

## NOTES

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### CALIFORNIA NARCOTIC REHABILITATION: DE FACTO PRISON FOR ADDICTS?

This note discusses the history and status of California's statutory plans for coping with the narcotic addiction problem.

#### I. BACKGROUND

Opium has the distinction of being probably the oldest known narcotic and may compete with alcohol for the title of the oldest known sedative drug—use of opium is referenced as far back as 5000 to 4000 B.C. In its unrefined state it was used for thousands of years as an analgesic, a tranquilizer, a sedative and a way of escaping reality. In 1804 a chemist discovered that crude opium actually consisted of several different chemicals, and isolated the principal active ingredient—morphine. It was not until 1898 that an associated drug, heroin, was discovered. At that time heroin was believed to be non-addicting.<sup>1</sup> It was later discovered that all opiate derivatives, such as morphine, heroin, dilaudid, codeine, and dionin, are both physiologically and psychologically addicting.

The natives of the New World knew the effects of another drug, a stimulant, which they experienced by chewing coca leaves. The drug cocaine was first produced from these leaves in 1853. Though it acts differently than the opiate derivatives, being a stimulant rather than a depressant, it too is considered to be physiologically and psychologically addicting. Marijuana, on the other hand, is not considered physiologically addicting, and it is the only narcotic defined in the California Health and Safety Code whose users are specifically exempt from narcotic addict commitment.<sup>2</sup> Barbiturates and amphetamine-type stimulants are not narcotics and no provision is made for their users to be included under the California Narcotic Rehabilitation Act.<sup>3</sup>

The Harrison Narcotic Act<sup>4</sup> of 1914, although a federal revenue act, had a regulatory effect on narcotics. It was passed at a time when the narcotic problem in the United States existed to a degree that would be shocking today. In 1914 it was estimated that there were between 150,000 and 200,000 narcotic addicts in the United

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<sup>1</sup> CAL. CITIZENS' ADVISORY COMMITTEE TO THE ATTORNEY GENERAL ON CRIME PREVENTION, NARCOTIC ADDICTION, p. 9 (March 26, 1954).

<sup>2</sup> CAL. PEN. CODE § 6407.

<sup>3</sup> STATS. 1961, ch. 850, §§ 2, 3.

<sup>4</sup> 38 STAT. 785.

States. In 1918, a commission appointed by the Secretary of the Treasury estimated that there were 1,000,000 drug addicts in the country. During World War I, one man in every 1,500 was rejected from military service because of drug addiction.<sup>5</sup> These figures should be contrasted with the estimate that in 1954 there were 60,000 addicts in the nation, and in World War II the army rejected one man in every 10,000 because of drug addiction.<sup>6</sup> Prior to the 1914 passage of the Harrison Act, narcotic drugs could be bought for pennies over the counter because there was no illicit market and no abnormal profit in these drugs. Ten years later, the estimated incidence of drug addiction had dropped to approximately one-eighth the 1914 rate.<sup>7</sup>

The major effects of opium addiction on afflicted persons are interference with (1) their productivity, (2) their desire for achievement, (3) their sense of responsible adjustment to vocational, family and social problems and (4) their heterosexual adjustment.<sup>8</sup> Because of these effects society began to realize that it had a moral duty and right to suppress drug addiction, both to protect itself and to prevent the individual from harming himself.<sup>9</sup> These factors led to the passage of additional legislation, including the declaration in 1924 that heroin was an illegal drug. Since 1924 there has been no legal importation of heroin into the United States.<sup>10</sup> Other opiates are manufactured under license of the federal government for medical use.

California has sporadically enacted legislation regulating narcotics. For instance, administering stupifying drugs with the intent to commit a felony was prohibited in 1872,<sup>11</sup> keeping or resorting to a place where opium was used was declared unlawful in 1881,<sup>12</sup> taking opium into a jail became a crime in 1901,<sup>13</sup> being an addict was defined as vagrancy in 1929,<sup>14</sup> and in 1931 the Chief and Inspectors of the Division of Narcotic Enforcement became peace officers of the State of California.<sup>15</sup>

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<sup>5</sup> ADVISORY COMM., *op. cit. supra* note 1, at 14.

<sup>6</sup> *Id.*, at 14, 15.

<sup>7</sup> KOLB & DU MEZ, *THE PREVALENCE AND TREND OF DRUG ADDICTION IN THE UNITED STATES AND FACTORS INFLUENCING IT*. Reprint 924, Public Health Reports (1924).

<sup>8</sup> *Medical Views on the Narcotics Problem*, 31 F.R.D. 53, 60 (1963).

<sup>9</sup> *Ibid.*

<sup>10</sup> ADVISORY COMM., *op. cit. supra* note 1, at 20.

<sup>11</sup> CAL. PEN. CODE § 222.

<sup>12</sup> CAL. PEN. CODE § 307, repealed by STATS. 1937, ch. 382, § 1.

<sup>13</sup> CAL. PEN. CODE § 171a.

<sup>14</sup> CAL. PEN. CODE § 647 (12), repealed by STATS. 1939, ch. 1078, § 1.

<sup>15</sup> CAL. PEN. CODE § 817.

In 1927 California enacted a comprehensive system for the treatment of addicts in hospitals.<sup>16</sup> In 1937 this system was codified into the Welfare and Institutions Code.<sup>17</sup> The code permits the civil commitment of a person determined to be a "narcotic drug addict." The term "narcotic drug addict" is defined as "any person who habitually takes or otherwise uses to the extent of having lost the power of self-control any opium, morphine, cocaine, or other narcotic drug. . . ."<sup>18</sup> Section 5355 provides that upon determination that a person is a narcotic drug addict, he may be committed to the Department of Mental Hygiene for placement in a hospital "for an indeterminate period of not less than three months nor more than two years."

