin are the two major drugs of abuse accounting for 26% and 28% respectively of the arrests, or a total of 54% of all drug arrests in 1971. Possession of a hypodermic needle also accounted for 12%, a significant portion of the arrests. Possession is the charge most frequently occurring, accounting for 59% of all arrests.

Illicit methadone does not appear to be a major problem, accounting for less than 1% of all arrests. Even with increased enforcement activities the adult male heroin user is still the most likely individual to be arrested.

Data on juvenile offenders for 1971 is presented in figure 2. In juvenile cases marihuana accounts for 1,729 arrests out of a total of 3,600 for all drug offenses. Heroin accounts for only 381 arrests. As with the adult category, possession is the most frequent charge, representing 2,122 arrests out of the total of 3,600 arrests.

FIGURE 2

Juvenile Court Cases by Drug and Nature of Offense, 1971

	Opiates									
	Heroin	Metha-done	Other	Barbi-turates	Amphet-amines	Cocaine	Hallucino-gens	Mari-juana	Other	Total
Use	138	2	197	54	20	0	160	307	166	1,044
Possession	189	1	129	71	54	6	123	1,268	281	2,122
Distribution	53	0	13	10	32	1	69	150	75	403
Dispensing	1	0	1	6	0	0	10	4	9	31
Total	381	3	340	141	106	7	362	1,729	531	3,600

Possession of hypodermic needle	219
Growing marijuana	4
Driving under the influence of a narcotic	2
Glue abuse	126
Carbona sniffing	13
Total	364
Total juvenile court cases	3,964

B. Conviction Data

Conviction data is recorded only in aggregate statistics, and cannot be retrieved in terms of the nature of the crime or drug involved. The data that is available follows:

In the County courts, of the 4,646 cases in 1971,
1,603 cases were dismissed;
3,043 cases were convicted.

1,517 received suspended sentences and/or probation
55 were fined;
1,471 received sentences.

In the municipal courts, of the 27,370 cases in 1971,
15,472 cases were referred to grand jury;
3,581 cases were dismissed;
442 cases received a conditional discharge;
7,875 cases were convicted.

1,392 received sentences;
3,281 received suspended sentences and/or probation;
3,202 cases were fined.

Of the 3,964 juvenile court cases in 1971,

1,416 cases were dismissed;
171 cases were committed to a juvenile facility;
118 cases were committed to a medical facility;
52 cases were reprimanded and counseled;
86 cases received suspended sentences;
1,940 cases received probation;
125 cases were fined;
56 cases were adjusted.

The State Department of Institutions and Agencies reports an increase in drug law violators in recent years in the population of its correctional facilities, and speculates that this increase--along with increases in other categories of crime--reflects increases in criminal activity rather than "easier commitment of milder offenders." The actual figures are:

Drug Law Violators Admitted to Prison and Youth Correctional Facilities

1969-1971*

	Average 1969-1970	1971	Net Change
Youth Correctional	471	716	+245
Prisons	284	349	+ 65
Total	755	1,065	+310
	Percent of Total Admissions		
Youth Correctional	17.7	21.7	+ 4.0
Prisons	20.5	21.2	+ 0.7
Total	18.7	21.5	+ 2.8

* In 1971 more than one-fifth of the population in correctional facilities were there because of drug violations. If projected increases in number of arrests follow through to convictions, the implication for these facilities is significant. It is also noteworthy that admissions to youth correctional facilities between 1969-70 and 1971 increased at a much higher rate than for adult facilities.

C. Incarceration Costs

After arriving at a tentative figure as to numbers involved, one method of analyzing the cost of an intervention program in New Jersey as outlined in the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 is to compare treatment costs against the cost of incarcerating an individual. In certain respects, this is a simplistic approach and it is specious if the stated goals of an intervention process are other than monetary, i.e., to provide a more effective approach to those considered "ill" than incarceration has proven to be.

1. Incarceration Costs: State Prison & Youth Correctional Facilities FY 1974

(Appropriations includes salaries, property maintenance, services, supplies).

	APPROPRIATION	AVERAGE DAILY POPULATION
TRENTON STATE PRISON	$7,111,871	1,450
RAHWAY STATE PRISON	5,317,862	1,180
LEESBURG STATE PRISON	3,749,032	800
SUB-TOTAL	$16,178,765	3,430
BORDENTOWN	3,997,037	707
YARDVILLE	4,752,695	717
ANANDALE	3,522,444	730
SUB-TOTAL	$12,272,176	2,154
CLINTON	$ 2,720,602	250

TRAINING SCHOOLS FOR BOYS & GIRLS

	APPROPRIATION	AVERAGE DAILY POPULATION
SKILLMAN	$1,804,329	150
JAMESBURG	3,093,078	275
TRENTON (Girls)	700,000	100
RESIDENTIAL GROUP CENTERS	383,921	78
SUB-TOTAL	$5,981,328	603

	$16,178,765	3,430
	12,272,176	2,154
	2,720,602	250
	5,981,328	603
TOTALS	$37,152,871	6,437

Based on these figures it costs $5,771.76 to maintain a prisoner for a year in a State Prison and Youth Correctional facility.

2. Incarceration Costs: County Penal Institutions

The Commission has surveyed costs in a few county penal institutions and submits the following information:

MERCER COUNTY JAIL AND WORKHOUSE 1/13 thru 12/73

$14.87 per day per prisoner = $5,437.55 per year

(Information furnished by Roy Beans, Director of Corrections for Mercer County.)

MIDDLESEX COUNTY WORKHOUSE 1/1/73 thru 12/21/73

$19.65 per day per prisoner = $7,172.25
(The Workhouse often holds over jail prisoners when jail is full.)

Total number of drug charges admitted in 1973 out of total admission of 2,078.

Sale	77
Use	19
Possession or possession of hypodermic needle	261
Total	357

(Information supplied by Deputy Warden Parmley, who indicates that costs for 1974 will approach $21.00 per day or more due to higher costs.)

ATLANTIC COUNTY JAIL 1974 figures to date

1973 figures not available

$17.50 per day per prisoner = $6,387.50 per year.

(Information furnished by Mr. Drutz, Accountant for Jail.)

ESSEX COUNTY PENITENTIARY - Caldwell 1973

$18.25 per day per prisoner = $6,661.25 per year.

(Information supplied by Mr. Adonizio, Business Manager)

1973 - Approxmimately 600 inmates admitted

- Approximately 350-375 of these or 80% were drug abusers. Of the percentage, 40% (approx.) were for drug consumption offenses.

(Information supplied by Mr. Knox of the Quinn Narcotic Rehabilitation Program which is an in-house rehabilitation project working with addicts in Caldwell.)

ESSEX COUNTY JAIL - Newark 1973

$15.58 per day per prisoner = $5,676.70 per year

Drug Offenses

Use	86
Possession	1,072
Sale	167
Possession of needle	4
	1,329

(Information supplied by Captain Petardi of Essex County Sheriff's Office.)

D. Treatment Costs

There are presently four major modalities of treatment offered within the State. In addition to these, detoxification is available and is often the initial point at which the client enters the treatment system. The modalities, and a description thereof, are as follows:

(1) Day care drug free treatment is essentially a non-residential therapeutic community. The program is generally structured similar to the residential therapeutic community but the clients do not live in, returning to their own homes or to foster homses after day's activities.

(2) Outpatient drug free treatment covers a broad range of counseling, individual therapy, and group therapy programs in which clients may participate in varying schedules from daily to biweekly or monthly sessions as needed.

(3) Detoxification consists of the medically supervised withdrawal from addiction or habituation and is available on either an inpatient or ambulatory outpatient basis.

(4) Methadone maintenance is the substitution under medical supervision of a slow metabolizing synthetic narcotic (methadone) for heroin or other morphine-like drugs, in conjunction with a course of counseling and individual or group therapy. The induction period of three to five weeks may be done in an inpatient facility or on an ambulatory outpatient basis. After induction, daily medication is dispenses and supportive services provided to outpatients.

(5) The residential therapeutic community is an ex-addict orientated self-help community in a therapeutic milieu, utilizing encounter therapy, reality therapy, and other group and individual therapy approaches to instill self-discipline within the individual and within the group.

The Division of Narcotic and Drug Abuse Control has provided this Commission with the average costs for each modality. As of July, 1974, the funding matrix (which includes the cost of salaries, property maintenance, services, supplies) is:

(a)	Out-patient drug free or methadone maintenance	$1,700	per slot per year
(b)	Residential drug free treatment	$5,000	per slot per year
(c)	Day Care drug free treatment	$2,500	per slot per year

As of June 30, 1974, the number of treatment slots by static and by dynamic capacities and by modality of treatment were:

		Static Capacity*	Turnover Factor	Dynamic Capacity**
(a)	Detoxification (Out and In-patient)	243	(x26)	7,150
(b)	Methadone Maintenance	3,420	(x1.3)	5,045
(c)	Drug Free Residential	1,495	(x4)	5,332
(d)	Drug Free Outpatient	3,205	(x2)	6,040
	Total Number***	8,636		23,567

The Division estimates that approximately 80% of the static capacity slots are presently filled--leaving 20% expansion room without need for additional funding. As of June 30, 1973, the following resources from the following sources were expended in prevention, treatment, and rehabilitation per year in New Jersey:

Federal	$13.5 million	60 percent
State	5.0 million	23 percent
Local	3.0 million	13 percent
Private	1.0 million	4 percent
	$22.5 million	100 percent

* Static Capacity - Number of treatment slots at any one point in time.

** Dynamic Capacity - Number of treatment slots for a one year period given the client turnover factor according to given program resources.

*** The distribution of treatment slots in New Jersey is as follows: almost half of the Static Capacity statewide is in methadone maintenance; a sixth in drug-free residential; a third in drug-free out-patient; and one-thirtieth in detoxification.

The twenty-one counties in the State have from one to twenty-seven drug treatment facilities within each county. There are 115 known drug treatment facilities under the direction of fifty public and private agencies offering one hundred and sixty-two programs. A single facility may offer more than one program or modality of treatment.

SUMMARY OF TREATMENT FACILITIES AND PROGRAMS

Auspices	No. of Facilities	% of Total	No. of Programs	% Total
Federal (VA)	3	2.6	5	3.1
State Dept. of Health (DNDAC)	20	17.4	43	26.5
State Dept. of Institutions & Agencies	9	7.8	11	6.8
State Dept. of Higher Education	1	0.9	1	0.6
County	7	6.1	12	7.4
City	6	5.2	9	5.6
Private	69	60.0	81	50.0
TOTAL	115	99.9	162	100.0

Comparatively, the costs for treating a drug-dependent individual by out-patient drug free or methadone maintenance, residential drug free treatment, or drug free treatment, are no more--and generally less--than the costs of incarceration. While the costs for drug treatment do not include costs for screening a defendant, the Commission recommends below that the screening agency be under the auspices of the Division of Narcotic and Drug Abuse Control. Since the Division maintains a statewide network of facilities and experts to provide diagnostic evaluations, screening costs should not cause an additional financial burden.

Furthermore, <u>at present</u> the Division concludes that treatment slots are available without the need for additional funds. Nonetheless, the fact that 60 percent of the funds expended in drug prevention, treatment, and rehabilitation per year in New Jersey are federal funds, indicates that additional State funds will be needed to continue these programs if federal funds are reduced.

The Drug Abuse Council of Washington, D.C., a private, non-profit foundation established to provide research, public policy evaluation and program guidance on a national level in the area of drug abuse, issued a statement in May of this year concerning federal policy. Their analysis indicates that the Nixon Administration placed increasing emphasis on law enforcement and less on prevention and treatment. The statement reads:

The decision to reduce the federal commitment to drug abuse prevention, which includes treatment, rehabilitation, education, training, research, is apparently based on the Administration's claim, as echoed in the President's drug abuse message to Congress, that "we have turned the corner on heroin." Other drug abuse problems are to receive low-level federal commitments, as evidenced by the recent decision to spend only $6 million in FY 75 for treatment-research programs designed to stem the apparent rise in polydrug abuse, the indiscriminate mixing of many drugs.

While heroin use may be leveling off or declining on the national level, there is widespread agreement that heroin dependence remains a significant problem in the inner-city areas," according to Thomas E. Bryant, M.D., president of the Drug Abuse Council. Further, recent studies in the use of heroin would suggest that its use did not peak simultaneously across the country and may be just now emerging as a problem in a number of medium-sized cities. The projected funding for drug abuse prevention is an ominous sign to those communities where drugs are endemic and for locales now feeling the impact of widespread drug misuse.

Dr. Bryant noted that underutilization of treatment programs is an argument frequently used to support federal budget reductions in drug prevention. But, he observed that "utilization of programs depends on much more than just availability. We need to evaluate program quality and the reasons why many drug users avoid the programs which are now available. Ironically, though such an evaluation would seem indispensable, the current budget request has few dollars earmarked for evaluation of programs."

On the other side of the drug abuse budget for FY 1975, dollars requested for law enforcement have increased by $40 million, a rise of 15 percent over FY 74. Actual dollar "outlays" (projected spending) will rise even more sharply, with an increase of $49 million. Most of these dollars are earmarked for the Drug Enforcement Administration, an arm of the Department of Justice.

> Although some law enforcement efforts in the drug area have been helpful, surely history has taught us that overreliance on law enforcement cannot provide a panacea for our nation's drug concerns," Dr. Bryant stated. "For too long drug dependents have been viewed as criminals.
>
> In addition, we must be particularly wary of those law enforcement techniques which could infringe upon our fundamental freedoms and values: involuntary civil commitment, indiscriminate wiretapping, no-knock entry, entrapment, hot lines for informers, and surveillance of patients and clients.

The decision to reduce the federal commitment to drug abuse prevention, treatment, and rehabilitation programs is expected to mean a $1.6 million cutback in federal funds for such programs in New Jersey, according to the State Division of Narcotic and Drug Abuse Control. Also, $825,000 of State money will be required to match federal funds--in order to continue to make present federal dollars available. If this allocation is not made by the State, New Jersey may stand to lose in excess of an additional $5 million in federal money. Either the State will have to make new appropriations, or rearrange its priorities and reallocate funds from other sources--such as incarceration costs--to finance drug treatment, rehabilitiation and prevention programs.

Conclusions

As related throughout this chapter, the objectives and potential results of an intervention program are: (1) the provision of treatment to a significant number of drug-dependent persons who are suffering from a drug illness; (2) the reduction of the burden (in terms of both the workload and financial costs) on courts and

prisons resulting from both drug crimes or drug-related crimes; (3) the prevention of the stigmatization of the individual which results from a criminal conviction in the case of a drug crime or drug-related crime; (4) the protection of the community from drug-dependent persons by means of a more effective approach than incarceration has proven to be; and (5) the provision of alternatives to the criminal justice system for the more casual user.

New Jersey's conditional discharge program for persons charged or convicted of certain offenses under the "New Jersey Controlled Dangerous Substances Act" (P.L. 1970, c. 226; C.24:21-27) suffers from the following shortcomings: (1) the class of eligible defendants is too narrowly defined; (2) the pretrial option is underutilized; (3) the lack of a structured process and established criteria for screening eligible defendants; (4) judges and prosecutors often lack sufficient medical expertise and knowledge of treatment options; (5) insufficient monitoring and review of treatment progress of the individual; (6) and the statute does not protect the defendant who chooses not to participate in a treatment program, by means of the diversionary process, from self-incrimination.

New Jersey Court Rule 3:28 differs in that all criminal offenders may be considered eligible for diversion. However, it also suffers from certain shortcomings: (1) there are no standards or criteria of eligibility stated in the rule; (2) no funding is provided by the State since it is not a legislative mandate; (3) the prosecutor has no discretion under the rule, only a veto power over the eligibility of a defendant's participation in a treatment program; and (4) there are no safeguards against self-incrimination.

Recommendations

In light of the foregoing discussion concerning the expressed need for effective intervention programs for drug-dependent persons and alternatives to the criminal justice system for the more casual user through legislation, thereby mandating the right to treatment in many cases, and the shortcomings and limited availability of present intervention programs, the Commission concludes that the "New Jersey Controlled Dangerous Substances Act" should be amended and does hereby propose the following changes thereto:

1. RECOMMEND, that a supplement to the "New Jersey Controlled Dangerous Substance Act" should be enacted to implement the diversionary treatment process recommended by the National Conference of Commissioners on Uniform State Laws in its proposed "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 to provide that:

(A) The treatment process must be substituted, formally or informally, for the criminal process if a person charged with any offense-whether previously convicted of any offense under the provisions of the "New Jersey Controlled Dangerous Substances Act" or any law of the United States, this State or of any other state, relating to controlled dangerous substances--under section 19 of P.L. 1970, c. 226 (C.24:21-19); section 20a. and b. of P.L. 1970, c. 226 (C. 24:21-20a. and b.); section 26 of P.L. 1970, c. 226 (C. 24:21-26); section 29 of P.L. 1970, c. 226 (C. 24:21-29); section 1 of P.L. 1966, c. 12 (C. 2A:96-5); P.L. 1952, c. 95 (C. 2A:108-9); section 1f. of P.L. 1962, c. 201 (C.2A:119-8.1); section 1 of P.L. 1955, c. 277 (C. 2A:170-77.3); section 3 of P.L. 1955, c. 277 (C.2A:170-77.5); and section 7 of P.L. 1966, c. 314 (C.2A:170-77.15), among other statutes, is diagnosed as drug-dependent and requests that these procedures be invoked. A defendant should not be denied treatment by being charged under a habitual criminal statute. This procedure would be initiated at the request of the defendant to the prosecutor who then must petition the court for commitment in lieu of prosecution. The court would hold a civil hearing to determine: (1) if the defendant is drug-dependent; (2) if he has cooperated with the preliminary screening and treatment program thus far; and (3) if adequate treatment is available. If the court decides in favor of treatment, criminal charges are held in abeyance until dismissed or reinstated by the court, but for no longer than

the lesser of 18 months or the maximum permissible period of incarceration for the offense charged. If the defendant fails to cooperate with the treatment program, he is returned to the court for a hearing and is scheduled for trial if the court so determines. If a defendant completes treatment, charges may be dismissed by court order and the record expunged.

(B) If a drug-dependent person is charged with a non-violent crime, e.g., petty property offenses, and so requests of the prosecutor, the treatment process may be substituted for the criminal process in one of two ways: (1) by treatment in lieu of prosecution. This provides for an informal process whereby the prosecutor may withdraw or hold the charges in abeyance and so notifies the court. The charges are automatically dismissed after expiration of the lesser of 180 days or the maximum permissible period of incarceration, and expungement is mandatory; or (2) commitment in lieu of prosecution. This provides for a formal process whereby the defendant requests treatment, the prosecutor petitions the court and the court holds a civil hearing and orders commitment. The criminal charges are held in abeyance until either dismissed or reinstated by the court but no longer than the lesser of 18 months or the maximum permissible sentence for the offense charged; expungement is mandatory.

(C) If the prosecutor elects not to use the diversion procedure and the defendant is found guilty or pleads guilty and he is drug-dependent, the defendant may move the court to order

civil commitment in lieu of an entry of judgment. Again, the time period is the lesser of 18 months or the maximum permissible period of incarceration for the offense charged. If the defendant fails in treatment, the court may enter judgment. Expungement is at the discretion of the court, except as provided for in section 28 of P.L. 1970, c. 226 (C. 24:21-28).

(D) Substitution of the treatment process for the criminal process should not be available to persons who are drug-dependent and charged with, or found guilty of, violent crimes, e.g., murder, forcible rape, kidnapping, voluntary manslaughter, etc., but participation in a treatment program may be made a condition of probation or, if the person is sentenced, treatment must be provided in the correctional institution.

(E) The defendant who has been convicted of a non-violent crime may petition the court to defer sentencing or to sentence him to a term of probation, on condition that he participate in a treatment program. Expungement would be at the discretion of the court, except as provided for in section 28 of P.L. 1970, c. 226 (C. 24:21-28).

Distinctions, therefore, should be made regarding the relationship between treatment and the criminal process, not regarding the availability of treatment.

Furthermore, the Commission is aware that such a treatment process may require additional funds; however, under the provisions of the "Uniform Drug Dependant Treatment and Rehabilitation Act" of 1973, whether treatment is available is a

State-specific determination involving such factors as the extent to which the treatment program is funded and the physical availability of adequate facilities and trained personnel for treating a particular type of drug dependence. None of the judgments pertain to a specific drug-dependent person; whether adequate treatment is available for a person diagnosed as drug-dependent is a judgment made by a court on the basis of recommendations by treatment personnel.

2. RECOMMEND, that the treatment program provided for in P.L. 1970, c. 334 (C.26:2G-21 et seq.) should be supplemented to include all provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973. These include:

(A) Mandating that any person, whether an adult or minor, who needs emergency services as a result of using a contolled dangerous substance, or who desires preventive services or drug dependence treatment, can apply directly to a treatment facility for either emergency or preventive services or drug dependence treatment. Minors should be included to avoid any implication that either admission, diagnosis or treatment requires parental consent. Minors who seek assistance, whether voluntarily or under commitment, are often reluctant to have their drug usage known to their parents, and the possibility of such notification may in fact deter them from seeking treatment. This is especially true of runaways. A provision for treating minors would be superceded by the Federal Regulations concerning

methadone, however, which require that any person under 18 years of age must have written parental consent before methadone can be administered.

(B) The consensual nature of both the voluntary program and the commitment program requires that notice be given to an applicant that he need not submit to medical examination and diagnosis or provide a complete personal history unless he chooses to do so; however, he should be informed that refusal to comply with the conditions of diagnosis and treatment vitiates his opportunity to participate in the program. Should the applicant consent to examination, he may be required to submit to reasonable chemical surveillance procedures, such as urinalysis or other medically reliable means of detecting the presence of controlled dangerous substances in the body. Persons who are diagnosed but not found to be drug-dependent must be referred to other public or private agencies for appropriate assistance.

Furthermore, a voluntary entrant should not become an involuntary patient. But, in recognition of the fact that the efficacy of treatment depends on patient cooperation, "reasonable conditions" for each type of treatment shall be established. Also, a voluntary patient's participation can be terminated for repeated failure to cooperate with the treatment program.

Furthermore, patients should be required to contribute toward the cost of services rendered to the extent that they are financially able to do so, but contributions should not be required

by the parent or legal guardian of a minor patient. For many youths, the desire for confidential treatment extends even to keeping the matter from their parents. Requiring parental contribution toward the cost of treatment would require notification and would therefore frustrate the policy encouraging voluntary entry by drug-troubled youth. At the same time, however, financial information from all patients, including minors, should be obtained as part of the treatment record.

(C) The rights and protection afforded a person in treatment should be mandated, such as: (1) the person does not lose any civil rights or liberties as a result of being treated; (2) he may not be a subject for experimental research or treatment without expressed and informed consent; (3) he may not be administered any chemical or maintenance treatment without expressed and informed consent, except in an emergency; (4) his mail may not be censored; and (5) records of private physicians shall remain confidential regarding a person's drug problem, among other rights and protections.

3. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be supplemented to implement those provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 applicable to the following persons: (1) persons in police custody for purposes of being charged with a crime who need emergency treatment as a result of drug usage or addiction. In effect, this provision begins the formal intervention pro-

cess described in Recommendation 1. It is designed to discharge the State's and municipality's obligation to treat persons in custody who need such treatment, and it is the defendant's first contact with treatment personnel; (2) persons in police custody or who have come to the attention of the police, their families, and/or others, who are in need of short-term involuntary emergency treatment because they are incapacitated by a controlled dangerous substance. Such persons shall be civilly committed after a civil hearing, where they are represented by counsel and have a private physician at their disposal, for no longer than 15 days after the date of commitment. This provision, in light of current drug abuse patterns, appears warranted and of value. It is expected that such a provision would not be used frequently and could be invoked only after a civil hearing in which the court must find by clear and convincing evidence that the person is incapacitated and needs such treatment (refer to proposed amendment of definition section in Recommendation 5 regarding "persons incapacitated by a controlled dangerous substance"); (3) persons in police custody, who, after screening and/or diagnosis of drug dependency, may ask the court that either in lieu of bail or as a condition of release or bail, they be referred to a treatment facility for complete diagnosis and treatment. As stated above, this procedure is designed to secure medical diagnosis and initiate treatment as soon as possible after a defendant is taken into custody for

the purpose of being charged with a crime. The diversionary process outlined in Recommendation 1 is thus begun at an early stage. To operate effectively, criminal justice personnel must be reasonably certain that the defendant will appear for further proceedings; thus, a secure treatment facility is provided for, if needed, in individual cases. It also means that treatment and criminal justice personnel must cooperate.

