

HB

479

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill 479
 Title "An Act revising the drug laws of the state; and providing for an effective date."
 Requested by House Judiciary Committee Date April 30, 1980

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Social Services
 BRU, Program, or Subprogram(s) Affected Office of Alcoholism and Drug Abuse
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | -0- | -0- | -0- | -0- | -0- |
| 200 TRAVEL | | -0- | -0- | -0- | -0- | -0- |
| 300 CONTRACTUAL | | -0- | -0- | -0- | -0- | -0- |
| 400 COMMODITIES | | -0- | -0- | -0- | -0- | -0- |
| 500 EQUIPMENT | | -0- | -0- | -0- | -0- | -0- |
| 600 LAND & STRUCTURES | | -0- | -0- | -0- | -0- | -0- |
| 700 GRANTS, CLAIMS, ETC. | | -0- | -0- | -0- | -0- | -0- |
| TOTAL | | -0- | -0- | -0- | -0- | -0- |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|-----|-----|-----|-----|-----|
| GENERAL FUND | | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | -0- | -0- | -0- | -0- | -0- |
| OTHER (Specify Fund Source) | | -0- | -0- | -0- | -0- | -0- |
| | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL TIME | | -0- | -0- | -0- | -0- | -0- |
| PART TIME | | -0- | -0- | -0- | -0- | -0- |
| TEMPORARY | | -0- | -0- | -0- | -0- | -0- |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Department of Health and Social Services is presently authorized to receive appropriations for the prevention, education, treatment, and research of drug abuse currently authorized under AS 44.29.100-150.

The Department is currently providing limited drug abuse education through its local drug treatment programs, such as distribution of pamphlets, counseling, public speaking, showing of films, etc. The Department by contract is also presently developing a drug abuse education component to the K-12 alcoholism prevention education school program funded by the Department's alcoholism grant budget. Also, there is currently no active research effort being conducted beyond data gathering to prepare the needs assessment for the Drug Abuse State Plan. We have, therefore, projected a zero (-0-) fiscal note to meet the minimum requirements of the bill.

Original: Legislative Finance Prepared by: *Rle* Robt. L. Cole Date: 4/30/80
 cc: Budget and Management ~~XXXXXX~~ Office: Alco. & Drug Abuse PH: 586-6201
 Prime Sponsor (First Legislator Named) Department of Health & Social Services

33-001 (Rev. 12/79)
 Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt. *[Signature]* Date: 4/30/80

If the Legislature wishes to increase the level of drug abuse research and education, the Department recommends expansion into the following areas:

- | | | |
|----|---|---|
| 1. | Establish a prescription drug diversion monitoring program utilizing the Department's Medicaid billing system to determine abuse through excessive usage by clients of drugs with known "street" value or drugs with a high potential of abuse (valium, librium, percodan, codeine, darvon, etc.) | \$ 75,000 |
| 2. | Investigate the possibility of development a triple prescription form system for dispensing legal drugs. The third copy of the form would be utilized to establish norms for usage of individual drugs and then determine deviations and accordingly institute appropriate actions. | 75,000 |
| 3. | Design and implement demonstration program models regarding drug abuse to reach specific target groups such as women, youth, elderly, physicians, and pharmacists. | 75,000 |
| | | <hr style="width: 10%; margin-left: auto; margin-right: 0;"/> \$225,000 |

House Bill only allows municipalities to be more restrictive

Because of the decriminalization of marijuana possession, in many situations a feeling of acceptance of the use of the drug has grown among many of the younger people in Alaska. Forgetting for now about the personal individual effects of marijuana, I wish to discuss the social effects which local governments have to deal with.

Supposedly, local governments function to serve a relatively small population living in a certain area. Each area has differing needs with respect to capital improvements, cultural facilities, ~~size and type of facilities~~, etc. however, each local area seems also to take on its own social flavor ~~also~~.

Local officials must be responsive to the social desires of their constituents.

I don't know what the people want in Anchorage and Fairbanks, but in Sitka, they want to get rid of marijuana. And we don't want to tell Anchorage and Fairbanks what's best for them--let them make their own decisions and let us make ours.

We are not talking about a person's nation-wide fundamental rights when we seek to prohibit possession in public in Sitka; we are seeking to protect the public's right to have a society where the public is protected from harm.

Our point is not to argue whether or not marijuana is harmful to an individual's health or personality, but to state that Sitkans see marijuana as harmful to society in Sitka.

The Ravin case, where the Alaska Supreme Court allowed marijuana possession in the home, is interesting for a number of reasons. First, the court did not conclude that marijuana is a fundamental right. Second, they discussed fully the question of the rights of the individual vs. the rights of society and concluded that the only place an individual's concern for marijuana outweighed society was in the person's home. The court found that society had a right to regulate marijuana in public.

One very interesting aspect of Ravin was that the Alaska Supreme Court found that at that time (early 70's), there was insufficient evidence of social harm from marijuana to prohibit it in the home, but the court indicated that it might change its decision on allowing home use if more evidence of social harm appeared in the future.

With the decriminalization of most marijuana possession, Sitka has seen a continuing growth of this drug's use.

As a result, we witnessed the opening of a "Head Shop" selling pipes and other paraphernalia only a few feet away from the racks of popular music for sale to our youngsters.

At a recent Assembly meeting, the Asst. Principal of our junior High School displayed a collection of pot pipes he had confiscated from his junior high students.

The Sitka Police are arresting an increasing number of dangerous drivers who act as though drunk, but give low readings on the breathalyzer machine.

Cocaine is now beginning to be found with increasing regularity.

The point is, that many people live at the edge^{of} or just slightly beyond ~~society's~~ ^{society's} restrictions. ~~As we make more types of behavior,~~ legal society faces increased dangers and parents find their young children falling victim to peer pressure of their classmates who emulate their older friends.

Decriminalization of marijuana has adversely affected Sitka, for marijuana is more than simply a drug. It symbolizes a lifestyle antithetical to social responsibility. Look at magazines such as "High Times" which glamorizes a drug lifestyle to see how marijuana is used as a symbol of freedom from social restriction.

I'm sure you've all heard these comments before, and I'm sure you all made up your own minds on marijuana, which is all well and good, but more importantly, Sitka has made up its mind on marijuana and Sitka doesn't like it and wishes to exclude it as much as possible from Sitka.

We don't want to tell you what to do where you come from, but give us the local option to handle marijuana in Sitka as Sitkans want.

Let each Alaska Community decide the question ~~themselves~~ ^{itself}.

In Sitka we wrote a proposed Anti-marijuana Ordinance and submitted it to the Electorate at a Special Election and the ordinance passed. It can't go into effect though, unless you allow us local option.

Nobody really expects our local ordinance to solve the problem, but it is by no means as ineffective as some people would claim.

What this ordinance really does it move the limits back towards where they used to be and it expresses the public's displeasure and disapproval with the drug culture. It should make many people think, especially our youngsters, about what society will not tolerate.

→ To tell the truth, many Alaskans ~~have little faith in~~ ^{are concerned with} their State Lawmakers when they see them legislate on matters of great local importance and don't allow the localities the choice of settling the matter for themselves. You could probably gain a renowned reputation for collective wisdom if you allowed Home-Rule municipalities to handle more problems in manners where unique solutions could fit unique situations. Sitka will thank you if you do that in this situation.

MA Jakes
21-0

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01 - JUNEAU 99811

April 30, 1980

Document# 97-80

The Honorable Hugh Malone
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Malone:

You requested that the Department of Health and Social Services propose language for inclusion in CS for House Bill 479 which would speak to issues raised in the Department's position paper on this bill.

These issues have been reviewed with the Department of Law and they have advised us that they are taking them into consideration in working with the House Judiciary Committee in presenting the Administration's position on drug legislation.

Mr. Dan Hickey has indicated that he will be available to work with you and the Committee in an effort to address these concerns.

Sincerely,



Allen K. Korhonen
Deputy Commissioner

cc: Daniel W. Hickey
Chief Prosecutor
Department of Law

Robert L. Cole, Coordinator
State Office of Alcoholism and Drug Abuse

Alaska State Legislature

(1) 12999
(2) HB 479 file

LEGISLATIVE ADDRESS
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE (907) 465-3734
465-3779



HOME ADDRESS
4603 SAN ROBERTO
ANCHORAGE, ALASKA 99504
TELEPHONE (907) 337-7942

REPRESENTATIVE BILL MILES

April 15, 1980

Charles H. Parr, Chairman
House Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

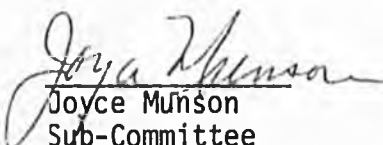
Dear Representative Parr:


It has recently come to my attention that some persons are claiming the House Health, Education and Social Services Committee Substitute for House Bill 479, an act relating to drugs, reduces, in some cases, penalties for drug and drug-related crimes.

Please be advised that it is the unanimous recommendation of the Sub-Committee that drafted the Committee Substitute that no penalties be reduced from currently enacted law. If there was one principle we all agreed upon it was this: drug - law offenders, especially repeat offenders, should be penalized at least as harshly as existing law and usually much more severely.

Sincerely yours,


Bill Miles
Sub-Committee
Member


Joyce Munson
Sub-Committee
Chair


E. V. "Chat" Chatterton
Sub-Committee Member



Official Business

Alaska State Legislature

file copy

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

February 28, 1980

TO: Charlie Parr, Chairman, House Judiciary Committee
FROM: Margaret W. Berck, Staff
SUBJECT: Sectional Analysis of HB 479

I. STANDARDS AND PROCEDURES.

*Section 1

Sec. 17.17.010. This section establishes a Controlled Substances Advisory Committee in the Department of Law. The members of the Committee are the Attorney General, Commissioners of Health and Social Services and Public Safety, a pharmacist and a criminal defense attorney. The latter two members are appointed by the Governor. All members serve without pay, but are entitled to travel expenses and per diem.

Sec. 17.17.020. This section defines the authority of the Controlled Substances Advisory Committee. The Committee is empowered to add, delete or re-schedule substances. All such actions must be adopted under the Administrative Procedures Act and in accord with the "public safety" criteria contained in this section. Should there be a change in the Federal schedules, the Committee is required to consider a similar change to Alaska law. The Committee is free to determine that such a Federal change is not warranted in Alaska, but must report such a decision, together with findings of fact, to the Lieutenant Governor.

Decisions by the Committee have no legal effect until the Legislature is given an opportunity to review them. Committee decisions must be submitted to the Legislature within the first 10 days of a session. The Legislature must act by the 56th day of the session if it wants to annul a proposal. All legislative annulments must take place in the form of a bill. Should the Legislature reject a proposal by

the Committee, the Committee cannot re-assert such a proposal to the Legislature for three years.

The Committee has no authority over tobacco or alcohol.

Sec. 17.17.030. This section provides that the inclusion of slang terms for drugs to assist the layperson in identifying controlled substances, has no bearing or effect in a criminal prosecution.

Sec. 17.17.040 - Sec. 17.17.090. These sections establish six schedules of controlled substances. The most dangerous substances are contained in Schedule I, while the least dangerous, marijuana, is contained in Schedule VI.

II. OFFENSES AND PENALTIES.

Sec. 17.17.200. This section creates a criminal offense and provides penalties for distributing a controlled substance to a minor. Although the penalties vary depending upon the schedule classification of the particular controlled substance distributed, all violations of this section would constitute a felony.

This section is designed to impose stiffer penalties on those persons over 18 years of age who distribute controlled substances to persons under 18 years of age. However, the recipient must be at least three years younger than the distributor before this section comes into effect. If the three-year age differential does not exist, the distributor would be subject to prosecution under the general distribution offenses.

This scheme was taken from the Uniform Controlled Substances Act and their rationale is as follows: "The three-year age differential is included to prevent imposition of the stiffer penalties in a case such as where a 19-year-old college student distributes two or three marijuana cigarettes to his 17-year-old roommate. In this situation, there is not the element of seduction so often found in cases where the distributor and recipient are far apart in age."

Sec. 17.17.210. This section creates a criminal offense and provides penalties for manufacturing a controlled substance. Although the penalties vary depending upon the schedule classification of the particular controlled substance manufactured, all violations of this section would constitute a felony. The definition of "manufacture" (Sec. 17.17.900(14))

includes propagation of certain of the substances, such as marijuana. In order to comply with the Alaska Constitution as interpreted in Ravin, and in order to justify the stiffer penalties for this offense, the definition of "manufacture" excludes manufacturing for personal use. A person manufacturing controlled substances for his personal use would be subject to prosecution under possession offenses.

Sec. 17.17.220 - Sec. 17.17.270. These sections create a criminal offense and provide penalties for distributing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Despite penalty variations, distribution of any amount of a Schedule I, II, III, or IV substance would constitute a felony offense. Distributions of small amounts of a Schedule V or a Schedule VI substance would constitute a Class A misdemeanor. Furthermore, a "non-remuneration defense" is provided for the distribution of an ounce or less of a Schedule VI substance (marijuana). If the distributor is successful in providing that such a distribution was made for no remuneration to a person 18 years of age or older, the penalty is reduced from a Class A misdemeanor to a Class B misdemeanor. This provision is compatible with Federal law which provides that a person who distributes a small amount of marijuana for no remuneration is guilty of a misdemeanor rather than a felony. (21 USCA 841) Furthermore under Federal law (21 USCA 844), if such a person has never been previously convicted of a drug offense, the court may place the person on probation and subsequently dismiss the criminal charge against the person if he does not violate his parole. Under this Federal provision, the person would not acquire a criminal record.

Sec. 17.17.280 - Sec. 17.17.330. These sections create a criminal offense and provide penalties for possessing a controlled substance. Separate sections are provided for each schedule classification. Penalties vary depending upon the schedule classification and the amount involved. Possession of small amounts of any substance would constitute a Class A misdemeanor. This provision is compatible with Federal law which establishes misdemeanor penalties for simple possession of any controlled substance. Unlike the Federal law, however, HB 479 would establish felony offenses for the possession of large amounts of any controlled substance. This scheme was adopted in HB 479, in order to facilitate the capture of drug dealers who are not caught in the act of distribution. Traditionally, these individuals have been prosecuted under a "possession with intent to sell" offense. But due to the difficulties in prosecuting "intent to sell"

offenses, HB 479 eliminates that type of offense and looks strictly to the amount possessed in determining appropriate penalties.

In order to comply with the Alaska Constitution as interpreted in Raven, possession of less than a pound of marijuana by an adult would not constitute a criminal offense.

Sec. 17.17.340. This section makes it a Class B misdemeanor to possess any amount of marijuana in your immediate control while operating a motor vehicle, vessel, or aircraft. Under existing law, the maximum punishment for this type of offense is a \$1,000 fine. Under HB 479 an offender is subject to a 90 day jail sentence, or a \$1,000 fine, or both.

Sec. 17.17.350. This section makes it a violation (a fine of up to \$300) to display or use any amount of marijuana in a public place.

Sec. 17.17.360. This section makes it unlawful for a minor to possess any amount of marijuana. A minor who violates this section is guilty of a violation.

Sec. 17.17.370. This section is directed at the legitimate drug industry. It makes it a Class B misdemeanor for a person to refuse or fail to make or keep all records required by this Act.

Sec. 17.17.380. This section also is directed at the legitimate drug industry. It makes it a Class C felony to do any of the following: (1) to keep or maintain any structure for storing or selling controlled substances in violation of this Act; (2) to use a registration number that is fictitious, revoked or suspended; (3) to obtain a controlled substance by fraud, forgery or deception; (4) to make, distribute, or possess a die to print a trademark upon a drug or container so as to render a drug a counterfeit substance; and (5) to furnish false or fraudulent information on any record required to be made and kept by this Act.

Sec. 17.17.390. This section provides for the creation of a three-year felony offense for certain possession and distribution offenses. In order to graduate the penalties in relation to type of offense, substance classification and quantities, an additional felony offense to those established in the new criminal code was required.

Sec. 17.17.400. This section provides that in those offenses which require the consideration of an amount for determining

appropriate penalties, it is no defense to a prosecution that the amount was in fact larger than that required for the offense charged.

Sec. 17.17.410. This section provides that a penalty imposed under this law is in addition to other civil or administrative penalties imposed by law.

Sec. 17.17.420. This section prohibits the prosecution of an individual under this law, if the individual's act constituted an offense under Federal law or the law of another state and the individual was convicted or acquitted under those laws.

III. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 17.17.550. This section empowers the Commissioner of Health and Social Services to adopt regulations under the Administrative Procedure Act and to establish reasonable fees relating to the regulation of the legitimate drug industry.

Sec. 17.17.560. This section requires any person who manufactures, distributes, or dispenses controlled substances in this State to register annually with the Commissioner of Health and Social Services. Certain individuals, such as employees of registered dispensers or common carriers, need not register. Furthermore, the commissioner may inspect the establishment of a registrant or applicant.

Sec. 17.17.570. This section establishes the standards whereby the Commissioner of Health and Social Services may grant or deny registration. A person is entitled to registration if he complies with Federal registration requirements.

Sec. 17.17.580. This section establishes the standards whereby the Commissioner of Health and Social Services may revoke or suspend a registration to manufacture, distribute, or dispense a controlled substance.

Sec. 17.17.590. This section provides for the due process rights of an individual whose registration is the subject of a denial, suspension, or revocation. Prior to taking action, the Commissioner of Health and Social Services must serve the individual with a factual statement on which the proposed action is based. The individual is entitled to an adjudication under the Administrative Procedure Act. The commissioner may suspend the registration during the administrative proceedings only if he finds there is an imminent danger to the public.

Sec. 17.17.600. This section requires a registrant to keep and maintain records in conformance with the requirements of Federal law and with the additional requirements the commissioner may adopt.

Sec. 17.17.610. This section provides that the distribution of controlled substances must conform to Federal requirements regarding order forms and prescriptions.

IV. ENFORCEMENT AND ADMINISTRATION.

Sec. 17.17.750. This section requires the Commissioner of Public Safety, the Attorney General, and all law enforcement officers of the State to cooperate with drug enforcement agencies of the United States and other states.

Sec. 17.17.760. This section provides for the forfeiture of various items of property utilized in violation of this Act. Aircraft, motor vehicles and vessels are not subject to forfeiture if their use was committed by a person other than the owner or secured party unless such owner or secured party was privy to the violation.

Such property may be forfeited to the state upon a criminal conviction of the defendant or upon a judgment of a court in a civil proceeding against the property.

The property may be seized by the Commissioner of Public Safety upon an order issued by a court finding that probable cause exists that the property is subject to forfeiture. Seizure without a court order may be made if: (1) it is incident to a valid arrest or valid search warrant; (2) it has been the subject of a prior judgment in favor of the State in either a criminal or civil proceeding; or (3) there is probable cause that the property was or is being used in a drug violation and the property is easily movable. Property seized under this last provision, may not be held over 48 hours or until an order may be applied for and issued by a court, whichever is earlier.

Property forfeited under this section shall be disposed of according to court order.

Sec. 17.17.770. This section provides that the burden of proof is on the State to prove by clear and convincing evidence that the property in question is subject to forfeiture. Liability is not imposed upon a State or local officer engaged in the lawful performance of his duties.

Sec. 17.17.780. This section requires the Commissioner of Health and Social Services to provide educational programs designed to prevent and deter abuse of controlled substances. Additionally, the commissioner shall encourage research on controlled substances.

V. GENERAL PROVISIONS.

Sec. 17.17.900. This section provides the definitions of various terms used in this Act.

Sec. 17.17.990. This section provides that the Act may be cited as the Controlled Substances Act.

*Section 2 and *Section 3.

These sections amend existing statutes that refer to current drug titles that would be repealed by this Act.

*Section 4.

This section amends AS 12.55.155(c) to provide additional aggravating sentencing factors to be utilized in drug offenses. These additional factors are: (1) smuggling a controlled substance into the State; (2) the commission of an offense involving large quantities of controlled substances; and (3) the commission of an offense involving the distribution of a controlled substance adulterated with a toxic substance.

*Section 5.

This section amends AS 12.55.155(d) to provide additional mitigating sentencing factors to be employed in drug offenses. Those additional factors are: (1) the commission of an offense involving small quantities of controlled substances; (2) the commission of an offense involving the distribution of a controlled substance for no remuneration to a personal acquaintance 19 years of age or older; and (3) the commission of an offense involving the possession of a controlled substance for personal use in the defendant's home.

*Section 6.

This section amends existing law regarding the duties of the Department of Health and Social Services.

Section 7.

This section provides for the continuation of various proceedings commenced prior to the effective date of this Act.

*Section 8.

This section provides for the continuation of orders and regulations not in conflict with this Act until modified, superseded, or repealed.

*Section 9.

This section provides for the repeal of existing drug statutes.

MWB:vc



ALASKA PHARMACEUTICAL ASSOCIATION

Box 1185 Anchorage, Alaska 99510

3-12-80

State Senator Ed Dankworth
Pouch U
Juneau, Alaska 99811

Dear Senator Dankworth:

The following resolution from the business meeting at our recent convention concerns SB65, HB 479, HB 628:

7. WHEREAS the State of Alaska does not yet have a Uniform Controlled Substance Act, and WHEREAS three bills have been introduced into the current legislative session (1) SB65 — Senator Dankworth (Peace Officers) (2) HB479 — Representative Parr (3) HB628 — Governor Hammond

Therefore, be it RESOLVED that the Association recommend that:

- (1) All punishment and prosecution standards be removed from Title 17 and inserted into the Criminal Legal Statutes (Code)
- (2) The federal law should be the model law and adopted by the State of Alaska and Alaskan judges should be mandated to strictly follow the federal guidelines for prosecution and punishment.

Further be it RESOLVED that if the State of Alaska must change the Federal law, the Association recommends that:

- (1) Drug classification for penalty use should not conflict with the federal law ~~to avoid confusion~~ to avoid confusion while testifying.
- (2) Practitioners exempted from requirement of an Alaska license should be "An individual practicing a health profession in the discharge of official duties while in the military service of the United States, the United States public health service, or the United States veterans administration. The institution in which the individual practices shall report the name and address of the individual to the appropriate agency within 30 days after the date of employment.

"An individual residing in Washington or Oregon who is authorized under the laws of the State to practice a health profession and whose practice may extend into this state, but who does not maintain an office or designate a place to meet patients or receive calls in this state."