Welfare and Institutions Code section 5355.7 provides that "(a)ny person committed as a drug addict . . . may be paroled after the expiration of three months . . ." or paroled "after the expiration of three months and before the expiration of the maximum term . . . when such superintendent [of the hospital] is satisfied that the person will not receive substantial benefit from further hospital treatment."

Few addicts committed under these Welfare and Institutions Code provisions receive any treatment. This is because the Department of Mental Hygiene in practice accepts only those persons who *voluntarily* commit themselves<sup>19</sup> and because of lack of personnel and facilities.

With passage of the Health and Safety Code in 1939, California placed emphasis upon regulation, and today Division X of that code entitled "Narcotics" contains provisions regarding definitions, offenses and enforcement.

Prior to 1962 several California counties relied on section 11721 of the Health and Safety Code as the primary control for their narcotic addict populations. This section made it a misdemeanor for any person within the state's jurisdiction to use, or be under the influence of, or be addicted to the use of, narcotics unless administered by or under the direction of a person licensed by the state. As a part of the penalty, the section provided for a ninety-day mandatory period of custody upon conviction, which could be implemented by various rehabilitative and supervisory services.

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<sup>16</sup> STATS. 1927, ch. 89.

<sup>17</sup> STATS. 1937, ch. 369.

<sup>18</sup> CAL. WELF. & INST. CODE § 5350. Other narcotic drugs are defined in div. 10, ch. 2, art. 1, HEALTH & SAFETY CODE.

<sup>19</sup> CAL. SPECIAL STUDY COMM'N ON NARCOTICS, FINAL REPORT, p. 21 (1961).

A Citizens' Advisory Committee to the Attorney General on Crime Prevention recommended that new legislation be sought in this field.<sup>20</sup> At the 1961 regular session of the California Legislature such a bill was considered, and subsequently Chapters 11 and 12 of the Penal Code, entitled "Commitment and Corrective Treatment of Narcotic Addicts" and "California Rehabilitation Center" (hereinafter referred to as Narcotic Rehabilitation Act) passed and became law September 15, 1961.<sup>21</sup>

In 1962 the United States Supreme Court held unconstitutional, in *Robinson v. California*,<sup>22</sup> that portion of section 11721 of the Health and Safety Code which permitted conviction for the status of being addicted, as differentiated from the acts of using or being under the influence of narcotics. This gave considerable impetus to the new Narcotic Rehabilitation Act which had been in effect only months prior to the Supreme Court decision. Hundreds of commitments under the new act had been made prior<sup>23</sup> to the *Robinson* decision, and even more have been made since. The new comprehensive plan for treatment has withstood constitutional attack in the California courts on several occasions and the United States Supreme Court has refused to review a California Supreme Court decision, *In re De La O*,<sup>24</sup> upholding the constitutionality of the Narcotic Rehabilitation Act.

## II. CALIFORNIA'S STATUTORY PLAN

### A. General

The Narcotic Rehabilitation Act (Penal Code Chapters 11 and 12) emphasizes treatment and rehabilitation of the narcotic addict in a specialized institution rather than his mere prison confinement. Nevertheless involuntary confinement is part of the plan. The avowed purpose of the act is nonpunitive treatment for the protection of the individual and the public.<sup>25</sup>

The following summary of the provisions of Chapter 11 demonstrates the rehabilitative character of the program and details the procedures involved in admitting a person to treatment.

This chapter provides generally for "receiving, control, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any

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<sup>20</sup> ADVISORY COMM., *op. cit. supra* note 1, at 40.

<sup>21</sup> STATS. 1961, ch. 850, §§ 2, 3.

<sup>22</sup> 370 U.S. 660 (1962).

<sup>23</sup> CAL. DEP'T. OF CORRECTIONS, CALIFORNIA NARCOTICS ADDICT CONTROL & REHABILITATION PROGRAM: A REVIEW, p. 7, (Jan. 15, 1962).

<sup>24</sup> 59 Cal. 2d 128, 378 P. 2d 793, *cert. denied*, 374 U.S. 856 (1963).

<sup>25</sup> CAL. PEN. CODE § 6399.

agency thereof who are or have been addicted to narcotics or who by reason of repeated use of narcotics are in imminent danger of becoming addicted."<sup>26</sup> A "'(n)arcotic addict' as used in this chapter refers to any person . . . who is addicted to the unlawful use of any narcotic as defined in Division 10 of the Health and Safety Code<sup>27</sup>, except marijuana."<sup>28</sup> The phrase "imminent danger" is not defined in either Penal Code Chapter 11 or 12, but the wording of section 6400, "or who by reason of repeated use of narcotics are in imminent danger of becoming addicted" seems to indicate that use, presumably unlawful, is the criterion for determining if a person is in imminent danger, rather than, for example, his mere association with known addicts.

The specific commitment procedures set out in Chapter 11 vary according to whether the person sought to be committed is charged with a crime<sup>29</sup> or whether he is not so charged.<sup>30</sup> There are also variations according to whether the person is charged in a municipal or justice court,<sup>31</sup> or in a superior court.<sup>32</sup>

## B. Involuntary Commitment of Persons Convicted of a Crime

### 1. *In Municipal or Justice Court*

Section 6450 of the Penal Code provides that if, upon conviction of a crime in a municipal or justice court, it appears to the judge that the defendant may be addicted or in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend imposition of the sentence and certify the defendant to the superior court. The superior court then conducts proceedings to ascertain if such defendant is addicted or is in imminent danger of becoming addicted to the use of narcotics. These proceedings are conducted in substantial compliance with sections 5353, 5053, 5054 and 5055 of the Welfare and Institutions Code. The proceedings include arraignment, medical examination, and hearing.

If the superior court judge finds that the defendant is addicted, or is in imminent danger of becoming addicted to narcotics, and is not ineligible for the program under section 6452 of the Penal

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<sup>26</sup> CAL. PEN. CODE § 6400.