In addition, the provisions mandate that any person in police custody is entitled to receive treatment for his drug problem. In many counties this is no problem, but some counties offer no treatment or inappropriate treatment, and treatment in State penal institutions is often not available or, again, medically inappropriate; and (4) persons in police custody who, at any time before trial, state that they are drug-dependent or appear to be so to the police. Such persons shall be screened for drug dependency and shall be referred after screening, upon their request, for diagnosis and treatment. In addition, any person who is diagnosed as drug-dependent shall be notified of his right to request treatment.

4. RECOMMEND, that a screening agency should be established as part of the network of facilities operated by the State Division of Narcotic and Drug Abuse Control. It should be independent of the individual treatment agencies operated by the Division and of the criminal justice system. The establishment of such an independent system might prove costly in certain counties should

a new system be needed. In this case, the Division should make use of all available resources to insure adequate screening. "Screening" is to be conducted by trained medical personnel, social service staff and para-professionals to (1) determine if the defendant is drug-dependent; (2) obtain a complete social and legal history; and (3) recommend an appropriate treatment plan. It is necessary for the effectiveness of the program that the screening agency work closely with the treatment agency and the criminal justice system.

5. RECOMMEND, that if Recommendation 1 is adopted, section 2 of P.L. 1970, c. 226 (C. 24:21-2) should be amended to include the following definitions descriptive of the diversionary treatment program described in Recommendation 1:

(a) "Commitment" means the relationship established by a court order that places a drug-dependent person or person incapacitated by a controlled dangerous substance in the custody of the [appropriate person or agency] for purposes of treatment under this Act.

(b) "Court" means [insert appropriate court or courts].

(c) "Dismiss" or "dismissal" means the termination of a criminal action with prejudice to its reinstitution by the State.

(d) "Intermediate services" means treatment services for drug dependence for a part-time resident patient in a treatment facility.

(e) "Nearest relative" means, in the order or priority stated, a person's legal guardian, spouse, natural or adopted adult child, parent, adult sibling, or any other person with whom the person resides.

(f) "Outpatient services" means treatment services for drug dependence for a patient who is not a resident of a treatment facility.

(g) "Persons incapacitated by a controlled dangerous substance" means a person who, as a result of the effects of one or more controlled dangerous substances, needs treatment and either is unconscious or his judgment is so impaired that he is incapable of making a rational decision with respect to his need for treatment.

(h) "Police" means [law enforcement officers] authorized by law to arrest a person without a warrant for the commission of a criminal offense.

(i) "Private facility" means a facility providing treatment services that is not operated by the federal, State, or local government, whether or not it receives public funds or operates for profit.

(j) "Public facility" means a facility providing treatment services that is operated by the federal, State, or local government.

(k) "Residential services" means treatment services for drug dependence for a full-time resident patient in a treatment facility.

(l) "Treatment" means (1) emergency services for a drug-dependent person, a person incapacitated by a controlled dangerous substance, or a person under the influence of a controlled dangerous substance; (2) the full range of residential, intermediate, and outpatient services for drug-dependent persons designed to aid them

to gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community; and (3) community-based prevention services designed to reduce the likelihood of drug dependence. Treatment includes but is not limited to diagnostic evaluation; medical, psychiatric, psychological, and social services; drug maintenance services; vocational rehabilitation, job training, and career counseling; educational and informational guidance; family counseling; and recreational services.

(m) "Treatment facility" means a narcotic and drug abuse treatment center as defined in section 2 of P.L. 1970, c. 334 (C. 26:2G-22).

6. RECOMMEND, that various other provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 be adopted for inclusion within the "New Jersey Controlled Dangerous Substances Act." These include appropriate services for the prevention and treatment of drug dependency among State and local employees as well as encouraging private industry to develop treatment services within the State; non-discriminatory admission of drug users and drug-dependent persons to private and public hospitals and to private and public mental institutions. Another provision protects the drug-dependent person by providing for the termination of commitment orders upon a civil hearing and the confidentiality of records and a defendant's testimony in civil hearings.

7. RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" should be supplemented to encompass the provisions of the "Uniform Drug Dependence Treatment and Rehabilitation Act" of 1973 applicable to persons not involved formally in the criminal process but who come to the attention of families, the police or public health officials. These provide for non-criminal responses for persons under the influence of a controlled dangerous substance who are incapacitated and need emergency treatment. This treatment may last no longer than 48 hours without the person's consent unless further commitment is authorized by the court with appropriate safeguards. The police may be informed of the person's incapacity and take him to a treatment facility--but the taking is not to be an arrest.

8. RECOMMEND, that the Conditional Discharge Statute of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c.226 (C.24:21-27) should be amended so that its provisions apply to that class of defendants described as drug users who are not yet, or may never be, drug-dependent, and that second or subsequent offenders -- rather than only first offenders -- be eligible for treatment through conditional discharge, which should be mandated. Supervisory treatment should not exceed one year or the maximum period of confinement for the offense with which the individual is charged -- if it is less than one year. It is further recommended that the term "supervisory treatment," as contained in section 27, be amended to read "appropriate

supervision," which will allow the court greater flexibility in determining the proper course of act on for each individual. Defendants eligible for conditional discharge should also be subject to screening by the screening agency established in Recommendation 4, so that the court will have a professional and reliable basis on which to make its decision.

9. RECOMMEND, that drug users charged with crimes other than those outlined in Recommendation 8 should be eligible for diversion under Court Rule 3:28. In order to make this provision more widely available, it is further recommended that programs operated by or certified by the Division of Narcotic and Drug Abuse Control be studied by the Administrative Office of the Courts with the goal of approving them for operation under the Court Rule.

10. RECOMMEND, that if the recommendations contained in this chapter are enacted and signed into law a provision should be contained therein to require (a) ongoing research and evaluation as to the effectiveness of the intervention process and (b) that the Legislature review and study the program within 3 years of its creation to determine if legislative revisions are needed.

FOOTNOTES

CHAPTER III

1. Nathan B. Eddy, The History of the Development of Narcotics, 22 Law and Contemporary Problems 3 (1957).

2. William B. Eldridge, Narcotics and the Law, A Critique of the American Experiment in Narcotic Drug Control. American Bar Foundation (1962), 4-5.

3. Ibid.,9.

4. United States v. Doremus, 249 U.S. 86 (1919).

5. John R. DeLuca, Is the Cure Worse than the Disease? An Analysis of the Efforts to Treat Heroin Addicts and a Discussion of an Alternative Approach. Criminal Justice Workshop. Woodrow Wilson School, Princeton, New Jersey. Heroin Policy Task Force (1974).

6. Webb v. United States, 249 U.S. 96 (1919).
Jin Fuey Moy v. United States, 254 U.S. 189 (1920).
United States v. Behrman, 258 U.S. 280 (1922).

7. United States v. Behrman, 290.

8. Linder v. United States, 268 U.S. 5 (1925).

9. Ibid.,19.

10. DeLuca cites a report by Brecher from Licit and Illicit Drugs (1972) that by "1970, Congress had passed 55 federal drugs laws to supplement the 1914 Harrison Act." DeLuca, Op.Cit., 14.

11. Dealing with Drug Abuse. A report to the Ford Foundation (1972),177.

12. In June, 1965, the New Jersey Department of Institutions and Agencies opened an in-patient Drug Addiction Treatment Center at the New Jersey Neuro-Psychiatric Institute with approximately 30 beds. Except for the Federal Hospital at Lexington, no public program of treatment existed for New Jersey residents prior to that time.

13. 37 Federal Regulation 242 (1972). (Methadone Maintenance Regulations).

14. President's Commission on Law Enforcement and Administration of Justice: The Challenge of Crime in a Free Society. (1967), 133-134.

15. See District of Columbia Department of Corrections Study: Narcotics Treatment Administration, summary of Twelve-Month Follow-up Study, Table 33 (1971) cited in the Report on the Controlled Dangerous Substances Act, New Jersey Division of Criminal Justice (1973), (Hereinafter refined to as New Jersey Report.)

16. President's Commission, op.cit.,229.

17. New Jersey Report, op.cit., 37-38.

18. Testimony of Dr. Vincent Dole, Treatment and Rehabilitation of Narcotic Addicts, Hearings Before Subcommittee No. 4 of the Committee of the Judiciary, House of Representatives, 92nd Congress, First Session, September 29, 1971,386.

19. Testimony of Dr. Dole, ibid, 395.

20. John DeLuca, op.cit.

21. New Jersey Report, op.cit., 21.

22. Ibid., 22.

23. Ibid., 29.

24. Pennsylvania Rules of Criminal Procedure, Rules 175-185; see comment following Rule 185.

25. John A. Robertson, "Pretrial Diversion of Drug Offenders," Boston University Law Review, Vol. 52, No. 2, Spring, 1972, 339.

26. "The Case for the Pretrial Diversion of Addicts from the Criminal Justice System." American Bar Association, 1972, 105-106. (Hereinafter referred to as ABA Diversion.)

27. Pennsylvania Rules of Criminal Procedure, comment following Rule 185.

28. Telephone interview with Peter Bowers, Assistant District Attorney, Philadelphia, December 4, 1973.

29. Interview with Martin J. Mayer, Director of Court Referral Project, Addiction Services Agency, City of New York, November 16, 1973.

30. Bellassai, John P. Segal, Phyllis N., "Addict Diversion: An Alternative Approach for the Criminal Justice System," Georgetown Law Journal, Vol. 67, 1972, 699.

31. Robertson, op.cit.,343.

32. Interview with Bruce Schragger, former County Prosecutor of Mercer County, New Jersey, on November 20, 1973.

33. Interview with Martin Mayer, op,cit.

34. Bellassai, op.cit.,682.

35. New Jersey Report, op.cit., 25.

36. New Jersey Report, op.cit., 26.

37. ABA Diversion, op.cit., 133-136.

38. New Jersey Report, op.cit., 21.

39. Ibid., 22.

40. Annual Report of the Administrative Director of the Courts 1971-1972, Administrative Office of the Courts, Trenton, N.J., January 31, 1973. 88.

41. This section draws heavily on Bellassai, op.cit.

42. Ibid., 702-703.

43. Ibid., 702.

44. Ibid., 703.

45. See statement of Michael R. Sonnenreich, Director of the President's National Commission on Marihuana and Drug Abuse, in the transcript of the Public Hearing held by this "Drug Study Commission" on May 11, 1973, in Trenton, New Jersey.

A P P E N D I X

(Chapter III)

C. 24:21-27 Conditional discharge for certain first offenses; expunging of records.

27. Conditional discharge for certain first offenses; expunging of records. a. Whenever any person who has not previously been convicted of any offense under the provisions of this act or, subsequent to the effective date of this act, under any law of the United States, this State or of any other state, relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under subsections 20a. (1), (2) and (3), and b., the court, upon notice to the prosecutor and subject to subsection c., may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of such person after reference to the Controlled Dangerous Substance Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilt or finding of guilt, and without entering a judgment of conviction, and with the consent of such person after proper reference to the Controlled Dangerous Substances Registry as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of 3 years. Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilt or finding of guilt, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court pursuant to the Controlled Dangerous Substances Registry Act. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of this act or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest.

DISPOSITION OF INDICTMENTS & ACCUSATIONS*

September 1, 1973 - June 30, 1974

OUTCOME OF CONDITIONAL DISCHARGE P.L. 1970, c. 226, s. 27 [C.24;21-27(2)]

COUNTY	BY JURY TRIAL COMMENCED		NON-JURY TRIAL COMMENCED				
	Partially tried but disposed of during trial by plea, motion for judgment of acquittal, nolle prosequi, etc.	Tried to completion	Partially tried but disposed of during trial by plea, nolle prosequi, etc.	Tried to completion	By plea before trial commenced	Total No. of Conditional Discharges	Total No. Of Indictments & Accusations Disposed of
ATLANTIC	45	0	0	0	4	49	991
BERGEN	0	0	0	0	0	0	1,545
BURLINGTON	0	0	0	2	5	7	1,018
CAMDEN	0	0	0	0	0	0	1,681
CAPE MAY	0	0	0	0	0	0	473
CUMBERLAND	0	0	0	0	0	0	629
ESSEX	0	0	0	0	0	0	3,221
GLOUCESTER	0	0	0	0	5	5	502
HUDSON	0	0	0	0	0	0	1,244
HUNTERDON	0	0	0	0	0	0	349
MERCER	0	0	0	0	22	22	1,459
MIDDLESEX	0	0	0	0	0	0	1,690
MONMOUTH	3	0	0	2	3	8	1,389

*EXTRACTED FROM COUNTY MONTHLY CRIMINAL REPORT, ST-51-9/73

B

DISPOSITION OF INDICTMENTS & ACCUSATIONS*
September 1, 1973 - June 30, 1974

OUTCOME OF CONDITIONAL DISCHARGE P.L. 1970, c. 226, S. 27 [C.24:21-27(2)]

	BY JURY TRIAL COMMENCED		NON-JURY TRIAL COMMENCED				
COUNTY	Partially tried but disposed of during trial by plea, motion for judgment of acquittal, nolle prosequi, etc.	Tried to completion	Partially tried but disposed of during trial by plea, nolle prosequi, etc.	Tried to completion	By plea before trial commenced	Total No. of Conditional Discharges	Total No. of Indictments & Accusations Disposed of
MORRIS	0	0	0	4	1	5	735
OCEAN	0	0	0	0	3	3	558
PASSAIC	0	2	0	0	35	37	1,417
SALEM	0	0	0	0	1	1	240
SOMERSET	0	0	0	0	17	17	411
SUSSEX	0	0	0	0	5	5	238
UNION	0	0	0	0	1	1	1,583
WARREN	0	0	0	0	0	0	147
TOTAL	48	2	0	8	102	160	21,520

*EXTRACTED FROM COUNTY MONTHLY CRIMINAL REPORT, ST-51-9/73

New Jersey Court Rule 3:28 (as amended, April 1, 1974)

3:28 [Defendant's Diversionary] Pretrial Intervention Programs

(a) In counties where a [defendant's employment or counseling program or other diversionary program including a drug or alcoholic detoxification] pretrial intervention program is approved by the Supreme Court for operation under this rule, the Assignment Judge shall designate a judge or judges to act on all matters pertaining to the program, with the exception, however, that the Assignment Judge shall him or herself act on all such matters involving treason, murder, kidnapping, manslaughter, sodomy, rape, armed robbery, or sale or dispensing of narcotic drugs by persons not drug-dependent.

(b) Where a defendant charged with a penal or criminal offense has been accepted by the program, the designated judge may, on the recommendation of the [program director] Trial Court Administrator for the county, the Chief Probation Officer for the county, or such other person approved by the Supreme Court as program director, and with the consent of the prosecuting attorney and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed 3 months.

(c) At the conclusion of such 3-month period, the designated judge shall make one of the following dispositions:

(1) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "matter adjusted--complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, further postpone all proceedings against such defendant on such charges for an additional period not to exceed 3 months; or

(3) On the written recommendation of the program director or the prosecuting attorney or on the court's own motion [o] order the prosecution of the defendant to proceed in the ordindary course. Where a recommendation for such an order is made by the program director or the prosecuting attorney, such person shall, before submitting such recommendation to the designated judge, provide the defendant or his or her attorney with a copy of such recommendation, shall advise the defendant of his or her opportunity to be heard thereon and the designated judge shall afford the defendant such a hearing.

(4) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investicative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant. No such hearing with respect to such defendant shall be conducted by the designated judge who issued the order returning the defendant to prosecution in the ordinary course.

(d) Where proceedings have been postponed against a defendant for a second period of 3 months as provided in paragraph (c) (2), at the conclusion of such additional 3-month period [,provided that, in drug detoxification cases the judge may wait such further period as he deems necessary to enable him to make an informed decision,] the designated judge may not again postpone proceedings but shall

make a disposition in accordance with paragraph (c) (1) or (3), provided however that in cases involving defendants who are dependent upon a controlled dangerous substance the designated judge may, upon recommendation of the program director and with the consent of the prosecuting attorney and the defendant, grant such further postponment as he or she deems necessary to make an informed decision, but the aggregate of postponement periods under this rule shall in no case exceed on year

Note: Adopted October 7, 1970 effective immediately. Paragraphs (a) (b) (c) (d) amended June 29, 1973 to be effective September 10, 1973; caption and paragraphs (a) (b) (c) (d) amended April 1, 1974 effective immediately.

ACCELERATED REHABILITATIVE DISPOSITION

Rule 175. Motion for Accelerated Rehabilitative Disposition, Pre-Indictment

After a defendant is held for court by an issuing authority, the attorney for the Commonwealth, upon his own motion or upon request of the defendant's attorney, may submit the transcript returned by the issuing authority to a judge empowered to try cases on indictment and may move that the case be considered for accelerated rehabilitative disposition.

Adopted, effective May 24, 1972.

Rule 176. Motion for Accelerated Rehabilitative Disposition, Post-Indictment

After an indictment is returned, the attorney for the Commonwealth upon his own motion or upon request of the defendant's attorney, may submit the indictment to a judge empowered to try cases on indictment, and may move that the case be considered for accelerated rehabilitative disposition.

Adopted, effective May 24, 1972.

Rule 177. Notice of Motion by Attorney for the Commonwealth

When accelerated rehabilitative disposition proceedings are initiated, the attorney for the Commonwealth shall advise the defendant and his attorney of his intention to present the case to an appropriate judge. Notice of the proceedings shall be sent also to any victim or victims of the offense charged.

Adopted, effective May 24, 1972.

Comment: A form of Notice which has been used in Philadelphia is a follows:

TO THE DEFENDANT IN THIS CASE:

You will note from the subpoena attached to this letter that you have been ordered to appear in Room____. This means that your case has been selected by the District Attorney's office as a proper case for the Accelerated Rehabliitative Program. Be sure to contact your lawyer so you

understand what this program is and how it works.

As you know, you were arrested and charged with a serious crime. You have the right to a trial and the Commonwealth must prove your guilt beyond a reasonable doubt. However, because there are reasons in your case to beleive that you could be helped more by being placed on probation than by being convicted and sentenced to jail, your case has been chosen for the Accelerated Rehabilitative Program. Instead of being tried, after appearing in Room____, you might be placed into this program immediately. If you stay out of trouble during the period of this program, these charges will be discharged. If you violate the conditions, you will be tried as if you never had been in this program.

If you want to be in this program, you must waive the appropriate statute of limitations as well as your right to a speedy trial on these charges while you are in this program, so that you will never be able to complain later that you should have received a trial now. You must also agree to abide by whatever conditions the judge in this program imposes on you. Generally, the period of this program is six months, one year, or two years.

I am sure you can understand that this program offers you a very good opurtunity. If you have any questions about it, consult your attorney. Be sure to appear in Room____ with your attorney on the date on the attached subpoena. If you do not appear, you may miss forever your chance for being included in this program and you will be tried on the charges against you and run the risk of conviction and a jail sentence.

Very truly yours,

Attachment (subpoena)
Re:
Charge
Hearing Date:

Dear [Name of Victim]:

On May 24, 1972, the Supreme Court of Pennsylvania adopted a Rule authorizing the Courts of this County to istitute a unique program for non-violent offenders. The purpose of this program is to take offenders who have not yet made crime a way of life and encourage them to make a new start under the supervision of this program and by offering them the possibility of restoring a clean record by completing this program successfully. Removing these first offenders from the criminal courts will, in turn, make those facilities available for the trial and rehabilitation of habitual or violent criminals.

The defendant in this case has been chosen for the purpose of Accelerated Rehabilitative Disposition. To qualify, he had to have a record free from criminal convictions and, in addition, not be accused of a crime of serious violence. Normally, to qualify for this program the crime must be one in which the defendant hurt no one but himself.

In this case, however, you were the real victim of the crime. For that reason, although the Accelerated Rehabilitative Disposition program seems indicated both because of the defendant's record and the non-violent nature of the crime, this office does not want to permit the defendant to go into this program without giving you a chance to be heard. If you have anything to say about this defendant, would you please be at his hearing Room____, City Hall, at___m. on the date noted above, or write to me so that I can be sure that your thoughts and feelings are considered.

Very truly yours,

Rule 178. Hearing, Explanation of Program

Hearing on a motion for accelerated rehabilitative disposition shall be in open court in the presence of the defendant, his attorney, the attorney for the Commonwealth, and any victims who attend. At such hearing, the defendant shall be asked on the record whether he understands that:

(1) Acceptance into and satisfactory completion of the accelerated rehabilitative dispostion program offers him an opportunity to earn a dismissal of the charges pending against him;

(2) Should he fail to complete the program satisfactorily he may be indicted, or if already indicted, tried as prescribed by law;

(3) He must agree that if he is accepted into the program he waives the appropriate statue of limitations and his right to a speedy trial under any applicable Federal or State Constitutional provisions, statutes or rules of court during the period of enrollment in the program.

Adopted, effective May 24, 1972.

Rule 179. Hearing, Manner of Proceeding

(a) When the defendant, with the advice and agreement of his

attorney, indicates his understanding of these proceedings, requests that he be accepted into the program, and agrees to the procedure set forth in Rule 178, the stenographer shall close the record.

(b) The judge thereupon shall hear the facts of the case as presented by the attorney for the Commonwealth, and such information as the defendant or his attorney may present, and shall hear from any victim present; but no statement presented by the defendant shall be used against him for any purpose in any criminal or civil proceeding.

(c) After hearing the facts of the case, if the judge believes that it warrants accelerated rehabilitative disposition, he shall order the stenographer to reopen the record and he shall state to the parties the conditions of the program.

(d) The defendant shall thereupon state to the judge whether he accepts the conditions and agrees to comply. If his statement is in the affirmative, the judge may grant the motion for accelerated rehabilitative disposition and shall enter an appropriate order as set forth in Rules 180 or 181. If the defendant answers in the negative, the judge shall proceed as set forth in Rule 184(c).

Adopted, effective May 24, 1972.

Rule 180. Deferring Grand Jury Action Upon Admission to Pre-Indictment Program

When an unindicted defendant is accepted into the program of accelerated rehabilitative disposition, the judge shall order that no bill of indictment shall be presented to the Grand Jury on the charges contained in the transcript during the term of the program.

Adopted, effective May 24, 1972.

Rule 181. Deferring Adjudication of the Charges Upon Admission to Post-Indictment Program

When an indicted defendant is accepted into the program of accelerated rehabilitative disposition, the judge shall order that further proceedings on the charges contained in the indictment shall be postponed during the term of the program.

Adopted, effective May 24, 1972.

Rule 182. Conditions of the Program

(a) The conditions of the program may be such as may be im-

posed with respect to probation after conviction of a crime, including restitutuion and costs, and may include other conditions agreed to by the parties, except that a fine may not be imposed.

(b) The period of such program for any defendant shall not exceed two years.

Adopted, effective May 24, 1972.

Rule 183. Procedure Upon Refusal to Accept the Conditions

If a defendant refuses to accept the conditions required by the judge, the judge shall deny the motion for accelerated rehabilitative disposition. In such event, the case shall proceed in the same manner as if these proceedings had not taken place.

Adopted, effective May 24, 1972.

Rule 184. Procedure on Charge of Violation of Conditions

(a) If the attorney for the Commonwealth files a motion alleging that the defendant during the period of the program has violated a condition thereof, or objects to the defendant's request for an order of discharge, the judge who entered the order for A. R. D. may issue such process as is necessary to bring the defendant before the Court.

(b) A motion alleging such violation filed pursuant to paragraph (a) must be filed during the period of the program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(c) When the defendant is brought before the Court, the judge shall afford him an opportunity to be heard. If the judge finds that the defendant has committed a violation of a condition of the program, he may order, when appropriate, that the program be terminated, and that the attorney for the Commonwealth shall proceed on the charges as provided by law. No appeal shall be allowed from such order.