- (3) "In emergency situations, a Schedule A, Schedule II, etc. drug may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy and handled in regards to the federal law.
- (4) Any change in the Federal law should automatically become State law.
- (5) Any armed robbery of pharmacies in order to obtain drugs should be considered at the highest penalty (or even a special category) for prosecution.

- (6) The State should not consider any dual registration or departments that would duplicate those already handled by the federal government.
- (7) A penalty for forged Controlled Drug prescriptions and bogus ^{TELEPHONE} prescriptions should be written into the criminal statutes (Code) (PASSED)

Discussion — This resolution will serve as the Association's recommendation to changes in the "drug" laws currently before the legislature. The Association has been trying to set up meetings with the governor's office to discuss these bills and our feelings. Any pharmacist wishing to obtain copies of these bills may contact the Legislative Affairs office in their respective cities. ~~amp~~

The Alaska Pharmaceutical Association feels that Title 17 should remain as the current federal law for medical purposes only. Any punishment regulations should be pulled out of Title 17 & inserted into the current criminal code.

The Criminal Code drug classifications for legal purposes only should not have the same classification (Schedule II, etc., Class II, etc.) as the Title 17 (current Federal law) would have. The nomenclature should be changed to avoid confusion by the medical professions while testifying.

Limiting practitioners to Alaska Licensees only will work a hardship on the consumers, especially in Southeastern Alaska, where many people do not patronize the local physicians, but use the facilities such as Virginia Mason Clinic or clinics in Washington or Oregon. Some pharmacists from the Association feel that Mayo Clinic practitioners should also be included in this exemption. Many of our sister states have exempted these professionals in states (bordering), including Massachusetts & Washington.

Because of the greater risk to consumers, armed robbery of pharmacies, in order to obtain drugs, should carry the stiffest of the robbery penalties. An armed robbery of one of the super drug stores would endanger many people, with the increased possibility of hostages, etc.

The pharmacists' main problem concerning drugs is forged prescriptions, including bogus telephone prescriptions, primarily for controlled substances with a few antibiotics, etc thrown in to alloy suspicion. Much time is expended on the pharmacist's part to check out the authenticity of such prescriptions; when the culprit is actually apprehended, our current laws have no teeth.

Enclosed is the Kansas regulation regarding forged prescriptions, which surely could easily be incorporated into our own laws.

The pharmacists of Alaska stress the importance of listening to these recommendations. Remember we are the individuals who must daily deal with any "drug" bill that you, our legislators, enact.

We are very willing to meet with anyone to discuss these recommendations. Please contact the association secretary, Chuck Decker, so that he may arrange a meeting with a small representative group of members. Address: Box 1135, Anchorage, Ak 99510. Phone: 243-5976 (home) or 276-3921 (work).

Sincerely yours,

Dave Heimke, Pres.

cc/HSSS & Judiciary Committee Members, Gov. Hammond, Rep. Carr, Comm. Peirne,
Association Board Members, Jessie Dodson.

KANSAS FORGED PRESCRIPTION LAW: AN ACT supplementing the Kansas criminal code; defining and classifying the crimes of obtaining a prescription-only drug by fraudulent means and of obtaining a prescription-only drug by fraudulent means for resale.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (1) Obtaining a prescription-only drug by fraudulent means is the: (a) Making, altering or signing of a prescription order by a person other than a practitioner; or (b) Delivery of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner; or (c) Possession of a prescription order with intent to deliver it and knowing it to have been made, altered or signed by a person other than a practitioner; or (d) Possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner. (2) Obtaining a prescription-only drug by fraudulent means is a class A misdemeanor for the first offense and a class E felony for a second or subsequent offense. (3) As used in this section: (a) "Pharmacist", "practitioner" and "prescription-only drug" shall have the meaning ascribed thereto by K.S.A. 1978 Supp. 65-1626 and amendments thereto (b) "Prescription order" means a written, oral or telephonic order for a prescription-only drug to be filled by a pharmacist. "Prescription order" does not mean a drug dispersed pursuant to such an order. (4) This section shall be a part of and supplemental to the Kansas criminal code. **Sec. 2** (1) Obtaining a prescription-only drug by fraudulent means for resale is the obtaining of a prescription-only drug by fraudulent means as defined in section 1 and: (a) Selling the prescription-only drug so obtained; or (b) Offering for sale the prescription-only drug so obtained. (2) Obtaining a prescription-only drug by fraudulent means for resale is a class D felony. (3) The provisions of this section shall not be applicable to prosecutions involving prescription-only drug which could be brought under the uniform controlled substances act and to which the provisions of K.S.A. 1978 Supp. 65-4127b would be applicable. (4) This section shall be part of and supplemental to the Kansas criminal code. **Sec. 3** This act shall take effect and be in force from and after its publication in the statutes book.

3/19/80

#####

9

TO: REP. BETTISWORTH, BROWN, PARR, RANDOLPH, ROGERS, SMITH.
SEN. BENNETT, FAHRENKAMP, HACKNEY

FROM: RAY G. ROWE
BOX 81043, COLLEGE, AK 99708 PH.----

RE: HB 479 & HB 628

I THINK HB 479 & HB 628 ARE OPPRESSIVE AND A STEP BACKWARDS TOWARDS A POLICE STATE. THESE BILLS ARE INTRUSIONS INTO THE FREEDOMS AND RIGHTS OF ADULTS TO LIVE FREELY WITHOUT FEAR OF LAWS THEY DO NOT SUPPORT OR RECOGNIZE.

PERHAPS MORE OF THESE DECISIONS SHOULD BE LEFT UP TO THE PEOPLE INSTEAD OF OVER-RIGHTEOUS PUBLIC SERVANTS OR LAW ENFORCEMENT AGENTS. PERHAPS IF THESE AGENCIES SPENT MORE TIME IN THE PREVENTION OF THEFT, MURDER AND THE SALE OF CONTROLLED SUBSTANCES TO MINORS WE WOULD LIVE IN A SAFER STATE. AFTER ALL LOOK HOW SUCCESSFUL PROHIBITION WAS.

CONTACT BY MAIL AS HAVE NO PHONE

LA21 1747 11.35 JA01 0026 11.35 03/19/80

#####

PLEASE NOTE ADDITIONS!!!!!!!

ADDITIONAL SIGNATURES ON THE MESSAGE JUST SENT FROM RAY G. ROWE:

1. CRAIG N. BUCHANAN, #1 MANAYUNK AVE. ESTER, AK 99725
2. MARILYNN BANKS EAST, #1 MANAYUNK AVE. ESTER, ALASKA 99725
3. RUBEN M. CLAYTON, P.O. BOX 81101, FAIRBANKS 99708
4. THELA M. CLAYON, P.O. BOX 81101, FAIKS 99708
5. ROBERT BROWN, JR. BOX 81788, COLLEGE, ALASKA 99708
6. THOMAS HART, BOX 81990, COLLEGE, ALASKA 99708
7. PAULA BRINK HART, BOX 81990, COLLEGE, ALASKA 99708
8. ROBIN FORD, BOX 73121, FAIRBANKS 99707
9. DANIEL CONSENSTEIN, BOX 73121, FAIRBANKS, ALASKA 99707
10. PAMELA ROWE, BOX 81043, COLLEGE, ALASKA 99708

THAT COMPLETES THE LIST OF SIGNATURES THNX FBX/LIO/MW \

STATE OF ALASKA
Interdepartmental Route Slip

| | |
|--|----------------------------------|
| TO: Mail Station <i>3100</i> | Department <i>Legislature</i> |
| Attention <i>Rep. Shelma Buckholdt</i> | |
| <input type="checkbox"/> Approval | |
| <input type="checkbox"/> Signature | |
| <input type="checkbox"/> Comment | |
| <input type="checkbox"/> Contact Me | |
| <input type="checkbox"/> Prepare Reply | |
| <input type="checkbox"/> For Your File | |
| <input type="checkbox"/> Note & Return | |
| <input type="checkbox"/> Initial & Return | |
| <input type="checkbox"/> Return as Requested | |
| <input type="checkbox"/> Return for Approval | |
| <input type="checkbox"/> Necessary Action | |
| <input checked="" type="checkbox"/> For Your Information | |
| Remarks: <i>Cap. Bldg. Rm 112</i> | |
| FROM: Mail Station <i>0600</i> | Department <i>DNSS</i> |
| By <i>L. Rodriguez</i> | Date <i>4/25/80</i> |

02-002 (Rev. 7/80)

STATE OF ALASKA

JAY S. HAMMONT, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01 - JUNEAU 99811

April 23, 1980

The Honorable Charles Parr
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

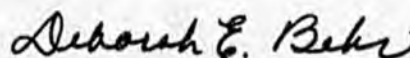
Document# 92-80

Dear Mr. Parr:

During the Department's testimony on House Bill 479 - Revising the Drug Laws of the State, your Committee requested further information regarding the prevalence of prescription drug abuse in medical assistance programs and what controls the Medicaid program has to monitor the problem. I referred your question to the Division of Public Assistance and enclose that Division's response.

I hope this answers your Committee's concerns on this matter. If the Department may be of further assistance, please do not hesitate to contact me at 465-3030.

Sincerely,



Deborah E. Behr
Special Assistant to
the Commissioner

Enclosure

cc: Representative Thelma Buchholdt
Representative Nels Anderson
Representative Patrick O'Connell
Representative Ramona Barnes
Representative Terry Martin
Representative Randy Phillips
Representative Hugh Malone
Representative Fred Brown

MEMORANDUM

State of Alaska



TO: Debbie Behr
Special Assistant to the Commissioner

DATE: April 18, 1980

FILE NO:

THRU: *Rod* Rod Betit, Director
Division of Public Ass. TELEPHONE NO:

FROM: *RO* Robert G. Ogden
Chief
Medical Assistance Section

SUBJECT: Abuse of Prescription Drugs

I understand various legislators have requested information on the prevalence of prescription drug abuse and what controls Medicaid has to monitor the problem.

First, I must indicate that we have no evidence of this being a problem. As you may remember, approximately one and one half years ago two physicians in Anchorage lost their licenses for a year as a result of not being careful of to whom and how many prescription drugs they issued. This incident has done a great deal in alerting physicians throughout the State of the importance of closely scrutinizing their patients and their prescription requests.

Also, as you know, the U.S. Bureau of Narcotics and Dangerous Drugs has a very active program of monitoring controlled substance abuse. In the last five years, many prescription drugs have been added to this controlled substance list, so that virtually all so called "dangerous" drugs are federally controlled and classified.

Pharmacist's are all quite good about informing the federal narcotics agents about chronic abusers, either patient or physician.

The Alaska Medicaid and General Relief Medical programs do not at this time have a method of monitoring or reviewing claims for possible drug abuse.

Our plan for the future is to develop a surveillance and utilization review system which would, among other things, monitor drug use. Through the budget process, we have requested funds to develop a new and permanent Medicaid Management Information System (see attached). This new system, if funded, would provide the Medicaid program with many management capabilities it does not now have:

- 1) Surveillance and Utilization Review
- 2) Management and Administrative Reporting
- 3) Accurate and timely program information
- 4) Data for budget projections.

FY 81 Budget Amendment

Public Assistance Administration BRU

For many years the Department has operated the Medicaid and General Relief Medical (GRM) programs with a claims processing system that manually priced invoices and used a very simple computer system to store a record of each payment. This system worked satisfactorily for a few years until the number of persons eligible for the programs grew, resulting in more invoices being processed. The Department was unable to secure an adequate number of employees to perform the time-consuming manual pricing function and the time required to pay invoices grew to several months from the date of receipt by the Department. As the programs grew, more pressure was placed on the computer system to provide information about the status of claims being processed, to provide better budget projections, and to accurately report financial and statistical information on claims paid. The problems continued to mount until July 1979 when the Department was faced with another in a long series of system failures. In this case, the computer system "lost" 1000 claims that had been manually priced and approved for payment. The Department shut down the system and immediately began to develop a request for proposals (RFP) for an interim claims processing system that would be operated by a private firm either in Alaska or at a site selected by the contractor. The goal of the contract was to provide the Department with the capability to maintain minimum control over the payment of claims, use a computerized pricing mechanism, pay 90% of clean claims within 30 days of receipt, provide a reliable history of that payment, and provide the Department with minimal payment information to allow fulfillment of federal reporting requirements.

Between August 8, 1979 and September 28, 1979, the Department advertised for proposals from experienced Medicaid claims processors. On October 5, 1979, the Department awarded the contract to Computer Sciences Corporation (CSC), one of three companies submitting proposals. A final contract was signed on December 17, 1979. During the time between awarding of the contract and signing, CSC had begun designing the system in an attempt to shorten the time required for installation and testing prior to operation. Since this contract was not an expected event, the Department had not budgeted for the additional expenditure. In order to provide funds for the contract, the Department reduced its claims processing staff from eleven to three employees. In retrospect, this may have been an error on the part of the Department as the problems experienced in making the transition from a fully state-operated system to one involving a private contractor were magnified in part by lack of state staff. Problems were experienced by the contractor in making their computer system compatible with the Department of Administration system used to write state warrants. It is obvious to the Department and CSC that CSC greatly under-estimated the cost of performing the terms of the contract, and that both parties misgauged the amount of time and effort necessary to complete the implementation phase.

The contract with CSC provides for performance through September 1980. Federal financial participation (FFP) in this interim claims processing contract was contingent upon the Department showing that it would move toward a long-term solution of the claims processing problems. At the time, the goal was that the Department would move to a long-term contract by October 1, 1980. While all parties now realize that that goal was overly optimistic, the Department still must develop a long-term solution to the problem as quickly as possible consistent with state and federal requirements and efficient implementation. The Department has set a target date of July 1, 1981, to begin operation of a new long term claims processing system.

Under federal regulations, a state agency may choose to operate a Medicaid Management Information System (MMIS) to process Medicaid claims and provide management information on the payment of those claims. While such a system is not required a state implementing such a system, once it is federally certified, will be eligible for greater federal funding--90% FFP for development and installation and 75% FFP for the operation and management of an on-going system. A state not having a certified MMIS is only entitled to receive its regular matching rate, which for Alaska is 50% FFP. A basic, bare-bones MMIS includes two components that go beyond the simple system presently used by the Department. These two modules are the Surveillance and Utilization Review Subsystem (SURS) and the Management and Administrative Reporting Subsystem (MARS). They provide state agencies with information about what services are being provided to whom and at what frequency and cost, and they provide information to the state agency and federal officials in an aggregate form to provide the tools needed to manage the program--the means of identifying causes for cost increases or decreased utilization, budgeting for future program expenditures, and determination of inappropriate expenditures due to fraud, abuse, or waste. While these two subsystems do result in a higher cost of operating the claims processing system they are absolutely essential if the Department is ever going to be able to accurately identify the costs of the Medicaid and GRM programs. The Department currently spends less than 5% of program expenditures for all possible costs related to the administration of the Medicaid and GRM programs.

Until now, the Department has had a checkered experience in providing accurate and timely program information. A recent study by the University of Alaska, Institute of Social and Economic Research prepared for the House Finance Committee, points out the need for the Department to have increased capability to do accurate budget projections to reduce the likelihood of continued erratic budgeting and submission of requests for supplemental appropriations. Another area of concern is the Department's ability to respond to requests for information about the Medicaid and GRM programs by providers, concerned citizens, and legislators. The Department has never been able to provide reliable data, but an MMIS would give the Department the ability to meet these demands for information.

An agency given the responsibility of managing the expenditure of over \$50 million in direct payments to providers of health care services must have the tools necessary to carry out that task in an effective, timely and cost-efficient manner regardless of whether it is a state agency or a private insurance company. Without the major improvements offered by a Medicaid Management Information System, it is highly unlikely that the Department will be able to fulfill that responsibility.

The Department has requested a total appropriation of \$1.0 million for a long term claims processing system. That amount is to be made up from continuation funding transferred between BRUs within the Department's original budget and a budget amendment requesting an additional \$507,000. The total amount is composed of both federal and state funds for the Medicaid and GRM programs. The budget amendment summary submitted by the Department does not reflect the possibility of receiving 75% FFP for MMIS operation and 90% FFP for development and installation. If the Department installs a certified MMIS, the amount of State general funds used to pay for the system will decrease. Also, installation of a certified MMIS will permit the Department to increase the federal match received for all positions connected with operation of the system, thus further decreasing the amount of state general funds used in the Public Assistance Administration BRU.

Since the Department has not had any experience with contracting for private claims payment other than the present interim contract, it is difficult to predict what the costs of a system might be. While the Department has not solidified the design of the proposed system, the Department is committed to contracting with a full fiscal intermediary. That is, the entire claims payment function, utilization review, provider enrollment and training, and third party recovery would become the responsibility of the contractor. Many of these necessary functions, particularly provider training, utilization review, and third party recovery, have not been performed by the Department, again due to lack of adequate staff and computer capability. While the Department prefers a full fiscal intermediary, companies submitting proposals will probably be asked to submit cost proposals similar to those required for the interim contract. This would provide a point of comparison between the contractor using his own computer and using the state computer. The proposals submitted for the interim contract have been used by the Department in an effort to gauge the cost of a long term system. It is entirely possible that the amount necessary to implement and operate a long term claims processing system may exceed the \$1.0 million being budgeted by the Department. If that is the case, the Department is prepared to come back to the Legislature with a request for additional funds. It should also be stated that the Department is committed to involving the Legislature in the process of reviewing contract proposals prior to selection by the Department, either through direct participation by legislators or staff from Legislative Finance or Audit Divisions.

| <u>PROPOSALS MADE FOR INTERIM CONTRACT</u> | <u>COST USING STATE COMPUTER</u> | <u>COST USING PRIVATE COMPUTER</u> |
|--|--------------------------------------|--|
| Computer Sciences Corporation | \$ 193,875 (0.97) | \$ 138,000 (0.69) |
| Electronic Data Systems | 745,485 (6.21) | 360,494 (3.01) |
| Blue Cross/The Computer Company | 521,663 (4.01) | 307,023 (2.36) |

From these three proposals and the operational experience that the Department has had with CSC, the single most important factor to consider is the implementation costs. It would appear that CSC did not take that cost into consideration when they put together their proposal. Since implementation is a one-time activity, the shorter the period of the contract, the larger the implementation cost is as a function of the overall cost per claim. The EDS and Blue Cross proposals included a separate itemization of implementation costs. For a longer term contract, the cost per claim in constant dollars should be less because of the greater number of claims to be processed by the system.

Since the interim contract dealt with claims covering slightly more than half a year, the Blue Cross or EDS proposals for the cost of using their computer would be roughly half the cost of a system. Additional money is needed to provide for the SURS and MARS subsystems, and for the provider relations and provider training activities that a long term contract would include. It is important to realize that the increased efficiency of operation derived from the MMIS may well result in a net savings because the increased efficiency of the system will result in a reduction of erroneous payments, duplicate payments, and increased return from other insurance coverage.

The result of the contract should be a system that will provide the Department and federal government with financial and statistical information about the program; will provide the Department and the Legislature with financial information adequate to do efficient budgeting; will give health care providers timely and accurate payment and allow providers to receive interim payments to assure adequate cash flow; will assure that providers know how the billing system works, how to correct errors on their claims, and reduce multiple submission of invoices; and will assure the beneficiaries of the Medicaid and GRM programs that they will have access to good quality health care without the threat of being cut-off by providers who have not received payment for past services rendered.



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
ANCHORAGE, ALASKA

May 21, 1980

HB 479 file



REFER TO
ENF 1-03:1C RGW

Representative Charles H. Parr
Chairman, Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Parr:

The American Council on Marijuana and other Psychoactive
Drugs has produced several reprints of articles dealing with the
medical effects of marijuana on the human body. Without endorsement,
either positive or negative, I find the material relevant to your
consideration of House Bill 479.

Sincerely,

Clyde Kellay
District Director

**the American
Council
on Marijuana
and Other
Psychoactive
Drugs**

521 Park Avenue
New York, New York 10021
212 758 8060

**STATEMENT BY THE AMERICAN COUNCIL ON MARIJUANA
AND OTHER PSYCHOACTIVE DRUGS, INC.**

Robert W. Fuller
Administrative Director

Board of Directors

M. G. H. Gilliam, Esq.
Chairman & President

The Reverend Daniel O'Hare
First Vice President

Kenneth I. Chenault, Esq.
Secretary and Treasurer

Albert E. Burke, Ph.D.

Keith Cowan

Helen C. Jones

Tex McCrary

Gabriel G. Nahas, M.D., Ph.D.

John Olsen, Ph.D.

Nicholas A. Pace, M.D.

George K. Russell, Ph.D.

Richard Salzman

Charles A. Schiano, Esq.

Scientific Advisory Board

Henry Brill, M.D.

Chairman

Clinical Professor

of Psychology

State University

at Stony Brook

Media Advisory Board

Howard Kany

Chairman

Executive Director

Broadcasting Foundation

of America

Legal/Judicial

Advisory Board

Aaron Kohn

Chairman

Managing Director

Major, and then

Chief Counsel, Office

of New York City

The American Council on Marijuana and Other Psychoactive Drugs, Inc. (ACM) was founded in 1977 as a non-profit educational foundation. ACM stands today as the only national organization in the United States which has undertaken the task of establishing and maintaining a clearing-house and control distribution center for information and research on marijuana and other psychoactive drugs.

It is commonly acknowledged that marijuana users now number in the tens of millions, spanning all age groups and socio-economic levels. A tremendous need for the information and research services of ACM has thus been generated. It is our strong feeling that an awareness of the deleterious effects of marijuana is the only way to discourage current usage and to prevent further expansion of a drug dependent public.

CURRENT USE AND EFFECTS OF MARIJUANA

In the past several years, two significant factors have encouraged the widespread use of marijuana:

- First, strong lobbying efforts by pro-cannabis groups who insist the drug is "harmless", have greatly contributed to the confusion regarding the drug's real dangers. These efforts have succeeded in deluding certain responsible segments of our society and have convinced them there is no danger in smoking marijuana;
- Second, many people who see what they suspect to be adverse effects from marijuana smoking, remain silent for lack of knowledge of the documented evidence, or because in many circumstances marijuana smoking is considered acceptable, if not the "in" thing to do.