<sup>27</sup> CAL. HEALTH & SAFETY CODE §§ 11001, 11002, 11002.1, 11003, 11003.1. These sections contain a voluminous list of narcotics, including opium, heroin, cocaine, morphine, codeine and derivatives.

<sup>28</sup> CAL. PEN. CODE § 6407.

<sup>29</sup> CAL. PEN. CODE §§ 6450-4.

<sup>30</sup> CAL. PEN. CODE §§ 6500-10.

<sup>31</sup> CAL. PEN. CODE § 6450.

<sup>32</sup> CAL. PEN. CODE § 6451.

Code, or there is an exception to the applicability of that section,<sup>33</sup> the judge shall make an order committing the defendant to the custody of the Director of Corrections. Such commitment is for a minimum of six months,<sup>34</sup> and a maximum of seven years, unless an extension is granted,<sup>35</sup> and if so granted, the maximum shall not exceed ten years.<sup>36</sup>

If the defendant is dissatisfied with the commitment order, he may demand a hearing, pursuant to Welfare and Institutions Code section 5125, before a judge or jury.<sup>37</sup> This hearing is the last resort at the trial level and if the determination of addiction is affirmed, the defendant is committed forthwith.

Where the defendant is not found to be addicted or in imminent danger of becoming addicted, he is certified back to the municipal or justice court for further proceedings deemed warranted by the judge of that court.

## 2. *In Superior Court*

Penal Code section 6451 sets forth the commitment procedure after the defendant's conviction of a crime in the superior court. Upon conviction, unless the superior court judge is of the opinion that the defendant's record and probation report indicate such a pattern of criminality that he is not a fit subject for the rehabilitation program, criminal proceedings are adjourned or imposition of sentence is suspended. Commitment proceedings are undertaken in essentially the same manner as if originating in a municipal or justice court.

The municipal and justice court judges, however, seem not to have been given the discretion to decide whether the defendant is a fit subject for the rehabilitation program. If it appears to the municipal or justice court judge that the defendant may be addicted or in imminent danger of addiction to narcotics he is bound to adjourn proceedings or suspend imposition of sentence in the criminal action and certify the defendant to superior court. Thus, it would appear

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<sup>33</sup> In 1963, the legislature amended § 6450 by adding a provision for commitment notwithstanding § 6452. Stats. 1963, ch. 1706, § 7. Thus, in "unusual cases, wherein the interest of justice would best be served, the judge may, with the concurrence of the district attorney and defendant," order commitment despite conviction for a crime enumerated in § 6452.

<sup>34</sup> CAL. PEN. CODE § 6516.

<sup>35</sup> CAL. PEN. CODE § 6521.

<sup>36</sup> *Ibid.* Prior to 1963, a person committed under § 6450 was committed for a period of five years, except as earlier discharge was permitted by PEN. CODE ch. 11. The effect of the 1963 amendment, under § 6521, is to increase the period of allowable confinement under § 6450 to seven, and, possibly, ten years. There has been no change permitting discharge prior to six months.

<sup>37</sup> CAL. PEN. CODE § 6508.

that a more selective process is employed for defendants convicted of crimes in the superior court. This distinction is apparently based upon the fact that a crime tried in the superior court is usually of a more serious nature than a criminal offense tried in a municipal or justice court. On this basis alone, the greater discretion vested in the superior court judge seems justified.

### 3. *Return From Commitment*

After commitment a defendant may be returned to the convicting court if, after 60 days following receipt of the defendant at the facility, the Director of Corrections concludes that, because of excessive criminality or for other relevant reason, the defendant is not a fit subject for confinement and treatment under the program.<sup>38</sup>

### C. Involuntary Commitment of Persons Not Charged With a Crime

Penal Code Chapter 11, Article 3, sets up a civil commitment procedure for persons not charged with a crime, but addicted or in imminent danger of becoming addicted to narcotics. This procedure is more elaborate than that employed after criminal conviction for, in the case of a person not charged with a crime, commitment is a deprivation of liberty which could not otherwise be imposed.

Penal Code section 6500 provides that anyone who believes that a person is addicted, or is in imminent danger of becoming addicted due to repeated use of narcotics, may report such belief to the district attorney who may petition the superior court for commitment of such person to the custody of the Director of Corrections for confinement in the narcotics rehabilitation facility. (Penal Code section 6501 declares it to be a misdemeanor knowingly to contrive to have a person unlawfully adjudged an addict.)

Upon the filing of the petition by the district attorney, the superior court issues its order that such person be medically examined pursuant to section 5050.1 of the Welfare and Institutions Code.<sup>39</sup>

A copy of the petition filed by the district attorney and a copy of the court's examination order must be personally delivered to the person sought to be committed at least one day prior to the time fixed by the court for the medical examination.<sup>40</sup> The court may also order the person confined in a county hospital or other suitable institution pending a hearing if the district attorney's petition is accompanied by the affidavit of a physician alleging an examination

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<sup>38</sup> CAL. PEN. CODE § 6453.

<sup>39</sup> CAL. PEN. CODE § 6502.

