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## AN ANALYSIS OF THE MISSOURI NARCOTIC DRUG LAWS

ROY F. PROFFITT\*

### THE PROBLEM

In recent months the newspapers, magazines, and airwaves have been filled with details of illegal traffic in and use of narcotic drugs. These news sources have pictured the illegal distributors of these drugs as well organized, highly efficient, powerful, wealthy, nation-wide machines. The direct victims of these importing and sales organizations are the habitual users of the drugs. The incidental victims may be anyone.

There is abundant evidence that the illegal sale of these drugs is really big business, and a profitable undertaking for those engaged therein. It is commonly referred to as a multi-million dollar racket, and this figure seems quite reasonable when one considers that two "small" peddlers in St. Louis recently sold more than \$270,000 worth of heroin in six months, and another St. Louis distributor was arrested with more than \$400,000 worth of heroin in his possession.<sup>1</sup> That an efficient importing and distributing system necessarily exists is evidenced by the fact that the principal drug used by addicts throughout the country today is heroin, a derivative of opium, and there is no legal source of this drug in the United States.<sup>2</sup> The medical profession no longer uses this drug, and its manufacture is prohibited, yet literally thousands of addicts in most areas of the United States are able, if they produce the price, to obtain sufficient quantities of heroin to sustain their habit. In an earlier era, during national prohibition, the roughly equivalent ease which intoxicating liquor could be obtained was explained by cynics to be the result of lax enforcement by sympathetic policemen and prosecutors, but no such attitude on the part of officials is apparent today to explain the continued supply of these evil drugs. The opinion has been advanced that the recent upsurge in consumption is fostered by the Communists in an

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1. On March 9, 1951, Mr. and Mrs. James Hurse pleaded guilty in federal district court in St. Louis to charges of illegally selling heroin. Narcotics officers said they had sold more than \$270,000 worth of heroin in six months. Mr. Jesse Collins, St. Louis, was arrested in New York City, Dec. 7, 1950, as he was about to board a St. Louis bound airliner with heroin valued at \$400,000, on the illegal market, in his possession.

2. Narcotic Drug Import and Export Act, 35 STAT. 614 (1909), as amended 21 U.S.C. § 173 (1946).

effort to undermine the morals of our youth.<sup>3</sup> It is true that China is one of the largest producers of opium, but it is beyond the knowledge of the writer whether these suspicions are justified, or whether the ready supply of the narcotics is merely the result of various free enterprisers attempting to satisfy the ancient economic law of supply and demand. The only tenable conclusion is that whoever the suppliers may be, and whatever their motive, they have succeeded, in spite of many obstacles and determined efforts by federal and state authorities, not only to satisfy the old market but to increase the scope of their activity in recent years.<sup>4</sup>

This leads to the second phase of the problem. The number of users has increased considerably within the last three or four years, and the increased use by young people has been out of proportion to the increase generally.<sup>5</sup> From the very nature of the practice, an actual count of users is impossible because users are a somewhat floating population, and they take elaborate steps to hide their addiction; however, it appears that the increase is nation-wide, and Missouri is no exception. It does appear that the largest increases are in the larger cities, and this is also true in Missouri.<sup>6</sup> Both St. Louis and Kansas City have reported some increase in addiction, which is reflected by a larger number of arrests for illegal sale or possession of the drugs.<sup>7</sup> Police reports do not indicate anything resembling an epi-

3. See testimony of Mr. James W. Connor, Operating Director, St. Louis Crime Commission, before the Missouri Senate Sub-Committee on Crime, April 25, 1951, (p. 148 transcript). Dr. V. H. Vogel and V. E. Vogel in "Facts About Narcotics" published by Science Research Associates, Inc. 1951 states on p. 6 that the Japanese in the war with China in the 1930's used opium for such purposes. Dr. V. H. Vogel was until recently medical officer in charge of the U.S.P.S.H. at Lexington, Ky.

4. *E.g.* see statistics prepared by Mr. Arthur C. Meyers, Statistician, St. Louis Police Force, and introduced as exhibit 82 to the Senate Sub-Committee on Crime by Col. William L. Holzhausen, Chairman, Board of Police Commissioner, St. Louis, Mo., May 2, 1951.

5. In a speech to the Missouri Correction Assn. in Jefferson City, Mo., Oct. 14, 1951, Dr. Robert W. Razor, Deputy Chief, Dept. of Neuro-Psychiatry, U. S. Public Health Service Hospital, Lexington, Ky. stated that in the past ten years the percentage of addicts in the hospitals under 21 years of age had increased from approximately 3% to between 17% and 20%. Admissions of the same age group to the same hospitals increased from 22 in 1947 to 440 in 1950. There was a slight decline in 1951. See Vogel, *Our Youth and Narcotics*, TODAY'S HEALTH, (Oct. 1951). Cf. Gerrity, *The Truth About the Drug Menace*, 204 HARPERS 27 (Feb. 1952).

6. See testimony of Mr. T. J. Walker, District Supervisor of the United States Bureau of Narcotics for Missouri, Kansas, Oklahoma and Arkansas, before the Missouri Senate Sub-Committee on Crime, April 25, 1951 (p. 185 transcript).

7. *Supra* n. 4. These records show some increase among adults, but a survey of the St. Louis schools in the spring of 1951 failed to substantiate that the use of narcotics by juveniles in St. Louis is on the increase. Judge Louis Comerford, Presiding Judge, St. Louis Court of Criminal Correction, Division No. 1, testified

demic, or complete breakdown of enforcement, but police do recognize the seriousness of the problem and have taken steps to meet it.<sup>8</sup> The newspapers have painted a somewhat different picture, and the number of arrests of teen-agers in St. Louis for narcotic violations as reported in one story, if carried to a logical conclusion, would indicate that addiction among teen-agers in that city had increased 1600% in the last two and one-half years.<sup>9</sup> That is probably an exaggeration. Other reports have indicated that the number of drug addicts arrested in St. Louis tripled during 1949 with a lesser increase in 1950.<sup>10</sup> Still another story said that the number of known users in St. Louis increased from 300 to 3000 in five years.<sup>11</sup> No one, at least publicly, has made the statement that the problem does not exist.

Specific reference has been made to the situation in St. Louis, but one should not be lulled into the belief that the problem is not state wide.

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before the Missouri Senate Sub-Committee on Crime May 2, 1951 (pp. 374-5 of the transcript) that "The use of narcotics has greatly increased in the past year among Negroes, and particularly young Negroes who are first offenders. Previously the number of cases of the use of narcotics by persons charged with a violation of the law coming to the Court's attention averaged about four or five a year. At the present time we will frequently have as many as four or five a month who admit they are users of heroin and cocaine. In many of these cases they are charged with petit larceny, do not work, and have a complete moral breakdown. . . ." Judge Comerford indicated he was speaking of "young" addicts 17 to 25 years old. Juveniles, as used by the St. Louis Police, meant only children less than 17 years of age. Sergeant John F. Flavin, in charge of the narcotics unit of the Kansas City, Missouri police department testified before the committee on May 9, 1951 (p. 489 transcript) that in the past three years there had been an increase in the number of addicts in that city, particularly among the Negroes, but that there was no addiction in the high schools. Mr. Henry H. Fox, Jr., prosecuting attorney, Jackson County, Missouri testified (p. 549 transcript) that his office had had several recent contacts with young shoplifters who admitted stealing in order to purchase a supply of drugs.

8. On March 12, 1951 the St. Louis, Missouri police department created a special 10 man anti-narcotic squad, and all recruits are taught search techniques with emphasis on search for narcotics. See exhibit 79 introduced to Missouri Senate Sub-Committee on Crime.

9. See story *Dope Peddling and Addiction Mounting Here*, St. Louis Missouri Star-Times, April 27, 1951. The increased attention to the drug menace by the police may help account for the increasing number of addicts coming to their attention.

10. See stories and editorials dated Feb. 4, 5, and 6, 1951 in all of the St. Louis newspapers.

11. See story *Dope Sales Here Becoming Major Crime Problem*, St. Louis, Missouri Globe-Democrat, Feb. 24, 1951. Cf. Mr. T. J. Walker *supra* n. 6, who estimated (p. 194 transcript) that there were between 500 and 1500 addicts in the entire state of Missouri. Speaking only of Kansas City, Missouri, Mr. Claude A. Follmer, U. S. Narcotic Agent, Kansas City, Missouri, testified before the special committee to investigate interstate commerce, known as the Kefauver Committee (see the hearings Part 4, Missouri, p. 92) that there were from 40 to 50 white and from 250 to 300 colored addicts in Kansas City.

Kansas City, though not overrun, has many addicts,<sup>12</sup> and reports of suspected addiction and violation of narcotic statutes in other localities in the state are regularly being made to the division of health in the State Department of Public Health and Welfare. Addicts need a ready supply of whatever drug they are addicted to; thus it usually follows that both phases of the problem exist in the same area. The combined presence of confirmed addicts and peddlers anxious to make a dishonest dollar soon spread the practice to others with whom they come in contact, much like a communicable disease. Delay in following up such reports of addiction or sales may result in the situation getting out of control, either temporarily or permanently.

The third phase of the problem may appropriately be introduced with a question, "So what?" Doctors with years of experience treating drug addicts have concluded that no consistent organic damage is seen in the body following prolonged and excessive use of narcotic drugs.<sup>13</sup> Police officers with years of experience have testified that addicts with an adequate supply of drugs often show no outward signs of their addiction.<sup>14</sup> Addicts claim that only the drug enables them to feel at ease, contented and able to compete on normal terms with non-addicts,<sup>15</sup> and in some cases this appears true. Character deterioration, however, is real and great, and Dr. Lawrence Kolb, of the United States Public Health Service, has described the effect of morphine and morphine-like drugs:<sup>16</sup> ". . . when taken in large doses, (they) sap the physical and mental energy; lethargy is produced, ambition is lessened, and the pleasurable feeling already described—that all is well—makes the addicts contented. These various effects cause them to pay less attention to work than formerly; consequently, they tend to become idlers by this means alone. Those who depend upon the illegitimate traffic are sometimes unable to work because of discomfort and weakness due to insufficient narcotics, and at other times they stay away from their work in order to look for the drug. There are cases . . . who have gone to distant cities regularly to get an ounce of heroin or morphine, and others who have lost as many as a dozen jobs through neglecting work to meet their peddlers, or through

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12. *Ibid.*

13. Vogel, Isbell and Chapman, *Present Status of Narcotic Addiction*, 138 A.M.A.J. 1019 (1948).

14. Sargeant John F. Flavin, *supra* n. 6, at p. 495.

15. *Supra*, n. 13.