The pressures exerted by the pro-cannabis "lobby" coupled with widespread usage has prevented much of the current scientific data from reaching the public at large. Tragically, this phenomenon has led to the assumption that the substance is a "harmless, recreational drug."

Recent studies refute the assumption that marijuana is "benign" and in fact, conclude that marijuana can cause serious harm to both body and mind. Cannabis use is linked with brain damage, respiratory impairments, hormonal changes, interference with cell division, blood cell abnormalities and interference with the body's immune system, as well as a disruption of sperm production in human males and serious effects on embryonic development in experimental animals.

It is also associated with serious psychological disorders, quite possibly residing in organic brain damage, ranging from mental confusion, diminished attention span, loss of short-term memory, anxiety and depression, to acute psychotic reactions and a marked loss of motivation. This is especially the case with teenagers, in whom chronic marijuana use infuses intense apathy and interferes with the delicate process of maturation.

It should be stressed that we are dealing here with more than a health issue. For we are faced with the prospect of current and future generations whose thinking and judgment may be impaired at a time when clarity of thought and sound judgment are perhaps needed more urgently than ever before. We also face the rising use of other psychoactive drugs and the probability that marijuana paves the way to these even more potent and debilitating substances, with serious negative consequences both to the individual and society as a whole.

FUNDAMENTAL PROBLEMS DEFINED

The Information Gap

The popular belief that marijuana is a harmless substance is due largely to a lack of understanding of this highly subtle and complex drug. Such lack of understanding has encouraged its widespread use; this, in turn, has created pressures to bring about social acceptance.

Contrary to the popular view, there is an ever-growing body of knowledge, based on solid medical research, which indicates that marijuana is a harmful drug. This research is initially published in medical and technical journals and requires translation for the layman in terms he can readily grasp. It then requires widespread dissemination. The media has shown skepticism and a reluctance to present important new data. Furthermore, the federal budget for conveying the message about the effects of marijuana is virtually nil at present, placing the obligation to do so on organizations within the private sector, such as ACM.

Another aspect of the information problem is seen in the public's uncertainty as to the meaning of the decriminalization of marijuana. Due to a genuine search for socially acceptable solutions to the problem of increased marijuana consumption, the difficulty of enforcing laws that consider cannabis use a criminal offense, and because of a well-orchestrated campaign by lobbyists, a movement to "decriminalize" marijuana was launched nation-wide and was passed in 15 states.

Since this movement was not accompanied by efforts to publicize marijuana's known dangers, decriminalization has conveyed the mistaken message to many that it is a safe, recreational drug, opening the way to further usage of more potent doses. Decriminalization has also served as a stepping stone for those seeking legalization both of this and other illicit substances.

Federal drug agencies formed to combat drug abuse have been reluctant to advance firm medical opinions about marijuana because of political pressures resulting from the drug's widespread consumption and acceptance. Moreover, lawmakers have not received adequate information so that they can make informed and wise decisions. Many, for example, are unaware of the drug's known dangers, or of the fact that appropriate alternatives to decriminalization exist. (Under such programs, criminal penalties can be avoided by requiring offenders to participate in educational and counseling sessions in an effort to rehabilitate the user and come to terms with the underlying cause of drug abuse.)

Finally, the effort to decriminalize or legalize the drug stands in direct contravention to the U. N. Single Convention on Narcotic Drugs, which the United States signed in 1961, thus putting this country in the questionable position of failing to honor within its own borders a treaty contracted with other nations. Careful consideration thus needs to be given to formulating a viable internal policy that is consistent with the United States' international stance.

The Research Gap

More is known than ever before about serious consequences to body and mind resulting from regular marijuana use and the use of other psychoactive substances. Additional research needs to be done, however.

Although several federal agencies oversee the area of drug research, no single body exists which is equipped to synthesize and compile evidence that is continuously growing out of these new studies. The development of a clearing-house for such ever-increasing knowledge seems essential at the present time. Such a clearing-house would remove the potential for unnecessary duplication and could also serve to suggest and implement research into new areas of drug study. Some studies have drawn conflicting conclusions and must therefore also be scrutinized to explain the disparity.

Non-medical areas warrant thorough research, too. These include the relationship between drugs and growing school absenteeism, the impact of decriminalization on cannabis use, the correlation between drugs and the epidemic proportions of teenage suicide, etc. Such research projects are important because they have direct and immediate effects on the American public.

MEETING THE NEEDS

Public Information and Education

It is the goal of the ACM to act as a conduit and clearing-house for information concerning the effects of drug use. This objective can best be met through a comprehensive public information campaign concerning the ramifications of such use. The Council can also serve members of the private sector desiring accurate and up-to-date information regarding trends in law enforcement, contemplated legislation and usage.

The educational program will encompass schools, libraries, churches, business and industry, labor and management, health care facilities, the medical profession, legislators and the judiciary. A distinctive effort must be initiated specifically for students from elementary through college levels in the interest of preventative health care, since it is the youth of our nation who have experienced the greatest increase in marijuana use and are most susceptible to its dangers. At the same time, accurate data relayed to the mass media can correct false notions held by much of the public and establish ACM as an information source where accurate and up-to-date information on marijuana and psychoactive substances can be obtained. As the overall educational program progresses, both individuals and government officials will be in a better position to make informed decisions based on Council information.

Research

The ACM proposes to give prompt attention to several crucial research areas, beginning with the fields of brain and reproductive research. In addition, serious attention needs to be given to research into the psychological disorders that are associated with chronic marijuana use. ACM plans to actively encourage other qualified research organizations to accelerate their work in related areas. It is our hope to undertake many of these projects in conjunction with established scientific and research organizations.

Reprint

**the American
Council
on Marijuana
and Other
Psychoactive
Drugs.**

521 Park Avenue
New York, New York 10021
212/758 8060

The Marijuana Health Hazard

By
Nicholas A. Pace, M.D.

**THE LAW
OFFICER**

JULY AUGUST 1977



The Marijuana Health Hazard

By Nicholas A. Pace, M.D.

During the last seven years, a very active organization called NORML (National Organization for the Reform of Marijuana Laws) has been vigorously campaigning state by state for the decriminalization of marijuana. This organization has campaigned nationally to make marijuana appear harmless. They are dedicated to fostering the idea that marijuana should be decriminalized since so many people are using it.

Recently, it has been learned that high on the list of President Carter's priorities in the field of public health is the decriminalization of marijuana. In order for you as law officers to understand the health aspect of this complex issue, we would like to give you the following information.

It is the contention of this author that the public has not been properly informed concerning the harmful medical effects of this drug. If anything, the

media tends to portray marijuana as no more harmful than tobacco or alcohol. This comparison is absurd.

As For Tobacco—Tobacco is not a hallucinogenic drug. Smoking tobacco produces no hallucinogenic effects. Smoking marijuana has in reality a hallucinogenic effect on the brain with distortion of time, space and sound. It takes 20 years of heavy tobacco smoking to produce the same type of severe sinusitis, pharyngitis, bronchitis, and/or emphysema that less than one year of daily marijuana smoking produces, proving that marijuana smoke is far more irritating to the respiratory tract than tobacco.

Scientific studies have shown that marijuana smoke mixed with tobacco smoke is far more damaging to lung tissue than tobacco smoke alone.

Even the *Consumer's Report* of March, 1975 acknowledged the lung damage in chronic marijuana users, although one could hardly endorse their suggestion that alternate forms of marijuana consumption such as "drinking marijuana tea" could protect the lung tissues. Medical literature is replete with reports similar to that of Dr. John

A. S. Hall's report showing the emphysema-bronchitis syndrome in black male Jamaicans who were regular marijuana users.

Unfortunately, it will take another 20 to 30 years for us to have autopsy reports to show the effects of long term chronic marijuana smoke on not only the lungs but other tissues as well.

Of interest is the fact that lungs of animals exposed to marijuana smoke have shown cellular changes that are similar to those seen in patients who develop lung cancer. Tar from marijuana, painted on the backs of animals, has produced cancers.

As Far As Alcohol Is Concerned—The concept that marijuana is safer than alcohol is definitely erroneous. A person can have one or two drinks a day for 20-30 years and never suffer ill effects from it. Alcohol is water soluble. One ounce is completely metabolized and broken down into water and carbon dioxide within 12 hours. Marijuana, on the other hand, is not water soluble—it is fat soluble, and the active psychotropic (mind altering) ingredient, delta-9 Tetrahydrocannabinol (THC), accumulates (in the

same manner as DDT) in the tissues of the body which are fat laden, including the brain and the sex organs. In animal experiments with radioactive tagged Delta THC, the THC was still detected in the brain, liver, lungs and reproductive organs two weeks after a single injection.

Although alcoholism is a serious drug problem, one does not hallucinate from one or two drinks. In order to hallucinate an alcoholic would have to develop far advanced disease, with brain damage and/or the withdrawal syndrome. On the other hand, the psychotropic effect of marijuana causes hallucinations in small doses, and in some cases, every time the drug is used. The distortion of time, space and sound are examples of the mild hallucinations that occur on a mild marijuana "high" is experienced. Think of what this effect will be on our driving population should marijuana become as popular as cigarette smoking. There are several studies which show that marijuana causes marked distortion of time and space on professional automobile drivers and airline pilots. Dr. H. Klonoff, Professor of the Department of Psychiatry at the University of British Columbia, Canada, in a study, showed the neuropsychological effects of marijuana on driving.

Marijuana Effects On The Brain—The active psychotropic ingredient has a cumulative effect on the brain which is responsible for the irreversible brain damage that Dr. Robert Heath, Chairman of the Department of Psychiatry and Neurology at Tulane University School of Medicine has shown in his rhesus monkey experiments. The actual irreversible brain atrophy or damage in the rhesus monkeys was produced after three months with the equivalent of one marijuana cigarette (2% THC) a day. The Columbian marijuana currently available in New York City is 3+% THC. Therefore, four to five marijuana joints per week would be at the same dosage that caused brain damage in the rhesus monkey experiment. Dr. Heath has not tried does less than this; therefore, this may not be the minimal level.

It is unfortunate that Dr. Heath's find-

ings have not been properly publicized, especially since it is thought that there are at least two million daily marijuana smokers in this country at the present time.

Loss Of Motivation—In 1972, Dr. Louis J. West described the term amotivational syndrome (loss of motivation). This syndrome is well known to numerous physicians and practicing psychiatrists in this country and elsewhere. Marijuana smokers suffer personality changes that occur gradually over a period of time. These personality changes include diminished drive, lessened ambition, decreased motivation, apathy, shortened attention span, poor judgment, diminished capacity to carry out complex plans or prepare realistically for the future, and a variety of other deleterious changes.

Dr. West suggests that this syndrome is caused by actual organic changes in the tissues of the brain. Dr. William Moore and Dr. Harold Kolansky of the University of Pennsylvania Medical School showed in an excellent study the same distortion of personality among chronic marijuana users. They describe hundreds of patients who have suffered from psychiatric and neurological symptoms such as impaired judgment, diminished attention and concentration span, a slowing in time sense, and a loss of thought continuity as a result of chronic marijuana use.

Dr. Andrew Malcolm, a Canadian psychiatrist, Dr. D. Harvey Powelson, formerly Chief of the Health Clinic at the University of California at Berkeley, and Dr. Roy Hart, a New York psychiatrist and Editor of the *Journal of the American Academy of Psychiatry and Neurology*, as well as many others, have independently confirmed and extended Dr. West's observations. In a paper that Dr. Hart presented, entitled "A Psychiatric Classification of Cannabis Intoxication," he showed that there were 75 independent studies which revealed the serious effects of marijuana on the mind. Evidence from all over the world has supported the presence of the amotivational syndrome. Dr. John A. S. Hall, a leading psychiatrist in Jamaica, and Dr. Boris Segal, a prominent Soviet psychiatrist—just to name two others—have

also reported on this syndrome.

Brain Atrophy (Shrinkage)—The important findings of the English neurologist, the late Dr. A. M. G. Campbell, in his study using air contrast x-rays of the brain on long term marijuana users (all of whom presented severe personality disorders) cannot be refuted. In all ten subjects, there was definite evidence of brain shrinkage as compared to ten control subjects. Dr. Robert Heath, of the Tulane University School of Medicine, studied the brain wave patterns in rhesus monkeys who were exposed to marijuana smoke twice a week and demonstrated that animals exposed this way had irreversible alterations in brain function for about three months after onset of the experiment. These brain wave abnormalities were shown to persist for eight months after the monkeys were no longer exposed to the marijuana smoke.

The regions of the brain where Dr. Heath measured the most pronounced and persistent changes in brain function by the brain wave examination were the same regions where Dr. Campbell noted atrophy or shrinkage in the ten human subjects.

Loss Of Learning Ability—Dr. Harold Kalant of the Department of Pharmacology at the University of Toronto has shown that rats exposed to marijuana smoke for five months suffered an irreversible loss of learning ability as measured by standard psychological tests.

Of special interest are the Soviet studies on dogs who were exposed to marijuana. These dogs showed signs of organic brain damage of the central nervous system including disturbances of various reflexes, impaired motor coordination and muscle movements, and states of depression followed by periods of excitement, aggressive behavior and fears. Autopsies on the brains of these dogs showed large areas of destruction in the cortex (thinking and learning centers) of the brain as well as in the cerebellum (balance section of the brain). These are the same regions of the brain that Dr. Heath reported on in his monkey experiments.

The Seven Day Half-Life—Of interest is the fact that marijuana produces a half-life of seven days. This

means that after one week only 50% of the substance is eliminated. Therefore, anyone who uses marijuana more than once a week cannot be truly drug-free and has a build-up of the drug in his tissues. One might remember the recent headlines of the commuter train crash in Chicago. Although the engineer involved had not used marijuana for the previous 24 hours, the substance was still detected in his system.

Prevention Of Cellular Growth—When marijuana is exposed to cell cultures, there is biochemical interruption of cellular metabolism, with the prevention of the proper formation of the building blocks essential for cell growth. Scientists agree that marijuana interferes with the synthesis of proteins and causes a decrease in the rate of cell division.

Dr. Peter Freed of Ottawa, Canada showed that young rats subjected to marijuana smoke not only suffered from generally reduced body weights, but also had significantly smaller hearts and brains as a percentage of their total body weight. He also got the same results in young suckling rats whose mothers were exposed to marijuana, bringing up the strong possibility that this effect is transmitted through mother's milk.

Reduced Sperm Production—Dr. H. Morishima and F. Zeidenberg, at the Columbia College of Physicians and Surgeons, illustrated in a carefully controlled study on 16 marijuana smokers, ages 18 to 23, over a two-year period, a significant and sustained decrease in the sperm concentration occurring after only two weeks of marijuana smoking. The decrease in the sperm concentration was sustained for at least two weeks after marijuana was discontinued. During the experiment, the subjects smoked an average of five to fifteen marijuana cigarettes a day.

Abnormal Sperm Cells—Not only was there a decrease in the sperm count, but there was also a decrease in the motility of the sperm (movement of the sperm). The most potentially damaging effect of marijuana on the sperm was the marked increase in abnormal forms of the sperm cell. This

brings forth the genetic possibility of transmitting abnormally viable sperm with decreased genetic information to a fertilized egg.

Genetic Effects—Marijuana not only interferes with cell division but also interferes with the synthesis of the important genetic material of the cells. There is interference with the immune system of the body, too. Studies have shown that marijuana use causes a reduction in the number of chromosomes in the white blood cells, plus abnormal white blood cells. Abnormal embryos have developed in the animals exposed to marijuana and birth defects have been produced in young rhesus monkeys whose parents were exposed to marijuana smoke.

Space does not permit a review in detail of the many other negative health effects that marijuana produces.

I have personally cared for two young people who became psychotic after using marijuana. In one case, psychosis developed after smoking only one joint and in the other case, after smoking five joints a week for a period of six months.

As a student and observer of the drug scene, I sincerely believe that while alcoholism is presently our most dangerous drug problem, marijuana has the potential of becoming an even greater problem since it is being used by an uninformed public. One has to be aware that decriminalization is tantamount to legalization, particularly when so many people are ignorant of the extremely serious risks involved in marijuana usage. No one wants to see young people thrown in jail, but there are other effective alternatives to decriminalization. For example, there is the Sacramento Citation Diversion Program where youths arrested for possession of marijuana are given a chance to take a drug information study course which exposes them to the information that we have written about here. Upon completion of the course, the youth's arrest record is wiped clean.

When someone asks how one can tell if marijuana has had any ill effects on someone, I suggest trying to recall what the individual was like six months prior to the regular use of marijuana

and comparing him with what he is like today. If there are marked changes in personality, social attitudes, emotions, etc., coupled with apathy, the chances are that marijuana is having an ill effect on his brain.

With the help of publications like *The Law Officer*, perhaps we can inform the youth of our country of the hazardous medical effects of marijuana.

Listed below are the names of books and publications containing further information on this subject:

SUGGESTED READING MARIJUANA

Russell, George, *Marijuana Today*, The Myrin Institute Inc., 521 Park Ave., New York; Nahas, G., *Keep Off The Grass*, Reader's Digest Press, Thomas Y. Corwell Co., 666 Fifth Ave., NY, NY 10019; Berjerot, N., *Addiction & Society*, Charles C. Thomas; Bloomquist, E., *Marijuana*, Glencoe Press, Beverly Hills, Calif.; Goode, E., *The Marijuana Smokers*, New York Basic Books; Moreau, J. J., *Hashish & Mental Illness*, Raven Press, New York; Nahas, G., *Marijuana: The Deceptive Weed*, Raven Press, New York; Jones, H. B., *Sensual Drugs: Deprivation & Rehabilitation Of The Mind*, Cambridge University Press, New York; Powelson, D., *Marijuana: More Dangerous Than You Know*, Readers Digest 12/74 pp 95-99; *Drug Information: National Clearing House for Drug Abuse Information*, P.O. Box 1635, Rockville, Maryland 20850; *American Council on Marijuana*, 521 Park Avenue, New York, N.Y. 10002. ●

Nicholas A. Pace, M.D. is a specialist in Internal Medicine and maintains a private practice in New York City. He is also an Assistant Professor of Medicine at New York University School of Medicine. Dr. Pace is the President of the New York City Affiliate of the National Council on Alcoholism, and is the New York Medical Director of a large corporation.

Reprint

**the American
Council
on Marijuana
and Other
Psychoactive
Drugs**

521 Park Avenue
New York, New York 10021
212 758 8060

How I Got My Daughter To Stop Smoking Pot

By
Susan Bromwell

Good Housekeeping®

March 1979

When drug experts told me what marijuana could do to Maggie's health, I had to get her off it. I hope all those children—and adults—who still think the drug is harmless will read my story. By Susan Bromwell

Yes, I smoke pot," my 15-year-old daughter Maggie said calmly. "Everyone does. But don't worry, Mom. It's harmless."

I had no idea till that morning that Maggie was using marijuana. I found out when a repairman in our house handed me a packet of rice papers he'd found on the floor and asked, "Who smokes pot in this house?" I had hoped the papers belonged to one of Maggie's friends, but Maggie unhesitatingly admitted they were hers.

My husband, Jim, and I had thought that we had no major problems with either Maggie or her 11-year-old sister Elise. True, Maggie had become withdrawn and apathetic of late. She'd lost interest in school and her A and B grades had slid to C's. She was depressed at times; sometimes her behavior seemed a little irrational; often she was hostile. Jim and I had reassured each other that all this was just normal teenage behavior. Now it seemed something far more serious was involved.

In an attempt to reassure me, Maggie offered to tell me all she knew about the teen pot scene. I knew little about pot, except that it was illegal (even though in 11 states, the possession of marijuana has been decriminalized, it has *not* been legalized), so I took her up on her offer, telling her that after our talk I would go to the top drug authorities to find out if smoking pot was really harmless. "I'll tell you what I learn," I said. "What you do about it then is up to you."

Maggie agreed. When we sat down to talk, I first asked her, "When did you start to smoke pot?"

"When I was 13," Maggie replied. "It seemed like the thing to do. When I smoked at home I'd burn incense to cover the smell. Or I'd smoke out the window. Mostly I'd smoke at other people's houses,

in bathrooms, in the movies, at concerts, in the park, practically anywhere. I used to smoke everyday. A lot of kids in my class still do. I'd smoke on the way to school because if you can get there stoned, school isn't such a drag. If you have a free period you get stoned in the park or on the street, just high enough so the teachers don't notice. After school, you get stoned again. When you get home and don't feel like doing your homework, you get stoned. On the weekends, you can hang out in the park and be stoned all day. Saturday night you can go to a party and get stoned again."

I was shattered. Not only did my daughter smoke, she was, as she said, "a head," the term for a heavy smoker. I was surprised when Maggie assured me that most mothers were as oblivious as I to their children's marijuana use. "Aside from red eyes and sleepiness, a person won't really notice if someone is on pot," Maggie explained. "When you're stoned you can act the same as you usually do. You just look at things differently from inside yourself."

"Where do kids get the money for pot?" I asked.

"From baby-sitting," she replied. "And Christmas and birthday checks." She explained that by buying one large amount of pot, making joints out of it and selling them to friends at a dollar apiece, you not only had your own supply of pot in hand, but soon you made enough money to make another large buy.

"How much do you smoke now?" I asked.

Maggie replied. "Only a normal amount. Five to 10 joints a day on weekends. That's the total. When Bob [her current steady] and I smoke a joint between us, I figure that as half a joint for me."

As agreed, after our talk I phoned the National Institute on Drug Abuse in Rockville, Md., and asked to speak to a researcher who specialized in marijuana. I was connected with Dr. Jack Blaine, a research psychiatrist

who had been assistant director of the National Commission on Marijuana and Drug Abuse. Dr. Blaine could not have been nicer or more understanding. Or less encouraging.

"Five to 10 joints a day every weekend?" he said. "I'd be very concerned if I were you."

"She used to smoke everyday," I said hoping for some reassurance. "She cut it down to weekends so it wouldn't affect her schoolwork."

"It could still be affecting her schoolwork," said Dr. Blaine. He explained that, unlike drugs like alcohol, marijuana is retained in the body for a long time. Pot has more than 57 unique ingredients. Several of these are psychoactive (mind-altering) and, of these, Delta-9-THC (commonly called THC) is the most psychoactive. Radioactively tagged THC has been traced experimentally in the body. The experiments have shown that three days after a person smokes one joint, 50 percent of the THC that was inhaled is still in the body in active form. Thereafter the body gets rid of only small amounts, perhaps over a period of weeks. The THC seeps into the fatty cells and fat-laden organs: liver, spleen, lungs, sex organs—and the brain. Each additional joint smoked adds more THC to the accumulation in the body. It is likely that the heavy pot smoker is never free of some of the effects of both THC and other ingredients in pot, which also have undesirable side effects.