<sup>40</sup> CAL. PEN. CODE § 6503.

by him within three days prior to the filing of the petition, concluding that the person, unless confined, is likely to injure himself or others or become a menace to the public. Where one is so ordered to be confined, it is the duty of the person in charge of the institution to provide medical aid to ease any symptoms of withdrawal from the use of narcotics.<sup>41</sup>

After the medical examination is completed a report thereof is delivered to the court. If no addiction or imminent danger of addiction is found, the petition is dismissed and the person, if confined, is released.<sup>42</sup> If addiction, or imminent danger of addiction, is reported by the examining physician, the court sets the time and place for a commitment hearing and gives the person sought to be committed notice thereof.<sup>43</sup> The hearing may be waived by the person sought to be committed, by an expression to this effect in open court.<sup>44</sup> The court, if a hearing is not waived, may issue subpoenas to insure the presence of witnesses at the hearing, and the person sought to be committed has a right to have witnesses subpoenaed, to counsel, to present witnesses on his behalf and to cross-examine witnesses.<sup>45</sup> If he is financially unable to employ counsel, the court shall appoint counsel if so requested.<sup>46</sup> Although there is no express statutory declaration to the effect that the judge is required to advise the person of this right to court appointed counsel,<sup>47</sup> the tenor of the overall commitment procedure as outlined by the California Supreme Court in the *In re De La O* decision indicates that this is required.<sup>48</sup>

At the hearing, if it is determined that the person is not addicted, the petition is dismissed.

If found addicted, he is committed to the custody of the Director of Corrections for an indeterminate period of not less than six months<sup>49</sup> nor more than ten years.<sup>50</sup> If the person committed, or a friend in his behalf, is dissatisfied with the commitment order, he may demand a hearing by judge or jury in substantial compliance

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<sup>41</sup> CAL. PEN. CODE § 6502.

<sup>42</sup> CAL. PEN. CODE § 6504.

<sup>43</sup> *Ibid.*

<sup>44</sup> CAL. PEN. CODE § 6507.

<sup>45</sup> CAL. PEN. CODE § 6505.

<sup>46</sup> *Ibid.*

<sup>47</sup> *But cf.*, CAL. PEN. CODE § 858.

<sup>48</sup> 59 Cal. 2d 128, 378 P. 2d 793, *cert. denied*, 374 U.S. 856 (1963).

<sup>49</sup> CAL. PEN. CODE § 6516.

<sup>50</sup> CAL. PEN. CODE § 6521. Prior to the 1963 amendment of § 6506, the maximum period of confinement was five years. The 1963 amendment does not impair the legality or effectiveness of any order made or other action taken that was lawful when taken. STATS. 1963, ch. 1706, § 17.



with the provisions of section 5125 of the Welfare and Institutions Code.<sup>51</sup>

Under the commitment procedures set out above, a committed person may, in the absence of a criminal conviction, be discharged from the program if the Director of Corrections concludes that he is not a fit subject for treatment.<sup>52</sup>

In summary, it should be noted that there are two requirements which must be satisfied before it is possible to commit to the rehabilitation program a person not charged with a crime but believed to be addicted, or in imminent danger of becoming addicted to narcotics. First, the medical examination must show addiction or at least an imminent danger of addiction to narcotics. Second, this condition must be demonstrated to the court's satisfaction at a formal hearing where the person has a right to representation by counsel. In addition, if the person is committed and is dissatisfied, he may demand a judge or jury trial to review the commitment order. A finding of non-addiction at this point will result in a dismissal regardless of the prior findings.

#### D. Release From Rehabilitation Program

##### 1. *Outpatient Status*

After commitment to the rehabilitation program under any of the above sections, a six-month period of confinement and observation is mandatory. Subsequently, the individual may become eligible for release to outpatient status. When, in the opinion of the Director of Corrections, the person has recovered sufficiently to warrant release to outpatient status, the director certifies this fact<sup>53</sup> to the Narcotic Addict Evaluation Authority.<sup>54</sup> If the director has not so certified a case within the preceding twelve months, in the anniversary month of commitment, the case is automatically referred to the authority for consideration of the advisability of release to outpatient status.<sup>55</sup>

The authority may release the person to outpatient status, subject to (1) the rules and regulations of the authority, (2) all conditions imposed by the authority, and (3) recommitment to inpatient status

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<sup>51</sup> CAL. PEN. CODE § 6508.

<sup>52</sup> CAL. PEN. CODE § 6509.

<sup>53</sup> CAL. PEN. CODE § 6516.

<sup>54</sup> The Narcotic Addict Evaluation Authority is composed of three members who, insofar as it is practicable, shall have broad backgrounds in law, sociology, law enforcement, medicine, or education and shall have a deep interest in the rehabilitation of narcotic addicts. The authority has as its headquarters the California Rehabilitation Center, and meets as is necessary, for a full and complete study of all persons certified by the Director of Corrections as having recovered to such an extent that outpatient status is warranted. CAL. PEN. CODE § 6515.

<sup>55</sup> CAL. PEN. CODE § 6516.

as prescribed in such rules, regulations or conditions. The Department of Corrections is responsible for supervision of a person released to outpatient status. Such person may be closely supervised through periodic and surprise testing for narcotic use and through counseling.<sup>56</sup> In connection with outpatient release, the Director of Corrections may establish halfway houses as pilot projects to determine the effectiveness of rehabilitation.<sup>57</sup>

## 2. *Complete Release From Rehabilitation Program*

### a. *Release Prior to Expiration of Maximum Commitment Period*

With but one exception which requires earlier discharge,<sup>58</sup> release from the narcotic rehabilitation program is possible after a minimum of three years in outpatient status.<sup>59</sup> If at any time the Director of Corrections is of the opinion that a person, while an outpatient, has abstained from the use of narcotics for at least three consecutive years, and has otherwise complied with the conditions of release, the director must report such opinion to the Narcotic Addict Evaluation Authority for consideration.<sup>60</sup>

#### (1) *Defendant Convicted of Crime*

In the case of a defendant convicted of a crime, if the authority concurs with the opinion of the director, it may certify such defendant to the committing court. That court must discharge the defendant from the program and return him to the convicting court. Criminal proceedings may be dismissed by the convicting court; if so, the defendant is released. If criminal charges are not dismissed, the defendant is held over for further proceedings. Time served under the rehabilitation program is credited to the length of the sentence imposed, if any.<sup>61</sup>

#### (2) *Person Not Charged With Crime*

In the case of a person not charged with a crime, if the authority concurs with the opinion of the director, it must discharge such person from the program.<sup>62</sup>

### b. *Release Upon Expiration of Maximum Commitment Period*

In any case where the person committed has not been discharged from the program prior to the expiration of the maximum period

<sup>56</sup> CAL. PEN. CODE § 6517.