16. Kolb, *Pleasure and Deterioration from Narcotic Addiction*, 9 MENT. HYG. 699 (Oct. 1925).

lying in bed in the morning instead of going to work because the dose that would have put energy into them was not available. Often, when these cases secure a supply, after their short periods of deprivation, they take more than is actually necessary to keep them comfortable. The result is that they alternate between physical and mental irritability and physical and mental lethargy. Both extremes make for emaciation, physical inefficiency, and unusual mental reactions.

"The dreamy satisfaction and the pleasurable physical thrill produced by opium in many addicts in their early experiences with it are of themselves forms of dissipation that tend to cause moral deterioration. Addicts, as a rule, are compelled to associate with persons of low moral character in order to continue their addiction. Financial embarrassment resulting from idleness or the high price of peddled narcotics impels them to beg money from their friends, obtain it from members of their families by subterfuge, or steal, in order to supply themselves with drugs; they suffer in manliness through feeling what they often consider the just contempt of the public; they suffer through their constant fear of arrest, or because of a term in the penitentiary served for having narcotics in their possession. This train of events brings about unfavorable character changes and gradual moral deterioration, and converts what might have been fairly useful citizens into outcasts, idlers, or dependents."

The skeptic may still feel that the use of narcotics by others will have no appreciable effect upon his or her life, but no one is completely immune from the incidental effect of another's addiction. Drug addiction is an extremely expensive habit.<sup>17</sup> The police files in any city are liberally sprinkled with case histories of a variety of criminals who became or were criminals or continued to be criminals primarily because it was the only available means of obtaining sufficient wherewithall to purchase a daily ration of a narcotic drug.<sup>18</sup> Many addicts have resorted to shoplifting, larceny, burglary and robbery to supplement their other incomes, women have become prostitutes for the same reason, and still others, once they have the habit, become peddlers of the drug to others. Particularly among juvenile users, there is often no record of delinquency prior to addiction.<sup>19</sup>

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17. See Vogel and Vogel, *supra* n. 3, at p. 31. Ten to twenty dollars a day may be needed to buy the necessary supply of drugs.

18. *Supra*, n. 7.

19. "About three-fourths of the addicts admitted to the federal hospitals for treatment give no history of a criminal record before they became addicts. However, almost without exception, all of these people soon became criminals in order to buy the drugs they needed." Vogel and Vogel, *supra* n. 3, at p. 32.

THE LAW TODAY<sup>20</sup>

The Missouri General Assembly has not been unmindful of the dangers existing from the unlimited traffic in and use of narcotic drugs. From a modest beginning as early as 1881 there has been a rather steady acquisition of new laws redefining, regulating or prohibiting some phase in the use, manufacture, possession or sale of narcotic drugs. Most of the old statutes, in somewhat modern dress, are still in force, with the newer acts superimposed upon as well as alongside the previous regulations and restrictions. Graphically, it would probably look like an inverted pyramid with the broad general base, the Uniform Narcotic Drug Act enacted in 1937, at the top rather than the bottom.

The dangerous quality of opium was recognized at an early date. In 1881 a statute was enacted which required that all preparations of opium (except those containing less than two grains of opium to the ounce) be labeled "poison."<sup>21</sup> A law enacted in 1885 provided that no person would be issued a permit to teach in the public schools unless that person was qualified to teach, among other things, physiology and hygiene with special reference to the effects of alcoholic drinks, stimulants, and narcotics generally upon the human system, and further that if any patron of the school requested that such subjects be taught in a school, then it must be done.<sup>22</sup> The next step, taken in 1887, prohibited the maintenance of opium dens—places "for the purpose of smoking opium, hasheesh, or any other deadly drug."<sup>23</sup> In 1905 the retail sale of cocaine, except on a physician's prescription, was prohibited.<sup>24</sup> The manufacturer and sale of adulterated and misbranded foods and drugs was first prohibited in 1907, and the label of any drug preparation containing a narcotic had to truthfully state the quantity or proportion contained therein or be deemed misbranded.<sup>25</sup> The state recognized as early as 1909 that persons addicted to the habitual use of "cocaine,

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20. Reference in this discussion to Missouri statutes will be to the Mo. Rev. STAT. (1949) unless otherwise indicated.

21. Laws 1881, p. 132, reenacted Laws 1909, p. 477. Now § 338.090.

22. Laws 1885, p. 243, amended Laws 1889, p. 232. Such instruction became compulsory, Laws 1897, p. 233, amended Laws 1909, p. 798. Now § 163.170.

23. Laws 1887, p. 175, amended in Mo. Rev. STAT. § 3874 (1889), and further amended to its present form, Laws 1911, p. 199. Now §§ 564.110 to 564.180.

24. Laws 1905, p. 145, amended in Laws 1915, p. 279 by adding opium, morphine, codeine and heroin to the list of prohibited drugs. Repealed by the 1949 revision act, S.B. 1052, as adequately covered by the uniform narcotic drug act.

25. Laws 1907, p. 238 § 6. This section was repealed and reenacted Laws 1943, p. 559 § 9870 with the additional requirement of a statement "Warning—May be habit forming." Now § 196.100

chloral, opium or morphine<sup>26</sup> were often unable to manage their own affairs or estates, and provided that guardians could be appointed for them.<sup>26</sup> In 1917 sales or gifts of narcotic drugs to inmates of the prison, reformatories, and industrial homes were prohibited.<sup>27</sup> An important and humane law in 1921 provided for the voluntary and involuntary commitment of drug addicts to the state hospitals for insane persons in order that such addicts might be cured of their habitual use of narcotic drugs.<sup>28</sup> A law in 1935 virtually prohibited the planting, selling, giving away, use and possession of marijuana in Missouri.<sup>29</sup> The largest addition to this series of legislation followed two years later when the General Assembly enacted the Uniform Narcotic Drug Act, which had been promulgated in 1932 by the National Conference of Commissioners on Uniform State Laws.<sup>30</sup> The present General Assembly has added four new sections concerned with narcotic drugs. The new drivers license law provides that no license shall be issued to any person who is addicted to the use of narcotics, and that any license shall be revoked if the licensee is convicted of driving under the influence of a narcotic drug.<sup>31</sup> Section 560.183 now makes the theft of any quantity of narcotic drug a felony.<sup>32</sup> Marijuana was declared a noxious weed, and its destruction authorized.<sup>33</sup>

There are today forty-seven sections of the *Missouri Revised Statutes* (1949) which deal directly with some phase of regulation or prohibition of the drugs themselves or with education and treatment of the users. There are several more sections which deal indirectly with users and their estates. In spite of the relative antiquity of most of these statutes, and in spite of the seriousness of the narcotic problems which they purport to regulate and control, most of the sanctions provided are rarely invoked, and few sections have ever been construed by the appellate courts. This is not intended to infer that the regulations are not enforced, for many are; nor to infer that the laws are not otherwise important and useful, because it is believed that they are; but, rather, to demonstrate that many of the sections are unfamiliar to most law enforcement officers, and to indicate an overlapping

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26. Laws 1909, p. 565, amended Laws 1917, p. 106. Now § 458.030.

27. Laws 1917, p. 155 § 121. Now § 217.720.

28. Laws 1921, p. 305. Now §§ 202.360 to 202.420.

29. Laws 1935, p. 225. Now §§ 564.090, 564.100.

30. Laws 1937, p. 344, amended Laws 1945, p. 957. Now §§ 195.010 to 195.210.

31. §§ 302.060, 302.271. Laws 1951, p. —, A.S.C.S.H.B. Nos. 22, 49, 56,

114 § A.

32. § 560.183. Laws 1951, p. —, S.B. No. 225.

33. § 263.250. Laws 1951, p. —, S.B. No. 224.



with the federal narcotic laws which makes the state laws somewhat less active. Another by product of the rather dormant status of most of the state's narcotic laws is that many of the older statutes were apparently forgotten or overlooked when new legislation was proposed, and this has resulted in considerable overlapping and in some cases irreconcilable inconsistencies. Some of the recent enactments have already become somewhat outdated by modern scientific developments. In spite of the many sections of the statutes enacted to curb the drug traffic in Missouri there are still some serious gaps in the total structure of an effective regulatory law.

The defects which exist can only be corrected, and the laws as they are can only be enforced efficiently if those who must correct and those who must enforce know and understand what the law is. To aid in such an understanding the various sections of the laws of Missouri, to which reference has been made, are herewith presented and discussed.

#### *The Uniform Narcotic Drug Act*

It is unquestioned that the various narcotic drugs do have some meritorious uses,<sup>34</sup> and it has not been the aim of the General Assembly to prohibit or outlaw the manufacture, distribution, use and possession of narcotics, but, rather, to regulate and control these activities. The most comprehensive act for this purpose in Missouri is the Uniform Narcotic Drug Act.<sup>35</sup> The uniform act was carefully drafted after many years of work.<sup>36</sup> The commissioners utilized the help and advice of many legal, scientific and medical experts. Great care was taken to stay within constitutional limitations, to integrate the provisions of the proposed state law with the federal laws on the subject,<sup>37</sup> and to avoid conflict with provisions of any treaties between the United States and foreign countries in regard to traffic in narcotic drugs.

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34. Narcotic drugs are most often used by the medical profession for their analgesic effect. *E.g.* morphine and morphine like drugs are used in cases of advanced cancer when the pain is too severe, or for immediate use as a pain block in the case of a severe injury or shock. Narcotics are also valuable as a sedative in certain situations. See *supra* n. 13, for further details.

35. *Supra* n. 30. This act has been adopted in 41 states and Alaska, District of Columbia, Hawaii and Puerto Rico. 9A U.L.A. 182 (1951).