Following this interview, I spoke with Dr. Stephen Szara, chief of the National Institute on Drug Abuse's Biomedical Branch. I asked him whether the chronic dry cough Maggie had developed could be caused by pot. In reply, Dr. Szara began a wide-ranging indictment of marijuana.

What "Pot" Does

"We're very concerned about youngsters who smoke pot heavily when they are developing," he said. "We, at NIDA, define a heavy smoker as anyone—teenager or adult—who smokes everyday, regardless of how much he or she smokes, or anyone who smokes four to five joints during an entire weekend."

What Dr. Szara told me about the effects of pot on the body can be summarized as follows:

Two Swiss scientists reported that tissue from human lungs exposed to tobacco smoke or marijuana smoke *both* show malignant transformation. Other studies have shown that chronic marijuana smoking can produce bronchitis, sinusitis, pharyngitis and emphysema in far *less* time than it takes to produce these effects by cigarette smoking. In addition, animal studies have demonstrated that some conditions caused by marijuana smoking can be precancerous.

A new study on adult females who have been smoking marijuana for more than one year shows a hormonal change has occurred which can be dangerous. Of special concern are the effects of these changes on the developing reproductive systems of teenagers. In another study, pregnant rhesus monkeys were exposed to marijuana at the human equivalent of one to two joints a day. In 44 percent of the cases, mothers aborted and infants died before, during and after birth. The pathologist found that, in the babies who died, there were developmental abnormalities in the nervous system, the cardiovascular system and in various organs.

Pot not only decreases the rate of cell division, but even small amounts of marijuana impairs the formation of DNA, the genetic material of the cells. Also, research on human lymphocytes—the type of white-blood cells which produce antibodies to help fight germs and disease—suggests that marijuana may impair the immune system.

"Dr. Szara," I blurted, "for the past four months my daughter has been sick about every other week with a different virus. Could it be the marijuana that's causing it?"

"Ask her to try an experiment," said Dr. Szara. "Stop smoking for three months. See what happens."

I next spoke to Dr. Robert Peterson, NIDA's assistant director of research and editor of their yearly report, *Marijuana Research Findings*. He gave me some shattering statistics. In a nationwide survey in 1977, 28 per-

cent of youngsters between the ages of 12 and 17 reported having used marijuana. Four percent of 12 to 13 year olds had smoked marijuana "during the past month." And *one in nine high school seniors smoked marijuana daily* (almost a doubling of the figure since 1975).

When I hung up after this phone call I was scared. I sent for the reading matter the doctors I'd spoken with during the past few days had suggested (see box on page 120).

Maggie, meanwhile, had taken to smoking openly in her bedroom. "Now that you and Dad know," she told me, "why should I risk getting busted by smoking in the park or on the street?" My husband and I, though torn, went along with her.

When the books and pamphlets I had sent for began arriving, I read them all—feeling mounting horror.

With notes from my reading and phone conversations at hand, I took Maggie for an uninterrupted hour for us to talk. I also asked Elise to sit in with us. She was not a pot smoker, but I wanted to be sure she didn't become one. Before we even began, however, I was prepared to be rejected by Maggie. I had learned that a symptom of the pot-smoker's syndrome was a rejection of facts about the harmful effects of marijuana. Maggie had stated it clearly: "I like pot and I don't want to hear anything bad about it!"

How It Affects the Brain

I had learned from my reading that some scientists believe this pro-marijuana attitude may be *caused* by the physical effects marijuana has on the part of the brain known as the septal area. Fat-soluble THC accumulates in the fatty cells of the septal area which controls emotional behavior, deep-seated pleasurable sensations, instincts, the subconscious and memory storage.

I had photographs of the brain cells of monkeys which had been exposed to marijuana smoke. All these monkeys showed very evident (and, to me, very scary) changes in brain cells when compared to cells from the same areas of healthy, control monkeys.

I had photographs of normal human sperm and sperm of donors who smoked pot. I also had photographs of white-blood cells from both smokers and nonsmokers. Again, the differences were clear—and frightening. The sperm of pot smokers looked spotty and faded compared to sperm from the nonsmokers. "This," said the scientists conducting the study, "may imply impaired ability to fertilize an egg."

The white-blood cells of the smokers looked "crumpled" compared with the firm, round cells of the "controls." The scientists concluded: "This shows abnormality of the membrane, which may affect the cell's ability to fight bacteria."

I started off the hour's discussion with my daughters by showing them the pictures. Maggie summed them up with a "Mmmmm."

I then read them a statement by Dr. Robert L. DuPont, formerly the director of the National Institute on Drug Abuse: *Marijuana is a very powerful agent which is affecting the body in very many ways. What the full outcome—the range of these consequences—is going to be, one can only guess at this point. But from what we already know, I have no doubt that they are going to be horrendous.*

"God!" said Elise, impressed.

Maggie did not say anything at all.

For an hour, I summarized much of what I had learned about marijuana's harrowing effects on the body. When the hour was up, Maggie said, "I appreciate your going to all this trouble, Mom. But none of it means a thing to me. I plan to smoke pot all my life."

I didn't sleep at all that night. Next day I was in despair. How could I help my daughter? I couldn't just give up. I had to *try* to make her see the terrible dangers of smoking pot.

That night at dinner I put the kitchen timer on the table. "I didn't have time last night to tell you *all* I found out about pot," I said to Maggie. "So every night at dinner, I'm going to give you 10 minutes more information." I set the timer for 10 minutes precisely. "As soon as it buzzes, I'll

shut it off and stop." I promised. Then I began to throw more facts, more figures at her. Every night from then on I found something new to add to the case against pot.

Usually I stopped when the timer sounded. But sometimes Maggie would turn it off—so we could keep on talking. What really got to her were the descriptions psychiatrists and psychologists gave of the symptoms of their pot-smoking patients. She "recognized" most of the symptoms. (The "Dropout" Syndrome: "That's like Andy! He used to be so great on the guitar. Now he doesn't play—just sits around, stoned." The "Paranoia" Syndrome: "That's like Phyllis. She's convinced the teachers are conspiring against her.")

Though I refrained from saying so, I, too, recognized many of the psychological pot symptoms in my own daughter. I read her a paragraph from *About Marijuana* by Dr. Franz Winkler: . . . *The abuse of marijuana is one of the major tragedies of our time. . . . Unknown to themselves and unnoticed by a generation of parents, teachers and physicians often too busy to pay real attention . . . some of the finest young people are condemned . . . to a gradual disintegration of their personality.*

I then suggested that Maggie try the proposal Dr. Winkler often put to young pot smokers: choose a person she'd known well before he or she started smoking pot heavily. Then compare the person that you remember with the person today. Dr. Winkler wrote: *I do not remember one single high school or college student seriously undertaking this investigation, who did not return (to me) deeply shocked by the experience. Most of them not only made a resolution to give up the drug, but became most effective crusaders among their contemporaries.*

Maggie shoved back her chair. "I've had enough," she said and left the table.

My Best Present Ever

Christmas came, Maggie's favorite day of the year. But this Christmas she sat on the couch, pale, yawning, without a flicker of interest in anything. "Like a non-person," my husband said later.

The night after Christmas she entered our bedroom. "Those pajamas I gave you, Dad, and that toilet water I gave you, Mom—they weren't too hot Christmas presents. So, I have something you'll like better. Bob and I have decided to stop smoking pot for three months."

That was Christmas 1977, over a year ago. Since then, Maggie has not smoked pot. All of her unpleasant personality symptoms that we'd attributed to "teenage difficulties" have disappeared. She once again enjoys school and is getting A's and B's ("Maggie has really blossomed this term!" her English teacher wrote). Her chronic dry cough has gone and, in over a year, she has been ill only once—for one day.

Bob has given up pot and so has Maggie's best friend, Annie. Their mothers have reported equally dramatic transformations to me. "We didn't realize," Bob's mother said, "how much he had changed until we got our boy back again!"

Maggie told me, "Mom, except for one thing, you handled my pot problem just right. Parents should show their concern and should give their kids medical findings about pot. The thing you did wrong was to let me smoke in the house. You should have said, 'I'm letting you make the decision as to whether you're going to smoke pot or not. But part of that decision is accepting the consequences—not only of the possibility of getting busted, but of what pot can do to you.' If kids have access to pot and they think it's harmless—as most kids do—they're definitely

going to get to abuse it. They've got to be given the facts about how pot can slowly wreck them—like it was doing to me. I know now that I'm cutting it out forever. Once you realize you're hurting yourself by smoking, you can't forget it—even when you're high."

Inspired by Maggie, I declared an all-out war on marijuana. I took the books and pamphlets I'd read to Maggie's school. The principal was so impressed he encouraged the school to inaugurate an in-depth marijuana-education program.

Maggie was asked to record her thoughts on tape for use in the program. She said, in part, "Pot weakens you. You lose your sense of self. One drugged-out person is like another drugged-out person. . . . You may think you're getting yourself together with pot, but you're not. You're pulling yourself apart."

"For the first time in a long time I feel that I'm going in the right direction. I've begun to genuinely like myself. I'm a much more happy person without pot."

After Jim, Elise and I listened to this tape, Maggie said, "Maybe we could start a turnaround in our school. Maybe we could make it so it's cool *not* to smoke pot."

"Oh, I hope so!" said Elise.

I know for sure that mothers everywhere echo these words. ♦

How To Get More Information

These are the publications I used in my war on marijuana. I recommend that other concerned parents read any or all of them.

Marijuana Research Findings. Free. From NIDA Clearing House, 5600 Fisher's Lane, Rockville, Md. 20857.

Senate Hearings on the Marijuana-Hashish Epidemic. Parts I and II. Price: \$5.35. From Government Printing Office, Washington, D.C. 20402.

Marijuana Today: A Compilation of Medical Findings for the Layman; an updated edition. By Dr. George K. Russell. Price: \$1.95. *About Marijuana.* By Franz E. Winkler, M.D. Price: 50 cents. Both from American Council on Marijuana and Other Psychoactive Drugs, 521 Park Ave., New York, N.Y. 10021.

Marijuana: Harmless Euphoriant or Dangerous Drug? By Dr. Walter X. Lehmann. Price: \$1. *The Case Against Marijuana.* Report on International Marijuana Conference. Reprinted from *The Washington Post*. Free. Both from Society for Informed Choices on Marijuana, Inc., 300 Broad St., Stamford, Conn. 06901.

Four Question and Answer Leaflets About Marijuana. Price: \$1. From Narcotics Education, Inc., 6830 Laurel St., N.W., Washington, D.C. 20012.

Keep Off the Grass: A Scientist's Documented Account of Marijuana's Destructive Effects (an updated edition to be published in May 1979). By Gabriel G. Nahas, M.D., Ph.D. Price: Hard cover, \$14; soft cover, \$7. From Pergamon Press, Maxwell House, Fairview Park, Elmsford, N.Y. 10523.

Sensual Drugs. By Dr. Har Jin and Helen Jones. Price: \$5.95. From Cambridge University Press, 32 East 57th St., New York, N.Y. 10022.

Families, Adolescents and Marijuana (a review of research and prevention programs). Free. From Pyramid (NIDA Prevention Assistance Project), 39 Quail Court, Walnut Creek, Calif. 94596.

MR. TEICH: First, I would like to thank you for allowing me to be here. I've never done anything like this before. My name is Garland Teich. I'm a diesel mechanic by trade. I have lived in Alaska for quite a few years. Prior to that I lived in Colorado where I was in law enforcement. At present I work in law enforcement in a voluntary capacity. In the past four years I have made in excess of 450 arrests in drug enforcement and vice areas. I have a long history here but I can see where I might have some questions to answer. I think I'm just going to hit or the high spots. Prior to living in Alaska I lived in Aspen, Colorado, where, by the way, it was in the news last week (sound not clear) and it was in reference to a sheriff who refused to enforce drug enforcement laws. I also know this gentleman. I worked with him prior to Alaska. That is one of the main reasons I am in Alaska. I wanted to move away from the drug infested society and I came to Alaska and I raised my children, the youngest being a senior now. I'm no longer so much worried about my children, but I hope to have a grandchild very soon. My oldest is 24. She started out sweeping floors in a big organization in Anchorage -- NC Caterpillar. She worked up to be Assistant Manager of the Shipping and Receiving Department, in which she is presently employed. I educated my children, I feel, very properly at home and I really feel strongly on home education, but I am in complete agreement with the two persons that testified prior to me. I feel that you have to have legislation also and the bills that are before the judiciary system at this time, or this here agency. I have two papers that I have submitted -- one is a news release on top, stated, and also CSHB 479. In my estimation neither of these bills are acceptable to myself or just about anybody in law enforcement. Also, I might refer to the reason why. The first bill HB 479 -- there is absolutely no definition of manufacturing of any narcotic. There is no definition to, as to, narcotic itself in the bill at all. In Section 17.17.200 it states that you can sell to a minor or any other person within a 3-age, 3-year age limitation. That means if I wanted to sell my product to a 15-year old, all I would have to do is get a 17 or 18-year old individual and I could have them sell it to them with no problem. There is also in Sec. 17.-17.230, there is the burden of proof for profit to make it a violation of the law. It states that you must prove that there is a profit that is going to be made by this product -- whether it be marijuana, cocaine, or whatever it is. I don't feel that the law enforcement agency should have to prove that there is a profit going to be made by this product. I don't know what statutes you were referring to earlier where it is illegal to obtain or sell or have in your possession an ounce of marijuana. Just recently I had an individual who was, by the way, an adult, offer to sell me 50 pounds of marijuana. I went ahead with the agreement with the understanding, and I have made other arrangements similar to this, where I go ahead and make the agreement and price is agreed upon, and then I go to the DEA -- they furnish me the money, I make the purchase, and then we have a case. We went to the District Attorney's Office with this 50 pounds and the price of \$25,000. This was evidently pretty good stuff. The District Attorney's Office would not accept this case because

of our present statutes in the State of Alaska are not being enforced and the State -- I can't speak for the State Troopers -- I -- but there are people above who have told law enforcement agencies do not touch marijuana until we get a clarification on this. As you remember, there was some drug busts up in the Matanuska Valley recently -- last year -- complete greenhouses were taken. Those people even tried to get their marijuana back and they succeeded. We have to have a strong drug bill. When you haven't got clarification for a law enforcement agency to follow, how do you expect the law enforcement agency to enforce the law. The bills before your Committee now are unacceptable. The only one that even would come close would be Ed Dankworth's bill, Bill No. 65. (someone in the background said its 101 in the House). Right. I could go on and on, but I feel that these two pieces of paper that you have before you will kind of explain -- I am not an attorney -- I am not here to interpret, all I am -- to say that you have to have legislation that is strong enough that will be passed. Now, as far as a local ordinance, that's fine. You still have to have a state statute to follow. If the local people want to enforce a different law, that's fine, and if these people want to grow their marijuana at home and have an ounce of it for their own possession, you can't restrict a man on an ounce of marijuana in their own home. He has the right to privacy, but when you take it out of that home -- and you're talking several pounds now under this Bill No. 479, there is nothing in there that says, that mentions anything about paraphernalia. You can have a stove and take your marijuana and cook it down to hash oil, or whatever you want. There is nothing that says that's illegal. Two grams is a misdemeanor -- two grams of cocaine or heroin is a misdemeanor. I can get the same penalty for going down here to your local drug store and snitching a bottle of aspirin as some individual can get for selling two grains, two grams, to a minor. It is a misdemeanor. You can get a worst penalty for drunken driving than for possession of two grams of cocaine. It upsets me to no end, but that's the way it is. And when you talk 10 pounds of marijuana, there isn't a district attorney in the State of Alaska that would even talk to you unless he has a lot of time. He won't even take your case on 10 pounds of marijuana. You've got to be able to prosecute these people and you've got to have some guidelines set for your law enforcement agencies. Now, it's awfully easy to say that police aren't doing their job. You bet they aren't doing their job, because they can't do their job. They have no guidelines to go by, and even when they do make a good case, its thrown out of court because nobody wants to prosecute a marijuana user, or salesman, or whatever it might be. Marijuana is a serious drug. I've talked to countless people -- some of them I had in my (sound not clear) which I got away from. People who have \$300 a day habits. Now this wouldn't be marijuana -- this is a hard drug. One individual -- I'm not allowed to mention names -- but anyway, \$300 a day. She begged me for help to try to get off the habit, to try to get off the street. There is nothing I can do. I can't even legally advise her. I did give her some, my personal thoughts how she could. Some other, another individual 13 years old, when I busted her the first time. The courts aren't severe on minors. There is no way that if you busted a minor with 50 pounds of

marijuana that he's going to end up in jail, and if he keeps his nose clean for three years until he becomes of age, that penalty or record is taken off his record. Its not on his record when you talk about a minor, so no matter. I'm sure that you have read the papers enough to know that no judge is going to sentence a minor to one month, one year, or whatever it might be, behind bars. I think I've said enough. I'm getting --

PARR: Let me, if I might, take privilege of the Chair and clarify two things, Mr. Teich. You said that the bill had no definition of manufacture and I think you will find about 10 lines on page 36 of the bill on definition of manufacture. You said you could sell two grams of heroin, that wouldn't be, that it would be a slap on the wrist. Under the bill it is a class 1, it's an unclassified felony which is the same penalty as for murder and kidnapping. You question where the penalty came from that I was giving awhile ago for the sale of marijuana to a minor, and I have the statutes here before me and it is 17.12.110, and it does say: for any term of years, or life, or by a fine of not more than \$25,000, or both. We very much like to have factual testimony, but it looks -- I would like to have some things clarified here.

TEICH: What statutes are you referring to? 17.12.110?

PARR: 17.12.110, subsection c -- and it says, and I just read it out to you. That's the existing State law on the sale of marijuana to a minor. The bill 479 that we were talking about -- you were talking about selling two grams of heroin or something, I say that's the same penalty as for murder or kidnapping in this bill. You said something about it not being a very strict penalty. This is up to 99 years. You said there is no definition of manufacture, it's right there in about 10 lines on page 36. So, we have some misunderstanding, I'm afraid, here as to what you're saying what's in the bill and what's in the statutes.

TEICH: I'm certain we do and I think if you would like to have them clarified, you have a man who is very capable to doing it and if you would have him down here, he can clarify it. I had it all gone over to me, over with me, by him and I took notes on his testimony to me and I think he would be very happy to come down here and clarify the whole situation.

PARR: Mr. Phillips, please. None of us on this Committee is an attorney except Mr. Brown, who is not here today. We are all laymen just like you -- not a single attorney in this batch, but somebody has been giving you some false information because it is pretty obvious that there is a 10 line definition of manufacture and somebody told you there's no definition of manufacture, you know.

TEICH: Okay. Now I think more so than ever you need this attorney to explain things. Now the attorneys are the ones that battle it out in the courts and the attorneys are also the ones that accept the cases to go to court, and I think you need this man very badly.

PARR: Now we would certainly be happy to have any testimony at all from anybody who can help us in trying to come up with a bill that will work, but if this gentleman is an attorney and who can't read page 36 any better than he did, I don't know if he's going to help us much.

TEICH: Let me -- now, page 36, what does that refer to?

PARR: You talked about the definition of manufacture, and there it is.

TEICH: Okay.

PARR: Quite specific, you know.

TEICH: Let's start at the beginning of it so I'll know what I am doing here.

PARR: I don't mind this attorney coming down, I'd be delighted to have him if he could. He shouldn't go around giving false information.

TEICH: This is very good information that I have given and it came directly from an attorney. Like I have stated, I am not an attorney but I would like very much for you to have an attorney explain it to you.

PARR: Well, as I have said, none of us is an attorney, but we do obviously work with attorneys in preparing these bills and I just don't appreciate someone spreading false information and misinforming you either. You know, you come here prepared to testify on his, on what this man has told you and it is not accurate.

TEICH: Does not include devices or their components, parts or accessories. How about under the paragraph "b".

BARNES: On page 36, Charlie.

PARR: What are you asking, sir? I'm not sure.

TEICH: That it is kind of specific, it states it does not include devices or their components, parts or accessories.

PARR: If you will look up the definition of what those are -- practitioners and that's also defined in the bill. We are talking about a doctor or somebody who has the, physician or dentist, or so forth, who have the authority under state law to give drugs to people who need them for medical reasons. You know, it is certain that we are not going to stop a doctor from being able to give somebody some (sound not clear) they need.

PARR: I think Miss Berck has another point that was mentioned that apparently this gentleman misinformed you on too.

BERCK: Yes, I believe it was related to Section 17.17.230.

TEICH: Uh huh.

BERCK: Where you testified that the burden of proof was on the state showing whether or not there was profit involved in a particular transaction?

TEICH: Right.

BERCK: And it seems very clear to me that it is a defense which would reduce the (sound not clear) to a class B misdemeanor if there was no remuneration, if it was an ounce or less, and to a person who is 18 years of age or older, and it seems very clear to me that that's an affirmative defense that an individual who is being prosecuted for this particular matter might bring up and raise very clearly that the burden of proof would be on the defendant to show the grounds that I have just laid out to reduce the offense to a class B misdemeanor from a class A misdemeanor.

TEICH: Yes, but why should it be left out to the state at all, or whether there's a profit?

BERCK: Pardon?

TEICH: Why should there be, why should it be left to the state at all? It hasn't been in the past -- whether there's going to be a profit made.

BERCK: It's not a burden of proof on the state. It would be an affirmative defense available to the person who is being prosecuted under this section. If you're at all familiar with the uniform, I mean the Federal Controlled Substances Act, you will probably recall that there are provisions very similar to this in that Act where for no remuneration you're dealing with a very small amount of marijuana. The person is treated less harshly than if he doesn't fit in those factual situations. This does not go quite as far as that and would merely allow the defendant to have an affirmative defense, but very clearly the burden of proof is on the defendant and not on the state.