Adopted, effective May 24, 1972.

Rule 185. Procedure for Obtaining Order Upon Successful Completion of the Program

When the defendant shall have completed satisfactorily the program prescribed for him and complied with its conditions, he may make an application to the court for an order dismissing the

charges against him. This application shall be supported by affidavit of the defendant and by certification of the agency or person charged with supervising his program, if any. Notice of filing such application shall be served on the attorney for the Commonwealth who shall within thirty days advise the judge of any objections to the application, serving a copy of such objections on the defendant and his attorney. If there are no objections filed within the thiry-day period, the judge shall thereafter dismiss the charges against the defendant. If there are objections filed, the judge shall proceed as set forth in Rule 184.

Adopted, effective May 24, 1972.

Comment: Rules 175 through 185, inclusive, are based upon the presently existing practice in Philadelphia County where a program of pre-indictment rehabilitative disposition exists under an order of the Supreme Court of Pennsylvania entered January 6, 1971. The purpose of this program is to eliminate the need for lengthy motions, trials and other court proceedings, in cases which are relatively minor or which involve social or behaviorial problems which can best be solved by programs and treatments rather than by punishment. In many cases, legal defenses may be available which would result in acquittal or delay in disposition of the charges. When immediate treatment is needed, however, defendant and counsel may be willing to have defendant undergo such treatment without an adjudication of guilt. Because of the rehabilitative purpose of the program, and because the program permits prompt disposition of the charges, this descriptive title has been selected rather than such terms as "pre-indictment probation" or "deferred disposition," commonly used in Philadelphia or elsewhere.

The practice in Philadelphia County has been to include in this program minor property crimes and small scale narcotics offenses and to exclude from the program all crimes of violence. Nevertheless, no attempt has been made in these Rules to specify what cases or classes of cases should be eligible for inclusion in the program. It is believed that the district attorney should have discretion with respect to which crimes he wishes to prosecute, and the presence of the judge in the program, along with the defendant and his attorney, precludes any danger that such discretion may be abused. It has been the practice of the district attorney of Philadelphia County to notify the victim, if any, that he may be heard in person or by letter. This principle has been incorporated in Rules 177, 178, and 179, which also provide for notice in writing to any victim of when a hearing is to be held on a motion to admit a defendant to A. R. D. This provision further helps to guarantee against any abuse of discretion by the district attorney.

The Philadelphia practice has not been to make use of accelerated rehabilitative programs after indictment. Even without this program, the attorney for the Commonwealth could nolle pros the charges. However, a nolle pros may not be desirable since there may be a need for some rehabilitative program for defendant, and since defendant can earn a clean record by participation in this program. These Rules permit such an expended use of the program on the theory that, in some instances, the cases which are appropriate for such treatment may not be detected until the Grand Jury has already acted.

Such an event may be caused by administrative error, or may be the result of an indictment which has been handed up before the defendant was apprehended. In such event, however, it is contemplated that when the attorney for the Commonwealth moves for inclusion of such a case in an accelerated rehabilitative disposition program, he will provide the judge with some good reason why such motion was not made at an earlier stage.

The concept of probation supervision without conviction has been endorsed by the President's Commission on Law Enforcement and the Administration of Justice in its report, The Challenge of Crime in a Free Society (1967), at p. 134. It is also strongly supported by the Pennsylvania Bar Association's Board of Governors, whose recommendation followed many months of work by its Criminal Law Section. It is also believed that the existence of these Rules will encourage many counties to esablish or broaden treatment facilities. The procedures established in these Rules also have a parallel in the practice of juvenile courts, notably the Philadelphia Juvenile Court during the first half of the 1960's and the Massachusetts Juvenile Courts at present. Such procedures are presently being used in approximately one-sixth of the cases that would otherwise result in indictment in Philadelphia County and has thus eliminated a great strain on the judicial system in Philadelphia.

CHAPTER IV

The Impact Of Stricter Drug Laws Upon The Criminal Justice System And The Illicit Drug System In New York and New Jersey

Introduction

The incidence of crime during the last two decades in the United States has engendered widespread anxiety and frustration among the American populace. The problem necessitated rationalization, and a readily identifiable suspect--the heroin addict--has become an alleged source of the seemingly unremediable situation.[1] Public officials, despite the lack of empirical data to substantiate the allegation, have consistently attributed more than one-half of urban crime to drug abuse,[2] and have introduced legislation which aims at reducing crime by increasing the severity of penalties for the illegal distribution, possession and use of illicit drugs.

The object of this Commission, however, is not to determine the connection between drug use and crime, but rather to study the efficacy and practicality of enacting a more stringent drug penalty scheme to solve the drug problem in New Jersey. Consequently, the Commission examined the recently enacted and much publicized New York Drug Law--as an example of a stringent drug penalty scheme to solve the drug problem in the United States.

This chapter discusses the intentions and impact of the New York Drug Law upon the criminal justice system and the illegal drug distribution system in New York and New Jersey; presents a

comparative analysis of the New York Drug Law and the "New Jersey Controlled Dangerous Substance Act" (P.L. 1970, c. 226; C. 24:21-1 et seq.) in terms of efficiency and practicality in solving the drug problem in New Jersey; and states the Commission's conclusions and recommendation concerning the implementation and enforcement of drug statutes in New Jersey similar to those contained in the New York Drug Law.

The New York Drug Law,[3] enacted September 1, 1973, and hereafter referred to by its popular name, the Rockefeller Drug Act, was studied by the Commission to (1) ascertain its legislative history; (2) understand its classifications of offenses and prescribed penalties; (3) determine its impact upon the criminal justice system in New York; (4) make a preliminary analysis of the effectiveness of the law in deterring drug consumption and dissemination; and (5) approximate the cost of implementing a Rockefeller Drug Act in New Jersey.

Legislative History

The Rockefeller Drug Act was the third plan in the past decade initiated through the criminal justice system to deal with the problem of drug abuse in New York State. The first, the Narcotic Addiction Control Commission (N.A.C.C.), established a system for a civil commitment program. Based on a mental health and professional therapy approach to drug addiction, it was one part of a larger program including methadone maintenance centers and therapeutic communities.

N.A.C.C. was never an unqualified success. By 1973 the majority of sentencing judges tried to avoid using civil commitment in lieu of imprisonment or other sentences. Overall, N.A.C.C. program was a popular sentence among defendants--a neat, rapid and painless exit from the criminal justice system. Despite the fact that commitment meant only a three month in-patient term followed by out-patient care, from which defendants would frequently drop out of, most drug offenders received commitment as a sentence on their first drug offense. The general sentiment among judges was that if one person in one hundred was helped, then the program was worth the risk.

The second plan was aimed at strengthening the prosecutorial power of the state. In 1969, a special Centralized Narcotics Court and a prosecutor's office were established to deal solely with drug prosecutions, with a goal of reducing plea bargaining in the area, among others.

Despite the heavy criticism of previous programs, there was no major study prior to the inauguration of New York's "get tough" law to show that the efforts the state had been making were failing. In fact, statistics indicated that heroin use had declined somewhat and levelled off. Specifically, there had been a decline in drug related crimes, narcotics related deaths, and in the number of prisoners requiring detoxification from heroin. Addicts in detention in New York City in March of 1972 totaled 5,077 out of a total inmate population of 12,693--or 40% of the total inmate population in New York City. In March of 1974, there were 1,696 addicts out of a total inmate population of 8,482--or 20% of the total inmate population in New York City.

Despite this evidence, Governor Rockefeller based his proposals on the belief that the then current laws and programs were ineffective:

> We have tried every possible approach to stop addiction and save the addict through education and treatment, hoping that we could rid society of this disease and drastically reduce mugging on the streets and robbery in the homes.... But we have achieved very little permanent rehabilitation and have found no cure.[4]

Neither of these tenets can be completely accepted. As the "Drug Study Commission's" public hearings have shown, the relationship between heroin and crime is unclear at best. The recent report of the National Commission on Marihuana and Drug Abuse stated that most known heroin addicts had long histories of delinquent behavior before drug use. Also, the Ford Foundation report, "Dealing with Drug Abuse," estimates that only 20% of the money used to purchase heroin is raised by street crime, with armed robbery and muggings accounting for less than 2% of the total. The other sources consisted of drug dealing, prostitution and property crimes. However, due to public anxiety about street crime and the widespread belief that it and heroin use are the same problem, studies which show that tough penalties have not had a major effect on deterring drug use were disregarded and the State of New York embarked into the realm of a harsh drug law.

Before discussing the intent of the 1973 drug law more fully, it would be helpful to describe the state of drug case prosecution under the previous New York law. This undoubtedly had an indirect input on the decision to change the law. An understanding of the preceding law will assist in measuring the extent of the Rockefeller Drug Act's impact. The system of plea bargaining or allowing a defendant to plead guilty to a lesser

charge and receive a mitigated sentence in return for saving the state the time and money of a trial was a common practice in the criminal justice system of New York. What does such a system mean in terms of drug prosecutions? Prosecutorial guidelines were informally agreed upon and cases were ranked according to the perceived seriousness of the drug. At the bottom of the pile lay marihuana cases; next came methadone and pill cases which were treated similarly, although methadone offenses were considered somewhat more serious; then cocaine and finally, at the top, heroin. The amount of the drug plus whether or not the charge was for a sale or mere possession added to or detracted from the weight given to the prosecution. This further division, however, had no real impact on marihuana cases. Cases involving up to five pounds of cannabis, although technically felonies, were readily handled in criminal court as misdemeanors. In fact, some cases of up to 30 or more pounds were treated as misdemeanors. Few id any defendants were sentenced to jail in New York City for marihuana, and cases involving one ounce or less were usually dismissed at arraignment in Manhattan courts. The criminal procedure law mandated a six-month adjournment in contemplation of a dismissal waiting period for first-time marihuana offenders, and prosecutors ususally advanced the waiting period for an immediate dismissal. The provision was also extended to multiple offenders. Fines averaging $250 were sometimes employed for multiple offenders.

Pill cases, either for possession or sale, were reduced to A misdemeanors (punishable by 1 year). This was a rarely broken

prosecutorial guideline, as pill cases were not considered a serious offense. The illegal possession or sale of methadone was also reduced to A misdemeanors and jail terms were infrequently given. The rationale behind these guidelines was the fear of high jury nullification rates (acquittal rates) as many juries would find the punishment out of proporiton in relation to the severity of the crime. Heroin violations were usually treated as felonies except in some cases where the amount of the drug could be considered for personal use. In this case, prosecutors would reduce the charges to misdemeanors. Approximately one-half of those convicted of heroin felonies received non-jail sentences (either a parole or probation). The rest drew jail terms of usually 0-3, 0-5 or 0-7 years.[5]

In view of the plea bargaining which occurred in New York City's courts, some people perceived the criminal justice system as one in which the defendants were being treated too leniently. The New York State Legislature was worried about instances of judicial abuse of power in granting lenient sentences. They wanted to eliminate this discretion as well as the pariah of plea bargaining. No one saw significant inroads being made in the drug trade by narcotics prosecution. Feeling that nothing else could be done, the decision was made to get tough not only on the defendants, but on the apparent leniency of the judges and prosecutors as well. Governor Rockefeller delivered his ultimatum: addicts had one last chance, a period of grace in which to turn themselves into drug treatment programs or else they would

be sent away for life. The law raised the ante on every offense so that over 70% of current felony arrests now carry mandatory life sentences. Plea bargaining was prohibited for these cases and judges were handed mandatory minimum and maximum sentences to be meted out. The option to sentence to drug programs was eliminated in A felony cases and severly limited in others.

What did the proponents and critics of the 1973 drug law see as the law's impact? The law was meant to reduce the availability of heroin on the street and thus lower the rate of crime. The Act was also expected to increase the number of drug-dependent persons enrolling in drug treatment facilities.

Proponents of the Rockefeller Drug Act cited the following reasons for the enactment of the aforementioned drug penalty scheme as the best means to eradicate the drug problem in New York: (1) severe mandatory penalties and requirements for substantial pleas would serve as a deterrent, not only to street pushers, but also to middle-level distributors and high echelon traffickers. This rationale rests upon the premise that certainty of punishment serves as an effective crime deterrent. Furthermore, drug-dependent persons would more likely be induced by the threat of stringent penalties to voluntarily enter into treatment programs; (2) the anticipated reduction of drug traffickers and drug-dependent persons through either imprisonment or treatment would reduce the crime rate. In this scenario, the major sources of illicit drugs will be significally controlled. Addicts, unable to locate drug supplies, would voluntarily enter drug treatment programs. Drug dealers and users not deterred would be confronted

with long periods of incarceration; and (3) the mandatory sentencing requirements and restricted plea bargaining would eliminate the severe disparities in sentencing and plea bargaining throughout the state. More significantly, there had been instances where illegal sentences had been given which were not in accord with statutory requirements. As a result, deterrent credibility in some areas of the state has been lessened and a class of embittered inmates has evolved. Mandatory sentencing and restrictive plea bargaining, therefore, would force judges to sentence drug offenders to the full extent of the law.

Those in opposition to the enactment of the Rockefeller Drug Act have generally argued the following points: (1) a mandatory sentence provision would not serve as an effective deterrent, in light of past experiences with mandatory sentences, which demonstrates that they do not in fact serve as a deterrent and, moreover, evidence appears to indicate the opposite.

Specifically, opponents of the law stress that the certainty of punishment as a principle of deterrence to crime would be meaningful only if the risk of apprehension is a real threat. They also point out that there are no particular provisions in the law which would enhance the certainty of apprehension. A first priority, then, should be to increase the risk of criminal offenses with less emphasis on specifying harsh mandatory sentences.

As further proof of the Rockefeller Drug Act's lack of deterrent credibility, detracters maintain that prosecutors would be reluctant to prosecute illegal acts where penalties are dis-

proportionate to the seriousness of the offense. In addition, juries have also shown an unwillingness to convict where severe penalties fail to take into account mitigating circumstances and treat casual offenders as severely as hardened criminals; (2) mandatory sentences may violate several provisions of the United States Constitution. More specifically, it has been maintained that mandatory sentence provisions disregard guarantees of due process of law; the equal protection clause of the Fourteenth Amendment; the prohibitions against cruel and unusual punishment contained in the Eighth Amendment; and may violate the right of every criminal offender to be judged and sentenced according to individual circumstances; (3) the actual effect of the drug statute, in regard to heroin addicts, as in past attempts to legislate harsh penalties, would be to exacerbate the existing heroin black market and drive the cost of heroin and other opiates up in price. According to these critical authorities, efforts to legislate against heroin problems in the past two decades have raised the daily cost of an individual's heroin habit from $2.00 a day to $20.00 a day. The implication of these tremendous costs may be manifested in the rise of street crimes by desperate addicts, organized crime dealing extensively in substitute illicit drugs and the possibilities of police corruption.

An effect of this law would be that instead of reaching the large-scale drug traffickers, the individuals directly affected by the Rockefeller Drug Act will be the small-time addict pushers.

The street pusher is almost invariably an addict himself and selling heroin substantiates his own habit. Thus, a few addict-pushers may be apprehended and imprisoned for longer sentences, while the black market drug economy continues unabated. Furthermore, drug program officials note that arrests and convictions of strict pushers would not affect other small-time drug dealers; (4) the provisions for mandatory sentences, according to critics of the Rockefeller Drug Act, would impede and overburden an already strained criminal justice system, particularly with regard to the criminal courts.

Again, this reasoning presumes that criminal defendants confronted with severe mandatory sentences would insist on entering a plea of not guilty and requesting a trial by jury. Thus, the criminal justice system could not accommodate or absorb the anticipated increase in defendants in its overcrowded court dockets or in its detention facilities. Even with increases in court personnel and facilities, opponents maintain that the system would not be able to efficiently handle an increased caseload. Moreover, on a cost-benefit basis, the financial cost of such a system would far outweigh whatever benefits would be achieved by mandatory sentences; (5) assuming the law will be vigorously enforced and prosecuted, those in opposition claim that the cost of the law has been grossly underestimated and would in fact be almost prohibitively expensive. According to this point of view, the cost of the drug law would be extraordinary because of the mandatory penalty features for Class A-I offenders and for first and second offenders for other

felony classes. This, as well as related limitations on plea bargaining, would force a substantial expansion of trial capacity in order to get case dispositions; (6) critics of the Rockefeller Drug Act cited statistics contrary to former Governor Rockefeller's conservative estimates. For instance, the New York City Criminal Justice Coordinating Council (CJCC) conservatively estimated that even with management reforms 96 new judicial parts would be needed in New York City alone. Without such reforms, the new judicial parts required were estimated to be around 154.

According to the CJCC the cost of a new part is $598,509 exclusive of space requirements. Thus, using the more conservative of the two estimates, the cost would be $57,500,000 for increased judicial parts exclusive of space needs. Without management caseload reform, the cost could possibly rise to $92,200,000; (7) opponents of the Rockefeller Drug Act also cited mandatory sentences as counter-productive to correctional rehabilitative efforts. Federal experience has repeatedly demonstrated that mandatory sentencing has generally generated deleterious effects on inmates, especially in terms of participation in rehabilitative programs. The primary reason for this causation appears to be that mandatory sentences, which dissipate any hope of parole or remission, provide no motivation which an inmate must have for rehabilitation. As a result, large numbers of the inmate population become despondent and troublesome. Therefore, the removal of the judicial discretion to sentence major felony offenders to probation would remove one of the most effective rehabilitative implements. According to the New York Civil Liberties Union, the imposition of mandatory terms of

imprisonment, regardless of the circumstances of the individual case, would, in many cases, needlessly sacrifice the interests of society and the productive capabilities of many otherwise salvageable individuals; and (8) with the new restrictions on plea bargaining, opponents speculated that the bargains would be made at a lower level in the criminal justice system, i.e., the law enforcement level. However, the bargains made at this level would not be under supervisory authority and the restraint of a judge and prosecutor; the possibilities for police corruption would thus be increased.

Although the Rockefeller Drug Act has now been in effect only one year, there is some preliminary data to evaluate whether the law has engendered the positive effect claimed by its supporters or the negative impact predicted by its opponents. Most of this data deals with New York City, which--while limited--is valuable to the Commission because of the geographic proximity of the City to New Jersey.

Offenses and Penalties

The expression "stricter law" generally connotes an increase in the severity of punishment for the violation of a prohibited act in terms of lengthening the period of confinement in a correctional institution or increasing the amount of a fine. However, the imposition of judiciary restraints upon disparate sentencing, plea bargaining, parole eligibility and suspended sen-

tences would also increase the severity of a penalty prescribed to a particular offense. Rather than examine the effect of such judicial restraint and increased sentence terms upon the criminal justice system, this section examines the Rockefeller Drug Act, which includes the following components of severity: mandatory life imprisonment; minimal custodial sentences prior to parole eligibility; and plea bargaining restrictions.

The drug legislation's "toughness" can be attributed primarily to the provisions in Article 220 of the New York Penal Law which mandate more severe penalties for drug users and traffickers.[6] Particularly stringent are the mandatory life imprisonment sentences for Class A felonies, mandatory imprisonment for certain B and C felony first offenders, and mandatory imprisonment for second offenders of Class B, C and D felonies.

Article 220 prescribes four class of felonies (A, B, C and D, prison terms of more than one year) and one class of misdemeanors (prison term up to and including one year). (See figures 1 and 2.)

A. Class A Felony Penalties

Class A Felonies, the most serious offense, provide three levels of penalties: A-I, A-II and A-III. Each of these criminal violations involves the unlawful sale or possession of narcotic substances or other specified dangerous drugs, and are punishable by life imprisonment.

Class A-I offenses are those involving the unlawful sale of any narcotic drug in quantities of one ounce or more or the

SCHEDULE OF DRUG OFFENSES AND PENALTIES UNDER NEW YORK PENAL LAW (Article 220)

CLASS	UNLAWFUL SALE OF:	AMOUNT	UNLAWFUL POSSESSION OF:	AMOUNT	PENALTY RANGE	OTHER COMMENTS
A-1 Felony	Any narcotic drug	1 oz. or more	Any narcotic drug	2 oz. or more of a substance containing a narcotic drug	15 yrs. to life imprisonment	If paroled, life parole; plea bargaining within A-Felony class only.
A-11 Felony	Any narcotic drug Methamphetamine Stimulants LSD Hallucinogens Hallucinogenic Substances	1/8 oz. to 1 oz. 1/2 oz. or more 5 grams or more 5 mgs or more 125 mgs or more 5 grams or more	Any narcotic drug Methamphetamine Stimulants LSD Hallucinogens Hallucinogenic Substan.	1 oz. to 2 oz. 2 oz. or more 10 grams or more 25 mgs or more 125 mgs or more 25 grams or more	6 yrs. to life imprisonment	If paroled, life parole; plea bargaining within A-Felony class only.
A-111 Felony	First offender: Any narcotic drug Methamphetamine Stimulants LSD Hallucinogens Hallucinogenic Substances	 Any amt. to 1/8 oz. 1/8 oz. to 1/2 oz. 1 gram to 5 grams 1 mg to 5 mgs 25 mgs to 125 mgs 1 gram to 5 grams	Possession with intent to sell: Narcotic drugs Hallucinogens Hallucinogenic Substan. LSD Methamphetamine Stimulants Possession Stimulants LSD Hallucinogens Hallucinogenic Substan.	 Any amount 25 mg 1 gram 1 mg 1/8 oz. 1 gram 5 grams to 10 grams 5 mgs to 25 mgs 125 mgs to 625 mgs 5 grams to 25 grams	1 yr. to life imprisonment	If paroled, life parole; plea bargaining within A-Felony class only.
B-Felony	Narcotic preparation to someone under 21 Second offender of C-Felony for dangerous depressant or narcotic preparation	Any amount	Second offender of C-Felony except marijuana violations		1 to 25 yrs. imprisonment	Conspiracy to commit A-Felony, is a B-Felony, bribery and bribe receiving in a drug case is a B-Felony.

SCHEDULE OF DRUG OFFENSES AND PENALTIES UNDER NEW YORK PENAL LAW (Article 220)

CLASS	UNLAWFUL SALE OF:	AMOUNT	UNLAWFUL POSSESSION OF:	AMOUNT	PENALTY RANGE	OTHER COMMENTS
C-Felony	Any narcotic prep. Dangerous depress. Depressants Marijuana	Any amount 10 oz. or more 32 oz. or more Any amount	Any narcotic drug Methamphetamine Stimulants LSD Hallucinogens Hallucinogenic Substan. Narcotic preparations Dangerous depressants Depressants Marijuana Marijuana	1/8 oz. to 1 oz. 1/2 oz. to 2 oz. 1 gram to 5 grams 1 mg to 5 mgs 25 mgs to 125 mgs 1 gram to 5 grams 2 oz. or more 10 oz. or more 2 lbs. or more 1 oz. or more 100 cigarettes or more	1-15 yrs. imprisonment	Imprisonment is mandatory except for marijuana; probation available for first marijuana violation; rewarding or receiving an award for official misconduct in a drug case is a C-Felony
D-Felony	Any controlled substance	Any amount	Possession with intent to sell: Any controlled substance Possession: Narcotic preparations Marijuana Marijuana	 Any amount 1/2 oz. to 2 oz. 1/4 oz. to 1 oz. 25 to 100 cigarettes	1-7 yrs. imprisonment	Probation available for first marijuana violation
A-Misdemeanor			Any controlled substance	Any amount	1 yr. imprisonment maximum	Probation available

unlawful possession of any narcotic drug of 2 ounces or more. Narcotic drugs are defined as those controlled dangerous substances which are highly abusable. The most well-known and utilized drugs classified under this definition would be heroin, cocaine, morphine and methadone. Penalties for A-I drug offenses range from a mandatory term of 15 years to life imprisonment.

Felonies of the Class A-II type involve the unlawful sale of any narcotic substance, stimulant, hallucinogenic or methamphetamine, according to the varying quantities (i.e., narcotic drugs 1/8 oz. to 1 oz.; L.S.D. 5 grams or more), and the unlawful possession of this schedule of drugs according to varying quantities for each type (i.e., narcotic drugs 1 oz., to 2 oz.; L.S.D.-25 milligrams or more). Penalties for A-II drug offenses range from a mandatory term of 6 years to life imprisonment.