36. See commissioners' prefatory note, Uniform Narcotic Drug Act, 9A U.L.A. 183 (1951).

37. The Harrison Act [26 U.S.C.A. § 2550 *et seq.*] and the Federal Import and Export Act [21 U.S.C.A. §§ 171-185].

The Missouri version<sup>38</sup> of this act consists of twenty-one sections. The first, and one of the most important sections of the act, carefully defines the terms used in the subsequent sections. In any law imposing criminal sanctions for a failure to comply with its provisions it is imperative that the meaning be clear and the terms well defined. This is doubly so when the subject matter of the act is highly technical and so little understood by the average citizen. "Narcotic drugs," as defined in this section of the act, "means coca leaves, isonipecaine and opium and every substance neither chemically nor physically distinguishable from them."<sup>39</sup> Each of these terms is further defined in detail. At least thirty-four states also include "Cannabis" or "marihuana" within the term "narcotic drugs,"<sup>40</sup> but in Missouri the traffic in this drug is now regulated by separate sections<sup>41</sup> which will be discussed below. In the interest of uniformity, both with respect to the regulations themselves and the penalties imposed, and in order to advantageously use the detailed regulatory scheme of the uniform act without unnecessarily repeating the various sections, and thus adding to the burden of those officials who must print, understand, and enforce the laws it would seem better to include this drug within the scope of the Missouri uniform act. As will be seen below, the differences between these two regulatory acts are not so great that a merger would present great difficulties, and the present inconsistencies are undesirable. Since the last amendment<sup>42</sup> to the uniform act in Missouri eleven new synthetic drugs have been found by the United States Secretary of the Treasury, and proclaimed by the President to be "opiates" and to "have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine."<sup>43</sup> To maintain the close integra-

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38. There are some intentional differences between the act as proposed by the National Conference of Commissioners to Uniform State Laws and the uniform act as enacted in most states. For details see the statutory notes under each section, Uniform Narcotic Drug Act, 9A U.L.A. 182 *et seq.* (1951). See Virden, *Status of Uniform Laws in Missouri*, 15 Mo. L. Rev. 274, 284-285 (1950) for a list of Missouri variations. Missouri has conveniently retained the sections in the same order as the Uniform Act and the numbering system allows for easy reference to the Uniform Act.

39. § 195.010(14).

40. For a list of these states see statutory notes, Uniform Narcotic Drug Act, § 1, 9A U.L.A. 189 (1951).

41. §§ 564.090, 564.100.

42. Laws 1945, p. 957. Following the lead of the federal narcotic laws, isonipecaine was added to the list of narcotic drugs.

43. The term "opiate" was added to the federal narcotic laws [Internal Revenue Code, 26 U.S.C.A. § 3228(f)] by the 79th Congress, P. L. 320, Mar. 8, 1946. This generic term was added "to provide a prompt and convenient method of bringing under the control of the federal narcotic laws any newly discovered drug

tion between the state law and the federal narcotic laws the term "narcotic drugs" should be redefined to include those drugs now termed "opiates" within the meaning of the federal act.<sup>44</sup>

This section of the act<sup>45</sup> provides that it shall be unlawful, except as authorized by the subsequent sections of chapter 195, for any person to compound, mix, cultivate, grow, or by other process, produce or prepare narcotic drugs, to possess, have under his control, sell, barter, exchange, give away, or to offer to sell, barter, exchange or to give away narcotic drugs (whether as principal, proprietor, agent, servant, or employee), or to prescribe, administer, dispense, distribute, leave with, or deliver narcotic drugs. This list seems rather exhaustive, but at least two omissions are worth noting. The use of narcotic drugs, even though they be obtained through illegal sources, and even though they are used for non-medical purposes, is not declared to be illegal by the act; nor is the possession of any apparatus, device or instrument for the unauthorized use of narcotic drugs prohibited by this section of the uniform act. Further reference to both of these omissions will be made below.

The act then requires and makes provisions for the licensing of manufacturers and wholesalers of narcotic drugs by the division of health.<sup>46</sup> The division must ascertain that the applicant is of good moral character, and properly equipped to undertake the business described, and further that the applicant hasn't recently violated any federal or state narcotic law, or is not

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which is determined, after appropriate inquiry to possess the same or similar dangerous, habit-forming, or habit-sustaining qualities as morphine or cocaine." (House of Representatives Committee on Ways and Means Report, 1946 U. S. Code Cong. Service p. 1083). Before a drug may be declared to be an "opiate" the Secretary of the Treasury (or person designated) must hold public hearings, and make findings as set forth in the section. Then to give general public notice that a particular drug will be covered by the federal narcotic laws as an "opiate" the President must proclaim that the finding was made by the Secretary of the Treasury. The drugs proclaimed to be "opiates" are amidone, Proclamation No. 2738, July 31, 1947, 12 F. R. 5269, 61 STAT. 1075, isoamidone, Proclamation No. 2793, July 2, 1948, 13 F. R. 3717, 62 STAT. 1525, keto-bemidone, Proclamation No. 2807, Sept. 7, 1948, 13 F.R. 5229, 62 STAT. 1552, bemidone, NU-1196 (also known as nisentil), NU-1779, NU-1932, N. I. H.-2933, N. I. H.-2953 and CB-11 (also known as heptazone or heptalgin), Proclamation No. 2851, Aug. 26, 1949, 14 F.R. 5361, 63 STAT. 1290, and NU-2206, Proclamation No. 2879, Mar. 27, 1950, 15 F.R. 1727, 64 STAT. —.

44. The addition of some of these drugs was suggested by Mr. T. J. Walker, *supra* n. 6 at p. 195.

45. § 195.020.

46. §§ 195.030, 195.040.

himself an addict. The division has considerable discretion in issuing such licenses, and may revoke a license for cause. Rulings of the division of health are subject to appeal in the courts. As will be seen, all other persons who are entitled to lawfully compound, sell, administer, or dispense narcotic drugs—physicians, veterinarians, dentists, apothecaries, persons in charge of hospitals and laboratories approved by the division of health, and a limited number of specialists and government employees—are licensed to practice their professions by various other licensing bodies in the state,<sup>47</sup> which are intended to insure lawful and ethical conduct on the part of these individuals.

The fifth, sixth and seventh sections<sup>48</sup> of the Missouri act are virtually identical with the same numbered sections of the uniform act. These sections specify under what circumstances and to whom manufacturers, wholesalers, apothecaries, physicians, dentists and veterinarians may lawfully sell, deliver, dispense, administer, give or prescribe narcotic drugs. In one sense these sections are the heart of the act, for, as stated, the purpose of the act is to carefully regulate, not prohibit the use of the drugs. Many of the other sections are necessary only to define or explain, list exemptions to and provide various sanctions for failure to deal in the narcotic drugs within the terms of these three sections. With minor exemptions, listed in Section 195.080, no manufacturer or wholesaler, licensed as provided above, may sell any narcotic drug except upon official written orders, as defined in Section 195.010.<sup>49</sup> They may then sell and dispense only to another manufacturer or wholesaler; or to an apothecary, physician, dentist or veterinarian; or to a person in charge of a hospital for use by or in the hospital; to a person in charge of laboratory for use in the laboratory for scientific and medical purposes; to a person in the employ of the United States Government or of any state, territorial, district, county, municipal or insular government who shall use the drugs in connection with his official duties; to masters of ships or aircraft, upon which no physician is regularly employed, for actual medical needs of persons on board when not in port; and to certain persons in foreign countries. Section 195.050 further provides for preservation of the

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47. Dentists, chap. 332; practitioners of medicine, surgery and mid-wifery, chap. 334; osteopaths, chap. 337; pharmacists, chap. 338; veterinarians, chap. 340.

48. §§ 195.050, 195.060, 195.070.

49. Missouri has, by this means, paralleled and incorporated by reference the federal procedure. The details of the federal procedure are found in 26 U.S.C. § 2554 (1946) and regulations pursuant thereto used by the U. S. Treasury Department, Bureau of Narcotics, 26 C.F.R. §§ 151.62-151.99 (1949).

order forms, authorizes possession of drugs obtained in the stipulated manner, and instructs those who have thus acquired the drugs in the manner in which they may use them.

Section 195.060 allows an apothecary to lawfully sell or dispense narcotic drugs under only three circumstances. He may sell or dispense narcotic drugs upon a proper written prescription of a physician, dentist or veterinarian.<sup>50</sup> Only such physicians, dentists and veterinarians who are registered under the federal narcotic laws may lawfully prescribe narcotic drugs.<sup>51</sup> The pharmacist must retain all such prescriptions for two years.<sup>52</sup> An apothecary who discontinues dealing in such drugs may sell his stock of goods to another apothecary, or to some manufacturer or wholesaler upon an official written order. Also upon official written order an apothecary may sell limited amounts of diluted drugs to a physician, dentist or veterinarian. The physician, dentist or veterinarian is expected, however, to acquire such drugs as he needs in his practice from manufacturers or wholesalers as discussed in the preceding paragraph.

"A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision."<sup>53</sup> The limits of "his professional practice" are necessarily discretionary, changeable and ultimately to be determined by the standards of treatments acceptable to the medical, osteopathic and dental professions.<sup>54</sup> This section subjects a veterinarian to similar restraint, with

50. The uniform narcotic drug act, Missouri included, has again made a conscious effort to parallel and incorporate the federal requirements for prescriptions. See 26 U.S.C. §§ 2553 (b) (1), 2554 (c) (2) (1946) and the regulations in 26 C.F.R. §§ 151.166 to 151.176 (1949). Neither the federal nor Missouri statutes require that special prescription forms be used, but certain information must be contained thereon.

51. *Ibid.*

52. Section 338.100 requires every proprietor or manager of a pharmacy to retain a file of all prescriptions for five years, and provides for a fine of \$50 to \$100 for failure to do so. Failure to comply with the two year requirement of § 195.060 is a felony (see § 195.200 which will be discussed below). It may be that the special legislation has had the effect of withdrawing narcotic drug prescriptions from the scope of § 338.100, or it may be that they are complimentary, and destruction prior to two years is felony, and between two and five years a misdemeanor. The two year provision conforms with the federal law, *supra* n. 50. There are no decisions of the Missouri courts construing these sections.

53. § 195.070-1.