TEICH: Well, okay. I misunderstood that, but I, that's a distinct statement made by an attorney to me and I got this laid on my lap two days ago and I haven't even read over both the bills completely. But I can speak from experience that you can't, but I know for a fact that you can't get a prosecution on a minor on an ounce or any, practically any, amount of marijuana. Nobody wants to talk to you.

PARR: Miss Barnes.

BARNES: Thank you, Mr. Chairman. Sir, I would like to go back to something you said quite a bit earlier because it really needs some clarification, I believe. You said you were involved in a drug bust of 50.

TEICH: It was going to be a bust -- the case -- they would not go

through with it, they would not furnish the money because the district attorney's office refused to prosecute a marijuana case of 50 pounds or less.

BARNES: Did they give you any idea why they -- 50 pounds or less?

TEICH: Right.

BARNES: You mean that the district attorney's office has a ruling that they only --

TEICH: Well, I don't know what their ruling is. I know they wouldn't accept their --

BARNES: 50 pounds or more?

TEICH: I don't know. The drug laws are very unclear in the state of Alaska and they won't tell you whether it is 5 pounds, 50 pounds, or what it is.

BARNES: Well, I would like Mr. Hickey to answer that question. I'd like him to tell us.

HICKEY: Certainly. I would be happy to. Mr. Chairman, with your permission.

PHILLIPS: There's kind of a joke here on the Committee that if you get three attorneys together, then you get four opinions.

TEICH: Well, right. That's very possible.

PARR: Let Mr. Hickey speak here.

HICKEY: Thank you, Mr. Chairman. You had indicated, sir, that this was a case you were working with the DEA on?

TEICH: Yes, it was.

HICKEY: Are you sure that's not the U. S. Attorney's office because the DEA is a Federal agency and they don't work with the State District Attorney's Office?

TEICH: I understood it was with the district attorney's office and the district attorney's office wouldn't accept the case.

HICKEY: Well, there is certainly no such guideline. In fact, within the last few months we have gone through a very extensive jury trial on a simple straight possession case from the Valley that involved 15 pounds out of greenhouses where we went in with the theory that because of the amount, we went in with the possession with intent to sell and distribute and the jury acquitted and it was 15 pounds. So, obviously if we are going to take a case to jury trial on 15 pounds of possession out of a greenhouse attached to a person's home. we're certainly going to take a sale case when you're talking about as much as 50 pounds.

TEICH: Did you say that he was exonerated on 15 pounds, or was he convicted?

HICKEY: He was found not guilty.

TEICH: Not guilty, okay. How many pounds was there in the greenhouse in Matanuska Valley last fall?

HICKEY: Well, that's where this case came from, sir. There was another series of cases that involved 300 and some plants. I don't know how many pounds that broke down to. This case that involved 15 pounds involved approximately 220 plants, so it was 220 plants in this particular instance would produce about 15 pounds, so I would assume the other one that I think you're referring to would have probably produced 20 or 25 pounds. But that case, the Grand Jury refused to indict on -- it didn't get past the Grand Jury.

BARNES: Mr. Chairman, if I may, I would like for Mr. Hickey to tell us why the district attorney's office is losing these cases. What is the basis for the loss?

HICKEY: Well, the basis for the losses -- the Raven decision says that the state may not prohibit the private possession of marijuana for personal use in the home -- it doesn't say any amount -- it just says that if it is for personal use and it's in the home, then it may not be prohibited. The Raven decision also recognizes, however, that it still remains against the law to possess it with intent to distribute it. Now, generally in order to prove intent to distribute we almost always have to have some additional evidence other than just the substance itself. For example, scales, packaging equipment, evidence of some kind of transaction, people coming and going, that sort of thing. In this particular case we felt that the amount itself, the number of plants involved -- 200 some. The fact that it would reduce itself down to 15 pounds of producible marijuana, the fact that there were, I believe, only four people who lived in the home, that that marijuana was not possessed for the personal use of the people that owned it. That they, in fact, had intent to distribute it. We argued that they did -- the other side argued that we failed to prove that. The jury agreed with the other side.

BARNES: Okay. Saying all of that now, and you worked on the Governor's drug bill -- what is in the Governor's drug bill to rectify that situation to assure that if you can make those drug busts?

HICKEY: There is a specific provision in the Governor's bill that says if you possess one count or more of marijuana under any circumstances, anywhere, it's a felony. A class C felony.

BARNES: That's okay for now, Mr. Chairman. Thank you.

PARR: Is there any further testimony from Mr. Teich?

TEICH: May I ask a question?

PARR: Go ahead, Mr. Teich.

TEICH: How about under Bill 479 -- are you familiar with that? Can you make a 15 pound drug bust under that bill?

HICKEY: Under 479 as introduced? Yes, sir, you could.

TEICH: As introduced? How about as amended?

HICKEY; As amended there are substantial problems.

TEICH: In other words, you would not recommend that bill as amended?

HICKEY: Absolutely not.

BARNES: Thank you, Mr. Hickey.

PARR: Any other comments from Mr. Teich, or any questions from Mr. Teich?

TEICH: May I make one comment before we --

PARR: Please go ahead, Mr. Teich.

TEICH: Is there any possibility that I could submit a letter to you explaining some of these notes that I have referred to?

PARR: Yes sir. We would be delighted to have them. We would also be delighted to have this attorney who gave you this information if he would like to either submit anything in writing or come in and testify -- either one.. We would be very happy to have him.

TEICH: Okay, very good. Is there an address I could get from the secretary to --

PARR: Yes sir. Certainly.

TEICH: Very good. Thank you.

PHILLIPS: Did you come all the way down from Mat-Su?

TEICH: I came down from Anchorage. I live in Anchorage. I came down at my own expense.

HB 479 file

No time for drug laws

THE EFFORT to tighten Alaska's liberal drug laws died an expected death this past week in Juneau. The Legislature, with what appeared to be deliberate craftiness, killed a bill that many Alaskans favored.

Gov. Jay Hammond had called for a new drug law, identifying it as one of the priority items the administration hoped to get in the 1980 session.

There is no indication that the administration did any heavy arm-twisting once the legislation had been introduced. And there was — no big surprise — not much active support of the bill by the legislative leadership, where a liberal view toward drug use is a fact of life.

THE RESULT WAS that the bill was held in committee until virtually the end of the session and then was reported out in a completely revamped form. Instead of being a measure to further restrict illegal narcotic pos-

session, sale and use, it had been turned into a bill that would further liberalize Alaska as a haven for drug users.

Obviously, such a move would be countered by another effort to restore the measure to its original purpose and perhaps make it even more restrictive.

Under those circumstances, clearly, there was not time to act on the bill. That, too, was all part of the carefully structured scenario.

IN ANNOUNCING that the matter was simply too complicated to deal with in the time remaining before adjournment, the legislators who were part of this game were able to wring their hands in dismay and say it is too bad that something more couldn't be done.

Flimsy. Transparent. Shabby, really. But a fact. The effort to tighten Alaska's drug laws simply — if you can stand a terrible pun — went to pot.

Juneau Times May 23, 1980

W/L-4

HR 479 file

The primary, moral reason for repealing "victimless crime" laws is because each individual should have the right to live his own life and use his own property in whatever manner he desires as long as he doesn't violate another individual's corresponding right. While this moral principle of freedom should, in itself, justify the repeal of laws dealing with drugs, prostitution, and gambling, there are many pragmatic reasons why repeal of these laws is a desirable objective.

Repeal of "victimless crime" laws should be distinguished from true criminal crimes which are committed in the course of the behavior which is the subject of such laws. Drug users who drive vehicles or commit assaults should be punished for such behavior.

Many persons who may not agree with the individual freedom justification for repeal of "victimless crime" laws mistakenly believe that such laws discourage or eliminate unacceptable behavior when, in fact, such laws allow the enormous profits derived from prohibitive transactions to fall directly into the hands of professional criminals.

Prosperous racketeers who make fortunes by financing drugs, gambling and prostitution are, in effect, direct beneficiaries of government subsidy. The government's attempt to limit competition and the supply of the commodities or services involved makes prices and profits enormous. Organized crime netted at least \$25 billion profit on \$48 billion revenues in 1976; by comparison, Exxon, the largest U.S. industrial concern, made \$2.6 billion on \$51.6 billion sales.

Attempts at increased enforcement of drug, gambling and prostitution laws are more than likely viewed with delight by big time racketeers; they produce the opposite effect of their stated objectives. As profits rise by increased enforcement there is more incentive for dealers to hand sell their products and services. The profit potential created by the Harrison Narcotics Act of 1914 and resulting state and local prohibitions have encouraged illegal drug deals and has increased the number of addicts from 2,000 in 1914 to more than 400,000 today. This problem is compounded since government then sees an increase in the undesirable behavior involved and escalates the cycle by using more tax dollars to increase enforcement. History has shown this to be impossible to eliminate.

In England, where doctors dispense narcotics by prescription, a typical daily dose costs 50¢ and the official number of British addicts is about 300.

The undesirable side effects of enforcement of "victimless crime" laws are many. The presence of such huge profits in the pockets of unscrupulous dealers has effects which sometimes reach into the heart of our political system through powerful lobbying and pressure tactics on public officials. Mob expert Ralph Solerns contends that organized crime rewards politicians for keeping private urban lotteries illegal because the mob needs the cash "floated" in its own numbers racket to finance huge drug imports.

Because addictive drugs such as heroin are presently illegal and quite expensive, they enable some people to make virtual slaves of others. It is a common practice in large scale prostitution for pimps to make their prostitutes dependent on drugs so that they are forced to prostitute themselves in order to feed their habit. It's time to stop this disgusting slavery. If heroin laws were repealed the price of heroin would be so low that prostitutes could break free of pimps and there would be no incentive for one person to hand sell the drug to another.

Devoting valuable police and other justice system resources to victimless crime-related matters dramatically lowers the effectiveness of the justice system in dealing with true crimes such as robberies, murders, burglaries, rape, etc. Studies show that some police organizations devote as much as 50% of their time to enforcement of victimless crimes while many dangerous crimes involving risk of human life go unsolved without the attention they deserve. The fact remains that even with the present expense and emphasis on drug enforcement, the objectives are not and can not be accomplished. In Alaska, the State Troopers estimate that they might actually stop about 5% of the drugs entering Alaska. Obviously there are plenty of illegal drugs in Alaska for anyone who might want them. Enforcement doesn't keep drugs out of people's hands; it only increases the incentive for dealers to push drugs.

Perhaps the worse side effect of drug laws is the fact that enforcement raises prices and causes addicts and users to pay for their drugs by committing true crimes. The federal Drug Enforcement

Administration has estimated that about one-fifth of the property crimes committed in the United States are related to heroin alone. The President's Council on Drug Abuse reported that in 1975, \$6.3 billion of property and \$630 million in court costs were due to addicts stealing to pay the inflated price of heroin. The Alaska State Troopers state that there is a definite parallel between the participants involved in illegal drugs and other crimes such as homicide, burglaries, robberies, larceny and rape. They go on to say that often a hard user of narcotics is supporting his habit with other people's property. The Troopers also state that the tremendous monetary profit derived from the illicit distribution of cocaine, heroin and other drugs has resulted in a substantial increase in the number of drug related homicides. (e.g. 21 within a recent 24 month period). The Alaska Narcotics Unit states in its 1977 drug report that high recidivism (repeat offenders) will continue as long as there are high profits.

In July, 1976, a study was conducted in Anchorage of 49 heroin addicts in three treatment centers. The results showed that each addict had to spend \$162 per day to support his habit. That's \$1,069 per person, per week or for all 49 addicts included in the study, a total of \$2,274,800 per year. Results showed that 81% of this amount was illegally obtained and that 38% was obtained from stolen property. Since the fencing rate in Anchorage is approximately 50% of market value, this means that about \$2,071,000 worth of property was stolen just to feed these 49 addict's habits for a year. When considering how many more addicts there probably are, this number is certainly much higher. It is particularly

sobering to realize that besides the cost of the stolen goods, every property crime also includes considerable risk that injury or death may occur to an innocent victim. The rest of the 81% received from illegal sources probably comes from prostitution and gambling which are encouraged to flourish because of enforcement of the drug laws. To put into perspective the inflated price and profits on heroin when it is illegal, the raw materials cost of five dollars worth of heroin is roughly a quarter of a million dollars on the street.

The dollar cost to the public of paying taxes to the government to attempt to enforce these laws is significant but hard to accurately determine. Such expenses affect the entire criminal justice system from the police, to the courts, to the probation and parole functions, to the corrections system to the prosecutors and defense counsel. In 1977 in Alaska there were 1,175 drug cases opened by police agencies. Of these, there were 1,016 arrests and 779 cases going to trial. Within the Alaska corrections system in 1978 there were approximately 4,114 prisoner man days as a result of direct drug charges at a very conservative cost estimate of a quarter of a million dollars. This doesn't even count all the other prisoner man days which were the result of non-drug offenses but which were committed to support a habit which is expensive because of the illegality of drugs. The Alaska Division of Corrections has found that 23% of all felony, property related arrests in Alaska in 1978 also included drug charges. When you consider how many property offense felons were stealing property to support their drug habit, the figure is even more significant. The heavy demand on prosecutors and courts who have to deal with victimless crimes allows other real

criminals to get through the system often without their due recompense.

Another undesirable side effect of victimless crimes is that since these activities occur only in the illegal sector, the potential for fraud, blackmail and extortion is high. Illegal prostitution results in the spread of venereal disease. Illegal gambling becomes a true rip-off and illegal drugs may become truly poisonous.

In summary, the only true victims of "victimless crimes" are those of us who pay increased taxes, insurance, and have our lives and property endangered by enforcement of these laws.

It would behoove Alaska to repeal these laws now, before organized crime becomes so powerful in our developing state that we would not be able to repeal them in the future.

Freedom is the issue,

Dick Randolph
Libertarian Legislator
Alaska State Legislature



Alaska State Legislature
House of Representatives
Juneau, Alaska 99811

HB 479 file

May 16, 1980

Gerald E. Crum
Box 445
Wasilla, Alaska 99687

Dear Mr. Crum:

I have received your comments about revising the state's drug laws. The House HESS Committee has reported out legislation that would revise Alaska's drug statutes. I believe that the bill, CS HB 479, represents a comprehensive and uniform attempt to strengthen drug laws in the state.

The penalty provisions of the bill conform to the new criminal code. Under CS HB 479, the penalty for distribution of all drugs except marijuana to an adult would be a felony of varying degrees, depending on the drug's schedule classification. For example, the penalty for selling heroin to an adult would be a class A felony---up to 20 years in jail and a \$50,000 fine. The penalty for distribution of marijuana to an adult would be a class A misdemeanor. The penalty for distribution of all drugs to a minor would be an unclassified felony, a penalty which could carry life imprisonment as a sentence.

The provisions effecting possession of drugs are equally as strict, I think. In keeping with the Peace Officers' suggestion, however, the Committee decided to keep current law regarding marijuana possession on the books.

CS HB 479 is now before the Judiciary Committee for its review. As a member of that Committee as well, I will do all I can to maintain the bill's current level of punishment relating to illegal use of drugs.

Thank you for letting me know of your views on this subject. I have taken the liberty of sharing your letter with the Judiciary Committee.

Sincerely,

A handwritten signature in cursive script that reads 'Thelma'.

Thelma Buchholdt
State Representative
District 9 (Spenard);
Chair, House HESS Committee

Gerald E. Crum
Box 445
Wasilla, AK, 99687.

Honorable Senator Dankworth
Pouch V
Juneau, AK, 99811.

Dear Senator Dankworth:

Our letter to you is regarding the Senate Bill 65 which for all practical purposes is "dead" for this year.

It is requested that you use this letter in any way that you deem feasible to better the ~~position in getting the~~ much needed teeth into our present laws.

We are of the impression the bill reported out of the House HESS Committee is totally worthless and actually an evasion of Legislative responsibility to the people of Alaska.

I am a high school teacher, truly concerned with the youngsters who undoubtedly will be involved with the management of our state in the very near future. Because I am sure that the attitude of those people who advocate the liberal drug laws are not correct in their thinking I'm willing to back you up in any way possible.

Working with these young adults every day I can see that the three year clause is an insult to intelligent thinking people. We have first hand knowledge of many cases of drug abuse and can see the adverse effects on these youngsters.

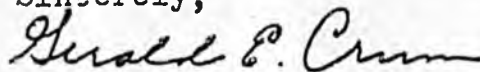
The pushers are the only ones who are at an advantage. They reap the financial benefits and face very little consequences. We have to stop the "action" at the pusher level. Once drugs are used all

profitable functions stop. They can't be taught, they can't be managed, and may actually be the cause of a complete disruption of discipline within a classroom. Unfortunately the person under the influence cannot be reasoned with.

The selling of drugs including marijuana to schoolage children by any age person on or off school grounds should be the utmost in consideration by the legislature. The future of our younger generation depends greatly upon the "tools" that a teacher is given to work with. Without the ability to control the drugs before they are used, we as teachers cannot adequately fulfill our responsibilities.

I am sending a copy of this letter to Thelma Buchholdt

Sincerely,



Gerald E. Crum

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01 - JUNEAU 99811

May 8, 1980

Document# 104-80

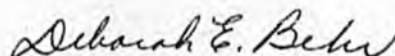
The Honorable Charles Parr
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Parr:

In our recent meeting, your Committee expressed interest in the Department's public health concerns with regard to licit, as well as illicit drug abuse. Our Office of Alcoholism and Drug Abuse has prepared a short memorandum regarding this issue, which I have enclosed for your reference and forwarded to Mr. Dan Hickey of the Department of Law, as well.

If you have additional questions on this matter, please do not hesitate to contact me.

Sincerely,



Deborah E. Behr
Special Assistant to
the Commissioner

Enclosure

cc: Daniel W. Hickey, Chief Prosecutor
Department of Law

Robert L. Cole, Coordinator
State Office of Alcoholism and Drug Abuse

MEMORANDUM

State of Alaska



TO: Debbie Behr
Special Assistant to the
Commissioner
Dept. of Health & Social Service

DATE: May 6, 1980

FILE NO:

TELEPHONE NO: 586-6201

FROM: George Mundell *G.M.*
Regional Program Coordinator
Office of Alcoholism/Drug Abuse

SUBJECT: Uniform Controlled Substance
Legislation

The House Judiciary Committee has expressed interest in the Department's public health concerns in reference to both Representative Parr's HB 479 and Governor Hammond's HB 628.

The preponderance of data available to the Office of Alcoholism and Drug Abuse indicates Alaskans suffer considerable more health problems as a result of the abuse of licit rather than illicit drugs. Licit drugs, that is prescription drugs and over-the-counter drugs were a factor in approximately 82% of all drug related deaths between 1968 and 1977. Women are particularly at risk in these statistics in that they account for almost 60% of drug related deaths although they comprise 46% of the total population and 34% of all deaths. The most frequent drug categories associated with female mortality were alcohol-in-combination with Darvon, barbiturates and tranquilizers.

Hopefully the version of the Uniform Controlled Substance legislation which is enacted will provide the substance classification committee with sufficient authority to adopt regulations which will be effective in combatting not only licit drug abuse, but diversion of licit drugs for illicit purposes as well.

Additionally it would be desirable for a deferred prosecution mechanism with screening and treatment alternatives available as appropriate for offenders.

Furthermore a clear and concise statement of policy which clarifies the role of Health and Social Services, Board of Pharmacy, Public Safety, and the Department of Law would ensure more efficient and effective administration of the Uniform Controlled Substance activity.



Education Commission of the States

300 Lincoln Tower • 1860 Lincoln Street
(303) 861-4917 • Denver, Colorado 80295

Legislative Review

April 21, 1980

Vol. 10 No. 10

FIRST CLASS
U. S. POSTAGE
PAID
DENVER, COLO
IT NO. 153

POST CLASS
JUNEAU, AK 99811
FOUCH V

HON CHARLES PARR
STATE REPRESENTATIVE
6.5 MILE CHENA HOT SPRGS
STAR ROUTE 50559
FAIRBANKS, AK 99701
PAR R C

- KANSAS PROPOSES MAJOR CHANGES IN COLLECTIVE BARGAINING, BILL AWAITS GOVERNOR'S SIGNATURE
- VOUCHER BILL IN OHIO TAKES ITS LUMPS, HARDLY ANYONE TESTIFIES IN ITS FAVOR
- FLORIDA LEGISLATIVE HOPPER HOLDS TWO BILLS ON SCIENTIFIC CREATIONISM
- CONNECTICUT TRUTH-IN-TESTING BILL IS MOVED TO INTERIM STUDY

Collective bargaining: legislative activity abounds. Some people call it a "fine tuning" process but in a few states it looks more like a major overhaul. Some of the nuts, bolts and pieces look like this:

Kansas, with SB 539 passed by both houses but not yet signed by the governor, has added new items to its list of mandatorily negotiable topics for K-12 and community college districts. The new items are: supplemental contracts, binding arbitration of grievances, extended and sabbatical leave, nonrenewal of contracts, re-employment of professional employees, terms and form of individual contracts, probationary periods and evaluation procedures. The school term was expressly declared non-negotiable. The bill encompasses other extensive amendments to the teacher bargaining law and moves more of the administration of the law to the secretary of human resources at the state level. Under the amendments the secretary has added responsibilities that include the determination, in representation petitions, of whether or not competing teacher unions have the required 30 percent support (formerly done at the local level), rulings on prohibited practices (formerly a district court responsibility), and the declaration of the existence of an impasse (also a former court responsibility). Many more provisions -- too numerous to discuss here -- include some insurance

that unilateral contracts are not issued by school boards until the negotiations process has been completed.

New introductions in Rhode Island include S 2500 allowing state department or agency heads to have their own bargaining agent but exempting them from the law on collective bargaining for state employees, S 2668 to provide arbitration on all matters ~~including money in contract disputes and permitting strikes if neither party requests arbitration by Sept. 1. and~~ (continued on page 2)

YESHIVA RICOCHET

Not late news but worth a comment or two is the situation at the University of New Haven (Connecticut), which has refused to bargain with its faculty members, citing the Yeshiva case in which the Supreme Court ruled, essentially, that faculty members of the private university were management and were not entitled to bargain. Phillip Kaplan, president of the New Haven school, said "It appears incontestable that the court's reasoning in the Yeshiva case applies to this university." Bargaining had been in process and was aimed toward a new contract by Aug. 31. The union, the Connecticut State Federation of Teachers, is contesting the school's action.