Class A-III felonies involve those first offenders convicted of selling lesser quantities of drugs enumerated in Class A-II (i.e., narcotic drugs in any amount to 1/8 oz., L.S.D. 1 milligram to 5 milligrams) or of possessing with intent to sell lesser quantities of those drugs (i.e., narcotic drugs in any amount; L.S.D. 1 mg.). Second offenders under Class B felonies may also be subject to penalties under Class A-III. For Class A-III, penalties range from one year to life imprisonment.

B. Class B Felonies

Class B Felonies involve the unlawful sale of any quantity of narcotic substances to persons under 21 years of age. Second offenders of Class C felonies (which will be discussed

later) are also subject to Class B penalties. Excepted from this second offender provision relative to Class B felonies are cases involving the sale or possession of marihuana covered under the Class C felony category.

Provisions were also made in the act to cover the indirect crimes of conspiracy, bribery and bribe receiving in drug cases. In this regard, offenses relative to Class A drug felonies are subject to Class B felony penalties. The penalties for all offenses covered under the Class B category range from 1 to 25 years. The imprisonment penalties are mandatory for all Class B felony offenders.

C. Class C Felonies

Punishable offenses covered under the Class C felony category are the unlawful sale of any narcotic substance of any amount (i.e., malorphine, codeine, ethylmorphine); dangerous depressants in quantities of 10 oz. or more (methaqualone, barbiturates); depressants of 32 oz. or more (meprobamate, paraldehyde, chlorohydrate); or marihuana in any amount. The unlawful possession of any narcotic drug, amphetamine, stimulant, hallucinogen, dangerous depressant and marihuana in certain quantities (varying according to the type of drug) is also a Class C felony. Finally, second offenders of D Felonies are subject to C felony penalties.

The penalties for Class C offenses range from 1 to 15 years imprisonment. Moreover, imprisonment is mandatory for Class C offenses except for those cases involving the sale or use of

marihuana wherein the judge is afforded discretionary sentencing power.

Felonies assigned the most lenient penalties are those falling under the Class D felony category which involve the unlawful sale or possession (with the intent to sell) of any controlled substance in any quantity, i.e., a mere possession of narcotic substances from 1/2 oz. to 2 oz., or marihuana from 1/4 oz. to 1 oz. Penalties for such offenses range from terms of 1 to 7 years imprisonment. Sentences of imprisonment are not mandatory for Class D felonies with probationary sentences available.

The last category for drug offenses is the misdemeanor class. Offenses regarded as misdemeanors are those involving the unlawful possession of any controlled substance in <u>any</u> amount. The maximum penalty for such offenses is one year imprisonment.

D. <u>Plea Bargaining</u>

The restrictions on plea bargaining comprise another significant aspect of The Rockefeller Drug Act. The practice of plea bargaining, the procedure whereby a defendant receives a mitigated sentence in exchange for a plea of guilty, is restricted within the levels of the Class A felony structure. More importantly, this restricted plea bargaining precludes defendants charged with Class A drug felonies from pleading guilty to lesser felony classes which do not carry maximum penalties for life imprisonment. In this regard, the defendant would only be able to bargain about the minimum term to be served before becoming eligible for life-

time parole. For instance, if a defendant is charged with a Class A-I felony, the most optional bargain he or she could strike would be to plead guilty to a Class A-III felony, the minimum penalty for which is 1 year. All of this, of course, assumes that the judge and prosecutor concur with the plea bargain.

Generally, for other felony classifications, plea bargaining is also limited to require that the plea must be at least to a felony charge if the defendant has any past felony convictions. As such, second offenders are precluded from pleading down to a misdemeanor level. First offenders of B, C and D felonies, unlike the provisions for Class A felonies, may plea bargain after indictment.

E. Provisions for Probation and Parole

Parole provisions are also limited under Article 220. Those convicted of Class A felonies are only eligible for parole after serving the minimum prison term. For Class A felonies, this in effect is the only sentencing flexibility afforded a judge other than agreeing to the plea bargaining process. Although the judge is required to sentence a defendant to life, upon conviction, he could specify that the individual be eligible for parole after serving the minimum time provided in accordance with the classification level (A-I, A-II, A-III). If paroled, an individual will remain in such status for the remainder of his or her life. Class B, C and D offenders, if paroled, must remain on parole for at least five years or the balance of the sentence.

The provisions for probation with regard to Class A felonies are even more restrictive than those for parole. The sole allowance for probation is for a certified informer convicted of an A-III felony who cooperates with the state against another drug offender. A cooperative defendant must be sentenced to life probation in lieu of the standard prescribed penalties.

There are no provisions for probation in Class B and C drug felony cases, except for marihuana violators, nor can probated sentences be given to any second felony offender. Probation sentences <u>are</u> available for all drug offenses in the D felony and misdemeanor classes. Therefore, the option to sentence a drug-dependent person to a probationary term in a treatment program is severely limited.

F. <u>Provisions for Second Offenders</u>

Second offenders of the same drug offense under the Rockefeller Drug Act are subject not only to more stringent penalties than those under which the offense would normally be categorized but minimum prison sentences are mandatory. More specifically, for Class A and B drug possession and sale offenses, there is no distinction between penalties for first and second offenses. Second offenders of Class C and D felonies are classified as B and C offenders respectively and are subject to mandatory imprisonment according to the penalties for these felony classes.

This mandatory provision applies to <u>any</u> second felony conviction within a ten-year period, even if the two felonies were

dissimilar or were not drug-related. The provision is applicable to those convicted twice of selling (not merely possessing) marihuana; it would be a Class C drug offense punishable by a sentence ranging from one year minimum to 15 years maximum imprisonment.

G. The Impact of the Rockefeller Act Upon the Criminal Justice System in New York City*

As noted above, some critics of the Rockefeller Drug Act perceived the criminal justice system buckling under from the pressures of congested court calendars caused from the mandatory sentences prescribed to drug offenders. Few believed that a system without plea bargaining could survive. Among other results anticipated were fewer informants available to public investigators, higher jury nullification (acquittal) rates, and a migration of drug traffic into the neighboring states of Connecticut and New Jersey. Besides the criticism of the law and its possible adverse effects, there was considerable concern at the amount of resources, in terms of money as well as manpower, that would be directed at narcotic violations, rather than violent crimes.

*As mentioned previously, the limited data available on the impact of the Rockefeller Drug Act in New York pertains mainly to the city. This is readily understandable when one realizes that the drug problem is much greater in the city than elsewhere in New York State.

To avoid court overcrowding which might lead to dismissals if cases could not be brought to trial quickly enough, projections were made indicating that New York City would need at least 50 new trial parts in the early years of the law at a cost of between $400,000 to $600,000 per part. As of August, 1974, Special Narcotics parts have acquired 29 new courtrooms as well as a new building in which to house some of the courts. The cost has been $556,000 per part for salaries alone or a cost of $16,124,000 for new salaries since September 1, 1973. The state plans to spend $30 million to support the law in fiscal year 1974-75.

STATE ALLOCATIONS IN SUPPORT OF THE 1973 LAW

Total allocated for 1974-75:	$30 million
Number of court parts supported	51

Distribution of costs for each court part:

Judge	$ 43,000
Court Personnel	288,000
Defender Services	96,000
District Attorney	106,000
Probation	23,000
Total cost per trial part	$556,000

There were other costs in preparing the Special Narcotics Court for the Rockefeller Drug Act. During the three months prior to the enactment of the law, the parts made a concentrated effort to reduce the court case load and alleviate the court's calendars for the influx of narcotic cases pursuant to the enactment of the anticipated Rockefeller Act. In order to accomplish this, further inducements were made to defendants to plead guilty to reduced

charges. The price one had to pay for a narcotics violation at the time was greatly reduced.

The need for more manpower to implement the law had an impact across New York City, but most notably within the Manhattan District Attorney's Office. The narcotics District Attorney had to increase his staff to cope with the anticipated increase in trials and needed assistants with trial and supreme court experience. Since Manhattan Assistant District Attorneys (ADA) are considered the best trained in New York City, many ADAs were lifted out of that office and transferred to the special narcotics office. This action created a large void in Manhattan's prosecutorial force. Consequently, for a number of months there were not enough trained ADAs to cover all the courts. The setback to that office alone, which handles all the criminal cases in the city outside of drug violations, was a high price to pay to implement the law. It will take a number of years before that office has as highly trained and experienced a staff as before the enactment of the Rockefeller Drug Act. It is doubtful that this price can be measured in terms of what happens to the prosecution of violent crimes. Another problem within the criminal justice system has been that many of the newly appointed judges appointed to preside over the new narcotics parts have no criminal experience and are unfamiliar with the technicalities of such intricate areas as wiretap laws, search and seizure problems, Wade or Huntley hearings and rehabilitation programs.

The Commission's study of the Rockefeller Drug Act revealed that a number of problems foreseen with the law have not occurred

within the criminal justice system. There has been no decrease in the number of informants. Secondly, jury nullifications have not increased, but have decreased. No one has been able to analyze why. Thirdly, trial rates have increased as was expected and backlogs have built up although not to the extent some had predicted.[7] Such a situation has been avoided by constantly opening new courtrooms as the caseload increases. Of the 410 A felonies indicted in the first three months of this year, it is safe to assume that about 90% of them or 369 cases will have to be tried. Operating at full capacity a New York trial court can handle 20 trials a year. Therefore, 18.4 trial parts will be kept busy for an entire year just to adjudicate this three month caseload. If arrests and indictments remain at current levels, the narcotics courts will need 72 courtrooms in order to stay even with their caseload. Only 50 new courts have been allotted for the law so while backlog has not yet become a serious problem, the mathematics of the situation clearly point to a time when the courts cannot cope with its caseload.[8]

Fourthly, penalties seemingly did not drive any dealers from their home territory during the period of amnesty for addicts, and there was no significant increase in applications for treatment programs.

Furthermore, there has not been an increase in the number of drug-dependant persons enrolling in drug programs one year after the passage of the Rockefeller Drug Act. New York City's 158

public and private methadone clinics service approximately 6,000 fewer clients than the 40,000 capacity level. The treatment population level has remained virtually the same since 1972. Therapeutic programs are similarly under-utilized.[9] Thus, the severity of the penalties has not, as predicted, driven drug addicts into rehabilitation facilities. (See figures 3 and 4.)

An important aspect of the Rockefeller Drug Act is deterrent credibility. In order for deterrence to work, a law must be enforced long enough and strictly enough for its punishment, and therefore its deterrent effect, to be understood in the street. At this point it is unclear whether the law will last intact for a long enough period so that deterrence is produced.

Despite prosecutorial recognition of the legislative directive against plea bargaining, a hard line on drug cases has not been held in every instance. No one has seen a marijuana case indicted although the law states that possession of 1/4 ounce or more of the drug is a felony. Marijuana cases are still prosecuted in the same manner as under the previous law. No lesser pleas are currently being taken on pill cases unless there are search or connection problems. However, the intent of the law appears to be undermined by the very methods it attempted to destroy. The law mandated that plea bargaining could only exist within the range of the three A felonies: A-1 (15-life), A-II (6-life) and A-III (1-life). An A felony had to remain an A felony. Other grades of felonies could be

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not available at the time of printing.]

FIGURE 3

[This page was reserved for a chart not available at the time of printing.]

FIGURE 4

bargained but this was to be discouraged. However, a group of assistant prosecutors demanded the right to reduce charges against A felony offenders who had no or only minor records (defined as 5 or fewer misdemeanor convictions and no violent felony convictions) or A felony charges involving small possession or small scale sale of methadone, cocaine or heroin. Their argument was that the punishment was too great to fit the crime. Only their recommendation concerning methadone was accepted, although it now seems inevitable that similar steps will be taken in the cocaine and heroin categories.

At this point in the drug law's life it was considered a politically bad tactic to announce reductions for cocaine and heroin offenders. These changes were considered too volatile for the chief prosecutor to make on his own initiative. Therefore, this alteration in the law will be left up to the New York State Legislature which has promised action on the law by January 1975. Currently, all methadone cases in New York City have been adjourned until September when the new guideline will go into effect and qualified defendants will be allowed to plead guilty to an A misdemeanor (punishable by a maximum of 1 year) instead of an A felony. Approximately 20% of all defendants charged with methadone violations fit into this category.

The 1973 Rockefeller Drug Act was not only the first harsh drug law; it can also be seen as a first attempt by the

New York State Legislature to codify and set the standards by which those in the criminal justice system would enforce the law on a day-to-day basis, through restricting plea bargaining and mandating sentences. That experiment now appears to the Commission to be anything but successful as the dynamics of the prosecutorial and court systems have again grabbed the initiative on how a law will be enforced. In doing so, of course they have reduced some of the law's effect, while making the law somewhat more humane and workable.

One of the major reasons why the law sits so uneasily with the officers of the court is the jarring inequities it produced. In measuring the penalties for criminal behavior under the New York penal code, there seems to be a denial of equal protection of the law created by the requirement for severe punishments for narcotics violations. An armed robber who severely injures a victim can only be imprisoned for a maximum of 25 years whereas a person making an illegal sale of one dose of methadone for $5.00 must face life imprisonment. The violent robber is clearly the more dangerous to society, yet he faces a significantly lighter sanction. The average sentence meted out to robbers in New York City runs around 3 years; the average sentence for a murderer between 5-7 years; yet average sentences for light drug offenses are now quite high. In order to correct this problem, the entire penal code would have to be re-worked and each punishment for violent crime

raised in direct proportion to the rise in criminal sanctions for drug abuse. Instead of this happening, the drug law itself will probably be amended.

Another legal problem with the Rockefeller Drug Act concerns its possible constitutionality with regard to the Eighth Amendment of the United States Constitution. There are presently cases before the New York State Appellate Courts which argue that the stringent penalties prescribed to drug offenders constitute cruel and unusual punishment.[10]

In general, neither critics or proponents of the Rockefeller Drug Act have appeared to change their attitudes since the controversial law took effect last September. However, its critics have been strengthened by the support of several judiciary members, especially from among the ranks in New York City State Supreme Court Justice Abraham Kalina, supervising judge of the Special Narcotics Court in Manhattan, recently stated that the "overwhelming majority" of judges hearing drug cases in the borough opposed the act because it was "too tough on the little guy" who used drugs and occasionally sold them to support his habit but did not engage in "commercial profiteering."[11]

The Impact of the Rockefeller Drug Act on Illicit Drug Systems in New York City and New Jersey

A. New York City

Although the Rockefeller Drug Act has only been in effect

for one year, the Commission has attempted to make a preliminary analysis of the effectiveness of the law in deterring drug consumption and dissemination. Contrary to expectations, arrests decreased pursuant to the enactment of the Rockefeller Drug Act:

Per Cent Changes in New York City Arrests for January-March 1973 (Under the old law) Compared with January-March 1974 (Under the Rockefeller Drug Act)

Heroin Felonies*	-25%
Heroin Misdemeanors	-37%
Cocaine Felonies	-19%
Cocaine Misdemeanors	-57%
Cannabis Felonies	-13%
Cannabis Misdemeanors	-14%
Synthetic Opiate Felonies	+52%
Synthetic Opiate Misdemeanors	-22%

*Drug Felonies in New York are divided into seven categories, the top three of which are punishable by a mandatory maximum of life, the lowest category by 0-4 years or probation of 3 or 5 years. The decrease in heroin arrests does not indicate a similar decrease in heroin accessability on the streets. According to police officials interviewed for the New York Bar Association study of the Rockefeller Drug Act, heroin is as available and as pure as in the same time period of 1973. (This was confirmed by New York City Legal Aid officials.)

Actually, arrests for drug crimes had been falling steadily since 1971, but now appear to be levelling off (see figure 5). Figures 6 to 9 give a breakdown of arrests for the period January-March, 1974.

This may in part be explained by a nationwide trend during the last few years which has seen the reduction and levelling off of heroin usage. At the same time, New York law enforcement officials report that the cost and availability of heroin in New York City was virtually the same during the first three months of 1974 as during the same period in 1973. This suggest that the supply of heroin has not been radically altered by the new law. These conflicting pieces of evidence do not offer a clear picture of heroin usage nor do they suggest a convincing case for the deterrant effect of the law. The arrest statistics also indicate an increase in arrests for cocaine and a vast increase in arrests for methadone. The changes in arrest statistics may also indicate a change in police tactics. For example, the huge drop in arrests from 1972 to 1973 did not indicate a similar drop in drug usage, but rather reflects the Police Commissioner's directive for police to arrest only on solid convictable evidence. Politics and public relations have always entered into the decision of who and when to arrest. Under the Lindsay administration, "sweep-the-streets" actions were avoided as being too costly for what they produced.

Another possible reason given for the levelling off of heroin use in New York is that since 1971, the New York office and the U.S. Southern District office have locked up about 500 organized

ARRESTS FOR DRUG CRIMES IN NYC, 1971-74

- Drug arrests have been falling steadily, but now appear to be leveling off.

- Drug arrests had been falling in relation to all arrests, but that medium term trend may have come to an end.

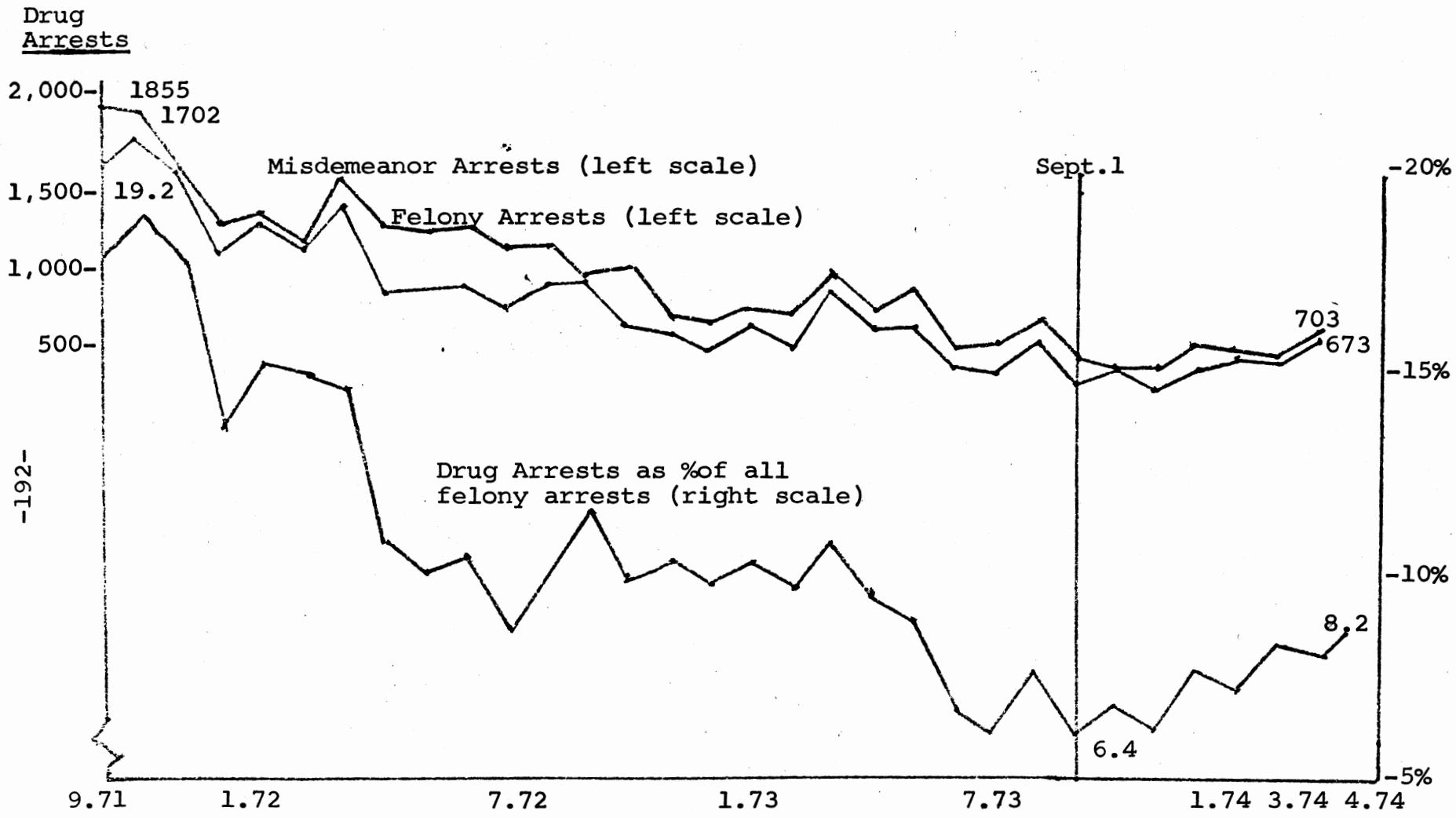

FIGURE 5

POLICE ARREST DATA JANUARY - MARCH 1974

NEW YORK CITYWIDE DRUG VIOLATIONS

I. JANUARY

	Heroin Opiates	Cocaine	Cannabis	Synthetic Opiates	Stimulant/ Depressant
Felony	277	74	178	32	17
Misdemeanor	191	24	314	16	22
Total	468	98	492	48	39

	Hallucinogen	Hypodermic Syringe
Felony	0	0
Misdemeanor	1	43
Total	1	43

Total Drug Felonies	578
Total Drug Misdemeanors	611
Total Arrests	1,189

FIGURE 6

POLICE ARREST DATE JANUARY - MARCH 1974

NEW YORK CITYWIDE DRUG VIOLATIONS

II. FEBRUARY

	Heroin Opiates	Cocaine	Cannabis	Synthetic Opiates	Stimulant/ Depressant
Felony	282	64	180	39	12
Misdemeanor	142	18	328	17	18
Total	424	82	508	56	30

	Hallucinogen	Hypodermic Syringe
Felony	2	0
Misdemeanor	0	36
Total	2	36

Total Drug Felonies	582
Total Drug Misdemeansors	566
Total Arrests	1,148

POLICE ARREST DATA JANUARY - MARCH 1974

NEW YORK CITYWIDE DRUG VIOLATIONS

III. MARCH

	Heroin Opiates	Cocaine	Cannabis	Synthetic Opiates	Stimulant/ Depressant
Felony	317	80	201	57	14
Misdemeanor	140	30	443	23	28
Total	457	110	644	80	42

	Hallucinogen	Hypodermic Syringe
Felony	5	0
Misdemeanor	0	46
Total	5	46

Total Drug Felonies	673
Total Drug Misdemeanors	710
Total Arrests	1,383

FIGURE 8

POLICE ARREST DATA JANUARY - MARCH 1974

NEW YORK CITYWIDE DRUG VIOLATIONS

IV. TOTAL DRUG ARRESTS TO DATE

	Heroin Opiates	Cocaine	Cannabis	Synthetic Opiates	Stimulant/ Depressant
Felony	876	218	559	128	43
Misdemeanor	473	72	1,085	56	68
Total	1,349	290	1,644	184	111

	Hallucinogen	Hypodermic Syringe
Felony	7	0
Misdemeanor	1	125
Total	8	125

Total Drug Felonies	1,831
Total Drug Misdemeanors	1,880
Total Arrests	3,711

FIGURE 9

crime personages who would be considered to be in the upper echelon of the drug trade (see figure 10 for a list of drug indictments handed down in New York City and New York State). This supposedly has had a great impact on the drug flow and was notably accomplished without a harsh drug law.

Drug education programs have also supposedly had an impact, since they have reached the population considered a contagious group where heroin use spreads rapidly--those 13-17 years old. Many have been turned off to the idea of heroin use and there is a feeling among prosecutors that further drug education programs will prevent others from turning to heroin should the supply increase significantly. This can be likened to the drop-off in LSD use after the flow of reports concerning LSD damage to chromosomes began. Following this knowledge, few people returned or turned to LSD. Another possible reason given for the levelling off of heroin use is the international efforts to reduce the growth of poppy plants in Turkey and the dismantling of the Marseilles-New York connection. Federal and state law enforcement officials claim that these actions resulted in lowering the availability of heroin in New York City.