54. Some states prescribe the limits of professional use and administration of narcotics in greater detail. *E.g.* California prohibits "out-patient" treatment of drug addicts, and limits, by statute, the amounts of narcotic drugs which may be used in connection with treatment of addicts in the lawful institutions. For details

the additional limitation that he may not prescribe, administer or dispense narcotic drugs for human beings. Any unused drugs left by the doctor to be administered in his absence must be returned to him when no longer needed by the patient.

Section 195.080 exempts medicines which contain a very small proportion of opium, morphine, codeine and heroin from most of the other requirements of the narcotic drug law.<sup>55</sup> The maximum concentrations of these exempted drugs are fixed by this section. Certain other liniments, ointments and preparations which are susceptible to external use only, and which contain narcotic drugs in combinations so as to make the extraction of the narcotic drug impractical (except those that contain coca leaves in any quantity or combination) may also be prescribed, administered, dispensed or sold at retail without use of prescriptions. The person who prescribes, administers, dispenses or sells such exempted drugs at retail may not, for any person or animal, exceed certain prescribed amounts of the drugs within a forty-eight hour period, may not sell two exempted preparations to one person within a like period, and must in good faith prescribe, administer, dispense or sell such preparation as a medicine and not for the purpose of evading the provisions of the act. To complete the picture, one who purchases for resale, or who sells such exempted preparations must keep a record showing the quantities and kinds received, sold or otherwise disposed of.<sup>56</sup>

It would be impossible to enforce any regulatory act such as the narcotic drug act if those who were permitted to deal in narcotic drugs were not also required to keep elaborate records of the receipt and disposition of all narcotic drugs which pass through their hands or are in their possession. Mention has already been made that all official written orders, and all prescriptions must be retained.<sup>57</sup> The details of additional records required of every physician, dentist, veterinarian, manufacturer, wholesaler, apothecary or any other person who is authorized to administer or professionally use

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see CAL. HEALTH AND SAFETY CODE, Div. 10, chap. 4 Arts., 1-4 (Deering, 1949). None of the witnesses who appeared before the Missouri Senate Sub-committee on Crime during 1951 suggested a need for more rigorous requirements in Missouri.

55. Some common cough syrups, Brown mixture, paregoric and Stokes' expectorant are representative of these medicinal preparations. The commissioners on uniform state laws recommended in 1942 that these exemptions be eliminated because of various abuses and because of serious shortages of narcotic drugs during the war years. See Uniform Narcotic Drug Act, § 8, 9A U.L.A. 205 (1951).

56. § 195.090-4.

57. See the discussion of §§ 195.050 and 195.060, *supra*.

narcotic drugs, or who purchases for resale or sells narcotic drug preparations exempted by Section 195.080 are found in Section 195.090. Since the prescriptions, orders, records and stocks of narcotic drugs are, by virtue of another section of the act,<sup>58</sup> open to inspection by federal, state, county, and municipal officers whose duty it is to enforce the laws of the state, and since records are required of all parties through whose hands the drugs will flow, a cross check of the various records soon discloses excessive purchases, sales, prescriptions and use of narcotic drugs which have passed through legitimate channels.<sup>59</sup> Of course these records will be of no help in detecting, apprehending or convicting the typical dope peddler who doesn't purport to be engaged in any legitimate business or to comply with the provisions of the narcotic drug law, and who obtains his supply from drugs smuggled into the country. Ordinary police methods are necessary to deal with this type offender, but the narcotic drug law, by narrowly limiting lawful traffic in narcotic drugs, does provide a basis for his punishment.

To further aid in the administration of the narcotic drug regulations, and to minimize the possibility of mistake and subterfuge, Section 195.100 requires manufacturers to clearly label each package containing a narcotic drug showing the contents of the package and the name of the vendor, and prohibits the removal or defacing of such labels. An apothecary who sells or dispenses narcotic drugs on written prescription must show his name, address and registry number, the name, address and registry number of the prescribing physician, dentist or veterinarian, the name and address of the patient and directions for use.<sup>60</sup>

Any person who has acquired any narcotic drug in accordance with any of the preceding sections "may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the

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58. § 195.160.

59. Federal cases have held that seizure and use of such records as evidence in criminal prosecutions does not violate the defendant's constitutional rights under the Fourth and Fifth Amendments of the Federal Constitution. See *United States v. Rabicoff*, 55 F. Supp. 88 (W.D. Mo. 1944); *Sargent v. United States*, 35 F. 2d 344 (9th Cir. 1929); *C. M. Spring Drug Co. v. United States*, 12 F. 2d 852 (8th Cir. 1926). Presumably such records would be admissible in Missouri state courts as well.

60. The Food and Drug Laws (Chap. 196) also contain labeling requirement for packages containing narcotic drugs. A package containing the narcotic drugs coca, cocaine, codeine, heroin, marijuana, morphine, or opium, if intended for internal use by man, except when dispensed on proper written prescription, is deemed misbranded unless it bears the statement "Warning—May be habit forming." Failure to comply is deemed a misdemeanor. §§ 196.015, 196.025, 196.100.

same."<sup>61</sup> The succeeding section<sup>62</sup> excludes from the rather narrow exceptions as to possession or control of narcotic drugs the following persons: common carriers, warehousemen, or their employees when lawfully transporting or storing such drugs; public officers or their employees or helpers in the performance of their official duties requiring possession or control of narcotic drugs; and employees or agents of anyone lawfully entitled to possession is temporary or incidental.

The narcotic drug act further provides that all narcotic drugs, the lawful possession of which cannot be established, or the title to which cannot be ascertained, which shall have come into the custody of a peace officer, shall be forfeited.<sup>63</sup> Such drugs are then to be either destroyed, transferred to some governmental agency, or transferred to some non-profit hospital within the state. Although the narcotic drug act to a very large extent prohibits possession of narcotics, and further provides that such illegal drugs that come into the custody of a peace officer shall be forfeited, the law does not proclaim how such drugs shall be seized, nor how and by whom they shall be declared forfeited. No other section in the statutes, it is believed, now provides for issuing search warrants for illegal narcotic drugs.<sup>64</sup> This article is not intended as a dissertation on the law of search and seizure in Missouri, but it must be obvious to even the casual observer that the limited right to search for and seize narcotic drugs in connection with the lawful arrest of a person illegally possessing them will not cover all situations where it might be necessary to search for and seize such drugs.<sup>65</sup> In *State ex rel. McDonald v. Frankenhoff*<sup>66</sup> and *State ex rel. Igoe v. Joynt*<sup>67</sup> the court sustained the seizure of certain gambling devices without benefit of proper search warrant or in connection with a lawful arrest on the ground that such

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61. § 195.110.

62. § 195.120.

63. § 195.140.

64. In connection with §§ 564.110 to 564.150, which will be discussed below, § 564.160 provides for search warrants, upon proper affidavit, for "any device, apparatus, or instrument for the use of opium or any other deadly drug," but does not include the drug itself. The history of § 542.380 leads to the conclusion that the "pills, powders, medicines, drugs, nostrums, instruments, articles and devices," therein referred to are limited to those for preventing conception or producing abortion or miscarriage. See Laws 1881, p. 124; Mo. REV. STAT. §§ 2180 to 2184 (1899); Laws 1909, p. 440.

65. See *State v. Jones*, 214 S.W. 2d 705 (Mo. 1948); *State v. Carezza*, 357 Mo. 1172, 212 S.W. 2d 743 (1948); *State v. Raines*, 339 Mo. 884, 98 S.W. 2d 580 (1936), for a discussion of the scope of an officer's privilege of search and seizure without a warrant. See note on same subject in 2 Mo. L. REV. 238 (1937).

66. 125 S.W. 2d 816 (Mo. 1939).

67. 341 Mo. 788, 110 S.W. 2d 737 (1937).



devices were "outlawed," "incapable of lawful use" and thus not protected by law and liable to summary seizure and destruction. Since narcotic drugs are capable of lawful use it is doubtful if these cases would sustain the seizure of narcotics without a search warrant or as incident to a lawful arrest.<sup>68</sup> One federal decision<sup>69</sup> has held that an officer lawfully inspecting the prescriptions, orders, records or stock of drugs of one required by law to keep such records, may, if he discovers an unlawful stock of narcotic drugs, seize the drugs as well as the records for evidence and forfeiture without the benefit of a search warrant. The seizure is not unreasonable if incident to lawful inspection. Food and drug inspectors in Missouri must operate upon such a basis. These inadequacies have apparently caused insufficient difficulty in the past to cause them to be brought to the attention of the General Assembly. This is in large part explainable by the close interrelation of the federal and state laws, the fact that nearly all prosecutions have been based upon violation of federal laws, and that federal officers have conducted most searches in accordance with federal procedure.

The cooperation between state and federal officials is commendable, but doesn't justify the substantial omissions in the Missouri law. The authority to search for and seize illegal narcotic drugs should be established, and the food and drug inspectors, who are charged with the supervision of the narcotic drug laws, should be given positive authority to seize excessive and unjustified stocks of drugs discovered during a lawful inspection within the terms Section 195.160. Rule 33 of the new Rules of Criminal Procedure for the Courts of Missouri, effective January 1, 1953, will provide adequate machinery for obtaining and executing the search warrants. This rule, in particular Rule 33.03 and 33.05, will also provide the machinery now lacking in Section 195.140 for securing the forfeiture of illegal narcotic drugs. However, since the narcotic laws are far removed from the other sections on criminal law, it would be desirable to make a cross reference in Section 195.140 to Rule 33 of the rules for criminal procedure.

If these recommendations should become law the officers of the Missouri state highway patrol would still be without authority to search for or seize

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68. In *State v. Jones*, *supra* n. 65, certain stolen narcotic drugs (for which a search warrant could have been obtained, § 542.260) discovered by illegal search of defendant's automobile were deemed inadmissible as evidence of burglary and larceny. Whether the prosecutor contended that such drugs were "outlawed," except when lawfully possessed, is not known. Defendant was apparently not charged with illegally possessing narcotic drugs.