<sup>57</sup> CAL. PEN. CODE § 6518.

<sup>58</sup> Voluntary Commitment. CAL. PEN. CODE § 6521.

<sup>59</sup> CAL. PEN. CODE § 6520.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

(seven years), such person at that time is returned to the committing court.<sup>63</sup>

Unless the director recommends an extension of the confinement period for not more than three additional years and the committing court concurs, a person not charged with a crime must be discharged.<sup>64</sup> One convicted of a crime is returned to the convicting court. On the other hand, if the director recommends and the court concurs in the extension, the person is retained in the program for not more than the three additional years.<sup>65</sup>

### III. JUDICIAL CONSTRUCTION OF CALIFORNIA'S NARCOTIC REHABILITATION PROGRAM

The constitutional validity of the Narcotic Rehabilitation Program has been challenged on several occasions in the appellate courts of California. The program has been upheld as a legitimate exercise of the state's power to regulate for the general health and welfare of its inhabitants.

The leading case on this subject, *In re De La O*,<sup>66</sup> involved a commitment to the rehabilitation facility under section 6450 of the Penal Code (after conviction in a municipal court). De La O petitioned the California Supreme Court for a writ of habeas corpus for release from the program on the following grounds: (1) that his commitment was a criminal penalty and, as such, constituted cruel and unusual punishment prohibited by Amendment XIV of the United States Constitution; (2) that the terms of the code were vague and indefinite and did not prescribe ascertainable standards of conduct, thereby violating the due process clause of Amendment XIV of the Constitution; and (3) that inasmuch as certain classes of persons were denied the right of jury trial, while others were guaranteed this right, there was not equal protection of the law as guaranteed by Amendment XIV of the Constitution.<sup>67</sup>

With respect to his argument that the program imposed cruel and unusual punishment by subjecting narcotic addicts to a criminal penalty, the petitioner relied on *Robinson v. California*,<sup>68</sup> which held that imposition of a criminal penalty for mere narcotic addiction was unconstitutional. The California Supreme Court carefully reviewed

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<sup>63</sup> CAL. PEN. CODE § 6521.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> 59 Cal. 2d 128, 378 P. 2d 793, *cert. denied*, 374 U.S. 856 (1963).

<sup>67</sup> Prior to the 1963 amendment of CAL. PEN. CODE §§ 6450 and 6451, those persons convicted in a municipal court of a violation of HEALTH & SAFETY CODE § 11721, and those convicted in a superior court, were not given the right to a trial by jury.

<sup>68</sup> 370 U.S. 660.

the code and concluded that while it exhibited a superficial criminal character, it was, in fact, civil in nature and designed primarily to afford treatment rather than inflict punishment.

As to petitioner's argument that the terms used in the code, particularly "addict" and "imminent danger," were vague and uncertain and thus violative of the due process clause, the court held that the term "addict" was sufficiently defined by section 6407 of the Penal Code,<sup>69</sup> and believed that neither term was a technical word of art, but was to be construed according to the context and approved usage of the language. Using this rule, the court concluded that the terms used in the code prescribed ascertainable standards of conduct and that there was no violation of the due process clause.

The equal protection argument advanced in *In re De La O* has lost its force due to legislative amendment of the statute in 1963. The code now provides that all persons committed are given a right to a jury at the hearing.<sup>70</sup> There is no differentiation on the basis of the type of crime of which defendant was convicted nor on the basis of the court in which he was convicted. Even prior to the 1963 amendment, however, the *In re De La O* decision upheld the code as constitutional.

Subsequent to *In re De La O*, several cases further construed the code provisions. These cases passed upon the validity of specific commitment practices utilized in particular cases.

*Van Zanten v. Superior Court*<sup>71</sup> involved a venue question. The issue was whether a petition for commitment was properly filed in San Diego County where the person sought to be committed was not present in the county at the time of the filing and was a resident of Los Angeles County. The court issued a writ of prohibition restraining further commitment proceedings, and held that the person sought to be committed was required to be present in the county in which the petition was filed, at the time of filing, in order to give the court jurisdiction. The court implied that residence in the county might constitute constructive presence for the purpose of the statute, but declined to make an affirmative ruling in this regard.

*In re Butler*<sup>72</sup> held that the person sought to be committed was in no position to complain of the alleged irregularity where he voluntarily returned to the county of filing and submitted himself to

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<sup>69</sup> The term "addict" as defined in CAL. PEN. CODE § 6407 included "unlawful" use of only certain narcotics. The unlawful use of marijuana, for example, is expressly excluded from the definition.

<sup>70</sup> CAL. PEN. CODE §§ 6450, 6451, 6508.

<sup>71</sup> 214 A.C.A. 540, 29 Cal. Rptr. 625 (1963).

<sup>72</sup> 59 Cal. 2d 157, 378 P. 2d 812, cert. denied, 84 Sup. Ct. 65 (1963).

the jurisdiction of the court. The court in *Van Zanten* referred to this decision, but distinguished it on the facts.

*In re Raner*,<sup>73</sup> *In re Johnson*,<sup>74</sup> and *People v. Nelson*,<sup>75</sup> discuss problems of compliance with the statutory procedures. In each case the person sought to be committed was confined pending hearing. The petition for commitment was not accompanied by the affidavit of a physician as required by Penal Code section 6502. The required affidavit must allege an examination of such person by the affiant within three days prior to the filing of the petition and must further allege affiant's conclusion that, unless confined, such person is likely to injure himself or others or become a menace to the public. Since the statutory safeguards had been disregarded, in each case the court lacked jurisdiction to enter the commitment order. In *In re Raner* the court stated: "Being a creature of statute, jurisdiction to enter an order of commitment pursuant thereto depends on *strict compliance with each of the specific statutory prerequisites for maintenance of the proceeding.*"<sup>76</sup>

*People v. Juvera*<sup>77</sup> involved the question of whether the order of commitment to the rehabilitation program was appealable. The court held that the commitment order was appealable, and added that the proceeding certifying the person from the convicting court to the committing court was in the nature of an interlocutory order.