COLLECTIVE BARGAINING cont.

S 2781 to prohibit classified supervisory personnel from being in the same bargaining unit as "rank-and-file" employees.

In New Jersey predictions are that a "quite complicated" new law, Chapter 477, permitting the negotiation of agency shop proposals, will cause considerable controversy in the months ahead. Apparently, confusion will revolve around the part of the bill dealing with a representation fee, not to exceed 85 percent of regular union dues, that will be required of nonunion members if the agency shop provision is included in contracts. The statute allows these nonmembers, but not their employers, to appeal the amount of the fee.

Fees are troublesome in Connecticut too. SB 322 has been introduced to permit the courts to assess legal fees against parties that "frivolously" appeal a grievance arbitration award.

Two recent collective bargaining studies have produced some negative conclusions. In Oregon an update of a 1977 report issued by the Foundation for Oregon Research and Education concludes that "the bargaining process is not yielding positive results." The report, which is critical of Oregon's current law, says that "Proper control and strong management are essential for improved education and public responses to economic adversity. The power of teachers' unions must have limits. Public tolerance and confidence will continue to decline partly as a result of strikes like those in Eugene and San Francisco." A broader report by the National Association of Secondary School Principals reveals that teachers take more time off after they have exercised their bargaining rights. In studies of selected school districts in New York, Nevada, Illinois, California, Indiana and Pennsylvania additional days made available in negotiated contracts are blamed.

● RURAL SCHOOLS

Funding for small school districts is the subject of AB 3095. California has identified small school districts as those with less than 2,500 students measured on the ADA basis. The bill provides that if costs for teacher salaries, utilities, buildings and grounds maintenance, food

services and transportation are greater than the statewide average cost per unit of ADA, the district would qualify for additional state support. The bill also contains a section dealing with textbook purchases for districts under 2,501 ADA students.

● VOUCHERS

Ohio's voucher bill, SB 326, first reported in the March 24 issue of Legislative Review, has now gone through two committee hearings with only the bill's sponsor lending support to the voucher concept. The hearings brought out a parade of witnesses against the voucher plan. The Ohio School Boards Association summarized the opposition's viewpoints in this manner: "A voucher program leads to the demise of the upward mobility for people now provided by the free public schools. The voucher program would provide public support of schools over which the public would have no control, vouchers would lead to First and Fourteenth Amendment constitutional problems by excessive entanglement prohibited by the U.S. Supreme Court, vouchers would provide a nightmare for those responsible for pupil transportation, a voucher program is not a viable alternative to problems now facing the public schools, vouchers would offer no solution to the problems of urban education and would present the cities with monstrous problems, vouchers would result in a dual school system, one group of private schools for the elite and the public system for the handicapped and disadvantaged."

● TRANSPORTATION

A couple of "eyebrow raisers" have been dropped into the hopper in Rhode Island. S 2838 is a senate resolution asking for the board of regents to require local school districts to study their bus routes. Another bill, H 7744, would require school bus drivers to leave the driver's seat and help pupils to board and leave the bus safely.

VIVA LA VITALIS
AND THE 60-SECOND WORKOUT

Question: What do you call a row of rabbits that takes one step backwards?

Answer: A receding hareline.

- CURRICULUM

Music is the thrust of a house resolution, H 7222, in Rhode Island. The bill calls for a 15-member commission to study existing public school music education programs and report by Jan. 30, 1981. S 2675 requires students in grades 8-12 to study the American economic system and the history and contribution of organized labor. Strengthening the physical education program is the subject of H 7474. The bill would increase P.E. instruction from 20 to 30 minutes per day.

Prayer in the schools is the subject of HB 4508 in Michigan. The bill would set aside a time for prayer or meditation during noninstructional hours. The Florida legislative session is just getting under way. A number of curriculum bills are in the hopper. S 118 and H 541 call for a period of silent prayer or meditation. H 467 specifies the mandatory teaching of basic skills and H 107/S 70 call for the teaching of evolution/scientific creationism.

- KINDERGARTEN

In Oregon the House Interim Education Committee is working on a 1981 bill to mandate kindergarten programs by 1987. The current draft of the bill would give reimbursement for kindergartens but no startup costs. Meanwhile, the attorney general has opined that kindergartens are a legislative, not an administrative, matter. He advised that school boards could be required to add kindergarten with money on hand if the voters approved an initiative.

H 2138 in Pennsylvania would make kindergarten attendance mandatory. This bill would amend current law, require kindergartens for children between the ages of 4 and 6, and change the compulsory attendance law to apply to children between the ages of 4 and 17.

In California, AB 2877 would permit school districts to maintain two kindergarten classes of 150 minutes each, taught by the same teacher, without a loss of ADA. The bill would also repeal the present provision that a kindergarten teacher of a single session have full-time duties directly related to a kindergarten program.

- COURTS

The Kansas Supreme Court has ruled that a private religious children's home is subject to state regulation, thereby upholding a lower court order closing a girls' home that had refused to be licensed by the state. The school, located in Hutchinson, Kan., had refused to apply for a license from the Kansas Department of Health and Environment to operate what is called the Victory Village Home for Girls. The operators claimed that certain regulations would cause them to be disobedient to God's command. Among the regulations they objected to on religious grounds was a prohibition against corporal punishment. The court ruled the state's duty to protect the safety and welfare of children takes precedence over the right of freedom of religion.

In a long-awaited landmark decision the appellate division of the New Jersey court system has ruled that Title I teachers do not acquire tenure if they have been treated as temporary employees. The state board of education had earlier ruled in the same manner and their decision was upheld by the courts. Thus, at least in New Jersey, a general rule has been established that where it appears a local board has, in good faith, offered, and professional staff have knowingly accepted temporary employment, the time served in such positions does not lead to tenure.

- GOVERNOR'S CORNER

From the state-of-the-state message in Idaho, Governor John V. Evans made these comments about the financing of education:

"Our state budget for 1981 allocates 72 percent of the general fund for education. Another 17 percent of the general fund provides social services to the state's senior citizens, handicapped, disadvantaged and others in need. That leaves only 11 percent of the general fund for all other needs of the state, ranging from natural resource programs to those aimed at economic development.

"With the passage of the 1-percent initiative and the resulting loss in property tax revenue, it has been imperative that the state increase its support to public schools. At the same time, we must maintain our vital and necessary state programs."

HS 479 master file

- POLLS

Last month we reported on a poll conducted by the American Academy of Family Physicians on happy teachers and burned-out teachers. This time we ran across a survey conducted by a University of Minnesota professor, Richard Needle. This survey was made of Minnesota teachers during May of 1979 and did include a section of questions dealing with job satisfaction. In this survey the pollster found teachers to be "somewhat satisfied" with their present teaching positions. A couple of the interesting questions looked like this:

"All in all, how satisfied would you say you are with your present teaching position?" Very satisfied, 42 percent; somewhat satisfied, 44 percent; not too satisfied, 12 percent; not at all satisfied, 2 percent.

"Knowing what you know now, if you had to decide all over again whether to take the teaching position you now have, what would you decide?" Without hesitation, the same position, 61 percent; second thoughts about the same position, 24 percent; definitely not take the same position, 4 percent; some other nonteaching job, 10 percent.

"If a good friend of yours told you that he/she was interested in working in a teaching position like yours for your employer, what would you tell him/her?" I would strongly recommend this teaching position, 57 percent; I would have doubts about recommending it, 30 percent; I would advise my friend against it, 13 percent.

- POSTSECONDARY

The Rhode Island Legislature is considering a number of bills ranging from governance structure changes to student aid. H 7750 would allow graduates of veterinary schools who practice for three years in Rhode Island to be exempt from all state higher education loans. S 2558 would replace the board of regents with a board of governors for higher education and a board of regents for elementary and secondary education. Another senate bill, S 2921, would provide up to \$500 of financial aid for students attending independent colleges.

WOMEN SCHOOL BOARD MEMBERS

The American School Board Journal, January, has reported that only 12 percent of school board members were women in 1975. This has more than doubled to 28 percent by 1979. The number of women board members varies from 39 percent in the Pacific states to 17 percent in the South.

- TRUTH IN TESTING

Rhode Island has H 7553 to require testing agents to disclose information on testing procedures and, upon request, to provide the test-taker a copy of his/her test sheet along with the correct answers. The bill, if enacted, is to go into effect on Jan. 1, 1981.

Next door in Connecticut, SB 320 drew heavy opposition when the bill was heard in committee. It has now been placed on the agenda for interim study. Meanwhile, the College Board has announced a policy allowing students taking the Scholastic Aptitude Test (SAT) to verify their scores personally by receiving the answer sheet, a scoring key and scoring information. The fee charged for this service to the student will be refunded if the student finds any discrepancy in the test scores. The test questions, however, are not to be released.

- POTPOURRI

Approved by the house in Rhode Island, H 7162 would give tenure to state workers after 25 years of service.

In Georgia, Governor Busbee has signed legislation making Georgia the 17th state to permit the use of marijuana for cancer and glaucoma patients.

SB 696 in Michigan would have school districts pay for crossing guards and signs if a crossing area is designated within that district.

ECS *Legislative Review* is published by the Department of Research and Information, Russell B. Vlandoren, director. Editor is Chris L'pho, associate director. Address: ECS, 1860 Lincoln St., Denver, Colo. 80295. (303) 861-4917. (Subscription rates: \$10, 20 issues, one year; \$20, 40 issues, two years.)

It is the policy of the Education Commission of the States to take affirmative action to prevent discrimination in its policies, programs and employment practices.

Representative Charles Parr, Chairman
House Judiciary Committee
Pouch V.

Juneau, Alaska 99801

Dear Representative Parr,

As chairman for the Anchorage Woman's Club Community Improvement Projects Department, I have been authorized to express our Club's appreciation for your interest and concern in introducing H.B. 479 to strengthen our drug abuse statutes.

We have a deep interest in your proposed legislation and have followed the bill's progress closely. The House H&SS Committee Substitute for the bill addresses favorably our basic concerns and has the full support of our 400 member Club.

We sincerely hope your committee will act favorably on this legislation now before you. (CS HB 479)

Thank you again for your interest, time and effort on this legislation.

Sincerely yours,
Roberta Chatterton

2308 Boniface Parkway

Anchorage, Alaska 99504

Juneau address:
315 Highland Phone: 586-3626

The Nation's Toughest Drug Law: Evaluating the New York Experience

Final Report of the Joint Committee
on New York Drug Law Evaluation



National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

Introduction

The 1973 Revision of the New York State Drug Law

In 1973, when the national "War on Drugs" was still fresh in mind, New York State radically revised its criminal law relating to illegal drug use. During the 1960s, the general policy of the State had been to divert low-level users of illegal drugs into drug treatment, and to invoke criminal penalties mostly against higher-level traffickers. By the early 1970s, it was commonly agreed that, as a device to limit illegal drug use and traffic, this approach had largely failed. In 1972, accidental narcotics deaths in New York State were six times what they had been in 1960. Thus, in 1973 the Governor and New York Legislature decided to try a new approach: the law was changed to prescribe severe and mandatory penalties for narcotic drug offenses at all levels and for the most serious offenses involving many other drugs.¹

The new drug law of 1973 had two principal objectives. First, it sought to frighten drug users out of their habit and drug dealers out of their trade, and thus to reduce illegal drug use, or at least contain its spread. Second, it aimed to reduce crimes commonly associated with addiction, particularly robberies, burglaries, and theft. It was believed that some potential drug offenders would be deterred by the threat of the "get-tough" laws, while at the same time some hardened criminals would be put away for long periods, and thus be prevented from committing further crimes.

The new law became effective on September 1, 1973. It raised criminal penalties for the sale and possession of many controlled substances. Primary attention of the legislation was devoted to heroin, but other drugs were also included in the sweep of the statute. (The laws relating to marijuana were not substantively amended in 1973.)

1. The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 424 of the 1976 Laws. The major provisions of the 1973 law are summarized in the Appendix.

The statute divided heroin dealers into three groups within the highest felony category in the State, class A, and required minimum periods of imprisonment plus mandatory lifetime parole supervision for each group.

- Class A-I was defined to include the highest-level dealers, those who sell one ounce or more, or possess more than two ounces.² These dealers were subjected to the most severe penalty: a prison sentence of indefinite length, but with a minimum of between 15 and 25 years and a lifetime maximum.
- Class A-II was defined to include middle-level dealers, those who sell one-eighth of an ounce or more, or possess one or two ounces. These offenders were subjected to prison sentences of indefinite length, with a minimum term of between six and eight and one-third years, and a lifetime maximum.
- Class A-III was defined to include street-level dealers, also referred to as "sharer-pushers," those who sell less than one-eighth of an ounce or possess up to an ounce with the intent to sell. These dealers were made liable to prison sentences of indefinite length, with a minimum term of between one year and eight and one-third years, and a lifetime maximum.

There were two exceptions to the mandatory prison terms: the law permitted a discretionary sentence of lifetime probation without imprisonment for certain informants; and, in the case of youthful offenders between the ages of 16 and 18, an ambiguity in the law gave rise to discretionary exceptions.³

Classifications of offenses were established for other narcotics as well as for heroin, and for non-narcotic drugs, the classification for each drug being based upon its own weight standards. Penalties for drug felonies less serious than class A crimes were also increased. As a general result of these recategorizations, fewer drug offenses were punishable as misdemeanors.⁴

Further, the 1973 law prohibited any person who was indicted for a class A-III offense from pleading guilty instead to a lesser charge. Those charged with class A-I or A-II offenses could plead guilty to a class A-III felony, but no lower. The statute thus mandated that *any person* (other than a Youthful Offender or informant) indicted for selling heroin must, if convicted, go to prison for an indeterminate period, ranging from one year to life.

2. These quantities refer to the gross weight of a substance containing heroin.

3. In 1975, the law was amended to remove the ambiguity, and discretion in sentencing was specifically permitted for offenders in this age group.

4. A felony is any crime punishable by more than one year in prison. A misdemeanor is one punishable by a jail term of up to one year.

The severity of the 1973 law was not only reflected in the length of sentences and restrictions on plea bargaining, but also in the fact that many drug felons were paroled after serving only a portion of their term and remain under the formal surveillance of the State for the remainder of their life. The 1973 law also made some class A offenses class B offenses; the most important of the changes was the reduction of terms for persons who were convicted of a felony in the past.⁵

The 1973 pattern of criminal regulation was maintained until July 1976, when the stringent provisions on plea bargaining were abolished. That change was part of a larger scheme, despite the retention of several provisions against serious drug offenses.

The Drug Law Evaluation Project

Shortly after the 1973 law went into effect, the City of New York and the Drug Law Committee and research Project to evaluate the "tough" law in a systematic fashion and to evaluate the extent to which the law achieve the hoped-for results. The Project only state that had made this study a laboratory for study of the new approach. The study might not only provide guidance for other states, but also be important as one of the few studies undertaken of the actual results of a law aimed at combat crime.

The objectives of the New York Project were:

- To ascertain what happened as a result of the law
- To analyze, to the degree possible, the reasons for the results
- To identify any general principles that might be derived from the New York experience and to other states as to the effectiveness of drug use and related crime.

Since the New York Legislature signed the law in 1973, the Project dealt with developments in 1976, the Project dealt with developments in 1973-June 1976, when the 1973 law was amended.

The work of the Project was done by a staff of professional staff. The Committee members included a wide range of experience in medicine and law.

5. This stringent provision against recidivists was removed from class A drug felony, since imprisonment was required after conviction.

The severity of the 1973 law was not limited to the mandatory sentences and restrictions on plea bargaining. Even if a person convicted of a class A drug felony were paroled after serving his minimum sentence, he would remain under the formal surveillance of parole officers for the rest of his life. The 1973 law also made some changes that were not limited to drug offenses; the most important of the changes reinstated mandatory prison terms for persons who were convicted of a felony if they had been convicted of a felony in the past.⁵

The 1973 pattern of criminal regulation remained substantially intact until July 1976, when the stringent limitations on class A-III plea bargaining were abolished. That change significantly altered the 1973 scheme, despite the retention of severe mandatory penalties for the most serious drug offenses.

The Drug Law Evaluation Project

Shortly after the 1973 law went into effect, The Association of the Bar of the City of New York and the Drug Abuse Council jointly organized a Committee and research Project to collect data about the 1973 law in a systematic fashion and to evaluate the law's effectiveness. Would the "get-tough" law achieve the hoped-for results? Since New York was the only state that had made this sharp change of policy, it provided a laboratory for study of the new approach. The Committee hoped that its study might not only provide guidance on problems of illegal drug use, but also be important as one of the few empirical evaluations that have been undertaken of the actual results of a legislative program designed to combat crime.

The objectives of the New York Drug Law Evaluation Project were:

- To ascertain what happened as a result of the 1973 drug law revision;
- To analyze, to the degree possible, why it happened; and
- To identify any general principles or specific lessons that can be derived from the New York experience and that can be helpful to New York or to other states as they wrestle with the problem of illegal drug use and related crime.

Since the New York Legislature significantly changed the 1973 drug law in 1976, the Project dealt with developments over the period September 1973-June 1976, when the 1973 law was in full force.

The work of the Project was conducted by a Committee and a professional staff. The Committee members, listed on page iii, represented a wide range of experience in medicine, law practice, prosecutorial work,

5. This stringent provision against recidivists had no application to persons convicted of a class A drug felony, since imprisonment was mandatory for these offenders even for a first conviction.

the judiciary, government, the police system, and academic analysis; the members were from New York State and other jurisdictions. Several disciplines were represented on the Project staff, including economics, public administration, criminology, statistical methodology, public policy analysis, and law.

Organization of the Project was made possible by an initial grant from the Drug Abuse Council. The major funding was provided by the National Institute of Law Enforcement and Criminal Justice, the research arm of the Law Enforcement Assistance Administration. Without this aid the Project would not have been possible.

In pursuit of the objectives of its study, the Project for three years systematically accumulated large quantities of data, conducted widespread interviews with knowledgeable persons, carried out extensive statistical analyses, and consulted scholars with relevant expertise. The range of the Project's inquiry was very wide. It included New York State agencies, courts at all levels, drug treatment authorities, prisons, police, prosecutors, and other sources of information that might enhance understanding of the operation and effect of the 1973 drug law.

The Project focused entirely on the effects of the 1973 revision. Thus it was beyond the scope of the Project to attempt to assess the causes of drug use, or to gauge the relative importance that should be given to medical-social versus criminal law approaches to the problem of non-medical use of dangerous drugs. Similarly, though the problems of the New York State criminal justice process are frequently referred to in this Report, the Project had neither the data nor the mandate to propose a comprehensive program for reforming the State's criminal justice system.

Following is a summary of the Committee's conclusions. The balance of the Committee's Report supplies detailed analysis and supporting data. In places, this Report treats New York City separately from the rest of the State because the scale of the City's problems of illegal drug use, crime, and court congestion is unique.

What Were the 1973

The available data indicate the resources neither of the objectives. Neither heroin use nor drug-related

Findings on Drug Use

*New York City: Heroin use was as w
the 1973 revision took effect, and a*

The evidence suggests that heroin years before the law took effect at thereafter. In 1975, there were near narcotics as there had been in 19 incidence of serum hepatitis (a disease). Further evidence of widespread heroin admissions to ambulatory detoxification mid-1976. These programs typically

Moreover, a large influx of Me marketing of "brand-name" heroin. The absence of widespread price increasing consumption, was also evident available. Police officials and drug the heroin marketplace was an open experience.

*New York City: The pattern of stable h
not appreciably different from the a*

Heroin use rose steadily in Washi contrast to the pattern of use in New

I

What Were the Effects of the 1973 Drug Law?

The available data indicate that despite expenditure of substantial resources neither of the objectives of the 1973 drug law was achieved. Neither heroin use nor drug-related crime declined in New York State.

Findings on Drug Use

New York City: Heroin use was as widespread in mid-1976 as it had been when the 1973 revision took effect, and ample supplies of the drug were available.

The evidence suggests that heroin use had been declining for about two years before the law took effect and remained stable for at least a year thereafter. In 1975, there were nearly the same number of deaths from narcotics as there had been in 1973, and there was also a rise in the incidence of serum hepatitis (a disease often associated with heroin use). Further evidence of widespread heroin use is the sustained high level of admissions to ambulatory detoxification programs between 1974 and mid-1976. These programs typically attract the most active users.

Moreover, a large influx of Mexican heroin in 1975 and the overt marketing of "brand-name" heroin were signs of easy access to the drug. The absence of widespread price increases, together with stable or slightly rising consumption, was also evidence that large supplies were consistently available. Police officials and drug treatment administrators agreed that the heroin marketplace was as open in mid-1976 as at any time in their experience.

New York City: The pattern of stable heroin use between 1973 and mid-1976 was not appreciably different from the average pattern in other East Coast cities.

Heroin use rose steadily in Washington, D.C. during 1974 and 1975 in contrast to the pattern of use in New York City. This comparison could be

other East Coast cities, but did not follow the upward course of non-narcotic drugs. Judged by the frequency with which methadone was detected in hospital emergencies and in autopsies performed by the New York City Medical Examiner, unsupervised use of methadone declined between 1973 and mid-1976.

Findings on Crime

New York State: Serious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975. The rise in New York was similar to increases in nearby states.

For New York State as a whole, felonious property crimes — theft, robbery, and burglary — climbed 15% per year between 1973 and 1975. The average rise in Pennsylvania, Maryland, and New Jersey was 14%.

New York City: There was a sharp rise in non-drug felony crimes between 1973 and 1975. However, the rise was apparently unconnected with illegal narcotics use: non-drug felony crimes known to have been committed by narcotics users remained stable during that period.

In New York City between 1973 and 1975, felonious property crimes rose 12% per year, much faster than the average increase of 7% in Washington, D.C., Philadelphia, and Baltimore.

However, the data indicate that of all non-drug felonies (i.e., felonies other than violation of the drug law itself) the *percentage* committed by narcotics users in New York City dropped steadily from 52% in 1971 to 28% in 1975. During the period 1973-1975, the *number* of crimes committed by narcotics users remained constant. Thus, while narcotics users still accounted for a large share of serious crime in New York City, it appears that the increase in crime during 1973-1975 was *not* related to narcotics use.

New York City: The available evidence suggests that the recidivist sentencing (predicate felony) provision of the 1973 law did not significantly deter prior felony offenders from committing additional crimes.