69. *United States v. Rabiocoff*, *supra* n. 59.

narcotic drugs under any circumstances.<sup>70</sup> This limitation on their powers affects the enforcement of all criminal laws, of course, but seems particularly improvident in connection with the illegal traffic in narcotic drugs, since the supply in the hands of the typical peddler must move in interstate or intra-state commerce, is easily transported by automobile, train or airplane, and, thus, could quickly pass through the limited territorial jurisdiction of sheriffs, constables, and police forces.<sup>71</sup>

Section 195.130 declares that "any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance," and then proclaims that no one shall keep such a common nuisance. The only sanctions provided by the narcotic drug act for keeping such a nuisance are fine, imprisonment or both fine and imprisonment,<sup>72</sup> but the equity courts of the state have in the past exercised the power of enjoining the continuance of a public or common nuisance without the benefit of statutory authorization.<sup>73</sup> Witnesses before the Missouri Senate Sub-committee on Crime suggested that buildings and vehicles operated in violation of this section should be padlocked and forfeited.<sup>74</sup>

It is also unlawful for any person to obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of the narcotic drug by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the concealment of a material fact; or by the use of a false name or the giving of a

70. § 43.200. The pros and cons of continuing such a limitation were rather widely discussed by various witnesses before the Missouri Senate Sub-Committee on Crime April 18-May 16, 1951. Most witnesses favored repeal of this section. A poll of prosecuting attorneys, judges, attorneys, bar associations, and law schools was 52 for and 17 against granting the power of search and seizure to the highway patrol.

71. Mr. Claude A. Follmer, *supra* n. 4, at p. 89, testified that he believed that Mafia was distributing drugs in Missouri, with the supply first coming to Kansas City then part of it being sent to St. Louis. See also testimony of Sergeant Flavin, *supra* n. 7, at p. 498.

72. § 195.200. As an example of the inconsistencies in the Missouri statutes which have resulted from piece-meal legislation in the past, keeping a common nuisance in Missouri under § 195.130 is a felony, but operating an "opium den" in violation of § 564.110, which will be discussed below, is deemed a misdemeanor.

73. *E.g.* see State *ex rel.* Crow v. Canty, 207 Mo. 439, 105 S.W. 1078 (1907).

74. Padlocking, Mr. J. E. Taylor, Attorney General of Missouri, (p. 59 transcription) forfeiture of automobiles, Mr. J. W. Connor, *supra* n. 3, at p. 152. Examples and well drawn patterns for both provisions can be found in the liquor control law, chap. 311.

false address. The act forbids the falsification of any statement in any prescription or record required by law, forbids the impersonation of one lawfully entitled to possess or administer narcotic drugs, and forbids the false labeling of any package or receptacle containing narcotic drugs. Information communicated to a physician in an effort to unlawfully procure a narcotic drug or administration of such a drug is not a privileged communication, but no physician or surgeon is competent to testify concerning any information acquired during professional treatment if the information was necessary to enable the doctor to prescribe for or treat the patient.<sup>75</sup>

Upon conviction of any person for the violation of any provisions of the narcotic drug act the court must send a copy of the judgment and sentence, and the opinion of the court (if any) to the board or officer, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business, if such be the case. The court may also, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or carry on his business. In each case the licenses referred to are not limited to those mentioned in Sections 195.030, 195.040. One peculiar feature of this section is that any person whose license or registration has thus been revoked by the court may, in effect appeal to the board or officer that originally issued the license and "upon proper showing and for good cause," be reinstated.<sup>76</sup> The usual procedure, typified by Section 195.040, provides for appeals to the courts from decisions of the licensing authority.

In any prosecution under the provisions of the narcotic drug act the defendant has the burden of proof in showing that he comes within any exception, excuse, proviso or exemption within the chapter, and no complaint, information or indictment need negate any such exception, excuse, proviso or exemption.<sup>77</sup>

The primary duty of enforcing the narcotic drug laws in Missouri is placed with the Division of Health.<sup>78</sup> All peace officers and prosecuting attorneys within the state are also directed to enforce these laws. Most of the actual work is done by the Bureau of Food and Drugs of the Division of Health, which has for this, and other duties it is expected to perform, four-

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75. § 195.170.

76. § 195.150.

77. § 195.180.

78. § 195.190.

teen inspectors throughout the state. These men are not peace officers, would have no right to execute search warrants if such warrants were available, and have no power to arrest other than as private citizens. Because of numerous other duties the inspectors may spend only a part of their time examining the various narcotic drug records required by law and the stocks of drugs in possession of those entitled to such possession.<sup>79</sup> In Kansas City and St. Louis policemen are detailed to special groups to aid in enforcing the narcotic laws, and as stated above, the state officers are greatly aided in the suppression of the illegal traffic in narcotics by the federal narcotics agents. Several witnesses before the Missouri Senate Sub-committee on Crime suggested the creation, either within or without the present highway patrol, of a special racket squad which would have state wide jurisdiction.<sup>80</sup> One important function of such a squad would be to combat the narcotics traffic. Certain limitations on the present power and ability of the state highway patrol to aid in the enforcement of the narcotic drug laws have been referred to previously. Nearly all prosecutions for violation of the narcotic laws within Missouri are in the federal courts, as the illegal activities of the defendants will usually violate both state and federal laws.

The penalties for violating the various provisions of the narcotic act are, for the first offense, imprisonment in the penitentiary for two years, or by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or both the fine and imprisonment. For the second offense or any subsequent offense both the period of maximum confinement and amount of any fine are increased—imprisonment in the penitentiary

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79. A communication from the Director, Bureau of Food and Drugs informs the writer that the bureau is also responsible for inspection and licensing of hotels, roominghouses, tourist courts, soda fountains, soft drink bottling plants, eating establishments, taverns where food is served, wholesale and retail warehouses, fruit markets, flour mills, macaroni plants, wholesale and retail bakeries canning plants, slaughtering plants, confectionery manufacturing plants, inspection and assistance to local authorities enforcing the standard milk ordinance and the standard eating and drinking establishment ordinance; supervision and certification of interstate milk shipments; and the training of district, county and local health department personnel.

80. See transcript of testimony of Mr. J. E. Taylor, *supra* n. 74, at p. 60; Mr. E. L. Dowd, 1st Asst. Circuit Atty, City of St. Louis, p. 118; Mr. J. W. Connor, *supra* n. 3, at p. 153; Mr. John Downs, Pros. Atty., Buchanan County, Mo. p. 322; Sergeant Flavin, *supra* n. 7, at p. 499; Mr. Wm. Aull, Asst. U. S. Atty, Kansas City, Mo., p. 531; Mr. Arlon Wilson, Operating Director, Kansas City Crime Commission, p. 596; Mr. Hamilton Thornton, Editorial Asst. St. Louis Globe-Democrat, p. 611; Sheriff Jack Barnes, Dunklin County, Mo., p. 700. See also the similar recommendation of the Kefauver Committee, *supra* n. 11, in its third interim report, p. 28.

from two to seven years, or a fine of not more than \$5,000 and not less than \$250. It is interesting to note that the imprisonment and fine are not cumulative for second and subsequent offenses, as they are for the first offense, but are set forth in the disjunctive.<sup>81</sup> There seems to be some doubt whether the penalties provided are sufficiently severe to deter the peddlers from their nefarious practices. Several witnesses before the Missouri Senate Sub-committee on Crime suggested that the penalties be increased.<sup>82</sup> Several states have provided stiffer penalties.<sup>83</sup> Congress has greatly increased the penalties for violation of federal narcotic laws, and for second and subsequent offenses, imposition of sentence may not be suspended nor probation granted.<sup>84</sup> As a matter of fact, as long as the present practice of handling all prosecutions in the federal courts is continued, the issue in Missouri is rather academic. The writer has been unable to find a single case in which the penalties now provided by Section 195.200 have been applied. One cannot say that the present penalties have not been a deterrent in some cases, and that, of course, is a valid function of the law.

The last section of the narcotic drug act<sup>85</sup> provides that "no person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this chapter."

### *Marijuana*

Although the effect of marijuana (also known by a variety of other technical and picturesque names including marihuana, cannabis, Indian hemp, Mexican hemp, hashish and muggles mooter) has a somewhat different effect upon the human system than the narcotic drugs and opiates, it was deemed sufficiently harmful to be the subject of special legislation in 1935.<sup>86</sup>

81. § 195.200. A contrast is found in § 564.100, the marijuana statute to be discussed below, where the penalty may be imprisonment, or fine or both.

82. Mr. T. J. Walker, *supra* n. 6, at pp. 198 *et seq.*; Mr. Roy P. Swanson, Attorney, Kansas City, Mo., p. 449; Sergeant Flavin, *supra* n. 7, at pp. 487 *et seq.*; Mr. Wm. Aull, *supra* n. 80, at p. 532.

83. Among them are Arkansas, Illinois, Maryland, New York, Oklahoma, Tennessee and Utah. See memorandum, *Control of Organized Crime*, published by the Council of State Governments, August 8, 1951.

84. Public Law 255, 82nd Congress. For the legislative history of this act see 2 U. S. Code Cong. Service 2602 (1951). The A. B. A. Commission on Organized Crime gave a rather cool reception to the federal act in their report to the A.B.A., p. 49, Sept. 1, 1951.

85. § 195.210.

86. §§564.090, 564.100, *supra* n. 29.

The use of marijuana immediately causes a mild intoxication, but its worst aspect is that it often leads the user to the use of and addiction to heroin, opium, morphine or other typical narcotic drugs.<sup>87</sup> Because marijuana grows wild in various parts of the United States, including Missouri, because it is and has been grown commercially for making rope, cloth and cordage, and because the dangerous drug principle may be utilized without the benefit of expensive, complicated manufacturing or extracting processes the regulation of the production, distribution and use of marijuana presents some problems not always found in attempting to regulate the traffic in narcotic drugs.

Section 564.090 virtually outlaws the production, possession, distribution or use of marijuana or derivatives or preparations of marijuana. The General Assembly recognized that the use of the bast fibrils of the marijuana plant for rope, cloth or cordage was a valuable undertaking, with little or no chance for drug addiction, and, thus, excepted the bartering, selling and furnishing of the fibers or products of the fibers from the prohibitions of the act. The Assembly further recognized that there were certain medical uses for marijuana, and provided that it would be lawful for a licensed pharmacist to possess marijuana for sale upon the written prescription of a physician, osteopathic surgeon, dentist or veterinary surgeon.