#### IV. RATIONALE AND DISCUSSION OF INVOLUNTARY COMMITMENT FOR NARCOTIC REHABILITATION

The basis upon which the state may involuntarily confine addicts for treatment is more easily understood by a review of parallels in existing law.

The practice of segregation and/or confinement of persons afflicted with mental conditions appears to have been a part of our Western culture for hundreds of years. The stories of cruelty, neglect, and degradation in the early English mental institutions, such as Bedlam, are common knowledge. Few people seem to have questioned the power of the state, both for the protection of society and for the welfare of the insane person, or one mentally defective, to place such a person under restraint.<sup>78</sup> It would seem that the courts have had no difficulty in finding justifiable the confinement of persons

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<sup>73</sup> 59 Cal. 2d 635, 381 P. 2d 638 (1963).

<sup>74</sup> 59 Cal. 2d 644, 381 P. 2d 643 (1963).

<sup>75</sup> 218 A.C.A. 441, 32 Cal. Rptr. 567 (1963).

<sup>76</sup> 59 Cal. 2d at 639.

<sup>77</sup> 214 A.C.A. 604, 29 Cal. Rptr. 653 (1963).

<sup>78</sup> *People ex rel. Morriale v. Branham*, 266 App. Div. 476, 42 N.Y.S. 2d 761 (1943).

dangerously insane.<sup>79</sup> At least, there seems little doubt that an insane or mentally defective person may be committed to a hospital or institution maintained for that purpose.<sup>80</sup>

The classic concept of commitment of insane or mentally defective persons is enlarged by the sexual psychopathy laws. The large number of recidivists in sexual offenses has tended to show the ineffectiveness of criminal punishment as correction, and in general the sexual psychopathy laws provide for civil commitment, segregation and treatment of the persons so designated, to the end that this recidivism may be reduced.

There are two objectives of the sexual psychopathy laws: (1) to sequester the sexual psychopath for as long as he is a danger to others, and (2) to treat him so that he might recover from his condition and be released.<sup>81</sup> This procedure is designed for those persons who are abnormal but not insane.<sup>82</sup> An element of danger in the make-up of the person to be confined is generally required.<sup>83</sup> Since the term of the commitment is until the person can be released safely into the general population, it must of necessity be indeterminate.<sup>84</sup> In practice this sometimes means that commitment is the equivalent of a life sentence.<sup>85</sup> However, this does not differ from the commitment of insane persons, who also may be confined for life.

In the state of Michigan the first attempt to pass a sexual psychopathy law resulted in a statute providing for examination before discharge from a penal institution of a convicted sex offender who, "though not insane, shall appear to be a sex degenerate or a sex pervert or appear to be suffering from a mental disorder characterized by marked sexual deviation, with tendencies dangerous to public safety. . . ."<sup>86</sup> The statute provided for further incarceration of the person in a hospital. Michigan held the statute an unconstitutional exercise of police power as it deprived such a person of a trial by jury of the vicinage and was not a civil commitment similar to the case of insane persons.<sup>87</sup>

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<sup>79</sup> *State v. Saffron*, 146 Wash. 202, 262 Pac. 970 (1927); *Dixon v. Steele*, 104 F. Supp. 904 (D.C. Mo. 1951); *Carter v. United States*, 283 F. 2d 200 (D.C. Cir. 1960); 44 C.J.S., *Insane Persons*, § 63 (1945).

<sup>80</sup> *State ex rel. Bricker v. Griffith*, 34 Ohio L. Abs. 95, 36 N.E. 2d 489 (Ct. App. 1941); *In re Stearns*, 59 N.Y.S. 2d 103 (Sup. Ct. 1945).

<sup>81</sup> See CAL. WELF. & INST. CODE § 5512.

<sup>82</sup> Annot., 24 A.L.R. 2d 350, 351 (1952).

<sup>83</sup> CAL. WELF. & INST. CODE § 5500.

<sup>84</sup> See CAL. WELF. & INST. CODE § 5512 and BALDWIN'S OHIO REV. CODE SERVICE § 2947.25 (1963).

<sup>85</sup> UTAH CODE CRIM. PROC. ANN. 77-49-5 (1953); 19 PURDON PA. STATS. ANN. § 1166 (Supp. 1962).

<sup>86</sup> MICH. PUB. ACTS 1937, No. 196, § 1-b.

<sup>87</sup> *People v. Frontczak*, 286 Mich. 51, 281 N.W. 534 (1938).

A different type of statute which provided for the sterilization of convicted sexual deviates on order of the Alabama governor was held to lack provision for due process where the statute denied, or failed to preserve, the right to a hearing before a competent tribunal or board or a judicial review.<sup>88</sup>

In 1940, however, the United States Supreme Court upheld a sexual psychopathy statute in the face of attack on constitutional issues.<sup>89</sup> State and federal courts across the nation have frequently upheld similar statutes against claims of cruel and unusual punishment,<sup>90</sup> lack of due process,<sup>91</sup> retrospective legislation,<sup>92</sup> ex post facto legislation,<sup>94</sup> and double jeopardy.<sup>95</sup>

Frequently sexual psychopaths are confined in institutions operated by state departments of correction rather than state hospitals. The California case law on the subject holds that confinement in an institution operated by the Department of Corrections until one recovers is not cruel and unusual punishment since the commitment is not under a criminal statute.<sup>96</sup>