Thus, due to changing drug use patterns, success rates under the old law and of education programs, it is difficult to measure claims about the deterrent effect the new law has had in its short life.

Drug Indictments Handed down in New York

January - March 1974

Class of Crime	New York City Number/percent of total		New York State Percent of total
Sales			
A-I (15 or 25 - life)	105	19%	9.9%
A-II (6 or 8 1/3 - life)	85	15.4%	8.3%
A-III (1 - life)	147	26.6%	18.5%
C (0 - 15)	10	1.8%	12.3%
D (0 - 7)	12	2.2%	3.4%
Possession			
A-I (15 or 25 - life)	37	6.7%	3.4%
A-II (6 or 8 1/3 - life	14	2.5%	2.4%
A-III (1 - life)	22	4.0%	2.4%
B (0 - 25)	1	.2%	.1%
C (0 - 15)	70	12.7%	21.5%
D (0 - 7)	3	.5%	4.3%
Charges repealed	46	8.3%	13.4%
TOTAL INDICTMENTS*	552		100

* 74.2% of all indictments in New York City handed down in this time period carry a manadatory maximun of life imprisonment and lifetime parole if granted. Statewide, the mandatory life indictments total 44.9% of all drug indictments or 495 cases of which 410 originated in New York City.

FIGURE 10

The majority of state cases at this point in time involve small time sellers supporting their own habits. The law is not solely aimed at sending the upper echelon dealer away for life; it ends up focusing on sending anyone who illegally possesses any amount of any narcotic drug away for life with the possibility of eventual release followed by life time parole. The law seems to be sweeping up the demand sector of the drug economy rather than attacking those who law enforcement officials have traditionally held had to be stopped in order to have any impact on drug availability: higher-ups in the supply sector.

Although proponents of the Rockefeller Drug Act speculated that the law would have an immediate effect upon the illicit drug system, Special Narcotics Prosecutor Frank Rogers now states that the deterrent value of the law will not have an impact upon "street activity" until 500 persons have been sentenced to life imprisonment. At present conviction rates, this means three and one-half years.[12]

The Commission cannot help but conclude that after one year the Rockefeller Drug Act has had a negligible effect on the illicit drug system in New York City. Narcotics and other dangerous drugs remain as available in New York City as before the enactment of the law, and the cost and purity of these drugs have also not been altered.

B. New Jersey

Pursuant to the enactment of the Rockefeller Drug Act, various public officials in New Jersey speculated that a "tough"

law would precipitate a migration of drug-dependent persons and illicit drug traffickers into Northern New Jersey. The premise for this speculation centered upon the assumption that individuals involved in the "drug scene" would seek sanctuaries in neighboring states -- such as New Jersey, where the penalties for narcotic offenses were less severe. Many New Jersey residents and public officials advocated the enactment of similar legislation in New Jersey in order to prevent the State from becoming a drug sanctuary and to avoid an increase in drug related crimes.

To test this drug sanctuary theory, the Commission distributed a questionnaire to the New Jersey Narcotic Law Enforcement Association -- which will be published as part of a broader survey in the Commission's second report. For present purposes, the questionnaire inquired into the impact of the Rockefeller Drug Act in New Jersey. The questionnaire asked:

> Since the passage of the New York Drug Laws in September, 1973, there has been speculation that the enactment of New York's strict narcotic statutes would precipitate the migration of the New York drug system (addicts and dealers) into New Jersey and Connecticut because of their less stringent laws. Have you witnessed any such migration? Can you cite any statistics?

The Association replied--on June 3, 1974--that it had been closely observing drug arrests and other indicators of a possible migration of drug traffickers from New York into New Jersey. Although there were several drug related arrests of New York residents in New Jersey in the past year, the Association reported that there was no indication these individuals were driven into New Jersey by the Rockefeller Drug Act, or that these indivi-

duals had not been crossing into New Jersey prior to the Act.

Because of its proximity to New York City, the Commission also asked law enforcement officials in Hudson County the same question. John Hill, Assistant Prosecutor for Hudson County and Head of the Narcotics Division, for one, replied in September of this year that,"Based on drug arrests and other observations in regard to the use, availability and trafficking, there has been no change [in New Jersey] since the enactment of the New York Drug Law." Another observer, Marion W. Hambrick, Special Agent in Charge of the Federal Drug Enforcement Administration in Newark, New Jersey, believes (as of September of this year) it is "still too early to tell and to draw any definite conclusions" as to the Rockefeller Drug Act's impact in New Jersey.

Interviews with other municipal, county, State and federal law enforcement officials in New Jersey also indicated that the impact of the Act in New Jersey has been "negligible." Furthermore, New York law enforcement officials--from their perspective across the Hudson River--have publicly stated that the stringent new antidrug laws "have not measurably slowed the overall flow of drugs or driven major narcotics dealers out of business...."[13]

The Cost of Implementing a Rockefeller Drug Act in New Jersey

Approximately eighty-five percent of all drug offenses in New Jersey are disposed of through pleas.[14] A plea may emanate from two fundamental judicial procedures: plea bargaining and the waiver of a defendant's right to a trial by a jury. The latter,

the less frequent of the two, may result from either an indigent defendant's inability to post bail and desire to expedite the judiciary process, or a defendant's aspiration to receive a mitigated sentence. Although lacking any legal basis, the presumption that the court will mete out a less severe punishment in return for an admission of guilt has some validity. Judges often perceive a plea of guilty as an indication of the defendant's remorse for the commission of the crime and his willingness to submit to the court's discretion in mandating punishment, and subsequently, evoke a sentence less severe than if the defendant had plead not guilty and was convicted by a jury.

Plea bargaining, the other judicial procedure used in the procurement of a plea, involves an agreement between the prosecution and the defense in which the defendant agrees to enter a mutually acceptable plea in return for a prosecutorial promise to make a certain concession or concessions on the defendant's behalf. The concession(s) may be in the form of a recommended minimal sentence such as a probationary term or a suspended sentence, differential treatment, or the dismissal of additional or potential charges with the entry of a plea to a lesser offense.

When the prosecutor and defense counsel reach an agreement on the offense or offenses to which a defendant will plead, on condition that other charges will be dismissed, the negotiation will be placed on record in open court at the time the plea is entered. If the judge should determine that the interest of justice would not be served by accepting the proposed agreement,

the defendant will be entitled to withdraw the plea.[15] The defendant also has the right to withdraw the plea under the circumstance that the judge declines to adhere to the prosecutorial sentence recommendation.[16]

Plea bargaining has proven to be a desirable procedure for the defense, prosecutors, and courts. The defendant usually receives a mitigated sentence, the prosecutor avoids the possibility of losing a "weak case,"[17] and the court ameliorates unmanageable calendars.

The enactment of a Rockefeller Drug Act in New Jersey would inevitably reduce the number of pleas and would necessitate an increase in the prosecutorial staffs. Pleas entered in the hope of procuring mitigated sentences would substantially decrease due to the mandatory sentencing provision. Judges would no longer possess the discretionary sentencing power to mandate less severe penalties, and the entry plea of guilty would only expedite the incarceration of the defendant. In regard to plea bargaining, the Rockefeller Drug Act restricts bargaining to within the Class A felony category. Thus, the most substantial gain from plea bargaining would be pleading to an A-III offense which prescribes a 1-year to life imprisonment sentence. Although the dismissal of an A-II felony in exchange for a plea of an A-III felony would reduce the minimum sentence by 5 years, a defendant's eligibility for parole does not guarantee being paroled. A defendant may be incarcerated for a longer period under the A-III offense than the A-II offense. In essence, a defendant will be imprisoned regardless

of plea bargaining with no guarantee of parole upon completion of the minimum sentence and consequently would be more inclined to plead not guilty and hope for the dismissal of a case, a motion to suppress the evidence or an acquittal.[18] Thus the number of plea bargainings and guilty pleas would substantially decrease, and subsequently the number of cases being brought to trial would increase.

Assuming under the Rockefeller Drug Act that 35 percent of narcotic offenses were disposed of through plea bargaining and 5 percent entered a plea, there would be a 45 percent[19] increase in the number of cases brought to trial. In order to illustrate the effect of such an increase upon the prosecutors and courts, the Commission has reviewed the total number of indicted narcotic offenses in 1971 in New Jersey.[20] The total number of narcotic arrests incurred during that year totalled 4,646. Fifty-four percent or 2,509 arrests were for the possession, distributing or dispensing of heroin and cocaine, offenses listed under Class A of the Rockefeller Drug Act. Using the current figure of 15 percent, 376 cases would have been brought to trial under the existing system compared to an estimated 60 percent, or 1,505 cases under the Rockefeller Drug Act.

These figures illustrate the high volume of cases which would be brought to trial upon the implementation of the Rockefeller Drug Act and the necessity for increasing the prosecutorial staff, assistant prosecutors as well as investigators, in order to handle the influx of trials and prevent further backlogging of cases.

A substantial increase in the number of cases being brought to trial invariably lengthens the time lapse between the arrest and verdict and engenders myriad injustices and inequities within the criminal justice system. Several county courts in New Jersey are faced with a heavy backlog of cases.[21] An additional increase of 45 percent in narcotic offenses would result in further case backlogs and would possibly delay court proceedings in the majority of cases for more than eighteen months.[22] One can imagine the numerous problems resulting from such a delay. Defendants who are unable to post bail, and are presumed innocent until proven guilty, would be subjected to more than a year's incarceration while pending trial, and the facts that are pertinent to a case would become clouded and distorted over the passage of time. The end result would be that a defendant would probably not receive as fair a trial had it been held within a reasonable period after the alleged crime had been committed.

In order to prevent the further backlogging of cases and the aforementioned manifestations associated with extensive time lapses, the court system will have to be allocated the necessary expenditures for the construction of courtrooms and the salaries for additional judges, court personnel and prosecutorial staffs. The Commission approximated the expected cost in Hudson County's court system necessary to expedite the judicial processing of the anticipated increase in the number of cases emanating from the enactment of a Rockefeller Drug Act in New Jersey.

There are presently nine criminal court judges in Hudson County sitting on the bench fourty-five weeks a year. The average period of time for a criminal case is five days. Consequently, approximately 380 criminal cases are heard per year:

> 5 court days per week x 45 bench weeks per judge = 225 bench days per judge ÷ by 5 days for a criminal case = 45 cases per judge x 9 criminal court judges = 380 criminal cases per year.

A 45 percent increase in trials would necessitate the construction of three courtrooms and the assignment of three to five additional judges.[23] Due to the limited available space in the Hudson County Administration Building, only two courtrooms could be constructed within the existing structure at the cost of $150,000. In all probability, an annex to the edifice would have to be constructed to house the courts at the estimated cost of more than one million dollars.

The salary of a criminal court judge is $40,000. Thus, the total cost for three additional magistrates would be $120,000. The remaining salaries of court personnel are itemized as follows:

(1) Six court clerks (2 per court) at $12,000/year	$72,000
(2) Three legal secretaries at $9,000/year	27,000
(3) Three legal researchers at $10,000/year	30,000
(4) Nine courtroom attendants at $10,000/year	90,000
Total	$129,000

Therefore, the total cost for additional judges and essential court personnel in Hudson County would be $339,000 annually.

The additional magistrates would necessitate the assigning of six assistant prosecutors and three investigators to the Hudson County Prosecutor's Office.[24] The annual salaries of an assistant prosecutor and an investigator are $14,000 and $9,000 respectively. Therefore, the cost of the additional prosecutorial staff would be $111,000, which would raise the total cost to $450,000 annually.

The number of additional judges, assistant prosecutors and courtrooms would vary from county to county depending upon the population density of the area and the existing court facilities. However, assuming that the average number of additional judges per county in New Jersey would be two, it would cost the taxpayers of New Jersey approximately an additional 5 million dollars annually to finance the twenty-one county prosecutors' offices and courts. This figure, excluding the costs for the construction of additional courtrooms and the salaries of additional public defenders and staff, indicates the tremendous fiscal expenditures necessary for the implementation of a Rockefeller Drug Act in New Jersey.

The Act would not necessarily mandate an increase in the number of narcotic law enforcement officers or impose additional costs for equipment. However, State, county and municipal police would have to be instructed on the changes in the classification of offenses, prescribed penalty scheme and any impact the law would have upon arrest priorities, surveillance techniques and the

informant system, although the cost involved in training the various police departments would be relatively insignificant in comparison to the estimated amount necessary for the courts and prosecutors.

The implementation of a Rockefeller Drug Act in New Jersey would be beneficial to narcotic law enforcement officials in the sense that it would psychologically reinforce their enforcement efforts and result in an increase in the number of quality rather than quantity arrests. Certain law enforcement officials argue that disparate sentencing under the "New Jersey Controlled Dangerous Substance Act" has caused disillusionment among police officers due to the judges' failure to distinguish between the degrees of moral culpability and to mete out severe imprisonment sentences in appropriate cases. This argument further maintains that police have resorted to quantity arrests (simple possession or use offenses) because of the court's apparent reluctance to mandate harsh penalties involving quality arrests (sale of drugs, especially by non-addicts). Quantity arrests usually involve addicts who are highly visible in comparison to the dealers, and take less investigation, less court delay and make an impressive arrest record for the officers. Thus, several law enforcement officials advocate that the enactment of mandatory sentencing and the concomitant removal of the judge's discretionary sentencing power would restore police confidence in the court system (the sentence being the reward for their efforts) and result in an increase in the number of quality arrest.

The implementation of a Rockefeller Drug Act in New Jersey would invariably result in the displacement of the discretionary powers of the court and the prosecutor. The court, due to the prescribed mandatory penalty scheme, would exercise much reduced discretionary sentencing powers, while the prosecutor, due to plea bargaining restrictions, would have limited discretion in regard to pleas. As a result, the discretionary powers of the police, not being directly affected by the Act, would be augmented.

Another consequence resulting from the displacement of the discretionary powers of the court and prosecutor involves station house bargaining. Presently, an estimated 50 percent of the narcotic cases in New Jersey result from information provided from an informer.[25] A narcotic informer is invaluable to law enforcement agencies because of his familiarity with and accessibility to the regional drug systems. The informer renders the following services:

1. Introduces undercover police agents to the drug system.
2. Substantially reduces the length of police surveillance on an individual and therefore supplements the limited manpower of narcotic divisions.
3. Information provided by a reliable informer constitutes the probable cause necessary for the issuance of a search warrant.

Although individuals become police informers for many reasons, the majority of police informants emanate from the courtroom. At the municipal court level, the police will either request a downgrading of an offense from a misdemeanor to a disorderly

persons offense and/or recommend a mitigated sentence, suspended sentence or fine, if the defendant agrees to cooperate with the law enforcement officers in providing certain information and rendering one of the aforementioned services. At the county court level, the prosecutor and police will settle on a mutually acceptable agreement and offer a defendant a mitigated sentence, through plea bargaining or recommendation of sentence, in exchange for cooperation with law enforcement authorities. Depending upon the policy of the police department, some informers may receive a paid salary for their services.[26] Thus, under the existing statute, the police and presecutors possess the means to induce individuals to assist the police. A Rockefeller Drug Act in New Jersey would deprive law enforcement officers of this source of informers and consequently would reduce the manpower and effectiveness of narcotic divisions throughout the State. The restriction of plea bargaining to within the Class A felonies, with the single exception of life parole, would mean that the minimum sentence would be 1-year imprisonment. Although it has been argued that the prosecutor still retains the power to downgrade an A-I or A-II offense to an A-III charge in exchange for a defendant's promise to assist authorities upon release, this type of agreement would be unrealistic and ineffective, for the Act does not prescribe a penalty for breach of promise. Under these terms, there is no assurance that the individual will act as an informer upon release and consequently could result in miscarriages of justice. The remaining alternative left to authorities in procuring informers would be the granting

of life parole. Due to the fact that life parole sentences are granted only to defendants providing information to the authorities, this procedure would endanger the life of the informer and reduce his effectiveness.

Consequently, the only viable alternatives would be to increase the number of undercover policemen assigned to narcotic squads in order to supplement the loss of "courtroom informers," or resort to station house bargaining. The enactment of the former alternative would not be sufficient in terms of maintaining the degree of effectiveness which prevailed under the informant system, for undercover agents would have a difficult time in entering a drug system without an informer's introduction.

Station house bargaining would occur when the police, having the customary avenues blocked, would agree to discharge an individual prior to booking in exchange for cooperation. If the defendant agreed but failed to produce the information requested of him, the police would book him on false charges and commit perjury in court. A further problem with this system would be that the police, usually having a limited perspective on the regional drug system, might release an important figure in the drug underworld, whereas under the existing system, the prosecutor and district attorneys would have more knowledge of an individual's involvement in the drug system and would be in a better position to determine the advisabiltiy of using a certain individual as an informer.

The enactment of mandatory sentencing and restricted

plea bargaining would also affect the normal procedures of the prosecutor, court and correctional institutions.

The prosecutor, having limited plea bargaining discretion, would not only confront an increased number of narcotic cases but, due to mandatory sentencing, a more difficult task in obtaining a conviction. Municipal court judges, despite the lack of authority to sentence felony cases, could more forcibly assert their power in determining that the State has probable cause to refer the offense to the Grand Jury and dismiss those cases in which the gravity of the offense does not warrant the severity of the punishment on the grounds of insufficient evidence. This practice would increase the burden upon the prosecution to prove probable cause that the defendant indeed did commit the alleged crime. Another judicial means of dismissing cases involving an individual with a low degree of moral culpability would be through a judge's refusal to refer a case to the Grand Jury, where an informer has assisted in the arrest, unless the prosecution reveals the identity of the informant in open court. This would create additional problems for the police as well as the prosecution, for the revelation of an informer's identity would reduce the effectiveness of the system, endanger the life of the informer and deter potential informers from aiding law enforcement officers, and the police would more than likely have to withdraw the complaint.

The repugnance toward the severity of the law also extends to the jury and increases the burden of persuasion upon the prosecutor in Grand Jury sessions and county court trials. Although not presently the case in New York, studies reveal that

juries, despite the customary warning from the judge to disregard punishment in determining the guilt or innocence of the defendant, are generally more reluctant to return a conviction, in spite of overwhelming and indisputable evidence, in cases involving capital or mandatory punishment.[27] In the case of the New York Baumes Law, which prescribed a mandatory life imprisonment with no parole for fourth-time felony offenders, the juries repeatedly dismissed or convicted the defendant of a less serious charge upon the principle that the gravity of the offense did not warrant the severity of the punishment.[28] Under a Rockefeller Drug Act in New Jersey, one could envision the juries taking a similar action in cases where the defendant's degree of moral culpability did not warrant a mandatory imprisonment sentence. Thus, the enactment of mandatory sentencing would result in increasing the prosecution's difficulty in procuring a conviction, and in some cases, defendants who are guilty of a narcotic violation may be acquitted or dismissed due to the reluctance of a jury or judge to be involved in the imposition of such a harsh punishment.

Mandatory penalties also deprive the judge of sentencing prerogative and consequently deny the court the discretion to mete out a sentence relevant to the defendant's moral culpability in terms of drug involvement, employment record, prior criminal record, and the extenuating circumstances involved in the case. Thus, the law does not distinguish between the drug-dependent defendant and non-addicted commercial dealer but rather relegates both into the same category according to the quantity of drugs involved

and uniformly sentences them. Inevitably there will be defendants convicted who do not deserve the harshness of the prescribed penalty and will not be eligible for a mitigated sentence or rehabilitation treatment. For example, an addict pusher who sells drugs in order to maintain his personal drug habit would be incarcerated in a correctional institution which, under present conditions, does not provide the medical or therapeutic treatment necessary for the rehabilitation of a drug abuser. Therefore, a Rockefeller Drug Act in New Jersey would defeat one of the fundamental principles of criminal justice. Furthermore, the enforcement of a Rockefeller Drug Act in New Jersey would probably increase the number of defendants to be imprisoned and would require that the State appropriate additional funds to its State Division of Corrections and Parole.[29]

There are essentially two reasons for predicting an increase in the number of defendants incarcerated under a Rockefeller Drug Act in New Jersey. First, the penalty scheme prescribes mandatory imprisonment sentences for every defendant, with the single exception of marihuana offenders, found guilty of a felony.[30] Secondly, the restrictions on plea bargaining would also apply to the judicial procedure of downgrading. The former negates mitigated sentences and consequently would increase the number of defendants imprisoned. The process of downgrading is similar to plea bargaining but occurs at municipal, rather than at the county, court level when the prosecution recommends the downgrading of a misdemeanor offense to a disorderly persons charge in exchange for a plea to the less serious offense.[31] Under a Rockefeller

Drug Act the prosecutor could not downgrade a Class A Felony to another class or lower any felony to a corresponding misdemeanor involving second-time offenders. Therefore, the present number of defendants who have their offense downgraded and serve their sentence in county correctional institutions would be sent to State correctional institutions, upon indictment and conviction, for county detention and correction centers only confine defendants being detained for trial or serving one year or less.

According to New Jersey correction officials, the present institutions are either above or at their capacity level. A substantial increase in the inmate population would mean less space and less effective rehabilitation services and would subsequently heighten the potential for inmate disruptions. Therefore, the State would have to construct additional institutions to accomodate the influx of inmates as well as appropriate the necessary funds to maintain the facilities.

Comparison of the Rockefeller Drug Act and the "New Jersey Controlled Dangerous Substances Act"

The Rockefeller Drug Act and The Controlled Dangerous Substances Act share the same objectives, to deter drug dissemination and rehabilitate drug-dependent persons and drug users--but the laws differ in the means to achieve this end. (Figures 11-14 of this chapter offer a comparative schedule of drug offenses and penalties.*) Among the differences is that the Controlled Dangerous Sub-

*See the appendix to this chapter for a more detailed comparison of the two drug laws.

COMPARATIVE SCHEDULE OF DRUG OFFENSES AND PENALTIES

State of New York — State of New Jersey*

CLASS	UNLAWFUL SALE/DISTRIBUTION* OF:	AMOUNT	PENALTY RANGE	COMMENTS
A-1 Felony	Any narcotic drug	1 ounce or more	15 yrs. to life imprisonment	lifetime parole if granted
High Misdemeanor*	Narcotic, Opiate, Depressant, any hallucinogen, stimulant in Schedule* I, II, III, IV, C. D. S. Statute	No weight consideration	If narcotic in I or II up to 12 yrs., $25,000 or both* non-narcotic in I or II and all others in III and IV up to 5 yrs., $15,000 or both*	
Misdemeanor*	Any Schedule V Substance e.g. cough medicine containing narcotic	No weight consideration	Up to 1 yr., $5,000 or both	
A-II Felony	Any narcotic methamphetamine stimulant LSD hallucinogen hallucinogenic substance	1/8 to one ounce 1/2 oz. or more 5 grams 5 mgms. or more 125 mgms. or more 5 mgms. or more	6 years to life	lifetime parole if granted
A-III Felony	First offense: any narcotic methamphetamine stimulants LSD hallucinogen hallucinogenic subs.	up to 1/8 ounce 1/8 to 1/2 ounce 1 gm. to 5 gms. 1 mgm. to 5 gms. 25 mgms. to 125 mgms. 1 gm. to 5 gms.	1 year to life	lifetime parole if granted
	Second offense: 1-6 above	any amount	1 year to life 8 1/3 to life maximum	same as above
B Felony	Narcotic preparation to someone under 21 Second offender of C felony for dangerous depressant or narcotic preparation	any amount	1-25 yrs., 0-3 minimum 8 1/3-25 maximum	conspiracy to commit an A felony is a B felony Bribery and bribe receiving is a B felony
C Felony	Any narcotic preparation dangerous depressants depressants marijuana	any amount 10 ozs. or more 32 ozs. or more any amount	1-15 yrs., 0-3 minimum 5-15 maximum	jail mandatory except for pot probation available for 1st pot violation
D Felony	Any Controlled Substance	any amount	1-7 yrs., 0-3 minimum 2 1/3-7 maximum	probation available for 1st pot violation

The comparisons listed above illustrate the complexity and multi-structure of New York's Drug Law a that of New Jersey. Weight of a drug is a factor in most cases in New York. New Jersey has five (5) schedules with specifically listed drugs and statute for distribution is guided thusly. Penalties in N York go higher but fines are not implied. Parole aspect is distinguishible in New York. (Maximum pena and fine in relevant New Jersey cases can have comparable impact.)