This section does not provide for licensing manufacturers or wholesalers of marijuana, does not regulate the sale by a system of written orders, does not authorize the possession or use of marijuana by physicians, dentists or veterinarians although they may prescribe its use, does not require pharmacists who may keep a supply of marijuana to maintain any records of the receipt or use of the drug,<sup>88</sup> does not prescribe any labeling requirements for containers of marijuana, does not, except by inference, entitle one who has received a preparation containing marijuana from a licensed pharmacist on the basis of written prescription to lawfully possess such a preparation, does not exempt common carriers or warehousemen or their employees from the provisions of the statute even though they be acting without knowledge or intent to violate the law, does not declare a place where users of mari-

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87. For scientific discussions of the physiological and psychological effect of the use of marijuana see Vogel, Isbell and Chapman, *supra* n. 13; Himmelsbach, *Comments on Drug Addiction*, *HYGIA*, May, 1947; Vogel, *supra* n. 5; WALLACE, *THE MARIJUANA PROBLEM IN THE CITY OF NEW YORK: SOCIOLOGICAL, MEDICAL PSYCHOLOGICAL AND PHARMACOLOGICAL STUDIES*. (Lancaster, Pa., Jacques Cattell Press, 1945), Reichard, *Some Myths About Marihuana*, 10 *FEDERAL PROBATION* 15 (Dec. 1946).

88. §338.100, *supra* n. 52, requires all prescriptions to be kept for five years.

juana gather a common nuisance or prohibit the keeping of such a place, does not authorize forfeiture of illegal stocks of marijuana, does not prescribe the effect of a conviction for violation of the marijuana laws upon the defendant's license to practice his profession or carry on a business, does not authorize the inspection of any records or stock of marijuana in the hands of an authorized pharmacist, does not penalize the use of fraud to obtain a prescription for marijuana nor the physician, dentist or veterinarian to give unnecessary prescriptions for marijuana, and it does not direct the division of health to enforce this law although they could easily combine these duties with the enforcement of the narcotic drug law. This section does make the use of marijuana a felony as well as the production, distribution or possession of the drug. The penalty for violating any of the provisions of Section 564.090 is a fine of \$250 to \$5,000, or imprisonment in the penitentiary for a term of two to seven years, or both fine and imprisonment.<sup>89</sup> In contrast to violations of the narcotic drug law an initial offense may be punished as severely as a second or subsequent offense, and the imprisonment and the fine may both be invoked.

If marijuana were added to the list of drugs in the narcotic drug law, as has been done in at least 34 states,<sup>90</sup> the only activity with relation to marijuana now covered by Section 564.090 which would not be covered is the present prohibition on the use of marijuana. On the other hand, each omission set forth in the preceding paragraph would be supplied by the narcotic drug law. If it is thought necessary to prohibit the use of narcotic drugs an amendment to the narcotic drug law would supply this deficiency.<sup>91</sup>

Since marijuana grows wild in various parts of the state the General Assembly has declared the plant a noxious weed and required all owners or occupiers of land to destroy all such plants growing upon their land.<sup>92</sup> Any person who refuses to destroy such plants after notice to do so shall allow the sheriff to enter upon his land and do so. The sheriff, when ordered by the county court, can recover his actual expenses from the court. Since there is no penalty for refusal, probably few farmers will feel compelled to comply with an order to destroy the weeds. It would have been more effective if

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89. §564.100.

90. *Supra*, n. 6.

91. The desirability of making the use of narcotic drugs a crime will be discussed below.

92. §263.250. Laws 1951, p.—, S.B. No. 224, effective 90 days after April 30, 1952.

the cost of destruction could have been charged to the owner or occupier of the land.

### *Opium Dens*

Sections 564.110 to 564.150 forbid a person to establish, in any place, any apparatus, instrument or device "whereby opium, hashish or other deadly drug may be smoked or used in any manner whatsoever by other persons"; to grant permission to others to use a place as an opium den; to lease any place for use as an opium den; to keep or exhibit or aid others to keep or exhibit any apparatus, device or instrument for the use of opium "or other deadly drug" by others; to use opium "or other deadly drugs" in such an establishment; to aid, assist or permit others to use such drugs in such an establishment; or to solicit or persuade others to visit such an establishment for the purpose of using opium "or other deadly drugs." The violation of these sections is, in each case, a misdemeanor with a penalty of no more than one year in the county jail, or a fine of \$200 to \$1,000 (except for using or aiding or permitting others to use the drugs the maximum fine is \$500) or both such fine and imprisonment. There is some confusion in these sections, many of the features of these sections have apparently been superseded by the uniform narcotic drug act, and the fact that the maintenance of an opium den should be a misdemeanor by virtue of these sections but is declared to be a felony by the narcotic drug act<sup>93</sup> is inexplicable. Section 564.110 first makes reference to "opium, hashish or other deadly drug." "Hashish" (or marijuana) is not mentioned again in that or the succeeding sections in this series of enactments, although the words "opium or any other deadly drug" are used nine times. Whether the use or omission of "hashish" is of any significance is hard to say. The meaning of "any other deadly drug" is an additional imponderable.<sup>94</sup>

As previously indicated,<sup>95</sup> the narcotic drug law now prohibits the keeping or maintenance of any place whatever for use, keeping or selling

93. §§195.130, 195.200.

94. This term is first found in the Laws of Missouri 1887, p. 175. Since there has been no judicial interpretation of this term it may be hard, at this late date, to reach a satisfactory explanation of the "legislative intent." If "deadly drug" is limited to "habit forming" drugs there is good authority that alcohol is such a drug [see Vogel, Isbell and Chapman, *supra* n. 13.]. A logical (or illogical) conclusion then is that there is a continuing, sweeping legislative prohibition against establishing or setting up cocktail lounges, bars, taverns and other places for serving alcoholic beverages. It is probably safe to conclude that the 34th General Assembly did not intend this result.

95. *Supra*, n. 93.



of narcotic drugs. A landlord who knowingly leased a place for such purpose could probably be punished under the narcotic drug law as a principal in the second degree or an accessory before the fact, depending upon the circumstances, and would be deterred by a proper "padlock" law, if enacted and added to the narcotic drug law. If it is deemed necessary and advisable to prohibit the possession of any apparatus, instrument or device for the unauthorized administration of narcotic drugs such prohibition could be added to the acts now prohibited by Section 195.020, discussed above. The prohibition on the use of "opium or other deadly drug" in Section 564.140 is very narrow, and limited to the use of such drugs *within* opium dens as described in the preceding sections. Whether and when the use of narcotic drugs should be made a crime will be discussed below. One who solicited patrons for an opium den could surely be convicted on some theory of aiding, abetting or conspiring with others to violate some of the present provisions of the narcotic drug act.

Sections 564.160 and 564.170 set forth the conditions of the search for and seizure of any apparatus, device or instrument for the use of opium "or any other deadly drug" with and without search warrants, and for the forfeiture of the apparatus, device or instrument under stipulated circumstances. Neither section makes reference to the drug itself. The procedural aspects of Section 564.160 will be superseded, without amendment, by Rule 33 of the new Rules of Criminal Procedure for the Courts of Missouri.<sup>96</sup> If "apparatus, device or instrument" were added to the narcotic drug act as suggested in the preceding paragraph, and search warrants authorized as previously suggested in the discussion of the narcotic drug act, Section 564.160 would serve no useful function. The right to seize the apparatus, etc., and to arrest the user without a warrant, authorized by Section 564.170 seems to be little more than the commonly accepted right of an officer to arrest one committing a crime in his presence, and to search that person and the immediate area of the arrest for contraband articles as an integral part of a lawful arrest. Section 564.180 provides, among other things, that none of the preceding sections shall "apply to druggists or physicians, or others engaged in the legitimate use or sale of opium."<sup>97</sup> The narcotic drug law now provides for the legitimate traffic in opium by druggists and physicians.

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96. Effective January 1, 1953.

97. The term "any other deadly drug" has, like "hashish," been dropped at this point.

In short, it is the opinion of the writer that the present narcotic drug law now covers, or, with minor amendments, could cover all of the desirable features of Sections 564.110 to 564.180, and these latter sections should be repealed in order to avoid the duplication and confusion that now exists.

### *Commitment of Drug Addicts*

An additional or companion problem to the problem of regulating the traffic in narcotic drugs is the determination of what should or can best be done with and for the individual who has lost his power of self control with reference to the use of narcotic drugs—the addict. For a variety of reasons a state should provide facilities and procedure for voluntary and involuntary commitment of drug addicts for institutional treatment directed toward the cure of the addict's habitual use of narcotic drugs.<sup>98</sup> The experts agree that the drug addict is a sick person in need of treatment, but that attempts to treat an addict in the home or office usually fail. Hospitalization is uniformly recommended.<sup>99</sup> A study of the literature in the field indicates that a common cause for the spread of the use of narcotic drugs is the association of non-addicts with confirmed users of the drugs. Dr. Harris Isbell, Director, Research Division, U. S. Public Health Service Hospital, Lexington, Kentucky has concluded that contact with narcotic drugs most frequently "re-

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98. Virtually every witness who discussed the subject at the public hearings before the Missouri Senate Sub-Committee on Crime, April 18-May 16, 1951 urged that Missouri demand compulsory treatment of drug addicts. In the transcript of the hearing see the testimony of J. E. Taylor, *supra*, n. 74 at p. 60; E. L. Dowd, *supra* n. 80, at p. 117; J. W. Connor, *supra* n. 3 at p. 149; T. J. Walker, *supra* n. 6, at p. 189; Judge Louis Comerford, *supra* n. 7, at p. 375; Roy P. Swanson, *supra* n. 82 at p. 449; R. C. Van Valkenburgh, Attorney, Kansas City, Mo., p. 523; Henry H. Fox, Jr., *supra* n. 7, at p. 549; Louis Clymer, Attorney, Kansas City, Mo., p. 718. See also letters to same effect from G. W. Cunningham, Acting Commissioner of Narcotics, United States Bureau of Narcotics, Washington, D. C. to J. W. Connor, Operating Director, St. Louis Crime Commission, dated Feb. 27, 1951, Mar. 9, 1951, Mar. 16, 1951 and Apr. 19, 1951 all filed as exhibit no. 24 with the Sub-committee. But cf. testimony of Sergeant John F. Flavin, *supra* n. 7, at pp. 485 *et. seq.* Sergeant Flavin after serving 4 years with the narcotics unit of the Kansas City police force felt that there was no "cure" for a drug addict, and testified (p. 496) that the only thing to do with a drug addict is to confine him.