The 1973 penal law revision contained a so-called "predicate felony" provision that prescribed mandatory State prison sentences for all persons convicted of a felony who had been convicted of a felony theretofore. Under this provision, furthermore, any person who had been convicted of a felony and who was indicted for a subsequent felony was prohibited from plea bargaining, that is, from pleading guilty to a misdemeanor. (Persons indicted for class A drug crimes were not subject to these general predicate felony provisions, since such persons faced mandatory imprisonment and

plea bargaining restrictions under the 1973 drug law even without being previously convicted felons.)

The predicate felony provision was intended to reduce recidivist crime in two ways: it was argued that the fear of automatic mandatory imprisonment would deter previously convicted felons from committing additional crime; and, if that failed, imprisonment itself would reduce crime by isolating from society a number of individuals who, if they remained at large, would probably commit additional crimes.

Between 1974 and mid-1976, over 5,100 repeat felony offenders were sentenced to State prison under the predicate felony provision. Of these, approximately 3,650 were from New York City.

In order to compare the criminal activity of convicted felony offenders before and after the 1973 predicate felony provision took effect, the Project examined the records of two parallel groups of convicted felony offenders. The first group consisted of 223 cases of persons who had been convicted of a felony during 1970 and 1971. The Project traced criminal records of these offenders for a two-year period ending August 1973, just prior to the effective date of the new predicate felony rule. The other group consisted of 220 cases of persons who had been convicted of a felony during 1972 and 1973, and their records were traced for a two-year period through August 1975; persons in the second group, unlike those in the first, faced mandatory prison sentences under the 1973 revision if they should again be convicted.⁶

Deterrence by Threat of Punishment

Comparative study of these two groups does not suggest that the new statute had the effect of deterrence by threat of punishment. The percentage of prior convicted felons who were arrested for a second felony during a two-year period after their earlier felony convictions proved to be exactly the same for the two groups studied—20%. Arrest alone does not establish guilt, of course, and these data may mainly attest to the consistency of the arrest practices of the police before and after the 1973 statute. But there is no reason to suppose that the quality of police arrests declined after the 1973 law went into effect, and therefore the likelihood is that these data reflect an underlying reality: namely, that the rate of

6. For statistical and other reasons, this study sample was limited to offenders who were convicted of non-drug felonies. Further, the study sample necessarily excluded offenders imprisoned after their first conviction, since few such persons were soon at large again and thus able to be repeat offenders. Limiting the sample to those not imprisoned may have biased the results, but, if so, the bias was probably in the direction of eliminating from the sample the most hardened criminals — those individuals most likely to have been imprisoned after a subsequent conviction even under the old law, and least likely to be deterred from future crime by the new law.

recidivism was the same before predicate felony provision.

Deterrence Through Incarceration

There is also little evidence the predicate felony provision had a deterrent effect on sentences imposed upon repeat offenders.

Under the 1973 predicate felony provision, a larger proportion of convicted repeat offenders went to prison. Out of a sample of 26 repeat offenders, under the old law, 58% were sentenced to prison; under the new law was 76% (19 out of 25 in the sample). At the same time, however, there was a decline in the number of repeat offenders who were sentenced to prison by which there could have been a net reduction in imprisonments of repeat felony offenders. The total number of arrests of prior convicted felons would have been necessary for arrest of repeat offenders from 1971-73 to 1974-76 to produce the same number available on total arrests of prior convicted felons in question; but the fact that total arrests of prior convicted felons in New York City increased by over 20% makes it highly improbable that the number of repeat offenders have increased by such a large amount.

Findings on Other Results of the Study

Measured in Dollars, the Experiment

It was recognized from the beginning that the study would require additional judges, prosecutors, and the expected increased workload of the courts allocated to New York City — a significant portion of the Supreme Court capacity available in the State. The judges, prosecutors, defense attorneys, and the State specifically to deal with the 1973 drug law cases, for the new resource. A reasonable estimate is that approximately 10% of the effort to enforce and implement the new law.

Some of the Fears Voiced by Critics

Some critics of the 1973 law predicted that the new law would anger the people. This did not occur. The number of repeat offenders

recidivism was the same before and after the effective date of the 1973 predicate felony provision.

Deterrence Through Incarceration

There is also little evidence to indicate that the predicate felony provision had a deterrent effect by increasing the number of prison sentences imposed upon repeat felony offenders.

Under the 1973 predicate felony provision there was an increase in the proportion of convicted repeat felony offenders who were sentenced to prison. Out of a sample of 26 repeat offenders who were convicted under the old law, 58% were sentenced to State prison. The corresponding figure under the new law was 76% (19 prison sentences out of 26 convictions in the sample). At the same time, however, as appears more fully below (pp. 22-24), there was a decline in the proportion of *arrested* repeat felony offenders who were sentenced to prison. Given that decline, the only way by which there could have been an increase in the total number of imprisonments of repeat felony offenders was by a dramatic increase in the total number of arrests of prior offenders. The Project estimates that it would have been necessary for arrests of prior offenders to increase by 50% from 1971-73 to 1974-76 to produce that effect. There are no direct data available on total arrests of prior offenders to bring to bear on the question; but the fact that total arrests of all persons for non-drug felonies in New York City increased by only 10% between those two periods makes it highly improbable that the arrest rate of prior felony offenders could have increased by such a large amount.

Findings on Other Results of the 1973 Law

Measured in Dollars, the Experiment of the 1973 Law Was Expensive.

It was recognized from the beginning that the approach taken in 1973 would require additional judges, and 49 of them were added to deal with the expected increased workload. Thirty-one of the new judges were allocated to New York City — constituting over one-third of the total Supreme Court capacity available in the City to administer *all* felony laws. The judges, prosecutors, defense counsel, and support staff established specifically to deal with the 1973 law cost the State \$76 million between September 1973 and mid-1976. Not all of this \$76 million was spent on drug law cases, for the new resources were used for other cases as well. A reasonable estimate is that approximately \$32 million was spent in the effort to enforce and implement the 1973 drug law.

Some of the Fears Voiced by Critics of the 1973 Law Were Not Realized.

Some critics of the 1973 law argued that it would jail many young people. This did not occur. The number of 16 to 18-year-olds incarcerated

each year for drug law offenses declined.⁷ Moreover, the exercise of sentencing discretion permitted by law for Youthful Offenders meant that for the 16 to 18-year-olds who were convicted the risk of a prison or jail sentence was less under the new law than under the old.⁸ Nor did the total number of first offenders incarcerated increase under the 1973 law, even though a higher percentage of offenders convicted of a felony for the first time did go to prison or jail.

Some police officials and prosecutors predicted that the new drug law would inhibit the recruitment of informants, who are of great importance to successful drug prosecutions. On the contrary, law enforcement officials agree that under the 1973 law there were more informants than before at all levels of the drug distribution system.

Some analysts predicted that the 1973 drug law would cause the prisons to overflow. In fact, drug law sentences under the 1973 law did not constitute a significantly larger fraction of annual new commitments to State prisons than in the past; they accounted for 13% of all commitments in 1972 and 1973 and for 16% in the first nine months of 1976. The population of the State prison system did indeed increase rapidly, from 12,845 at the end of June 1973 to 16,074 at the end of 1975 and further to 17,108 at the end of June 1976. But offenders in prison as a result of drug felonies accounted for only 11% of the June 1973 population and still accounted for only 11% of the December 1975 population. (Information for 1976 was not available.) The proportion of drug offenders in prison may increase in the future as the courts catch up on their backlog of class A cases (see below, pp. 17-18) and as drug offenders spend longer terms in prison as a result of the heavier penalties prescribed by the 1973 law. There will be, however, an offsetting factor—a smaller number of commitments in class A-III cases as a result of the 1976 amendment to the law.

7. Although police officers in New York City occasionally noted contact with very young people in the heroin distribution system, there was no great increase in arrests of youths under the new drug law.

8. All offenders incarcerated for terms of more than one year are sent to State prisons. Offenders incarcerated for periods of up to one year are sent to local jails.

What the Disa of the 1

The premise of the 1973 drug law is that the threat of a significantly longer prison term can significantly deter illegal activity. The law's premise is that the difficulties of administration of a law such as this are outweighed by the threat of the law's sanctions. The law's premise is that the threat of the law's sanctions and traffickers as an ever-present threat to offenders and would-be offenders.

The Criminal Justice Process and the Offender.⁹

Mandatory sentencing laws are a part of the criminal justice process — the higher percentage of offenders who are incarcerated and for longer periods of time. The criminal justice process from arrest to sentencing is a series of steps, and actions at each step are a reflection of the power of the law. Few cases make it through the steps are:

Arrest

Drug law offenders have always been arrested for any single offense. The number of arrests has increased under the 1973 law.

9. The discussion in this section concerns the arrest and sentencing of offenders. The discussion of the predicate felony process is in the next section.

Charlie

drug file

To: The State of Alaska Legislature

Juneau, Alaska 99801

From: Mr. Mark Curry
306 West Eighth
Juneau, Alaska 99801

Dear Gentlemen:

Since marijuana has been decriminalized here in the state of Alaska, I have been wondering if I could get a prescription of such to help alleviate a problem I have with my eyes. Without marijuana my eyesight is blurry, but whenever I take a good dose of moderately potent marijuana, my eyesight clears up very clearly indeed, and I can really focus my eyes. This is a very serious problem and solution to me. Can the legislature authorize such usage. Please tell me all you can about it.

The stuff on the street is too expensive.

Sincerely,

Mark Curry

P.S. I really would like some action taken on this.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

| | | |
|----------------------------|-----------------------------|----------------------------|
| FIRST FELONY CONVICTION | SECOND FELONY CONVICTION | THIRD FELONY CONVICTION |
|----------------------------|-----------------------------|----------------------------|

| | | | |
|------------|-------------------|-----------|---------------|
| "A" Felony | 0-20 3-[6]*-20 | 5-[10]-20 | 7 1/2-[15]-20 |
| "B" Felony | 0-10 | 0-[4]-10 | 3-[6]-10 |
| "C" Felony | 0-5 | 0-[2]-5 | 0-[3]-5 |

MAXIMUM FINES - PERSONS

Murder or kidnapping - \$75,000
 A, B, or C Felony - \$50,000
 A misdemeanor - \$ 5,000
 B misdemeanor - \$ 1,000
 Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
 3 X pecuniary gain
 - whichever is greater

KEY

Number in bracket is presumptive sentence.
 Number to left is lowest mitigated
 sentence. Number to right is highest
 aggravated sentence.

* Six year presumptive term applies if first
 A felony conviction, other than manslaughter,
 and defendant used or possessed a firearm
 during the offense or caused serious physical
 injury.

MAXIMUM TERMS OF IMPRISONMENT
 FOR MISDEMEANORS

A misdemeanor - 1 year
 B misdemeanor - 90 days

Copies to members

Alaska State Legislature

LIBERTARIAN
REPRESENTATIVE
RICHARD (DICK) L. RANDOLPH
1105 CUSHMAN ST.
FAIRBANKS, ALASKA 99701
Phone (907) 452-2206



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
Phone (907) 465-4955

House of Representatives
April 22, 1980

Charles Parr, Chairman
House Judiciary

Dear Rep. Parr,

House Judiciary Committee will most likely be taking HB 479 under consideration soon. I am enclosing an article which contains information I feel might aid you in your deliberation on this (or any other) drug bill.

If I can furnish any other information on this subject, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick Randolph".

Dick Randolph

Medicaid Abuse: Even Worse Than Feared

Doctors, hospitals, nursing homes, druggists—some in every field are found cheating taxpayers out of an estimated 8 billion dollars a year.

As they dig deeper into the problems of Medicaid and Medicare, authorities are discovering just how waste-ridden these programs really are.

Some nursing homes have been filing claims in the names of patients who have been dead for a year.

Clinical laboratories in many areas routinely charge Medicare patients up to \$42 for tests that cost others \$5.

A dentist billed Medicaid for extracting 38 teeth from one patient. The average adult has only 32 teeth.

A check of records of 50 Medicaid physicians in one state turned up 32 with questionable claims.

Authorities estimate that losses from waste and fraud could be as high as \$1 in every \$6 spent in tax-supported health-care programs. That comes to more than 8 billion dollars in programs costing 50 billion dollars this year.

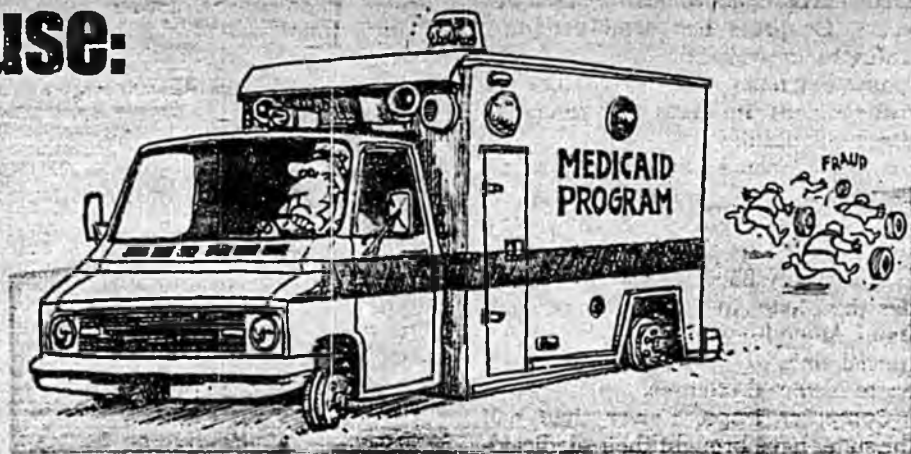
What discourages many taxpayers is that federal and state authorities so far have not been able to control the losses despite an arsenal of new weapons made available by Congress.

Contends Val J. Halamandaris, special counsel for the House Select Committee on Aging: "If anything, the problem is worse than ever."

Prosecutors report that, as antifraud efforts have intensified, operators in many cases have simply switched to more-sophisticated forms of cheating. Among new schemes showing up:

- Chain-owned nursing homes, medical clinics, pharmacies and medical-supply houses that stifle competition and "Fing-Pong" their patients from one facility to another. Organized racketeers dominate these businesses in some areas, authorities believe.

- Abortion mills that cater to Medicaid patients referred by phony family-planning groups in return for kick-backs. Congress in 1977 banned abortions for Medicaid recipients except under unusual circumstances. But, asserts an Illinois law official: "Abortions



for Medicaid recipients have been increasing at a staggering rate."

Medicaid billing agents who employ elaborate computers to outsmart the government's computers. With such equipment, operators are able to conceal manipulated figures and even alert themselves when a particular charge is likely to raise questions.

Barry Sax, deputy district attorney for Los Angeles County, reports: "Just about anything that providers can do to make money fraudulently is in fact being done."

Professional groups such as the American Medical Association argue that the vast majority of medical providers are honest, and they contend that the waste in public health-care programs probably is exaggerated.

Red-tape costs. Doctors blame much of the waste on bureaucratic red tape that leads to errors in billing and program eligibility.

Frustrations over rules and delays in collecting payments cause some doctors to shun Medicaid patients entirely.

Dr. Leonard Burness of New York City says he accepts Medicaid patients without charge. He adds: "I never send the paper work in because it just doesn't pay me. By the time you pay a \$250-a-week secretary to process all that paper, it's just not worth it."

Although Medicare for the elderly and disabled is larger in terms of overall spending, it is in the Medicaid program for the needy that most of the abuses seem to be taking place.

Officials attribute this development in part to Medicaid's broader coverage, including full payment for all medical needs as well as for nursing-home care.

Efficiency often has been hampered, too, by confusion over who is running the program—the states or Washington. Each state has its own version of Medicaid that it administers under federal supervision. The U.S. government pays about 55 percent of all

Health-Care Aid— From \$6 Billion to \$56 Billion

Medicare funds are provided to the elderly and disabled by the federal government. Medicaid is intended for the needy, and is financed by federal, state and local governments. The two programs began at modest levels. But then—

In Billions



Note: Official estimates for 1979 and 1980. Years ending June 30, except September 30 after 1976.

THUS, by 1980, these major health-care programs will be almost 10 times as costly as in 1967.

Source: U.S. Dept. of Health, Education and Welfare; U.S. Office of Management and Budget.

"The really serious results of this legislation... will only appear gradually and will not always be recognized as such. These will be the failures of promising careers, the disrupting of happy families, the commission of crimes which will never be traced to their real cause and the influx of many who would otherwise live socially competent lives into hospitals for the mentally disordered." — "New York Medical Journal," May 17, 1917, commenting on the first drug prohibition law, the federal Harrison Act.

S

ometimes a single incident, a matter of seconds, can sum up a condition more eloquently and powerfully than reams of theory, argument, and statistics. Here's such an incident:

The scene is The Pit, a street corner along Eighth Avenue in Harlem. There are more than 600 persons on the corner, a bustling display reminiscent of the floor of the stock exchange. Above the din is heard the shouting of esoteric names.

"Malcolm Green!"

"The Judge!"

"No-Monkey-Business!"

"No Respect!"

These are brand names. Of illegal drugs.

Now through this crowd of busy shoppers comes Sterling Johnson, Jr., New York City's special narcotics prosecutor, with police aides. The entrepreneurs and their customers know Sterling Johnson. He is The Man. But they continue conducting business. The sellers are openly soliciting motorists, sometimes pushing their wares in through the window to give drivers a closer look. They are aware of The Man walking in their midst. They don't care.

Then one of them approaches Johnson. He scowls: "Man, get off the fucking street corner if you ain't here to buy dope." The angry drug dealer walks on.

This occurred in 1976 more than three years after New York State enacted the harshest drug laws in the United States, laws mandating indefinite life sentences, severely restricted plea bargaining, and life-time parole for drug sellers.

If one is wondering how the laws (called the Rockefeller laws because of their instigation by then Gov. Nelson A. Rockefeller) have worked, the answer is to be found in that incident. For when all the statistics are sifted, all the bills tallied, all the pros proffered and cons considered, rising from the rubble of paperwork are that incident and its inescapable message: today, after some 2,000 persons have received indefinite life sentences for selling illicit substances, it is as easy to get drugs in New York City and other parts of the state as it was four years ago and more than \$141 million ago. It's probably easier.

The narcs concede it. So do the politicians and administrators of "criminal justice." New York City newspaper reporters almost routinely go out looking for drugs just so they can tell their readers how easy it is. With all the reporters and undercover agents in those crowds, it's a wonder there's anything left for the drug users.

In 1973, the popular estimate of the habitual hard-drug-

user population in New York City was 150,000 to 300,000. It seemed a safe enough range, but some researchers thought it was low. Richard Ashley, in his 1972 book, *Heroin: The Myths and the Facts*, conservatively put the estimate at 360,000. This was before the enactment of the nation's toughest drug laws.

In 1976, according to the N.Y. Office of Drug Abuse Services, there were 230,530 "narcotics addicts" statewide and another 333,570 "abusers of non-narcotic drugs," including cocaine, glue, amphetamines, barbiturates, tranquilizers, and LSD.

There are good reasons to assume that official bodies tend to underestimate such things. For one, counting drug users is not an easy task. By definition, it is counting criminals. Sterling Johnson, again keeping a safe span, estimates the current New York City "addict" population to be from 400,000 to 800,000.

Add to this the reported sharp increases in serious crimes

throughout New York City and we must ask, What happened? Why aren't those numbers smaller rather than larger? Why didn't the Rockefeller laws turn the drug problem around once and for all? And can anything succeed where they failed?

The laws that bear the former vice-president and governor's name made their way onto the books powered by flames of hysteria—a blaze fanned frantically by Rockefeller himself. Comparing drug users and sellers to an "invading army," he said the defenses of civilization were almost exhausted and that to save our lives and way of life we must

resort to the last defensive maneuver available.

Drug-crazed and profit-hungry criminals were rampant in the streets. Nothing less would do. In a televised state-of-the-state address to the legislature in January 1973, Rockefeller called for mandatory life imprisonment for drug sellers. No plea bargaining. No easy sentences from lenient judges. No parole. No youthful offender treatment. Life in the slammer. Period.

A billion dollars' worth of treatment had failed to cure this "disease" and cut crime, Rockefeller said. It was time for something new.

Immediately, speculation began as to why the governor was doing this. Some people, mostly professional "rehabilitation specialists," pointed out that the massive treatment programs begun during Mayor Lindsay's years were showing signs of success and that Rockefeller's proposal was an unjustified regression. (On this point, Rockefeller was closer to the truth; the rehabilitation workers had an interest in maintaining

Rockefeller's Draconian Drug Law

Four years, \$141 million, and 2,000 life sentences later, New York has more drugs and more addicts than ever before.

by Sheldon Richman

otherwise.)

It was noted that Rockefeller was up for reelection in 1974 and was a presidential aspirant for 1976. The nation's Nixonian mood, so went the theory, made it mandatory for a political hopeful to appear tough on drug users and crime. Rockefeller, burdened with a liberal image within the Republican Party, proposed the laws in his lurch to the "right as he prepared a presidential bid."

CRITICS GALORE

Whatever the reason, the laws were proposed, spawning an unlikely coalition of opponents that included the American Civil Liberties Union, Mayor Lindsay, the state District Attorneys Association, the Conservative Party, the state Judicial Conference, and the police. Months later, when signing the bill, Rockefeller would call the coalition a "strange al-

"I am totally intolerant of the position that we should not protect the people because it won't work in our system," said Rockefeller.

liance of vested establishment interests, political opportunities and misguided softliners who joined forces and tried unsuccessfully to stop this program."

The opponents said that a law with mandatory life sentences and no plea bargaining would overwhelm the courts and prisons. They said, perhaps contradictorily, that juries would be reluctant to convict defendants if the penalty was so harsh (this reportedly had been the experience elsewhere). The district attorneys and judges objected primarily because it would take discretion from them.

You will search in vain for an official who thinks the drug traffic has been diminished one iota.

There were critics who predicted that stepped-up enforcement and harsher penalties would increase the risk of drug dealing and hence the profits, inviting more, not less, illicit trade. If the laws succeeded in cutting drug supplies, it was argued, more crime due to rising prices could be expected.