COMPARATIVE SCHEDULE OF DRUG OFFENSES AND PENALTIES

State of New York — State of New Jersey*

CLASS	UNLAWFUL POSSESSION	AMOUNT	PENALTY RANGE	COMMENTS
A-I Felony	Any narcotic drug	2 oz. or more of a substance containing a narcotic drug	15 yrs. to life	lifetime parole if granted
High Misdemeanor* Incorporated in same statute	Any substance in Schedule I thru IV	No weight consideration except pot and hashish over 25 grams pot and 5 grams hash	Sched. I-IV drug including pot and hash above 25 gms. and 5 gms. up to 5 yrs., $15,000 or both*	Dismissal possible for 1st offenders over 21
Misdemeanor* Incorporated in same statute	Schedule V Substance	No weight consideration	Schedule V - misdemeanor - up to 1 yr., $5,000 or both*	expungement possible for 1st offenders unde 21
Disorderly person* Incorporated in same statute	Schedule I - Pot and Hashish	under 25 gms. pot, 5 gms. hashish*	maximum 6 mos. county jail and $500 or both*	No second offense applicability*
A-II Felony	Any narcotic drug methamphetamine stimulants LSD hallucinogens hallucinogenic substance	1 oz. - 2 ozs. 2 ozs. or more 10 gms. or more 25 mgms. or more 625 mgms or more 25 grams or more	6 yrs. to life - minimum 8 1/3 to life - maximum	lifetime parole if granted
A-III Felony	Possession with intent to sell: (In NJ this offense is treated as an out and out distribution case - no weight consideration) narcotic drugs hallucinogens hallucinogenic substance LSD methamphetamine stimulant Possession: stimulants LSD hallucinogens hallucinogenic subs. Second Offender: Any hallucinogens, hallucinogenic substances, LSD, methamphetamine, stimulants with intent to sell	 any amount 25 mgs. 1 gm. 1 mg. 1/8 oz. 1 gm. 5 gms. to 10 gms. 5 mgms. to 25 mgs. 125 mgms. to 625 mgs. 5 gms. to 25 gms. any amount	1 yr. to life - minimum 8 1/3 to life - maximum	lifetime parole if granted

FIGURE 12

COMPARATIVE SCHEDULE OF DRUG OFFENSES AND PENALTIES

State of New York — State of New Jersey*

CLASS	UNLAWFUL POSSESSION	AMOUNT	PENALTY RANGE	COMMENTS
B Felony	Second offender of C felony will fall here with the exception of marijuana violations		1-25 years, 0-3 minimum 5-15 maximum	conspiracy to commit an A felony is a B felony bribery and bribe receiving is a B felony in a drug case
C Felony	Any narcotic methamphetamine stimulants LSD hallucinogen hallucinogenic substances narcotic preparations dangerous depressants depressants marijuana marijuana	1/8 to 1 ounce 1/2 to 2 ounces 1 gm.to 5 gms. 1 mgm. to 5 mgms. 25 mgms. to 125 mgms. 1 gm. to 5 gms. 2 ozs. or more 10 ozs. or more 2 lbs. or more 1 oz. or more 100 cigarettes or more	1-15 years, 0-3 minimum 5-15 maximum	jail mandatory except for pot, probation available for 1st pot violation

COMPARATIVE SCHEDULE OF DRUG OFFENSES AND PENALTIES

State of New York — State of New Jersey*

CLASS	UNLAWFUL POSSESSION	AMOUNT	PENALTY RANGE	COMMENTS
D Felony	Possession with intent to sell: any controlled substance	any amount	1-7 years, 0-3 minimum 2 1/3-7 maximum	probation available for 1st marijuana violation
	Possession: narcotic preparations	1/2 oz. to 2 ozs.		
	marijuana	1/4 oz. to 1 oz.		
	marijuana	25-100 cigarettes		
A Misdemeanor	Any controlled substance	any amount	1 year imprisonment maximum	probation available

NEW YORK	GENERAL COMMENTS	NEW JERSEY	GENERAL COMMENTS
B & C Felonies	No probation available except for C felony pot violation	Use & Influence	Disorderly person, 6 months and $500 or both
	No conditional discharge in drug felonies	New Jersey has 4	Motor vehicle privilege suspension possible upon conviction of CDS Statute
C Felony	Imprisonment is mandatory except in marijuana cases	24:21-20	CDS Statute - Schedules I-V
A Felony	No bail pending appeal after conviction	2A:170-77.8	Non CDS but prescription drug
		2A:170-25.12	Substance releasing toxic vapor (e.g. glue)
Informants	Eligible for life parole if approved by administrative judge	39:4-49.1 (Motor Vehicle Statute)	Narcotic, non-narcotics in CDS exception - marijuana
	$1,000 reward for information in an A drug felony		
Use & Influence violation	None in New York		

New York lists various drugs by name and then lists some as "Controlled Substances". A check of its schedules and definitions will determine the drugs relevant to that category.

New Jersey refers only to Schedules I-V and differentiates only in marijuana and hashish cases. Schedule V violations are lower in possession and distribution and all other non-controlled (CDS) prescription required drug violations are disorderly persons offenses.

stances Act enables the court to determine the extent of an individual's involvement with drugs and evaluate the extenuating circumstances of the case so as to mete out a sentence beneficial to the rehabilitation of the defendant and to the protection of society.

The conditional discharge provision (P.L. 1970, c. 226, S. 27; C. 24:21-27) provides the court with the means to divert certain first-time offenders out of the criminal justice process and into a therapeutic program, while at the same time the maximum penalty provision allows the court to impose severe imprisonment and pecuniary penalties on defendants with a high degree of moral culpability--such as the non-addict dealer. Therefore, disparate sentencing affords the court the discretionary powers and the provisions to distinguish between the various degrees of an individual's moral culpability and to mandate rational and realistic sentences.

The Controlled Dangerous Substances Act also provides for plea bargaining. This procedure enables defendants to receive certain concessions from the prosecution, usually in the form of a mitigated sentence in exchange for a plea of guilty. Plea bargaining also assists the prosecution in expediting judicial proceedings and,often,in the procurement of police informers.

The Rockefeller Drug Act does not provide the court and the prosecution with the discretion or the means to determine a defendant's involvement with drugs and to sentence accordingly

but rather prescribes the same mandatory imprisonment sentence to every individual found guilty of a particular offense based upon the quantity of the drugs involved. One can imagine the various injustices which would occur with such limited sentencing discretion. Although addicts would not be likely to have more than one-eighth of an ounce of heroin at one time, they would face imprisonment for one year for certain offenses. Unless the State Division of Corrections and Parole initiates drug programs within the penal institutions, the addict will be denied the medical and therapeutic attention necessary for his rehabilitation.

A more unjust ramification of the Rockefeller Drug Act is that the addict-dealer, who sells drugs in order to maintain his own habit, would receive the same punishment as the non-addict commercial dealer, who sells drugs for the sole purpose of pecuniary gain, due to the court's incapability to sentence according to the merits of each case.

The Rockefeller Drug Act rests upon the premise that the severity of the penalty correlates to the level of deterrence. Previous federal and state narcotic statutes prescribing similar provisions and penalties, e.g., the Federal Narcotics Control Act of 1956 and the New Jersey Uniform Narcotics Act, failed to deter drug dissemination and consumption. Various studies reveal that in spite of the severity of penalties, drug addicts risk the threat of detection due to physical or psychological dependence, and that drug dealers continue to dispense narcotics due to the enormous pecuniary gains.

Conclusions

The Commission concludes that:

1. The amount of resources, in terms of money as well as manpower, to implement and enforce the Rockefeller Drug Act in New York, is a high price to pay.

2. The severity of the penalties has not, as predicted, driven drug addicts into rehabilitation facilities.

3. While the Rockefeller Drug Act mandates harsh penalties and attempts to restrict plea bargaining, this experiment now appears to be anything but successful as the dynamics of the prosecutorial and court systems have again grabbed the initiative on how a law will be enforced. In doing so, of course, they have reduced some of the law's effect, while making the law somewhat more humane and workable. The Commission believes there all certain indications that the Act will probably be amended so as to be more viable.

4. Due to changing drug use patterns, success rates under the old New York Drug Laws, and drug educational programs which have been credited with a decline in heroin use and arrests for drug crimes in New York City since 1971, it is difficult to measure claims of the deterrent effect the Rockefeller Drug Act has had in its short life.

5. Narcotics and other dangerous drugs remain as available in New York City as before the enactment of the Rockefeller Drug Act.

6. The Rockefeller Drug Act has not had an impact on the use, availability and trafficking in drugs in New Jersey; at least it is still too early to determine or to draw any definite conclusions.

7. Indications are that the additional fiscal expenditures

necessary for the implementation of a Rockefeller Drug Act in New Jersey are tremendous.

8. The "New Jersey Controlled Dangerous Substances Act"--unlike the Rockefeller Drug Act--allows the court to determine the extent of an individual's involvement with drugs and evaluate the extenuating circumstances of the case so as to mete out a sentence beneficial to the rehabilitation of the defendant and to the protection of society.

9. Various studies reveal that in spite of the severity of penalties, drug addicts risk the threat of detection due to physical or psychological dependence, and that drug dealers continue to dispense narcotics due to the enormous pecuniary gains.

Recommendation

RECOMMEND, that the "New Jersey Controlled Dangerous Substances Act" be retained as a more rationale and realistic approach to deal with the drug problem, but should be revised--as recommended elsewhere in this report--to keep pace with current scientific and medical understanding, criminal justice studies, and the community's expectations.

FOOTNOTES

CHAPTER IV

1. James Moore and C. Eric Hoger, "Drug and Crime: A Bad Connection," Yale Review of Law and Social Action, Vol. 3, No. 3, September 1973.

2. David Musto, The American Disease, Yale Press, New Haven, 247.

3. New York State Public Health Law: Article 33; Mental Hygiene Law: Article 81; Penal Law: Article 220.

4. New York Times, January 4, 1973, 28.

5. Due to overcrowding in the state prisons, judges and prosecutors realized that everytime someone was sentenced to prison, another prisoner would be released to the streets, perhaps before his time, to make room for the new prisoner. Thus, the average sentence for someone given 7 years in New York was actually 2-3 years at most.

6. Michael D. Kannensohn, A State Justice Project Report On the New York Drug Law, December, 1973.

7. With plea bargaining restricted and sentences mandated, a defendant has nothing to lose by requesting a trial. All defendants indicted for a felony drug offense fall into this category.

8. A clause in the drug law stating that predicate felons could be prosecuted in the special narcotics court has allowed the administrative judge to shift some of the backlog from Manhattan's criminal term over to narcotics prosecutors although the cases do not involve narcotic violations, thus compounding backlog problems in an attempt to ease the case load in Manhattan.

9. Village Voice, August 29, 1974.

10. For example, see Larry Charles Mosley v. The People of the State of New York (State of New York County Court, City of Rochester, County of Monroe; August 20, 1974).

11. New York Times, June 24, 1974.

12. Ibid.

13. New York Times, June 25, 1974.

14. Interviews with prosecutorial staff members revealed that this figure ranged from 95 percent in Union County to 80 percent in other counties, but the consensus of opinion among those interviewed was that 85 percent was the approximate figure for the State.

15. In accordance with the New Jersey Administrative Court Memorandum addressed to assignment judges and county prosecutors on December 28, 1970.

16. Ibid.

17. Other prosecutorial advantages gained from plea bargaining are discussed below.

18. Due to the severity of the penalty, persons charged with A-I felonies would in all probibility plead to an A-II or A-III felony.

19. The Commission has selected forty-five as a reasonable percentage, based upon the aforementioned rationale for requesting a trial under the stringent provisions within the Act, in order to illustrate the extensive cost of even a moderate increase in the number of narcotic trials upon the criminal justice system in New Jersey.

20. Compilation of Narcotic Offenses - 1971, New Jersey State Police.

21. As of October 1973, Hudson County had a backlog of approximately 1,600 cases; Mercer County had a backlog of 1,000 cases; and Union County had a backlog of 950 cases.

22. This is a rough estimate, based on discussions with several State and county officials.

23. These figures are from the Hudson County Court Administrators Office.

24. This information is from the Hudson County Prosecutors Office.

25. This figure was obtained through interviews with several assistant prosecutors and narcotic law enforcement officers.

26. The New Jersey State Police, for example, do not pay an informer.

27. Mandatory Sentences in Drug Cases, The Correctional Association of New York, 1973.

28. Ibid.

29. The number of acquittals and incarcerations may both increase, but the actual number remains indeterminable.

30. Another exception would be life parole in exchange for information.

31. Generally, downgrading occurs when the prosecution has a weak case against the defendant, the defendant has been overcharged or, as discussed earlier, the defendant has agreed to cooperate with the police.

APPENDIX

(CHAPTER IV)

COMPARISON OF THE NEW YORK STATE DRUG LAWS (Chapters 276, 277 and 278 of the 1973 Laws of New York State) AND THE COMPARABLE PROVISIONS OF THE "NEW JERSEY CONTROLLED DANGEROUS SUBSTANCES ACT" (P.L. 1970, c.266; C. 24:21-1 et seq.)

I. Controlled Substances Offenses

New York State Act

Controlled substances offenses are classified -- for the purpose of sentence to imprisonment for criminal possession and sale of controlled substances -- into the following categories:

Class A - I felony;
Class A -II felony;
Class A -III felony;
Class B felony;
Class C felony;
Class D felony;
Class A misdemeanor.

The new laws expound the principle of mandatory life sentences for all illegal sales of narcotic drugs, amphetamines and hallucinogens, including LSD but excluding hashish. Illegal possession of all but the smallest quantities of these substances also requires mandatory life sentences. However, the laws do permit a prisoner to be considered for parole after a mandatory period of imprisonment -- which varies with the degree of the offense.

The new range of penalties for controlled substances offenses involves stronger sentences for smaller amounts of a wider range of drugs. The serving of at least some time in prison is man-

B. Sale: A person is guilty of criminal sale of a controlled substance in the sixth degree when he knowingly and unlawfully sells a controlled substance.

C. Imprisonment Penalty: The sentence shall be fixed by the court but shall not exceed seven years, and the maximum term of an indeterminate sentence shall be at least three years. For a second class D drug felony offender, the maximum term of an indeterminate sentence must be at least three years and must not exceed seven, and the minimum period of imprisonment under an indeterminate sentence for a second felony offender must be fixed by the court at one-half of the maximum term imposed (e.g., one and one-half years) and must be specified in the sentence. Parole and probation are allowed.

Class C Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
3. one or more preparations, compounds, mixtures or substances of an aggregate weight of two ounces or more containing a narcotic preparation; or
4. a substance containing one gram or more of a stimulant; or
5. a substance containing one milligram or more of lysergic acid diethylamide; or
6. one or more preparations, compounds, mixtures or substances of an aggregate weight of one milligram or more of a hallucinogen; or
7. one or more preparations, compounds, mixtures or substances of an aggregate weight of one gram or more of a hallucinogenic substance; or

dated for most convicted drug offenders, instead of the previous judicial options ranging upward from probation in many cases. Parole would be possible after serving the maximum time, but only under a mandatory life sentence for all class A felonies, that is, with the former convict subject to lifetime supervision and the possibility -- if he violated parole -- of returning to prison for life.

Mandatory minimum terms are included for the three new categories of class A drug felonies, and in the cases of all second offenders in class B, C and D drug felonies. Following is a breakdown of the possession, sale and penalty provisions for class A to class D drug felonies, and class A misdemeanor, as provided in the recently approved New York State drug penalty program:

Class A Misdemeanor

A. Possession: A person is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance.

B. Sale: No provision.

C. Imprisonment Penalty: Up to one year; probation allowed.

Class D Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the sixth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more of a narcotic preparation; or
3. one or more preparations, compounds mixtures or substances of an aggregate weight of one-quarter ounce or more containing marihuana; or
4. twenty-five or more cigarettes containing marihuana.

8. a substance containing ten ounces or more of a dangerous depressant; or
9. a substance containing two pounds or more of a depressant; or
10. one or more preparations, compounds, mixtures or substances of an aggregate weight of one ounce or more of marihuana; or
11. one hundred or more cigarettes containing marihuana.

B. Sale: A person is guilty of criminal sale of a controlled substance in the fifth degree when:

1. he knowingly and unlawfully sells:

(a) a narcotic preparation; or
(b) a substance containing ten ounces or more of a dangerous depressant; or
(c) marihuana; or

2. he commits the crime of criminal sale of a controlled substance in the sixth degree and he has previously been convicted of criminal sale of a controlled substance in the sixth degree.

C. Imprisonment Penalty: The sentence shall be fixed by the court but shall not exceed fifteen years, and the maximum term of an indeterminate sentence shall be at least three years. For a second class C drug felony offender, the maximum term of an indeterminate sentence must be at least six years and must not exceed fifteen years, while the minimum period of imprisonment under an indeterminate sentence for a second felony offender must be fixed by the court at one-half of the maximum term imposed (e.g., three years) and must be specified in the sentence. No probation is permitted, but parole is allowed and will terminate fifteen years after conviction or sooner--depending upon the discharge date.

Class B Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the fourth degree when he commits the crime of criminal possession of a controlled substance in the fifth degree, as defined in subdivisions one to nine of a class C drug felony, and has previously been convicted of criminal possession of a controlled substance in the fifth degree -- as defined in subdivisions one to nine of a class C drug felony.

B. Sale: A person is guilty of criminal sale of a controlled substance in the fourth degree when:

1. he knowingly and unlawfully sells a narcotic preparation to a person less than twenty-one years old; or
2. he commits the crime of criminal sale of a controlled substance in the fifth degree--as defined in paragraphs (a) or (b) of subdivision one of a class C drug felony, and has previously been convicted of criminal sale or a controlled substance in the fifth degree--as defined in paragraphs (a) or (b) of subdivision one of a class C felony.

C. Imprisonment Penalty: The sentence shall be fixed by the court and shall not exceed twenty-five years, while the maximum term of an indeterminate sentence shall be at least three years. For a second class B drug felony offender, the maximum term must be at least nine years and must not exceed twenty-five years, while the minimum period of imprisonment under an indeterminate sentence for a second class B drug felony offender must be fixed by the court at one-half of the maximum term imposed (e.g., four and one-half years) and must be specified in the sentence. Parole terminates twenty-five years after conviction or sooner, depending upon discharge date, and no probation is permitted.

Note: First Offender Class B,C or D Felony

Where the sentence is for a first offender class B, class C or class D felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court fix a minimum period of imprisonment, the court may fix the minimum period. In such event, the minimum period shall be specified in the sentence and shall not be more than one-third of the maximum term imposed e.g., one year to one-third of maximum term imposed. When the minimum period of imprisonment is fixed, the court shall set forth in the record the reasons for its action; and in any other case, the minimum period of imprisonment shall be fixed by the state board of parole in accordance with the provisions of the correction law.

Class A-III Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses:

1. a narcotic drug, stimulant, hallucinogen, hallucinogenic substance or lysergic acid diethylamide with intent to sell it; or
2. a substance containing five grams or more of a stimulant; or
3. a substance containing five milligrams or more of lysergic acid diethylamide; or
4. one or more preparations, compounds, mixtures or substances of an aggregate weight of five milligrams or more containing a hallucinogen; or
5. one or more preparations, compounds, mixtures or substances of an aggregate weight of five grams or more containing a hallucinogenic substance.

B. Sale: A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a substance containing one gram or more of a stimulant; or
3. a stimulant and has previously been convicted of a controlled substance offense or the attempt or conspiracy to commit any such offense; or
4. a substance containing one milligram or more of lysergic acid diethylamide; or
5. lysergic acid diethylamide and has previously been convicted of a controlled substances offense or the attempt or conspiracy to commit any such offense; or
6. one or more preparations, compounds, mixtures or substances of an aggregate weight of one milligram or more of a hallucinogen; or
7. a hallucinogen and has previously been convicted of a controlled substances offense or the attempt or conspiracy to commit any such offense; or
8. one or more preparations, compounds, mixtures or substances of an aggregate weight of one gram or more of a hallucinogenic substance; or
9. a hallucinogenic substance and has previously been convicted of a controlled substances offense or the attempt or conspiracy to commit any such offense; or
10. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
11. methamphetamine and has previously been convicted of a controlled substances offense or the attempt or conspiracy to commit any such offense.

C. Imprisonment Penalty: The maximum sentence shall be life imprisonment, and the minimum period shall not be less than one year nor more than eight years four months. Parole after one to eight-and-a-third years, but no termination of parole, and no probation.

Class A-II
Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the second degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of two ounces or more of methamphetamine, its salts, isomers or salts of isomers; or
3. a substance containing ten grams or more of a stimulant; or
4. a substance containing twenty-five milligrams or more of lysergic acid diethylamide; or
5. one or more preparations, compounds, mixtures or substances of an aggregate weight of twenty-five milligrams or more containing a hallucinogen; or
6. one or more preparations, compounds, mixtures or substances of an aggregate weight of twenty five grams or more of a hallucinogenic substance.

B. Sale: A person is guilty of criminal sale of a controlled substance in the second degree when he knowingly and lawfully sells:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
3. a substance containing five grams or more of a stimulant; or
4. a substance containing five milligrams or more of lysergic acid diethylamide; or
5. one or more preparations, compounds,

mixtures or substances of an aggregate weight of five milligrams or more of a hallucinogen; or

6. one or more preparations, compounds mixtures or substances of an aggregate weight of five grams or more of a hallucinogenic substance.

C. Imprisonment Penalty: The maximum sentence shall be life imprisonment, and the minimum period shall not be less than six years nor more than eight years four months. Parole after six to eight-and-a-third years, but no termination of parole and no probation.

Class A-I Felony

A. Possession: A person is guilty of criminal possession of a controlled substance in the first degree when he knowingly and unlawfully possesses a substance consisting of one or more preparations, compounds, mixtures or substances of an aggregate weight of two ounces or more containing a narcotic drug.

B. Sale: A person is guilty of criminal sale of a controlled substance in the first degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances of an aggregate weight of one or more ounces containing a narcotic drug.

C. Imprisonment Penalty: The maximum sentence shall be life imprisonment, and the minimum period shall not be less than fifteen years nor more than twenty-five years. Parole is allowed after fifteen to twenty-five years--with no termination of parole--and probation is not permitted.

FINES

When the court imposes a sentence of imprisonment in accordance with these drug penalty provisions, the court may also impose a fine authorized by Article 80 of New York State's Penal Law and in such case the sentence shall be both imprisonment and a fine.

New Jersey Act

Offenses and their concomitant penalties under the "Controlled Dangerous Substance Act" may be roughly divided into four groups: (1) manufacture, dispensing, distribution; (2) possession; (3) use or being under the influence; and (4) associated offenses.

The "Controlled Dangerous Substances Act" of 1970 regulates the handling, sale, distribution, and possession, use or being under the influence of certain dangerous substances as outlined in the five schedules of controlled dangerous substances. The new law increased penalties for sellers ("pushers") of schedule 1-4 dangerous substances, such as LSD, barbiturates and amphetamines, to prison terms of up to five years and $15,000.00 fines. Such sellers had been subject to the minor penalties of disorderly conduct convictions. Sellers of schedule 1-2 narcotic drugs, such as heroin, will face up to 12 years in prison and a $25,000.00 fine. This penalty had been two to 15 years in prison and a $2,000.00 fine. The new laws increased the penalties, but not equally, for narcotic and non-narcotic drugs.

Any person who is at least 18 years of age who violates the above provisions by distributing a substance listed in schedules I or II which is a narcotic drug to a person 17 years of age or younger who is at least 3 years his junior is punishable by a term of imprisonment of up to twice that mentioned above (12 years in prison), e.g., 24 years in prison. Also, any person who is at least 18 years of age who violates the above provisions by distributing any other controlled dangerous substance listed in schedules I, II, III, IV, or V to a person 17 years of age or younger who is at least 3 years his junior is punishable by a term of imprisonment of up to twice that mentioned above (5 years in prison), e.g., 10 years in prison or by the fine mentioned above ($15,000.00).