However, the California statutes<sup>97</sup> provide that the person is committed to the state entity which operates institutions for persons mentally disturbed, rather than directly to the entity operating the state prison system, even though the actual confinement may be in an institution operated by the latter.<sup>98</sup> This differs from the Narcotic Rehabilitation Act, which calls for direct commitment to the Director of Corrections.<sup>99</sup> A further distinction between the two is that the sexual psychopathy laws ordinarily provide for a truly indeterminate period of confinement,<sup>100</sup> whereas the Narcotic Rehabilitation Act has an absolute limitation of seven years in most cases and ten years in cases where the court has authorized an extension.<sup>101</sup>

There are many other parallels in the law providing for commitment under civil procedures of persons variously denominated dipsomaniacs, inebriates, or alcoholics; for persons considered defec-

<sup>88</sup> *In re* Opinion of the Justices, 230 Ala. 543, 162 So. 123 (1935).

<sup>89</sup> *Minnesota ex rel. Pearson v. Probate Court*, 309 U.S. 270 (1940).

<sup>90</sup> *People v. Chapman*, 301 Mich. 584, 4 N.W. 2d 18 (1942).

<sup>91</sup> *People ex rel. Turnbaugh v. Bibb*, 252 F. 2d 217 (7th Cir. 1958).

<sup>92</sup> *State ex rel. Sweezer v. Green*, 360 Mo. 1245, 232 S.W. 2d 897 (1950).

<sup>93</sup> *People v. Chapman*, *supra*, note 90.

<sup>94</sup> *In re Moulton*, 96 N.H. 370, 77 A. 2d 26 (1950).

<sup>95</sup> *In re Keddy*, 105 Cal. App. 2d 215, 233 P. 2d 159 (1951).

<sup>96</sup> *People v. Levy*, 151 Cal. App. 2d 460, 311 P. 2d 897 (1957); *People v. Gross*, 139 Cal. App. 2d 607, 294 P. 2d 88, *cert. denied*, 351 U.S. 977, *cert. denied*, 352 U.S. 793 (1956).

<sup>97</sup> CAL. WELF. & INST. CODE §§ 5512, 5518.

<sup>98</sup> *Ibid.*

<sup>99</sup> CAL. PEN. CODE §§ 6450, 6451, 6506.

<sup>100</sup> CAL. WELF. & INST. CODE § 5512.

<sup>101</sup> CAL. PEN. CODE §6521.

tive or psychopathic delinquents; for stimulant addicts; and even for the involuntary commitment to a hospital facility of persons who are ill with a contagious disease and who refuse to voluntarily obtain treatment. In each case the state has found that the interests of society demand that the rights of the individual be subjugated and that he be confined, whether voluntarily or involuntarily, for the benefit of society. Each of these procedures, however, is a straightforward civil commitment without the criminal overcast which makes the sexual psychopathy laws and the narcotic rehabilitation law so similar.

Critics of the Narcotic Rehabilitation Act say that it cannot be treatment-oriented when it shows an overlay of criminal approach to the problem. This overlay is not traceable to any one item, but is an accumulation of small indicia which are mainly external in their effect, and, in the opinion of the authors, are more apparent than real. The indicia are items in the law such as: commitment of the addict to the Director of Corrections rather than to the Director of Mental Hygiene; placement in an institution operated by the Director of Corrections, which institution may be located on the grounds of a California prison; staffing of the institution with Department of Corrections personnel; parole of the addict to agents of the Adult Authority having parole supervision over felons; and inclusion of the law in the Penal Code rather than the Health and Safety Code or the Welfare and Institutions Code.

The claim usually heard is that these indicia show a general scheme of criminal punishment for the status of being an addict, thereby bringing the statutes within the purview of *Robinson v. California*,<sup>102</sup> in that such commitment of addicts as criminals constitutes cruel and unusual punishment. A claim of cruel and unusual punishment must depend upon a determination that the commitment of addicts to the California Rehabilitation Center is imprisonment as *criminals*, and that any treatment provided is secondary to a punishment concept. The present law avoids this in that it denominates the procedures as nonpunitive in nature,<sup>103</sup> leaving it to those attacking the law to show that it is civil in name only and provides a de facto prison for addicts where they are treated as criminals.

The California Supreme Court has spoken of these "criminal" indicia as "both unnecessary and unfortunate,"<sup>104</sup> but believed they are outweighed by the demonstrably civil purpose of the mechanism and operation of the program. Since the United States Supreme

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<sup>102</sup> 370 U.S. 660 (1962).

<sup>103</sup> CAL. PEN. CODE § 6399.

<sup>104</sup> *In re De La O*, 59 Cal. 2d at 149, 378 P. 2d at 807.



Court has denied certiorari in both the *In re De La O*<sup>105</sup> and the *Butler*<sup>106</sup> cases, it would seem that the issue is closed.

There are certain due process arguments which appear to the authors to carry some weight. Foremost among these is the claim that, under the Fourteenth Amendment due process clause,<sup>107</sup> California's Narcotic Rehabilitation Act is vague and ambiguous, if not in its use of the term "addicted," then certainly in the use of the phrase "in imminent danger of becoming addicted. . . ."<sup>108</sup> Terms such as "imminent" by a process of creeping inclusion have a tendency to take in more and more of the field, until they become a fiction and there is no aspect of "imminency" remaining. Such a word as "imminent," because it is a comparative and not an absolute, requires a value judgment as to just how imminent is imminent. What standard is to be applied, and how can it be expressed in words that may be communicated to the large numbers of persons involved in making such determinations, both in the legal and the medical aspects of the process?