It was even suggested that if the maximum penalties for murder and drug selling were the same, it would be a riskless venture for an accused drug offender to attempt to kill the witnesses against him. (The penalty for murder would actually be less severe because a murderer can plea bargain without legal restriction and be discharged from parole. At the time of the debate, eight of ten convicted or confessed murderers got sentences of ten years or less.)

But most of all, opponents claimed that the bill failed to distinguish between the big drug dealer (the capitalist) and the lowly user-seller trying to support his habit. It was predicted that high-level dealing would remain untouched.

Invectives were heaped on Rockefeller and his brinchild. "Barbaric," "inhuman," and "ignorant" are just some of the labels that turned up in the press. State Supreme Court Justice James J. Leff remained ironically optimistic. "The madness will pass," he said.

To those who agreed with the spirit of the law but doubted its practicality, Rockefeller said, "I am totally intolerant of the position that we should not protect the people because it won't work in our system."

Despite the outcry of opponents, the legislature went along—but not without substantial changes. The bill that was signed in May 1973 allowed limited plea bargaining, the possibility of lifetime parole after a mandatory minimum jail term, possible lifetime probation for informants, and the removal of hashish from the dangerous drug list.

In anticipation of a case-load increase, the legislature created new judgeships and other court resources that by the end of 1975 had cost the taxpayers \$55 million. The state ran a \$500,000 promotional campaign before the law went into effect on September 1, 1973, to scare users into treatment programs. ("That didn't happen," said Irwin Davidson of New York City's Addiction Services Agency.)

Before describing the "draconian measures," as the newsmagazines called them, it might be interesting to consider part of the historical backdrop against which the Rockefeller laws were set.

WHAT THE LAW CHANGED

By 1973, mandatory jail terms were out of vogue. New York State and the federal government had both abolished them for various crimes because they didn't deter criminals.

In 1966 and again in 1970, Governor Rockefeller had declared "all-out war" on drugs. In these efforts, he got minimum jail sentences raised for the first time since 1951, and the legislature

approved huge amounts of money for treatment programs, which included compulsory three-year civil commitments for habitual users. Rockefeller estimated that between 1963 and 1973, almost \$1 billion was spent in the anti-drug effort. Presumably, the all-out wars were lost.

One more thing about the pre-1973 period: judges already had the power to sentence large-scale drug dealers (those selling a pound or more) to life imprisonment. This gives credence to the view of Dr. David Musto, the Yale psychiatrist and drug-law historian, that the law actually was aimed at allegedly lenient judges who were considered wrist-slappers by some law-enforcement officials.

In essence, the Rockefeller laws restructured the sentencing statute and realigned the drug quantities to which it applied.

The sale or possession of any amount of "hard drugs"—opiates, LSD, cocaine (which the law mistakenly call a narcotic), and others—carries a maximum sentence of life imprisonment. The judge has no choice but to impose life in prison as the maximum term. The minimum term varies from 1 to 25 years depending on the quantity at issue. But some time in prison *must* be served. Parole, if granted (there are no set standards), is for the rest of the defendant's life (to appreciate the severity of this, consider that a parolee may not even marry without permission).

The law at first contained severe plea-bargaining restrictions. No one indicted for a drug felony that carried a life sentence could bargain to a charge with a minimum sentence less than life. The three classes of drug felonies with indefinite life sentences have different minimum terms based on a descending table of quantities: A1, A2, and A3. Under the bargaining rules, persons charged with A1 (minimum sentences: 15 to 25 years or A2 (6 to 8 1/2 years) could bargain down to A3, which has a minimum between 1 and 8 1/2 years. But someone charged with an A3, the least serious of the "serious" offenses, could not bargain at all because the maximum had to be life.

The outcome of this was as predicted. A3 defendants went to trial in droves because they had nothing to lose. The result: an eight-month backlog in New York City by the end of 1975.

Here is how the law was assessed in the September 1976 report of the Drug Law Evaluation Project of the New York City Bar Association: "During the first two years the new drug and sentencing laws were in effect, none of the key indicators of successful implementation have been evident. . . . Both in 1974 and 1975, there were fewer dispositions, con-

victions and prison sentences for drug offenses in New York State than there were in 1973.

The inability of the courts to handle the trial load eventually led the legislature to amend the restrictions on plea bargaining so that A3 defendants could avoid a life sentence by accepting 1 to 15 years instead. With this incentive to plead guilty, 1976 saw an improvement in the court's efficiency.

Other methods were unofficially adopted to avoid paralysis of the court system. Before 1976, unrestricted pre-indictment plea bargaining was common, though it circumvented the law. Former Manhattan District Attorney Richard H. Kuh got around the law by allowing illegal sellers of methadone to plead to a misdemeanor, although the law treated it as a heroin sale. (The methadone provision was especially harsh because New York State uses an aggregate weight standard, meaning that a trace of methadone in an ounce of orange juice is treated as an ounce of methadone. The courts finally ruled that the equation of methadone with heroin was unconstitutional because methadone is distributed legally by the government.)

Other methods of weakening the effect of the law were implicitly adopted for so-called sympathetic cases, for instance, a woman with children who helped her boyfriend sell heroin but made no profit. A New York City attorney said a minority of city judges used "sleight-of-hand and off-the-record agreements" to get charges reduced or dismissed. "Essentially," said one of the judges, Leon Polsky, "a judge resists any law which requires him to impose a particular sentence."

No major provision of the Rockefeller law has been rejected by the courts. In 1975, the State Court of Appeals ruled the life sentence constitutional. But, in an interesting aside, Chief Judge Charles Breitel wrote that the sentences' pragmatic value might well be questioned since more than a half century of increasingly severe sanctions has failed to stem, if indeed has not caused, a parallel crescendo of drug abuse."

STREET RESULTS

In judging whether the Rockefeller law has worked, one needs a standard. It is tempting to look to statistics; so officials talk about the percentage of convictions and the percentage of prison sentences. But this is clearly inadequate. A 77.7 percent conviction rate and a 47.9 percent prison commitment rate just don't tell us very much about how the law is working if what is meant is how well the legislature's aim of curtailing the drug trade has been achieved.

Now Available:

The Servile State
By Hilaire Belloc

A perceptive warning, first published in 1913, of the consequences of statism and the effect of socialist doctrine on capitalist society. With an introduction by Robert Nisbet. "A landmark of political thought in this century"—Walter Lippmann. Hardcover \$5.00, Softcover \$2.00.

Popular Government
By Sir Henry Sumner Maine

A classic inquiry into the conditions necessary for the success of representative government, by the author of *Ancient Law*. This edition includes Maine's famous essay on "The Constitution of the United States." Hardcover \$7.95, Softcover \$1.95.

Arator
By John Taylor

The most popular and influential work by John Taylor of Caroline, foremost philosopher of the conservative Jeffersonians. This edition includes sixty-four essays, practical and political, on farming and the social order of an agricultural republic. Edited and with an introduction by M. E. Bradford. Hardcover \$9.00, Softcover \$3.00.

Liberty Press Liberty Classics

We pay postage on prepaid orders. To order these books, or for a copy of our catalog, write:
Liberty Press/Liberty Classics
7440 North Shadeland, Dept. J4
Indianapolis, Indiana 46250

In 1976 there were 10,838 felony drug arrests in New York City—lower than in other years—but it would be a mistake to conclude that the law is responsible. What is responsible is the police department's policy of not arresting masses of street-level dealers as it used to.

The place to look for judging the law's performance is not in the courtroom or prisons or ledger books but in the streets. After all, the goal was not to lock up drug dealers. That is a means. The goal was to stop or discourage drug dealing. On the law's own terms, it fails miserably. You will search in vain for an official who thinks the drug traffic has been diminished one iota.

"Drug trafficking is occurring on the streets of New York City without substantial enforcement of either State or Federal drug laws," stated a February 1977 report of the U.S. House Select Committee on Narcotics Abuse and Control. "While New York has the most severe anti-narcotics laws in the nation, these laws do not act as a deterrent and have had little or no effect on traffic or use."

"It clearly has not had an impact on drug use in the city," said Cesar Perales, director of the city's Criminal Justice Coordinating Council. "I can't think of one good thing to say about the Rockefeller drug laws. You have to have the

worst luck in the world to get busted."

"It seems we've had no visible impact on the problem," said Deputy Mayor Nicholas Spagnetta.

This is just a sampling of the bad marks given this law.

"TOLD YOU SO"

In looking back to 1973, one can see that most of the critics' predictions about the law have come true.

The courts, as we've seen, were badly strained until the law was amended; the prison system is now feeling the new burden of more and longer sentences; the parole department is bracing itself for the next several years, when the consequences of lifetime supervision will begin to show; children under 16 years old are reported involved in the heroin trade because they are not liable for adult sentences.

As predicted, rehabilitation programs have been drastically cut as mandatory jail terms shrink the pool of prospective "patients." (For a variety of reasons, including the coercion, the cutting of these programs may be the only beneficial effect of the law.)

And, also as predicted, the higher echelons of the drug industry appear safe from state interference. The police may say they are reaching larger-scale dealers, but so far there has been no penetration on the order of the French Connection of the early '70s.

Some prognosticators missed the mark. Conviction rates are higher in New York City than they were before the new law. Perhaps the antidrug feeling among jurors was underestimated.

Law enforcement officials tend to concede all of this, but they claim that the law has had one positive result: the harsh sentences convince arrested drug dealers to become informants. But given the widespread agreement that the drug traffic is busier than ever, the effect of the informants must be questioned.

There is more to be said on the subject of informants. "I find the whole concept of trying to make informers distasteful and contrary to American principles of jurisprudence," said Narcotics Court Judge Michael J. Dontzin. "It reminds me of Germany and Russia in the '40s when children turned in their parents."

The analogy isn't far-fetched. Defense attorney Gerald Lefcourt said that, typically, a college student accused of selling cocaine will be offered a lighter sentence if he informs for the district attorney. He proceeds to turn in his friends, Lefcourt said. Ominous stories of deception in these cases abound.

In general, critics note that the law shifted sentencing discretion from the judge, where Anglo-American juris-

What Is Addiction?

The terms "drug addiction," "drug addict," "drug abuse," and "dangerous drugs" have been avoided here—for a very simple and very important reason: contrary to general impression, it cannot be taken for granted that most people know what these terms mean. The "experts" themselves don't often agree.

The definition of drug addiction that most people obtain by osmosis is that it is a condition—even a disease—in which a person craves a drug in increasing amounts and suffers when he stops taking it. One of the key aspects of the concept is that the addict can't help himself. He gets "hooked" and then he "hooks" others. Another important aspect is that addiction is harmful to the addict and society. The World Health Organization uses this definition:

Drug addiction is a state of periodic or chronic intoxication detrimental to the individual and to society, produced by repeated consumption of a drug (natural or synthetic). Its characteristics include: (1) an overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means, (2) a tendency to increase the dosage, and (3) a psychic (psychological) and sometimes physical dependence on the effects of the drug.

In considering this definition, Dr. Thomas Szasz, psychiatrist and drug-law opponent, asked in "The Ethics of Addiction" (*Harpers*, April 1972):

What is an "overpowering desire" if not simply a desire by which we choose to let ourselves be overpowered? And what is a "compulsion" if not simply an unresisted inclination to do something, and keep on doing it, even though someone thinks we should not be doing it?

Szasz noted that the issue of harm makes "addiction," not a medical concept, but an ethical one. Frequently, a person's conduct is considered harmful by others but not by the person acting. "Harm" implies values and purposes—that is, ethics, not medicine.

Drug addiction and drug abuse, therefore, are moral issues disguised in the white coats of medicine.

Use of the passive voice in talking about the matter is grossly inappropriate. People don't get addicted to drugs; they addict themselves. They choose to take a drug the first time (most get sick when they do) and then they (may) choose to repeat the act. Drug addiction, because of the way it is acquired, maintained, and ended, bears no resemblance to disease. It follows, then, that there can be no treatment or cure.

"It is a fundamental characteristic of human beings that they get used

prudence placed it, to the district attorney and parole board. As if to regain it, so goes one theory, appellate judges have let their distaste for the law influence their rulings in, for instance, the search-and-seizure area. The courts have held that the police may not search a suspected drug purchaser if all that was seen passed to him was a glassine bag. A policeman must see the substance in the bag before he can search. Cases have been thrown out on this basis.

DRUG ECONOMICS

Why didn't a law as harsh as this one stem the drug trade? Gerald Lefcourt, who frequently defends dealers in court, provides an answer, "It's absurd to think you can stop drug traffic with a statute. You can make \$75,000 for a few hours work. How can a law stop that? It's immature for people to think they can do

that."

The huge profits are the product of the black market, which, as Dr. Murray Rothbard noted in an interview, results from government prohibition. The laws restrict the supply, limit distribution channels, and create risks that dealers want to be compensated for. The heavy profits, which tend to rise as the state becomes more vigilant, are gilt-edged invitations to potential dealers.

"You can kill every major drug dealer in New York," said Dr. Ernest van den Haag, a New York University social philosophy professor, "and within half a year you'll have just as many as before, probably more, because it is very profitable."

These basic economic facts debunk one of the popular myths of drug-law enforcement. Large seizures of illegal drugs, rather than helping the situation,

to things," wrote Dr. Szasz. "However, there is no mysterious process of 'getting hooked' involved in any of this. It is simply an aspect of the universal biological propensity for learning, which is especially well-developed in man.

"The opiate habit, like the cigarette habit or the food habit, can be broken—usually without any medical assistance—provided the person wants to break it. Often he doesn't."

Why he doesn't, again, is not an issue of pharmacology.

In this connection, consider the words of an addict, quoted in Richard Ashley's book *Heroin*.

I mean, it seemed so obvious that you had to really WANT to get addicted. The idea some people have, that if you take one shot you're addicted, is so ridiculous. As far as I could tell, it took about two weeks of steady shooting to get to the point, not where you couldn't stop, but where you really dug it and felt a craving for it.

In short, you have to work at it to become an addict.

When this addict decided heroin was interfering with other important parts of his life, he gave it up. "Even the withdrawal was inconsequential in terms of any real physical or mental suffering," he said.

Addictive drugs—are there such things? In his classic book on drugs and the law, *Ceremonial Chemistry*, Dr. Szasz took up this question:

Why people habitually use such drugs... need not for the moment concern us here, other than to note that the reason cannot be said to be because the drugs are "addictive." It is the other way around: we call certain drugs "addictive" because people like to use them—just as we call ether and gasoline "flammable" because they are easily ignited. It is therefore just as absurd to search for non-addictive drugs that produce euphoria as it would be to search for non-flammable liquids that are easy to ignite.

There are studies indicating that some heroin addicts are not addicted to heroin at all, but rather to the "junkie lifestyle" and its characteristic rituals.

"Drug abuse" is another nonmedical term. To abuse is to use corruptly or improperly. It implies there can be a proper use. But in the United States, the use of any amount of heroin, cocaine, or marijuana for any purpose is considered abuse and is outlawed. Alcohol, tobacco, and caffeine, on the other hand, can be both used and abused. What is the difference?

What all this suggests is, not that we outlaw drugs we believe are dangerous, but rather that we outlaw drugs for other reasons, then call them dangerous to justify the prohibition.

The point is that the antidrug movement has obscured the issues, made them harder to face, and through this deliberate obfuscation, given an undeserved alluring mystique to the prodrug movement, an appeal it could never have achieved for itself.

actually worsen it. The smaller supply pushes prices up further, and users commit more crimes to meet the added expense. A 40-month Detroit study found this to be the case.

The iconoclastic psychiatrist Dr. Thomas Szasz questions the premise that the state wants to enforce the law. Calling it a "symbolic law," he said the purpose of it was not to abolish drugs, but to "fleece the public," control persons with socially unacceptable conduct, and provide huge salaries, fancy laboratories, and other "perks" and prestige to so-called drug abuseologists.

Asked if the law could be enforced if the authorities wanted to Szasz replied, "not in a democracy. In China they do; they shoot them. But in a democracy, you need to indict the offender and give him a trial. Who's going to be on the jury? The jurors are using drugs. Who's going

to sit on the bench? The judges are using them. It's a terrible con game."

By now, the public must sense this and must wonder in particular about cocaine, which, as the mass media recently discovered, is making a massive comeback in popularity. "And its popularity has yet to peak," says *Newsweek*. It is especially in vogue among the very affluent, making it probable that cocaine will follow marijuana along the path to decriminalization. But for now, the situation provides the ultimate irony. Men and women sit in Attica under life sentences for selling the slightest amount of cocaine, while Tiffany's is selling silver "coke straws" for \$10.

It is remarkable that the drug trade seems to be largely unaffected by new campaigns, seizures, arrests, and laws. Its resilience and adaptability are, perhaps ironically, tributes to free

(though hassled and distorted) enterprise. Because of its diversity—and competition among the Mafia, black crime organizations, and Hispanics, as well as independents—the illicit drug industry seems capable of fulfilling its customers' needs one way or the other regardless of the law.

A PRACTICAL SOLUTION

What does the future hold? The most drastic change could occur if an appeal argued last year in federal court is successful. Hopes that the law will be declared unconstitutional are not high, however.

That leaves the legislature as a source of change. But aside from a young, liberal assemblyman, Richard Gottfried, who was behind the marijuana changes, no one else in Albany sees this as a burning issue. Gottfried's Codes Committee is seeking to have lifetime parole abolished, and another bill would abolish the life sentence for small-scale sellers.

In New York City, law-enforcement funds are so scarce that officials are talking about experimenting with a British-style heroin maintenance program. "We can't afford to keep going like this," said Deputy Mayor Nicholas Scoppetta.

Of course, the one approach rejected out of hand is the one consistent with an individual-rights tradition—repeal of drug prohibition. It is also the approach that would best solve the problems now attendant upon drug use. Free trade in drugs would bring the black market into the open—drastically lowering crime-inducing prices, insuring marketplace quality control, making the street "pusher" obsolete, and undercutting organized crime's de facto drug monopoly.

The laws—not the drugs—are the source of the problems. Before 1914, there was no prohibition of opiates and cocaine, and there was no drug problem or "drug-related" crime. The drug problem and drug "abuse" were born the day drugs were made illegal. Thus does Szasz advise:

"It is time that we look more closely not only at what harmful drugs and profit-hungry pushers do to us, but also what harmful laws and power-hungry politicians do to us. In the history of mankind, many more people have been injured by laws than by drugs, by politicians than by pushers." □

A native of Philadelphia, Sheldon Richman has been practicing journalism for more than six years and is currently a reporter in Wilmington, Delaware. This article was prepared under a grant jointly supplied by the Sabre Foundation and the Cato Institute.

↑
Freedom is the issue!

Historical Perspective

Diversion Investigative Unit Program

Heroin Epidemic

Through the late 1960's and early 1970's, this country experienced a heroin epidemic of unparalleled proportion. In reaction to this, major programs were initiated in the fields of rehabilitation, education, and law enforcement to suppress both the supply and the demand for this drug. Although it is too soon, or perhaps our perspective is too close, to judge the impact of these efforts in an absolute sense, it does appear that the heroin epidemic has ceased to accelerate, and a line has been held. There are now indications that we may have done far more than this.

Federal Strategy

While the thrust of federal strategy was focused on heroin in this period, a quiet shift began within the drug abuse/trafficking arena toward alternate drugs. This shift has been the subject of widespread discussion within the fields of rehabilitation, education, and law enforcement, and is distinct enough to have received a title—"polydrug abuse." Prior to the enactment of the Comprehensive Drug Abuse Prevention and Control Act in 1970, statutory control over industry's handling of these drugs was weak. Diversion was occurring throughout the manufacturing, distribution, and practitioner levels of industry. This pattern of polydrug abuse led to the enactment of the Controlled Substances Act of 1970. A study of this Act will show that DEA has been given considerable authority to monitor the commerce of controlled drugs at the manufacturing and wholesaling levels. Its authority at the retail level is markedly less.

The rationale of Congress in limiting federal authority at this level was two-fold: (1) to conduct the same degree of scrutiny at this level as at the other levels would require a very large increase in federal resources; (2) the responsibility for monitoring this level has traditionally been held by the states rather than the federal government. Due to resource and legal restraints then, there is a marked difference between the strong federal presence at the upper levels of the drug industry and the inherently weaker federal presence at the retail level.

Federal strategy complemented and furthered this concept throughout this period. DEA has played a direct regulatory role at the upper levels of industry, while adopting a federal/state assistance role for the practitioner level.

Retail Level Diversion

Total amount of controlled drugs diverted from legitimate industry is conservatively estimated at about 250,000,000 dosage units per year. Although this amount is somewhat larger than estimates of earlier years, it is not quantity that is the most noticeable development. More significantly, the level of the industry at which diversion is occurring has changed. The degree of diversion occurring at the upper levels of industry has steadily and markedly declined since 1971, to the point where it appears now as a scattering of isolated incidents. It is estimated that about 90 percent of all the diversion occurring today is at the practitioner level.

Types Of Diversion

This last point requires elaboration. Diversion can occur in any of three ways: willful diversion, prescription fraud, and theft. The relative prominence of these can be subjectively approximated as follows:

- (1) Willful diversion by a practitioner or an employee thereof—45%.
- (2) Prescription fraud—45%.
- (3) Theft—10%.

Theft of controlled drugs is occurring primarily from pharmacies. DEA has conducted several major studies of pharmacy thefts, as well as a pilot project in a large metropolitan area to test the findings of these studies. The conclusion drawn from these studies and the pilot project is that pharmacy thefts can best be suppressed at the community level, through joint activities by the local police and the pharmacists. Under our *Pharmacy Theft Prevention Program*, DEA is launching a series of demonstration projects throughout the country to put this concept to work.

Suppressing the other types of diversion, particularly that involving the willful acts of a practitioner, is best handled through a state-level approach. We say this largely because virtually all existing mechanisms to deal with practitioner diversion are at the state-level.

State Regulatory Boards

DEA has spent considerable time and effort determining the abilities and deficiencies of the states in their handling of this problem. DEA has

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT _____

ATTENTION _____

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

*The Judiciary
#124 cap.*

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Public Safety

BY _____ DATE 4-7-80

file copy

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 479
 Title "An Act revising the drug laws of the State"
 Requested by _____ Date 4/7/80

II. FISCAL DETAIL
 Agency Affected Public Safety
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

| | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 | FY 85 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 7, 1980 PREPARED BY *jc* Michael J. Clemens
 AGENCY Public Safety
 PHONE 465-4336
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)