99. *E.g.* see Isbell, *Manifestations and Treatment of Addiction to Narcotic Drugs and Barbiturates*, 34 MED. CLINICS OF N. AM., No. 2, p. 425 (Mar. 1950); Kolb, *The Narcotic Addict; His Treatment*, FEDERAL PROBATION, p. 19 (Aug. 1939). Personal communications to the writer from Drs. Wm. J. Cremer, Paul L. Barone and Louis H. Kohler, Superintendents of Missouri State Hospitals No. 1 and No. 3 and the St. Louis State Hospital, respectively, are in agreement. California statutes prohibit treatment for drug addiction except in certain prescribed institutions, CAL. HEALTH AND SAFETY CODE, Div. 10 Chap. 4, Art. 2, § 11391 (1949). Unless there is some means whereby the hospital may hold the addict, once admitted, institutional treatment on a voluntary basis has not been very successful. Most voluntary patients will leave the institution before they receive maximum benefits.

sults from deliberate experimentation with the drug because of association with persons who are already addicted."<sup>100</sup> Contrary to a somewhat popular belief, Dr. Isbell concludes that less than 5% of the drug addicts become addicted because of accidental contact with narcotics through medication.<sup>101</sup> This benefit from the cure of an addict is self evident. The cure of an addict, so that he no longer must shirk work, associate with undesirable companions, and resort to crime to satisfy his need for the drugs to sustain his habit, may result in the return to society of a fairly useful citizen instead of a citizen who is, and feels that he is, an outcast, an idler, and dependent upon others. An additional source of satisfaction is that each cure tends to dry up the market for those who now make their living by the illegal importation and sale of narcotics. Since an addict often resorts to various forms of criminal activity to finance his expensive drug habit, the cure of his habit will result in a reduction of the crime rate in his locality. The cure of an addict may also prevent a broken home with the inevitable injury to the addict's spouse, parents, children or other relatives.

"Cure" is a relative term. Just as one may be "cured" of pneumonia, and may again succumb to the same disease, so may the addict who has been "cured" at some time revert to the habitual use of narcotics, but few would contend that the pneumonic sufferer should not be treated for his initial or subsequent illnesses. The intervening period is deemed adequate incentive for treatment. Again drawing on the analogy between pneumonia and drug addiction, many pneumonics once cured are forever cured of pneumonia. The same may be said for drug addicts. Because of the difficulty of keeping in contact with the patients after their release from the two U. S. Public Health Service Hospitals for the treatment of narcotic addicts, exact statistics are unavailable, but it is definitely known that between 15 and 20 per cent (and probably more) of the patients treated in these hospitals, since the establishment of the first hospital in 1935, have remained abstinent, and at least an additional 20 percent have remained abstinent for extended periods of time.<sup>102</sup>

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100. *Ibid.*

101. *Ibid.*

102. See Vogel, Isbell and Harris, *supra*, n. 13 and see Isbell, *supra* n. 99. The consensus of the staff at the St. Louis State Hospital, in a personal communication to the writer, was that "cure" could be expected in approximately one-third of cases treated. This is in substantial agreement with the statistics of the United States Public Health Service Hospitals. *Cf.* the testimony of Sergeant Flavin, *supra* n. 98. Possibly Sergeant Flavin's work does not bring him in contact with those who do remain abstinent.

Drug addiction is not, in itself, a disease, but is a symptom of a basic underlying personality or psychiatric maladjustment or disorder. Thus, drug addiction is primarily a psychiatric problem.<sup>103</sup> Treatment for addiction is, in general, fairly uniform, and usually consists of three stages—withdrawal, rehabilitative therapy, and psychiatric treatment.

Withdrawal, as the name suggests, is the process whereby the addict is gradually deprived of the drug upon which he has become physically and mentally dependent. Although the least important part of the treatment, it should be accomplished in the quickest, smoothest, and most humane manner possible so that a suitable relationship between patient and physician may be established as a base for further psychotherapy and rehabilitation. Proper supervision of this process can materially reduce the patient's physical and mental suffering associated with the abrupt withdrawal of drugs from an habitual user. A muscular twitching in the legs, which frequently develops during this period, has given rise to the term "kicking the habit."

After denarcotization is completed, any organic disease which the patient may have is treated appropriately. If a patient is suffering from an incurable disease the treatment is designed to give the greatest possible physical improvement and to teach the patient to live with his chronic disease without narcotics. If the addiction is due to intractable pain, some surgical procedure—sympathectomy, rhizotomy, chordotomy, lobotomy—may abolish the patient's need for pain relief from drugs. Occupational therapy is instituted. And patients are given adequate opportunity for recreational activities.

The psychiatric treatment is devoted to discovery and eradication of the underlying cause for the addiction. The techniques vary considerably to fit the needs of the individual case and to best utilize the facilities of the institution wherein the addict is committed. Intensive psychotherapy on an individual basis is often impossible because of the shortage of trained psychiatrists. For some patients such treatment is not desired. Group psychotherapeutic sessions are used at some institutions, and patients seem to derive benefit from association with "Addicts Anonymous," a group of rather recent origin patterned after "Alcoholics Anonymous." The minimum time for effective institutional treatment is from four to six months.

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103. *Supra.* n. 99. The writer's references to medical problems and practices are brief summaries of the various professional articles cited in preceding footnotes, set forth here in order that the reader may better visualize the problems with which the state is confronted.

Post-treatment supervision is also of great importance, but often inadequate. The patient, prior to discharge, should have a plan, a job and a place to live. He should not be returned to an environment where he will have frequent contacts with other addicts. His conduct and habits should be supervised by his family, physician, parole officer, minister, friends or some social service department, and, if possible, he should have follow-up examinations at the institution for a period of time.<sup>104</sup>

### 1. Care of the Addict in Missouri

Missouri has been virtually a pioneer among states in enacting a workable plan for both voluntary and involuntary commitment of addicts for eradication of their drug habit. Sections 202.360 through 202.420 provide such a plan. Section 202.360 sets forth the general purpose and limits of the act. It declares that "all residents of this state, except those in the condition of senility, or suffering pain from incurable diseases, who are or shall become habitual users of opium, cocaine, or of some salt or derivative of these drugs, to such an extent as to become what is commonly called or known as 'dope fiends' or 'addicts,' shall be subject to involuntary confinement in the state hospitals for insane persons, under treatment by the medical staffs of such hospitals, for the cure of such habit, for such period of time as shall be necessary to accomplish such cure. Persons so confined shall be entitled to be released when, and not before their appetite for such drug, or drugs, has been thoroughly eradicated, which cure shall, prima facie, depend upon the opinion of the hospital superintendent where the confinement occurs."

Jurisdiction of the administration of these sections is vested in the probate court of the county in which the addict is a resident. Any person subject to involuntary commitment, as provided above, may appear, and, by written declaration of his purpose and desire to do so, voluntarily submit to the appropriate probate court for commitment and treatment. If the addict does not voluntarily submit he may, upon written information charging him or her to be such an addict, signed by any resident of the county in which the addict is resident, be ordered to appear before the probate judge for a proper hearing to determine whether the person is in fact a drug addict. There is no requirement that the alleged addict be insane, merely

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104. An elaborate plan for medical prevention and follow-up for drug addicts has been proposed by Dr. L. H. Berry, M.D., *Medical Counseling Clinics for Young Narcotic Addicts*, 147 A.M.A.J. 1129 (Nov. 1951).

that he is addicted to the habitual use of narcotic drugs. The court is directed to make the finding without the aid of a jury. The court then, whether upon confession or its own finding of addiction, must further inquire into the financial ability of such person, and if the person have property in excess of that exempted from execution for debt, the court shall proceed to appoint a curator of the estate. Requirements, duties and powers of the curator parallel those of guardians of persons of unsound mind. Commitment is the next step, in "any hospital for insane patients in the state of Missouri, to be selected by said court." In either case, submission or finding of addiction by the probate judge, the period of confinement is for such period as may be necessary for cure of the patient's drug habit, and when cured he shall be discharged by the hospital. The hospital expenses, probate court fees, and mileage charges of the sheriff are all to be paid by the county court of the county in which the addict is a resident (as is true of insane patients and sexual psychopaths), and the county court may be reimbursed, upon application to the probate court, from any property of the addict in excess of that property exempted by law from execution for debt. No patient shall become a charge upon a county or city unless he has been a bona fide resident therein at least one year prior to commitment.

Prior to commitment the probate judge must ascertain, by inquiry of the superintendent, the capacity of the institution of his choice to properly accommodate and care for the patient, and to the extent of this capacity the superintendents of all state hospitals are required to receive for treatment all persons lawfully ordered to be confined therein.

The principal defect with these sections seems to be that they are little known and rarely used.<sup>105</sup> The superintendents of three Missouri State Hospitals<sup>106</sup> thought that it would be better if the drug addict could be treated in a separate institution or at least a separate department of a present institution, rather than intermingled with all other types of accutely

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105. Although recognizing the need for hospitalization and treatment of drug addicts, only one of the witnesses listed in note 98, in testimony before the Senate Sub-committee on Crime, indicated an awareness of these sections. State Hospital No. 1 has admitted only three drug addicts in the past five years and has not had to refuse admission to any. State Hospital No. 3 admitted one addict in 1951 and "probably only a few each year." St. Louis State Hospital has since 1937 refused admission to addicts when clinical examination has shown no evidence of a psychotic state because of lack of capacity in the hospital to properly accommodate and isolate such cases. These figures do not include those cases in which the patient is committed to the hospital for other causes and is also addicted to the use of narcotic drugs.