A more difficult question is whether it is proper to include such persons in an involuntary commitment program, even if the term "imminent danger of becoming an addict" can be properly defined. The authors know of no precedent for treating, in involuntary confinement, persons who are in imminent danger of becoming insane, in imminent danger of becoming sexual psychopaths, in imminent danger of becoming infected with a contagious disease, in imminent danger of becoming inebriate alcoholics, or other such classification. This appears to be a new inclusion in the laws of confinement, and if the category can be constitutionally defined, does it come within the police power of the state to confine persons in imminent danger of becoming addicts?

One matter has not yet been fully tested. That is whether the constitutional prohibition against unreasonable search and seizure in criminal matters will be incorporated into the protections afforded under the new statutory procedure for commitment of addicts. A considerable body of law has arisen over the years in regard to what is unreasonable search and seizure. The federal rule is now applicable to the states and enforceable by habeas corpus in the federal

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<sup>105</sup> 374 U.S. 856 (1963).

<sup>106</sup> 84 Sup. Ct. 65 (1963).

<sup>107</sup> UNITED STATES CONST. AMEND. XIV § 1.

<sup>108</sup> In the *De La O* decision the court said that "in imminent danger of becoming addicted" was a non-technical phrase having a commonly understood meaning. Since *De La O* was an addict the statement was dictum. See *Lanzetta v. New Jersey*, 306 U.S. 451 (1939), where the statutory definition of "gangster" was held to be too vague to meet the constitutional standard of due process.

courts.<sup>109</sup> This federal rule, however, applies to criminal proceedings, although the vigorous rationale in *People v. Cahan*<sup>110</sup> would seem to indicate that it would be extended to cover involuntary civil commitments.

If it be assumed *arguendo* that narcotic addict commitment is a civil proceeding, then it would appear to be possible for police officers who have made an illegal search and seizure to use the illegally obtained evidence against the accused in the civil proceeding for commitment as an addict even though the evidence would not be admissible in a criminal proceeding. This type of evidence could be extremely important in the proceeding under Penal Code section 6500, for instance, where the evidence might consist of needle marks on an addict's arms, covered by his shirt sleeves, and disclosed by a forcible search without reasonable cause. Even if such evidence were reenforced by discovery of narcotics on the person of the accused, the original search being unlawful, the illegally seized narcotic drug would not be admissible in a criminal proceeding. But if the courts admit such evidence in a Penal Code section 6500 proceeding, law enforcement officers could evade the exclusionary rule by filing, instead of a criminal charge, a petition for examination under section 6500 of the Penal Code. Thus stated, it would appear that it might be necessary to transplant the law of search and seizure in toto into the laws governing the commitment of addicts.

## V. CONCLUSION

Before the decision in *Robinson v. California*, the State of California had enacted a statutory scheme for the involuntary commitment of narcotic addicts. It was an original creation, not having evolved through changes in statutory and case law. The statutes have just undergone their first revision which has eliminated certain objectionable aspects of the law.

Basically the law is a proper exercise of the state's police power to protect the population from a class of persons who are sick, and who require treatment against their will, both for their own good and for the good of the community. It is proper that these persons be committed to an institution where they may be involuntarily confined, and it is unfortunate and unnecessary, but not unconstitutional, that there is a semblance of criminality associated with the process. Perhaps the legislature originally was not itself certain that it was enacting a procedure totally civil in nature, rather than quasi-civil, quasi-criminal, but the result does not fail because of this.

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<sup>109</sup> *Ker v. California*, 374 U.S. 23 (1963).

<sup>110</sup> 44 Cal. 2d 434, 282 P. 2d 905 (1955).

The real defects in the system appear to lie more in the specifics than in the generalities. At least part of the language is vague and to some degree ambiguous. As proper cases arise, and real issues are brought before the courts, it may be anticipated that some of these early problems will be settled. It is expected that the legislature will continue to improve the law. In any event, in its basic outlines, the law has, to date, successfully withstood constitutional attack.

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## EFFECT OF STATE MARITAL LAWS ON "WIDOW'S" BENEFITS UNDER THE SOCIAL SECURITY ACT

### I. INTROUCTION

This note concerns one part of the voluminous Social Security Act: Subchapter II—Federal Old-Age, Survivors and Disability Insurance Benefits.<sup>1</sup> Although the persons entitled to benefits under this Subchapter include those who meet the requirements of wife, child, widower, widow, or parent of the wage earner, this note is confined to the widow's Survivors benefits<sup>2</sup> and examines:

- (1) The reference to state law to determine "widow's" status;
- (2) The effect of this reference upon her right to benefits;
- (3) The recent congressional amendments to the act which concern the problem;<sup>3</sup> and,
- (4) The impact of state law upon the right to reinstatement of benefits after annulment of subsequent remarriage.<sup>4</sup>

#### A. Nature of Benefits

The theory behind the widow's monthly benefits is the substitution of Social Security benefits for the economic loss resulting from the death of the wage earner, thus keeping the widow from becoming a public charge or undue burden upon her family.<sup>5</sup>

The right to benefits is in no way connected with need or wealth; a widow of a wealthy man as well as a widow of a poor man may

<sup>1</sup> 49 STAT. 622 (1935), as amended, 42 U.S.C. §§ 401-25 (1958).

<sup>2</sup> 42 U.S.C.A. § 402 (e) (Supp. 1962). The benefits are of two types: monthly pensions and lump-sum death payments. The lump-sum death payments are relatively unimportant; therefore, this note is primarily concerned with the monthly pension.

<sup>3</sup> 74 STAT. 924 (1960); 71 STAT. 519 (1957), amending 42 U.S.C. § 416 (h)(1).

<sup>4</sup> By analogy the problems and rights of widows discussed in this note apply to widowers as well. See 42 U.S.C.A. § 402(f), 416(g) (Supp. 1962).

<sup>5</sup> See *Stuart v. Hobby*, 128 F. Supp. 609 (S.D.N.Y. 1955); *Newsom v. Social Security Board*, 70 F. Supp. 962 (E.D. Mich. 1947).