"Pushing" includes the unauthorized manufacture, distribution, or dispension, or possession with intent to manufacture, distribute, or dispense, a controlled dangerous substance (or a counterfeit controlled dangerous substance). The penalty for possession of schedule 1-2 narcotic drugs (such as heroin), and for schedule 1-4 controlled dangerous substances (such as LSD, amphetamines and barbiturates), has been increased to a maximum of five years in prison and a $15,000.00 fine. The new law specifically defined 25 grams of marijuana, including any adulterants or dilutents, and 5 grams of hashish as the breakoff points below which penalties for possession have been materially reduced. For a first offense conviction of possession of the above (or lesser) amounts of marijuana or hashish, an offender is subject to a maximum of six months in jail or disorderly conduct charges. Previously the law had prescribed sentences of two to 15 years in prison. A first-offense conviction for possession of more than 25 grams of marijuana, including any adulterants or dilutents, or five grams of hashish will entail a penalty of up to five years in prison and a fine up to $15,000.00 or both. Convicted users, or anyone under the influence of any controlled dangerous drug, as distinct from pushers or possessors, will continue to be disorderly persons.

Generally, penalties for all second offenses are doubled, as they are also for selling drugs to minors rather than to adults. Another feature of New Jersey's narcotic laws provides for court proceedings to eliminate penalties and to expunge criminal records if defendants will accept rehabilitative treatment as ordered by a court. Criminal records may also be expunged for offenders under the age of 21 years who remain free of any serious or repeated violations for a period of six months after the completion of probation.

Additionally, any person who is addicted to the use of morphine, cocaine, heroin, opium or any derivative thereof, or marijuana, and who hires, employs or uses any child under the age of 18 years to transport, carry, sell, prepare for sale or offer for sale any of said drugs for any unlawful purpose, is guilty of a high misdemeanor. A non-addict who hires, employs, or uses any child under the age of 18 years for the same above-mentioned purposes, is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 30 years except upon the affirmative recommendation of a jury of life imprisonment. Any person who induces or persuades any other person to use any narcotic drug unlawfully, or aids or contributes to such use of any narcotic drug by another person, or contributes to the addiction of any other person to the unlawful use of any narcotic drug, is guilty of a high misdemeanor.

II. Persistent Offenders:

New York State Act

Article 70 of New York State's Penal Law (section 70.10) provides the court with discretionary authority to impose the sentence of imprisonment specified for a class A felony (whether A-I, A-II or A-III is not indicated) upon a person who commits a felony (any class) after having been incarcerated for two separate felonies, the second of which was committed subsequent to incarceration for the first.

New Jersey Act

A person convicted of a second offense under this act, other than possession of a schedule V substance, marihuana or hashish, or use of any controlled dangerous substance shall be punished by a term of imprisonment of up to twice that otherwise authorized, by up to twice the fine otherwise authorized or by both.

An offense is considered a second or subsequent offense if, prior to the commission of the offense, the offender has at any time been convicted of an offense or offense under this act or under any of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

III. Judicial Options:

New York State Act

Instead of a prosecutor's previous power to negotiate lighter sentences with defendents, the new drug penalty law now provides that in class A drug felony situations plea bargaining would be restricted, e.g., the court, with the concurrence of either the administrative judge of the court or of the judicial district within which the court is situated or such administrative judge as the presiding justice of the appropriate appellate division shall designate, may sentence a person to a period of probation upon conviction of a class A-III felony if the prosecutor, either orally, on the record, or in a writing filed with the indictment recommends that the court sentence such person to a period of probation upon the ground that such person has or is providing material assistance in the investigation, apprehension or prosecution of any person for a class A to D drug felony or the attempt or the conspiracy to commit any such felony, and if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant is of the opinion that:

1. Institutional confinement of the defendant is not necessary for the protection of the public;
2. The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision;

3. The defendant has or is providing material assistance in the investigation, apprehension or prosecution of a person for a class A to D drug felony or the attempt or conspiracy to commit any such felony; and
4. Such disposition is not inconsistent with the ends of justice.

However, the court shall not impose a sentence of probation in any case where it sentences a defendant for more than one crime and imposes a sentence of imprisonment for any one of the crimes, or where the defendant is subject to an undischarged, indeterminate or reformatory sentence of imprisonment which was imposed at a previous time by a court of this state and has more than one year to run.

When someone is charged as a second felony offender, he will be permitted to enter a plea of guilty to any lesser included offense which is a felony, but will not be allowed to plea to a misdemeanor charge to cover all charges. Provisions are included for a hearing, in respect to the commission of the prior felony if the defendant controverts the fact that it was committed.

A second felony offender is defined as one who has been sentenced to prison, suspended sentence, suspended execution of sentence, probation, conditional discharge, unconditional discharge and certification to the narcotic addiction control commission for a felony in this State, or an offense outside the State for which a term of imprisonment in excess of one year could have been imposed. The alleged second felony offense must occur within ten years after the defendant was released from a prison term on the first felony or within ten years when sentence other than imprisonment was imposed for the first felony.

New Jersey
Act

Conditional Discharge Conditional discharge is available under section 27 of the "New Jersey Controlled Dangerous Substances Act" (P.L. 1970, c. 226; C. 24:21-27) for those first offenders charged with use, being under the influence, or possession--under section 20 of the same Act. The court may disallow the conditional discharge of an eligible defendent if it determines that he is a threat to the community or that he will not benefit from treatment. In addition, a defendant cannot be so discharged more than once. The discharge must be with the offender's consent and on the condition that he submit to a program of "supervisory treatment" set by the court.

Supervised treatment can include residential inpatient care limited to the maximum sentence allowable for the offense charged, but not more than three years.

Intervention can take place either between trial or after a plea or finding of guilt, but before entry of a judgment of conviction. Successful completion of the treatment program results in a dismissal of any pending judicial proceedings. If the defendant fails to successfully complete the program, "the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no pleas of guilt or finding of guilt, resume proceedings." In any event, the defendant is denied a second chance in supervised treatment. Successful completion and dismissal means that the court does not adjudicate guilt, and no conviction is entered against the individual.

A person placed on probation under the above provision, if he was under 21 at the time of the offense and it is not less than 6 months after the expiration of his probation term, may apply to the court for an order to expunge from all official records, except those maintained under the Controlled Dangerous Substances Registry Act, all record of his arrest, trial, and conviction. The record shall be expunged if the applicant has not been guilty of serious or repeated violations of the conditions of his probation. Once the court has ordered expungement, no charge of perjury or otherwise giving false statement may be successfully brought against the individual because of his failure to acknowledge his arrest.

IV. Bounties

New York State Act

A fund--to be known as the rewards for information or controlled substances fund--is created in the division of criminal justice. This fund shall be funded and replenished by the submission of a voucher certified by the commissioner (of the division) and payable on audit and warrant of the comptroller from funds appropriated for such purpose.
The moneys in the fund are available for the payment of rewards to the person or persons providing information leading to the apprehension and conviction of an individual for a class A-I, II and III drug felony or the attempt to commit such felony. A person shall be deemed to have provided information leading to the apprehension and conviction of an individual for any crime set forth above when such person has communicated to the division in such manner as may be prescribed by the commissioner, including but not limited to a toll free telephone line, information which the commissioner has determined to have materially contributed to such apprehension and conviction. The commissioner shall have authority to conduct such investigation as he deems necessary, including the authority to investigate the records of local law enforcement agencies, district attorneys and courts, prior to making such determination.

Upon a determination by the commissioner that information submitted in accordance with the above paragraph did materially contribute to the apprehension and conviction of an individual for any crime set forth above, the person or persons submitting such information shall be entitled to, and the commissioner shall pay from the fund, a reward of $1,000.00, except that in the case of two or more persons, each shall be entitled only to a proportional share of such reward. Payments made pursuant to this provision shall not be taxable to the recipient thereof under provisions of article twenty-two of the New York State tax law. Any person aggrieved by the determination of the commissioner may seek review of such determination pursuant to article seventy-eight of the civil practice law and rules of New York State.

Peace officers, prosecutors, members of the judiciary and employees of the narcotic addiction control commission may not qualify for or be entitled to any reward payable under the provisions of this section. The commissioner shall promulgate such rules and regulations as he deems necessary to effectuate the purposes of this section.

New Jersey Act

Non-existent.

CHAPTER V

FUTURE OBJECTIVES

During the course of the Commission's study various objectives, in addition to the previously adopted recommendations, were suggested for future study and possible recommendations in the second report of the Commission, as part of the broad objectives listed in Chapter I of this report. They are:

1. Drug-Dependent Persons Presently Incarcerated

Inmates now have two vehicles through which to seek early release from prison and get into treatment.

These are Court Rule 3:21-10(a) and P.L. 1952, c. 32, S.1 (C. 30:4-123.43). The latter provides that:

> [30:4-123.43. Narcotic addicts, parole of.] Notwithstanding the provisions of the act to which this act is a supplement, the State Parole Board may parole any inmate serving a sentence or sentences, in a penal or correctional institution of this State or of one of the several counties, by reason of conviction as a narcotic addict, at any time after commitment and commencement of his said sentence, or sentences; provided, that such inmate, as a condition to the granting of such parole, shall agree to voluntarily admit himself to an appropriate federal facility, institution or hospital in this State for the treatment of narcotic addicts. As a part of such condition of parole, such inmate shall further agree to remain in such facility, institution or hospital and to accept the treatment prescribed therein for narcotic addicts and to continue such treatment as may be prescribed by the authorities of such facility, institution or hospital in the event of his release therefrom while under parole supervision, and upon failure or refusal so to do, the board shall revoke such parole and require such inmate to be returned to the place of his original confinement there to serve the balance of the original sentence, or sentences, imposed

> upon him, unless sooner reparoled. The State Parole Board may impose such other conditions as part of such grant of parole, in addition to the foregoing, as it may deem proper and as provided for in the act to which this act is a supplement.

It has come to the attention of the Commission that very few addicts are paroled under this provision. It may be due to the policies of the Parole Board as well as the fact that the Parole Board in the prison complex consists of three men who must evaluate 3,000 inmates a year and perhaps release 1,500 to 1,800 men per year. This appears to be a very heavy load. The Commission staff will contact Mr. Nick Heil's Office (Division of Correction and Parole, State Department of Institutions and Agencies) to request the release of statistics and to discuss the Parole Board's perceived problems in releasing addicts.

Apparently, far more inmates are released early under Court Rule 3:21-10(a) which provides for post-conviction relief. It reads:

> [3:21-10. Reduction or Change of Sentence.] (a) Time. A motion to reduce or change a sentence filed not later than 60 days after the date of judgment of conviction; or if an appeal is taken within the 60 days, not later than 20 days after the date of the judgment of the appellate court. The court may reduce or change a sentence, either on motion from the date of the judgment or, if an appeal was taken within 60 days, within 35 days of issuance of the judgment of the appellate court, and not thereafter; provided, however, that an order changing a custodial sentence to permit transfer of a defendant to a narcotics treatment center may be made at any time.

> (b) Procedure. All changes of sentence shall be made in open court upon notice to the defendant and the prosecuting attorney. A new judgment of conviction setting forth the revised sentence and specifying the change made and the reasons therefor shall be entered on the record.

The Commission will explore the reasons for this as well as discussing with the staff of the Administrative Office of the Court, Attorney General's Office, and the Division of Correction and Parole whether, in fact, new legislation is needed that is stronger than that provided by P.L. 1952, c. 32, S. 1 (C. 30:4-123.43), or whether the court rule is sufficient.

The Commission staff has met with Carl Fischer of the Division of Narcotic and Drug Abuse Control, State Department of Health, and Bill Scura, of the Division of Correction and Parole, who are working jointly on programs for addict-inmates within the prison as well as attempting to obtain early release for eligible inmates. Dr. Harri Feymuth, Medical Director, Patrick House, Jersey City, has interviewed, diagnosed and developed treatment plans for a number of inmates over the last year or so--to provide the court (under the court rule) or the Parole Board (under the statute) with expert advice concerning the advisability of early release. In the case of the addict, a key component is, of course, the appropriation and availability of treatment for released inmates.

The Commission will consider if legislation providing for a process of mandatory evaluation for addicts presently incarcerated is needed and/or if some other type of legislation beyond that recommended in Chapter III of this report is needed, should it be adopted.

2. Other Provisions Under Title 30 of the Revised Statutes

(a) P.L. 1953, c. 122, S. 3 (C. 30:4-177.14): New Jersey Neuro Psychiatric Institute

The drug addict unit at N.J.N.P.I. was closed in June, 1974 and no longer offers treatment to addicts. The Commission will consult with personnel in the Division of Narcotic and Drug Abuse Control and in the State Department of Institutions and Agencies regarding the closing of the unit and, thereafter, consider repeal of this section.

(b) P.L. 1964, c. 226, SS. 2&3 (C. 30:6C-2&3): Narcotics Advisory Council Established

The Commission will explore the status of this council and determine if new legislation is needed--such as that recommended by Robert B. Stites, former Director, Division of Narcotics and Drug Abuse Control, in his annual message to the Governor.

(c) P.L. 1964, c. 226, S. 6 (C. 30:6C-6)

The Commission will explore this section to:

(1) determine if it is used with any frequency; and

(2) if it conflicts in any way with the legislation recommended in Chapter III of this report.

3. Alcohol Abuse and Addiction

The Commission in its study has noted with great concern the high rate of alcohol abuse in this State--particularly the problem as it relates to teenagers and to abusers who mix alcohol, barbiturates, and narcotics. In the broadest sense, alcohol is

considered a drug within the purview of the Commission. If nothing else, the Commission may want to recommend that an alcohol study commission be established by the Legislature and that one of its tasks should be an attempt to define a more effective administrative set-up to deal with this problem on a State level.

4. Controlled Dangerous Substances Registry Act of 1970: P.L. 1970, c. 227 (C. 26:2G-17 et seq.)

There is concern among many individuals in this State, including treatment personnel, over the use of the registry. Some treatment personnel refuse to report (e.g., those with Patrick House in Jersey City and Carl House in Princeton) as they maintain that the registry is in conflict with federal law concerning the confidentiality of client records. The registry forms (see appendix A to this chapter) call for the client to be identified by name, address, social security number, etc. The information is to be supplied for research primarily. Such detailed information is not needed to meet the purposes of the Act. P.L. 1970, c. 227, S. 3 (C. 26:2G-19) establishes the use of the registry, among which is the use of it by the court, county prosecutor and Attorney General's Office to determine prior offenses. The Commission will study and determine if there is not a better system for supplying the criminal justice system with this information than that provided by treatment personnel. The Act gives the Division of Narcotic and Drug Abuse Control substantial discretion to require by order, rule or regulation information from those services it deems necessary.

The basic question for study is to weigh the very real danger of a lack of individual confidentiality against the need for statistical information.

In conjunction with this, P.L. 1971, c. 390 (C. 18A:40-4.1 and 18A:40-4.2) requires school personnel to report to the registry any student who is diagnosed to be under the influence of a controlled dangerous substance while in school. This may mean that a student attending school and having used marihuana, for example, may have his name and other information submitted to a control registry--to remain there for the rest of his life.

The Commission will consider revisions of these sections with an eye toward insuring privacy of such information to the greatest extent possible.

5. Use or being under the influence: P.L. 1970, c. 226, s. 20b. (C. 24:21-20b.)

Anyone who uses or is under the influence of any controlled dangerous substance is a disorderly person under this section. The issue is--should this section be repealed? The question of whether such a statute is constitutional is unresolved. In Robinson v. California, 370 U.S. 660 (1962), the U.S. Supreme Court struck down California's statute making it unlawful "to be addicted to narcotics" on the gounds that it violated the Eighth Amendment's prohibition against cruel and unusual punishment as contained in the United States Constitution. In essence, the reasoning was that a person's "status" could not be punished and that some "act" had to be committed. The Court, however, did not settle the related issues raised by criminal statutes prosecuting such "badges" of addiction as "use," "under the influence,"

"possession," etc. Justice White in a concurring opinion admonished the court for not dealing with these related issues.

Following the Robinson decision, the Illinois Supreme Court struck down the state's "use" and "under the influence" statutes. However, the New Jersey Supreme Court in 1963 upheld its "under the influence statute," in New Jersey v. Margo, 40 N. J. 188; 191A2d 43.

Indications are that the constitutional issue is not yet settled by the Courts.

It has been suggested that at least the "use" and "under the influence" statutes provide the criminal justice system with a "stick" to get drug-dependent persons into treatment and also provide prosecutors with the opportunity to downgrade charges in cases warranting such action. These points are arguable from both sides.

The Commission must make a policy decision concerning continuation of these statutes. Further research can be conducted but it should be noted that the U.S. Supreme Court has not dealt with this issue since Robinson in 1962 and there are no New Jersey Supreme Court cases since Margo, 1963.

A comparison of other state statutes may be helpful (see appendix B to this chapter). Only 15 states provide penalities for "use" and "under the influence"; these states are:

Arizona	Indiana	New York
California	Michigan	Oregon
Colorado	Nebraska	Texas
Delaware	Nevada	Utah
Hawaii	New Jersey	Wyoming

New Jersey is the only state which provides for the revocation of a driver's licenses upon conviction under this section; i.e., "use" or "being under the influences" of any scheduled drug may subject a person to a disorderly persons offense and the loss of his driver's license.

If the legislation recommended in Chapter III is adopted, the Commission should consider repealing section 20b. since casual users will not be as likely to be brought into the criminal justice system as they are now through such charges. This would lessen the need to include "users" in the provisions of the legislation recommended in Chapter III which relates to those charged with drug-consumption crimes, and may be a more important consideration than the so-called "stick" mentioned above. In addition, if penalties for possession are reduced there is no need for plea bargaining and the down-grading of offenses.

6. Possession: P.L. 1970, c. 226, S. 20 (C. 24:21-20a)

Any person convicted of possessing any quantity of a drug scheduled in Schedule I, II, III or IV is guilty of a high misdemeanor and is subject to a maximum of 5 years in prison and/or a fine of up to $15,000. Possession of a drug scheduled in Schedule V is a misdemeanor, punishable by up to a year in jail and/or a maximum fine of $5,000.

The Commission finds this section troubling as it does not differentiate between substances for purposes of punishment, nor does it differentiate on the basis of quantity. Alter-

natives to this dilemma are to insert quantity levels or to lower penalties for those convicted of possessing quantities deemed "to be for personal use." This would leave the court some discretion to deal with individual cases in a less arbitrary manner (see appendix C to this chapter for comparative state provisions for possession, possession for sale and use of controlled danger-substances).

7. The Availability of Illicit Drugs: P.L. 1970, c. 226, S. 19 (C. 24:21-19)

In order to accomplish one of the primary goals in combatting the drug problem, i.e., the elimination of the availability of illicit drugs, it is necessary that efforts be made to detect, prosecute and punish high echelon drug traffickers. Large scale dealers pose the gravest threat to society as they encourage the incidence of drug use for pecuniary gain. Such persons are the most morally culpable of all participants in the pyramidical drug distribution network. Detection and apprehension are only steps in the criminal process and are pointless unless penalty provisions are sufficiently severe to make convictions meaningful.

The present penalty provisions provided in P.L. 1970, c. 226, S. 19 (C. 24:21-19) are inadequate to deter, and not substantial enough to control, those engaging in high level drug trafficking. The Commission should consider a revision of P.L. 1970, c. 226, S. 19 (C. 24:21-19) to provide a definition of a drug trafficking enterprise and to increase the severity of penalties

for the offense of drug trafficking to encourage the detection and arrest of high echelon traffickers of controlled dangerous substances and to ensure their punishment.

With the imposition of severe penalties for high echelon drug traffickers, legislation to implement this proposal must carefully define what is a drug trafficking enterprise. This provision should not be aimed at those individuals who sell to the ultimate users to support their own drug use, or without pecuniary motivation, or to accomodate acquaintances. As with any legislation providing severe penalties, the necessity for appropriate and responsible application is apparent and rests a substantial burden with the prosecutorial authorities to differentiate between offenders and to invoke this recommended legislative provision only against individuals responsible for the growth of drug use in the State of New Jersey.

8. Nuisances and Forfeitures: P.L. 1970, c. 226, S. 35 (C. 24:21-35)

The Commission should consider whether P.L. 1970, c. 226, s. 35 (C. 24:21-35) -- dealing with nuisances and forfeitures -- should be amended to provide that all money, currency or cash seized and confiscated in connection with any arrest for violation of or conspiracy to violate any controlled dangerous substances law of this State should be forfeited to the county treasurer of the county wherein the aforesaid money, currency or cash was seized and confiscated, after 6 months from the date of the record of the entry of a conviction, and upon application by the county treasurer.

The aforesaid money, currency or cash could be used by a law enforcement agency of the county wherein the same was seized and confiscated, upon application by a law enforcement agency of the county to the county treasurer, solely in investigating and apprehending violators of any controlled dangerous substances, narcotic or drug law of this State.

9. Illegal Distribution or Possession of Hypodermic Needles, etc.

The Commission should consider whether those sections of New Jersey's statutes dealing with the illegal distribution or possession of hypodermic needles, syringes or any instrument adapted for the use of narcotic drugs by subcutaneous injections without a written prescription of a duly licensed physician, dentist or veteranarian (section 1 of P.L. 1955, c. 277, C.2A:170-77.3; section 2 of P.L. 1955, c. 277, C. 2A:170-77.4; and section 3 of P.L. 1955, c. 277, C. 2A:170-77.5) should be amended to omit narcotic drugs and insert in its place controlled dangerous substances as defined in section 2 of P.L. 1970, c. 226 (C. 24:21-2). Since many substances other than narcotic drugs, e. g., amphetamines and cocaine, are injected by way of hypodermic needles, syringes or any instrument adapted for the use of controlled dangerous substances by subcutaneous injections, the aforementioned laws prohibiting the illegal distribution or possession of said instuments should be for any controlled dangerous substance -- rather than solely narcotic drugs.

10. Storage and Disposal of Controlled Dangerous Substances

The Commission should consider whether the "New Jersey Controlled Dangerous Substances Act" should be supplemented to provide for the safe storage prior to trial, and the proper disposal thereafter, of controlled dangerous substances, when they are no longer needed for prosecutorial purposes. The problem was dramatically illustrated in the recent New York City scandal involving the "French Connection" drugs. In addition, recommendations should be considered to provide for the admission in evidence of the results of chemical analysis without the accompanying testimony of the chemist who performed the tests. At present such chemical reports would be considered hearsay and could not be received in evidence absent appropriate introductory testimony. It is obvious that the prosecutor must expend considerable time, effort and money to produce the chemist, who for the most part will testify in a perfunctory manner adding little of value to the trial. It should also be noted that since the chemist is considered an expert, valuable trial time is wasted while the prosecutor reviews in detail the chemist's educational background and practical experience in the field.

11. Motor Vehicle Offenses: R.S. 39:4-50a. and b.

The Commission should consider whether P.L. 1970, c. 226, s. 20 (C. 24:21-20c.) should be deleted by amendment, and R.S. 39:4-50a. and b. amended to apply to a person who operates a motor vehicle while under the influence of a controlled dangerous sub-

stance, as defined in section 2 of P.L. 1970, c. 226, (C. 24:21-2), or while his ability to operate a motor vehicle is impaired by the use of a controlled dangerous substance. The Commission feels that Section 20 of P.L. 1970, c. 226 (C.24:21-20c.), providing at the discretion of the sentencing judge for the forfeiture of a person's right to operate a motor vehicle over the highways of this State for a period of not more than two years from the date of a conviction for a violation of P.L. 1970, c. 226 (C. 24:21-20), i. e., possession, use or being under the influence of controlled dangerous substances, should be reviewed for possible deletion from the "New Jersey Controlled Dangerous Substances Act" and possibly dealt with under Article 9 of Title 39 of the Revised Statutes, concerning the operation of or acts affecting the operation of vehicles and street cars. This can be accomplished by amending R.S. 39:4-50b. -- concerning penalties for the operation of a motor vehicle while one's ability to operate a motor vehicle is impaired by the consumption of alcohol -- to provide the same penalties for operating a motor vehicle while one's ability to operate a motor vehicle is impaired by the use of controlled dangerous substance. R.S. 39: 4-50a. -- concerning the operation of a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug -- should also be considered for possible amendment to delete narcotic, hallucenogenic or habit-producing drug and insert therein while under the influence of a controlled dangerous substance.