106. *Supra*, n. 99.

ill mental patients. At present no separate institution in Missouri is available, and, because of crowded conditions, isolation of drug addicts within the present institutions is difficult. In other respects these superintendents indicated that the equipment in the hospitals was adequate, and that the present staffs were suitably trained and experienced to successfully treat drug addicts. On the basis of commitments during the past few years the construction of a separate institution seems unwarranted. However, in view of the present crowded conditions in all of the state hospitals,<sup>107</sup> it is equally clear that a sudden surge of patients from among the hundreds of drug addicts estimated to be within the state would swamp the existing facilities. The amount and degree of care and treatment which will be afforded to the drug addicts of Missouri is a matter of practical economics. It may be that some intermediate position, such as setting aside one wing or one building of one of the present institutions for confinement and treatment of drug addicts, would be a satisfactory solution. In Section 202.360 the substitution of "any narcotic drug" for "opium, cocaine, or of some salt derivative of these drugs" would bring this section into line with the proposed changes to the list of narcotics in the uniform narcotic drug law.<sup>108</sup>

The constitutionality of involuntary commitment of a drug addict for treatment and cure has not been challenged in Missouri. In light of the evidence that the addict is a menace to society, spreading his addiction to those with whom he comes in contact, and thus a real threat to the moral fiber of the entire state, these measures which are neither arbitrary, oppressive nor unreasonable, would seem to be a lawful exercise of the state's power and duty to preserve the public health.<sup>109</sup>

Too often a person's addiction to narcotics first comes to the attention of the law enforcement authorities when the addict is arrested for the commission of some criminal offense. There are then conflicting interests—the defendant is deemed to owe a debt to society for his transgression of the criminal laws, yet society is interested in treating his addiction. If the defendant has committed larceny, for example, to obtain money with which to purchase drugs, imprisonment or a fine, without cure of his drug habit, will

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107. For details see, *The Mentally Ill: Their Care and Treatment in Missouri* (Comm. on Leg. Research Rept. No. 8, 1948).

108. *Supra*, n. 42 and 43.

109. A state's power to confine a person for medical treatment has been sustained in related fields, e.g., *State ex rel Sweezer v. Green*, 360 Mo. 1249, 232 S.W. 2d 897 (1950) (criminal sexual psychopaths); *Moore v. Draper*, 57 So. 2d 648 (Fla. 1952) (tuberculosis).

do little to reform him. Upon release his need for the drug will overcome his fear of imprisonment and he will soon be in trouble again. It is difficult to combine punishment and treatment because a jail or prison is a poor background for psychiatric treatment.

New York approaches this problem with a scheme similar in many respects to our present criminal sexual psychopathic provisions.<sup>110</sup> Any trial court having jurisdiction of a defendant in a criminal proceeding may, at any stage of the proceedings, upon discovery that the person is a drug addict, commit such defendant for treatment. Upon discharge from the hospital the defendant is returned to await further action in the court on the basis of the original charges, and such progress as the defendant made while being treated for addiction can be fully considered. This plan, with the possibility of prompt medical attention in a proper institution, seems superior to any system whereby the medical attention, if available at all, is delayed until after conviction for the criminal offense.<sup>111</sup>

## 2. Should the Use of Narcotics be a Crime?

As pointed out above, the Uniform Narcotic Drug Act does not make the use of the drugs a crime. Section 564.140 prohibits "smoking opium or other deadly drugs, or using opium in any way or manner" within an opium den, and prescribes that the violation shall be a misdemeanor. Section 564.090-564.100 makes the use of marijuana a felony. Neither section requires that the user be addicted, and in each case where the use is a crime the only sanctions proposed are fine and/or imprisonment.<sup>112</sup>

Several witnesses before the Missouri Senate Sub-Committee on Crime<sup>113</sup> recommended that the use of or addiction to narcotic drugs under all circumstances should be made a misdemeanor. Most witnesses, however, made it clear that the primary purpose of declaring the use of the drugs a crime was to provide an effective lever for compulsory treatment of the

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110. §439, Public Health Law C.L.S., N. Y. (1951). Missouri's Criminal Sexual Psychopath laws are §§ 202.700 to 202.770.

111. Cf. testimony of Henry H. Fox, *supra* n. 7, at p. 549.

112. If the use of drugs, without more, should be a crime, the difference in punishment is hard to explain. At least four states, besides Missouri, make the use or addiction to narcotic drugs a crime. California, CAL. HEALTH AND SAFETY CODE §§ 11721, 11722 (1949), a misdemeanor; Kentucky, KRS 218.250 (1948), a misdemeanor, and defendants are usually granted probation if they will submit to treatment at the federal hospital at Lexington, Ky.; Louisiana, S.B. 347 (1948) a felony but with authority to suspend sentence if defendant, at his expense, will submit himself to a federal hospital; Pennsylvania, 35 PA. STAT. ANN. §§ 855, 865 (1949), a felony.

113. *Supra*, n. 98.



addict. Other advantages which might be gained from declaring the use of the drugs to be a crime are that a prosecutor is more likely to be familiar with the criminal laws, thus more addicts will be treated; and if an addict is arrested without warrant he may be held for twenty hours under Section 544.170 without charging him, in the hope that during such period of detention he might reveal the source of his supply or that he may reveal his source if he is arrested for the use of drugs and knows that he will be confined in any event.

Since these witnesses did not discuss Sections 202.360 to 202.420 above, it is difficult to determine whether the compulsory treatment sought through making the use of narcotics a crime was intended to take the place of, compliment or duplicate those provisions.

The advantages to be gained from declaring such use a crime seem, to the writer, to be outweighed by the advantages of a civil procedure which will, if used, accomplish the same high purpose. Through the use of a civil process there is no threat of an *ex post facto* defense; the issue of addiction can be tried to the court; the delays inherent in criminal proceedings are not likely to be present; if the patient doesn't remain abstinate there is no likelihood of double jeopardy; the cost to the state would be less; the addict, if not otherwise a criminal, need not be stigmatized by a confession to or conviction of a crime; and the addict may, without self incrimination, be required to submit to reasonable physical examination.

#### Miscellaneous

Section 163.170 requires that "Physiology and hygiene . . . with special instruction in . . . the effect of alcoholic drink, narcotics and stimulants on the human system, shall constitute a part of the course of instruction, and be taught in all of the schools supported wholly or in part by public money or under state control." Little or nothing is done to ascertain if this requirement is being complied with, and, as far as the writer could ascertain, the instruction on narcotics in most schools is superficial.<sup>114</sup>

Section 217.720 prohibits the sale or gift of liquor or narcotics to prisoners in the penitentiary, prisons, reformatories and industrial homes, and makes such act a misdemeanor. Insofar as this section deals with nar-

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114. Dr. Victor H. Vogel, former Medical Officer in charge of the United States Public Service Hospital at Lexington, Ky., has recently collaborated with his wife in preparing a booklet—*Facts About Narcotics*—for use in high schools, as a part of the physiology or hygiene course. The publishers are Science Research Associates, Inc., 57 West Grand Avenue, Chicago 10, Ill.

cotics it is inconsistent with, and possibly superseded by the narcotic drug law, discussed above. In order to avoid the duplication and inconsistency, the reference to narcotics should be deleted or the section should be amended and made to conform with the more recent statutes.

Section 302.060(4) states that no drivers' or chauffeurs' license shall be issued to any person "addicted to the use of narcotic drugs." Section 302.271(2) provides that any such license shall be revoked for conviction of driving a motor vehicle under the influence of "a narcotic drug." The conviction referred to apparently means a conviction in violation of Section 564.440, discussed below, in which case driving under the influence of any drug is a felony. The limitation in Section 302.271 seems unnecessary and undesirable.

Sections 458.030 *et seq.*, recognizing the plight of an addict, authorize and set forth the procedure whereby the probate court may appoint a guardian for a person addicted to the "habitual use of cocaine, chloral, opium, morphine as to be incapable of managing his own affairs." Newer synthetic "opiates"<sup>115</sup> with addiction forming and habit sustaining properties similar to morphine are overlooked by Section 458.030 as they are by the other narcotic drug laws, and should be added by amendment.

Section 564.440 declares that "no person shall operate a motor vehicle while in an intoxicated condition, or when under the influence of drugs." "Drugs" is apparently not limited to, but would certainly include narcotic drugs. Such operation is a felony, punishable by imprisonment up to five years in the penitentiary and/or one hundred dollars fine. The preceding section<sup>116</sup> declares that no pilot, engineer, motorman or conductor of any steam boat, train or street car shall attempt to discharge his duties while intoxicated (presumably by alcoholic beverages), but makes no reference to the performance of his duties under the influence of drugs, although such person might thus endanger the lives of many more persons than the operator of single automobile. In this day of extensive air travel it should be noted that no law in Missouri prohibits the operation of an airplane under the influence of either drugs or alcoholic beverages.

Because of the tremendous difference in value between narcotics sold through legitimate outlets and those sold on the illicit market, larceny of the drugs from doctor's automobiles and offices, and from drug stores and

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115. *Supra*, n. 43.

116. §564.430.

hospitals has been overly enticing to both addicts and peddlers. If the legitimate market value of the stolen drugs failed to reach thirty dollars the thief, if apprehended, was guilty of petit larceny. Senate Bill No. 225, of the 66th General Assembly seeks to remedy this situation by declaring that the larceny of narcotic drugs of any value shall be deemed a felony. This act became effective March 18, 1952 as Section 560.183.

#### CONCLUSION

It is the writer's opinion that the present laws of Missouri, with a few exceptions noted above, form an adequate base for a modern, efficient statutory scheme of regulation and control of the traffic in narcotic drugs. The necessary amendments to bring the Missouri statutes up to date, and to fill gaps in the present structure should, in most instances, be amendments to chapter 195. The present sections concerning marijuana and opium dens should then be repealed. Other amendments and innovations which seem desirable to the writer or to others have been indicated. Increased utilization of the present provisions for voluntary and involuntary commitment and treatment of drug addicts in the state hospitals should, in some measure, obviate the need for additional legislation with respect to the user. However, successful treatment requires adequate facilities, medicines, personnel, and subsistence, and the ultimate good to be realized from legislation directed toward treatment and cure of addiction will be directly influenced by the amount of money the people of Missouri are willing to spend to implement the program.

No effort has been made to discuss legislation concerning other habit forming drugs, such as barbiturates, bromides, alcohol, peyote (mescaline) and amphetamine.<sup>117</sup> These drugs are not included within the present narcotic drug laws of Missouri, although in some ways their use and sale is regulated by the food and drug laws. At first glance, the problems seem to be similar to the narcotics problems, and proper study may indicate a further need for legislation with respect to these drugs.

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117. See Vogel, Isbell and Chapman, *supra* n. 13.