12. Manufacturers, Dispensers and Distributors

The Commission should consider the following three proposals:

(a) Under the provisions of P.L. 1970, c.226, S.10 (C.24:21-10), every person who manufactures, distributes, or dispenses any controlled dangerous substance within this State or who proposes to engage in the manufacture, distribution, or dispensing of any controlled dangerous substance within this State, shall obtain annually a registration issued by the State Department of Health. A proposal has been considered to require the obtaining of a license rather than what is called a registration. There would be no need to change the requirements but the present registration would be called a license.

(b) Under the provisions of P.L. 1971, c.226, S.15 (C.24:21-15), the distribution of controlled dangerous substances requires a written prescription of a practitioner. It exempts practitioners, other than a pharmacist, when they dispense drugs in good faith and in the course of their practice. However, the present wording of section 15a. of this statute should be reviewed for possible changes in that, in essence, it states that a practitioner can dispense under any circumstances as long as he does so by prescribing. Section 15c. of this statute should also be reviewed. It states that no Schedule V controlled dangerous substances may be distributed or dispensed other than for a valid and accepted medical purpose. This refers primarily to

codeine products -- which are distributed by pharmacists, for the most part, without prescriptions. Section 15c. requires that a pharmacist make a medical judgment; this argument can be extremely tenuous in court.

(c) Under the provisions of P.L. 1970, c.226, S.37 (C.24:21-37), the burden of proof of any exemption or exception set forth in the "New Jersey Controlled Dangerous Substances Act" shall be upon the person claiming its benefit. The Commission should review this statute as to its constitutionality; i. e., it places the burden of proof on a practitioner (a physician, dentist, etc.) as to the elements of the very offense he is charged with. The statute may need to be phrased in terms of a presumption or burden of persuasion.

13. Definitions and Schedules of Controlled Dangerous Substances

The Commission should study the definitions and schedules of controlled dangerous substances to separate, and distinguish, non-narcotic from narcotic drugs.

APPENDIX

(CHAPTER V)

DSR-3
MAR-71

NEW JERSEY STATE DEPARTMENT OF HEALTH
DIVISION OF NARCOTIC AND DRUG ABUSE CONTROL

TREATMENT FACILITY REPORT OF CONTROLLED DANGEROUS SUBSTANCE (CDS) ABUSER

For Registry Use

PLEASE PRINT OR TYPE — **SEE REVERSE SIDE FOR INSTRUCTIONS**

1 LAST NAME | 2 FIRST | 3 MIDDLE

4 PRESENT ADDRESS — STREET — CITY — COUNTY — STATE

5 DATE OF BIRTH MO ☐☐ DAY ☐☐ YR ☐☐ | 6 PLACE OF BIRTH | 7 SOCIAL SECURITY NO ☐☐☐ ☐☐ ☐☐☐☐ NONE ☐

8 SEX 1 ☐ MALE 2 ☐ FEMALE | 9 RACE 1 ☐ WHITE 3 ☐ PUERTO RICAN 2 ☐ BLACK 4 ☐ OTHER | 10 MAIDEN NAME

11 DRUG OR CDS OF PRINCIPAL ABUSE — NO PRINCIPAL DRUG OR CDS ☐ — UNKNOWN ☐ — DATE STARTED USING MO ☐☐ YR ☐☐

12 EMPLOYMENT (TIME: FULL / PART)
- 1 ☐ PERMANENT ☐ ☐
- 1 ☐ TEMPORARY ☐ ☐
- 2 ☐ UNEMPLOYED ☐ ☐
- 3 ☐ ENROLLED STUDENT ☐ ☐
- 4 ☐ UNKNOWN ☐ ☐

12A EDUCATION - HIGHEST GRADE COMPLETED ☐☐

13 CDS OF 1ST ABUSE

13A DATE OF 1ST ABUSE MO ☐☐ YR ☐☐

14 RELIGION
- 1 ☐ CATHOLIC
- 2 ☐ PROTESTANT
- 3 ☐ JEWISH
- 4 ☐ OTHER
- 5 ☐ NONE
- 6 ☐ UNKNOWN

15 TREATMENT

	PRIOR NO. OF TIMES IN PATIENT	PRIOR NO. OF TIMES OUT PATIENT
PHYCHIATRIC	____	____
CHEMO-THERAPY	____	____
THERAPEUTIC COMMUNITY	____	____
DETOXICATION ONLY	____	____
OTHER (SPECIFY ____)	____	____
NONE	☐	
UNKNOWN	☐	

15A PLANNED AT THIS FACILITY

	IN PATIENT	OUT PATIENT
PHYCHIATRIC	1 ☐	2 ☐
CHEMO-THERAPY	1 ☐	2 ☐
THERAPEUTIC COMMUNITY	1 ☐	2 ☐
DETOXICATION ONLY	1 ☐	2 ☐
OTHER (SPECIFY)	1 ☐	2 ☐

16 OTHER PRESENT MEDICAL CONDITIONS.
- ☐ HEPATITIS
- ☐ T B
- ☐ V D
- ☐ OTHER INFECTION
- ☐ OBSTETRICAL PROBLEMS
- ☐ COMPLICATING PSYCHIATRIC
- ☐ NUTRITIONAL PROBLEMS
- ☐ UNKNOWN
- ☐ OTHER (SPECIFY)

17 LIVING WITH
- 1 ☐ PARENTS OR OTHER RELATIVES
- 2 ☐ SPOUSE
- 3 ☐ PARENTS OR OTHER RELATIVES AND SPOUSE
- 4 ☐ FRIENDS
- 5 ☐ ALONE
- 6 ☐ UNKNOWN

18 CURRENT LEGAL INVOLVEMENT
- 1 ☐ NON-PUNITIVE CUSTODY (CIVIL COMMITMENT, MENTAL HEALTH, ETC.)
- 2 ☐ PUNITIVE CUSTODY (JAIL, REFORMATORY, ETC.)
- 3 ☐ NONE
- 4 ☐ UNKNOWN
- ☐ CHARGES PENDING
- ☐ PAROLE
- ☐ PROBATION

19 PRIOR LEGAL INVOLVEMENT

ARRESTED FOR CDS OFFENSE

1. ☐ YES 2. ☐ NO 3. ☐ UNKNOWN

19A.

ARRESTED FOR OTHER OFFENSE

1. ☐ YES 2. ☐ NO 3. ☐ UNKNOWN

20 FOR HOSPITAL EMERGENCY ROOM ONLY

REASON	RESULTS
☐ OVERDOSE	1 ☐ DIED
☐ BAD TRIP	2 ☐ RELEASED
☐ ACCIDENT	3 ☐ DISCHARGED AGAINST ADVICE
☐ OTHER MEDICAL	4 ☐ ADMITTED TO HOSPITAL
☐ WITHDRAWAL	5 ☐ REFERRED TO DRUG TREATMENT FACILITY
☐ UNKNOWN	6 ☐ REFERRED TO PRIVATE PHYSICIAN

21 SOCIO-ECONOMIC STATUS OF FAMILY

A. AREA RAISED	B. ECONOMIC LEVEL OF FAMILY	C. HIGHEST EDUCATIONAL LEVEL OF FAMILY (PARENT FIGURE)
1 ☐ RURAL	1 ☐ POOR	1 ☐ GRAMMAR
2 ☐ SUBURBAN	2 ☐ BELOW AVERAGE	2 ☐ HIGH SCHOOL
3 ☐ URBAN	3 ☐ AVERAGE	3 ☐ COLLEGE
4 ☐ UNKNOWN	4 ☐ ABOVE AVERAGE	4 ☐ GRADUATE
	5 ☐ UNKNOWN	5 ☐ UNKNOWN

REPORTED BY NAME AND TITLE (IN HOSPITALS AND INSTITUTIONS ONLY PHYSICIANS REPORT) | 22 DATE OF REPORT

ADDRESS OF PRACTITIONER OR NAME OF INSTITUTION | SIGNATURE

FOR REGISTRY USE ONLY ☐ Y ☐ N

M7414

MM-4
May 71

New Jersey State Department of Health
DIVISION OF NARCOTIC AND DRUG ABUSE CONTROL
P.O. Box 1540
Trenton, New Jersey 08625

MONTHLY METHADONE MAINTENANCE REPORT

M7871

Please send report to Program Director at above address
not later than five work days after the end of each month

Clinic

Patient's name (last, first, middle)	Sex ☐ M ☐ F	Age	Methadone dosage mgms. per day
Address	Other medication, if any		
City State			

Was patient engaged in any of the following activities this month?

☐ Working ☐ Attending School ☐ Other socially acceptable activity (specify) _____

If not, explain _____

Did patient have medical problems this month?

☐ No ☐ Yes (explain) _____

Did patient have legal problems this month?

☐ No ☐ Yes (explain) _____

Was patient terminated during this month? ☐ Yes ☐ No

If yes: ☐ By clinic (explain) ☐ On his own request (explain)

Remarks (use reverse side if necessary)

Date	Completed by (name & title)	Signature

FOR "USE" OR "BEING UNDER THE INFLUENCE"

STATE	ADDICTION OR USE OFFENSE OF NARCOTICS	USE OFFENSE OF HALLUC. STIMUL. & DEPRESS.
Alabama	No	No
Alaska	No	No
Arizona	90 days to 1 year in County Jail or no more than 5 years probation after 90 days in jail.	No
Arkansas	No	No
California	90 days to 1 year in County Jail.	No
Colorado	6 months to 1 year in County Jail.	Not more than 1 year and/or not more than $500.
Connecticut	No	No
Delaware	Not more than 5 years and not more than $5,000 fine (misdemeanor)	Not more than 2 years and not more than $500.
Florida	No	No
Georgia	No	No
Hawaii	Yes (not given)	NO
Idaho	No	No
Illinois	No	No
Indiana	Not more than 180 days and $300 fine, Judge may withhold or suspend judgement pending sentence or treatment.	Not less than 1 year Not more than 10 years and not more than $1,000 or not less than 30 days not more than 1 year in county jail or state penal farm and not more than $500.
Iowa	No	No
Kansas	No	No
Kentucky	No	No
Louisiana	No	No
Maine	No	No
Maryland	No	No
Massachusetts	No	No

STATE	ADDICTION OR USE OFFENSE OF NARCOTICS	USE OFFENSE OR HALLUC. STIMUL. & DEPRESS.
Michigan	Not more than 1 year and/or not more than $2,000 fine.	Not more than 1 year Not more than $1,000 6 months and/or not more than $500.
Minnesota	No	No
Mississippi	No	No
Missouri	No	No
Montana	No	No
Nebraska	Not more than 30 days and/or not more than $500 fine.	Not more than 30 days and/or not more than $500 fine.
Nevada	Not less than 1 year; Not more than 6 years and not more than $2,000 fine.	Not less than 1 year; Not more than 6 years and not more than $2,000.
New Hampshire	No	No
New Jersey	Not more than 6 months and judge may suspend driver's license.	Not more than 6 months and judge may revoke drivers license.
New Mexico	No	No
New York	Not more than 3 months.	Not more than 3 months.
North Carolina	No	No
North Dakota	No	No
Ohio	No	Not more than 1 year and not more than $1,000 fine.
Oregon	Not more than 1 year and not more than $1,000 fine.	Not more than 1 year and not more than $1,000 fine.
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	No	No
South Dakota	No	No
Tennessee	No	No

STATE	USE OR ADDICTION OFFENSE OF NARCOTIC	USE OFFENSE OF HALLUC. STIMUL. AND DEPRESS.
Texas	Not more than 3 years; no suspended sentence	No
Utah	Not more than 6 months and/or not more than $299 fine.	Not more than 6 months and/or not more than $299 fine.
Vermont	No	No
Virginia	No	No
Washington	No	No
West Virginia	No	No
Wisconsin	No	No
Wyoming	Not more than 90 days and/or not more than $100.	Not more than 90 days and/or not more than $100.
Washington, D.C.	No	No
Guam	No	No
Puerto Rico	No	No

STATE	POSSESSION	POSSESSION FOR SALE	SALE
ALABAMA	Not less than 2 yrs. Not more than 15 yrs. & Not more than $25,000	**********	Not less than 2 yrs. Not more than 15 yrs. & Not more than $25,000
ALASKA	Not less than 2 yrs Not more than 10 yrs. & Not more than $5,000	**********	Not less than 2 yrs. Not more than 10 yrs. Not more than $5,000
ARIZONA	Not less than 2 yrs Not more than 10 yrs. & Not more than $50,000 Min-mandatory 2 yrs	Not less than 5 yrs Not more than 15 yrs. Not more than $50,000 Min-mandatory 5 yrs.	5 yrs. - life Not more than $50,000 Min-mandatory 5 yrs.
ARKANSAS	Misdemeanor	Not more than 30 yrs. and/or not more than $25,000	Not more than 30 yrs. and/or not more than $25,000
CALIFORNIA	Not less than 2 yrs Not more than 10 yrs. Min. - mandatory 2 yrs.	Not less than 5 yrs. Not more than 15 yrs. Min. - mandatory 2-1/2yrs.	5 yrs. - life Min. - mandatory 3 yrs.
COLORADO	Not less than 2 yrs. Not more than 15 yrs. & Not more than $10,000	Not less than 10 yrs. Not more than 20 yrs.	Not less than 2 yrs. Not more than 15 yrs. & Not more than $10,000
CONNECTICUT	Not more than 5 yrs. and/or Not more than $3,000	Not less than 5 yrs. Not more than 10 yrs. & Not more than $3,000 Not a DDP* at time of arrest Not less than 10 yrs. Not more than 20 yrs.	Not less than 5 yrs. Not more than 10 yrs. & Not more than $3,000 Not a DDP at time of arrest Not less than 10 yrs. Not more than 20 yrs.
DELAWARE	Not more than 5 yrs. & Not more than $3,000 (Misdemeanor)	Not more than 25 yrs. & Not less than $5,000 Not more than $50,000	Not more than 25 yrs. & Not less than $5,000 Not more than $50,000
FLORIDA	Not more than 5 yrs. and/or not more than $5,000	**********	Not more than 5 yrs. and/or not more than $5,000
GEORGIA	Not less than 2 yrs. Not more than 5 yrs. & Not more than $2,000	**********	Not less than 5 yrs. Not more than 10 yrs.

* Drug dependant person

STATE	POSSESSION	POSSESSION FOR SALE	SALE
HAWAII	Not more than 5 yrs. and/or not more than $5,000. 1/8 oz. or more of heroin, morph. or cocaine or 1/2 oz. of any Sched. I or II drug. Not more than 10 yrs. and/or not more than $10,000. 1 oz. or more heroin, morph. or cocaine or 2 oz. of any other Sched. I or II drug not more than 20 yrs. and/or not more than $10,000		Not more than 10 yrs. and/or not more than $10,000 1/8 oz. or more of heroin, morphine, or cocaine or 1/2 oz. or more of any other Sched. I or II drug not more than 20 yrs. and/or not more than $10,000
IDAHO	Not more than 6 mos. and/or Not more than $300	Not more than 15 yrs. and/or not more than $25,000	Not more than 15 yrs. and/or not more than $25,000
ILLINOIS	Not more than 1 yr. or 1 - 8 yrs. and not more than $15,000; 30 G. or more of heroin, cocaine or morphine Not less than 3 yrs. Not more than life & Not more than $100,000	1 - 20 yrs. and not more than $25,000; 30 G. or more of heroin, cocaine or morphine; not less than 10 yrs., not more than life and not more than $200,000	1 - 20 yrs. and not more than $25,000; 30 G or more of heroin, cocaine, or morphine; not less than 10 yrs. Not more than life & not not more than $200,000
INDIANA	Not less than 2 yrs. Not more than 10 yrs. & Not more than $1,000	Not less than 5 yrs. Not more than 20 yrs. & Not more than $2,000 No probation until min. is served	Not less than 5 yrs. Not more than 20 yrs. & Not more than $2,000 No probation until min. is served
IOWA	No more than 1 yr. and/or No more than $1,000 may suspend any required participation in treatment program	No more than 10 yrs. and no more than $2,000	No more than 10 yrs. and no more than $2,000
KANSAS	No less than 1 - 3 yrs. No more than 10 yrs. & No more than $5,000	No less than 1 - 3 yrs. No more than 10 yrs. & No more than $5,000	No less than 1 - 3 yrs. No more than 10 yrs. No more than $5,000
KENTUCKY	No less than 1 yr. No more than 5 yrs. and/or No less than $3,000 No more than $5,000	No less than 5 yrs. No more than 10 yrs. and/or No less than $5,000 No more than $10,000	No less than 5 yrs. No more than 10 yrs. and No less than $5,000 No more than $10,000
LOUISIANA	No more than 5 yrs. and/or no more than $5,000	No more than 30 yrs. hard labor and/or no more than $15,000	No more than 30 yrs. hard labor and/or no more than $15,000

STATE	POSSESSION	POSSESSION FOR SALE	SALE
MAINE	No more than 20 yrs. and/or No more than $50,000	**********	No more than 20 yrs. and/or no more than $50,000
MARYLAND	No more than 4 yrs. and/or No more than $25,000 (Misdemeanor)	No more than 20 yrs. and/or No more than $25,000	No more than 20 yrs. and/or no more than $25,000
MASSACHUSETTS	No more than 1 yr. and/or No more than $1,000 Possession of heroin-no more than 2 yrs. and/or $2,000	No more than 10 yrs. in state prison OR no more than 2 1/2 yrs. in a jail and/or no more than $2,000	No more than 10 yrs. in state prison OR no more than 2 1/2 yrs. in a jail and/or no more than $20,000
MICHIGAN	No more than 4 yrs. and/or No more than $2,000	No more than 20 yrs. and/or No more than $25,000	No more than 20 yrs. and/or no more than $25,000
MINNESOTA	No more than 5 yrs. and/or No more than $5,000	No more than 15 yrs. and/or no more than $25,000	No more than 15 yrs. and/or no more than $25,000
MISSISSIPPI	No more than 3 yrs. and/or No more than $3,000 offenders under 21 to go to State Hospital	No more than 15 yrs. and/or No more than $15,000. Offenders under 21 to go to State Hospital	(Delivery) No more than 15 yrs. and/or no more $15,000. (Sale) No more than 30 yrs. and/or no more than $30,000 Offenders under 21 go to State Hospital
MISSOURI	No more than 20 yrs. in State Prison or no less than 6 months. No more than 1 yr. in jail.	**********	No less than 5 yrs. No more than life
MONTANA	No more than 5 yrs.	**********	No less than 1 yr. No more than life.
NEBRASKA	No less than 1 yr. No more than 2 yrs. or No more than 6 months in County Jail and/or $500	No less than 5 yrs. No more than 20 yrs. No probation	No less than 5 yrs. No more than 20 yrs. No probation

STATE	POSSESSION	POSSESSION FOR SALE	SALE
NEVADA	No less than 1 yr. No more than 6 yrs. & No more than $2,000	**********	No less than 1 yr. No more than 20 yrs. & No more than $25,000
NEW HAMPSHIRE	No more than 5 yrs. and/or No more than $2,000	**********	No more than 20 yrs. and/or no more than $5,000
NEW JERSEY	No more than 5 yrs. and/or No more than $15,000	No more than 12 yrs. and/ or no more than $25,000	No more than 12 yrs. and/or no more than $25,000
NEW YORK	1/8 oz. or more of heroin, morphine, cocaine; or 1/2 oz. or more of other narcotic drug or raw opium 2 1/3 - 7 yrs. 1 oz. or more of heroin, morphine, cocaine or 2 oz. or more other narcotic drug or raw opium 5 - 15 yrs. 8 oz. - 8 1/3 - 25 yrs., 16 oz - 15 yrs. - life		5 - 15 yrs 8 oz. - 8 1/3 to 25 yrs. 16 oz. - 15 yrs. to life
NORTH CAROLINA	No more than 5 yrs. & no more than $5,000	No more than 5 yrs. & no more than $5,000	No more than 5 yrs. & No more than $5,000
NORTH DAKOTA	No more than 5 yrs. and/or No more than $2,500	No more than 20 yrs. and/ or no more than $10,000	No more than 20 yrs. and/or no more than $10,000
OHIO	No less than 2 yrs. No more than 15 yrs. & No more than $10,000	No less than 10 yrs. No more than 20 yrs.	No less than 20 yrs. No more than 40 yrs.
OKLAHOMA	No less than 2 yrs. No more than 10 yrs.	No less than 5 yrs. No more than 20 yrs. No suspended sentence or probation and $20,000	No less than 5 yrs. No more than 20 yrs. & No more than $20,000 No suspended sentence or probation
OREGON	No more than 10 yrs. & No more than $2,500	**********	No more than 10 yrs. & No more than $2,500 A fine no more than double the gain realized from the commission of the crime may be imposed

	POSSESSION	POSSESSION FOR SALE	SALE
PENNSYLVANIA	No more than 1 yr. and/or No more than $ 5,000	No more than 15 yrs. and/or No more than $250,000 or any higher amount that will exhaust the assets utilized in the crime.	Same as for possession for sale
RHODE ISLAND	No more than 15 yrs. & No more than $10,000	No more than 20 yrs.	No more than 40 yrs.
SOUTH CAROLINA	No more than 2 yrs and/or No more than $5,000	No more than 15 yrs. and/or no more than $25,000	Same as for possession for sale
SOUTH DAKOTA	No more than 5 yrs. and/or no more than $5,000	No more than 10 yrs. and/or No more than $5,000	Same as for possession for sale
TENNESSEE	No more than 11 mos. 29 days and/or suspended sentence into rehabilitation clinic	Schedule I: No less than 5 yrs. No more than 15 yrs.&no more than $18,000 Schedule II: No less than 4 yrs.&no more than 10 yrs. No more than $15,000	Same as for possession for sale
TEXAS	No less than 2 yrs. No more than life	**********	No less than 5 yrs. No more than life
UTAH	No more than 6 mos.and/or No more than $299	No more than 15 yrs.and/or No more than $15,000	Same as for possession for sale
VERMONT	No more than 1 yr.and/or No more than $1,000	1/2 oz.or more of opium,1/8 oz.or more of heroin,morphine or cocaine;no more than 2 yrs. and/or $2,000 1 or more oz.of heroin,morphine or cocaine, 2 or more of opium No more than 5 yrs.and no more than $5,000	No more than 5 yrs. and no more than $10,000
VIRGINIA	No less than 1 yr. No more than 10 yrs. or in discretion of jury No more than 12 mos. in jail and no more than $5,000	No less than 5 yrs. No more than 40 yrs. & No more than $25,000	Same as possession for sale

STATE	POSSESSION	POSSESSION FOR SALE	SALE
WASHINGTON	No more than 5 yrs. and/or No more than $10,000	No more than 10 yrs. and/or No more than $25,000	Same as for possession for sale
WEST VIRGINIA	No less than 90 days No more than 6 mos. and/or No more than $1,000	No less than 1 yr. No more than 15 yrs. and/or No more than $25,000	Same as for possession for sale
WISCONSIN	No more than 1 yr. and/or No more than $5,000	No more than 15 yrs. and/or no more than $25,000	Same as for possession for sale
WYOMING	No more than 6 mos. & No more than $1,000	No more than 20 yrs. and/or no more than $25,000	Same as for possession for sale
DISTRICT OF COLUMBIA	No more than 1 yr. and/or No less than $100, no more than $1,000	**********	Same as for possession for sale
GUAM	No more than 1 yr. and/or No more than $1,000	No more than 10 yrs. and/or No more than $10,000 Special 5 yr. parole term	Same as for possession for sale
PUERTO RICO	No less than 1 yr. No more than 3 yrs. & No more than $5,000	No less than 10 yrs. No more than 30 yrs. & No more than $25,000	Same as for possession for sale