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Involuntary Commitment of Alcoholics

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COMMENTARY

INVOLUNTARY COMMITMENT OF ALCOHOLICS*

Alcoholism has been termed the nation's number one drug problem.[1] In 1970 one-third of all arrests made in the United States were for public drunkenness.[2] The Florida Legislature's concern over the magnitude of the alcoholism problem and its conclusion that "[d]ealing with public inebriates as criminals has proved expensive, unproductive, burdensome, and futile"[3] are, therefore, understandable. The cost of alcoholism to Florida industry and government has been estimated at over $100 million annually.[4] These estimates probably fall far short of the true monetary impact of alcoholism on society.[5]

On July 1, 1973, legislation became effective, supplying a statutory mechanism for the involuntary commitment of alcoholics for treatment.[6] As originally enacted this legislation also provided for the simultaneous repeal of all state and local intoxication and drunkenness statutes, but repeal has since been postponed until October 1, 1974.[7] These provisions are part of the Comprehensive Alcoholism Prevention, Control, and Treatment Act,[8] an earlier portion of which became effective July 1, 1971. This commentary will examine the provision for involuntary commitment of alcoholics and suggest changes to the present statute.

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1. Committee Comment to Senate Bill 439 (1971 Regular Session of Florida Legislature) of Senate Committee on Health, Welfare, and Institutions, at 1. This committee sponsored the bill, which was enacted as FLA. STAT. ch. 396 (1971).

2. *Id.*

3. FLA. STAT. §396.022(4) (1971).

4. Letter from Joseph C. Ziesenheim, Chief, Bureau of Alcoholic Rehabilitation, to William D. Rogers, M.D., Director, Florida Division of Mental Health, Mar. 16, 1971. Mr. Ziesenheim estimated that problem drinkers annually cost Florida employers "[a]t least $72 million" and the State, as an employer, more than $6 million. He also listed losses due to misspent welfare funds at approximately $17.8 million per year and the costs of arresting, trying, and incarcerating individuals committing the four basic alcohol-related offenses (public intoxication, driving while intoxicated, and alcohol-related vagrance and disorderly conduct) at over $4.7 million per year. Additionally, a degree of intoxication was involved in an estimated 45% of all felony arrests in 1970.

5. *See* Stevenson, *The Emergence of Non-Skid-Row Alcoholism as a "Public" Problem,* 45 TEMP. L.Q. 529 (1972). The economic impact of drinking drivers is examined in Kornblum & Blinder, *The Alcoholic Driver: A Proposal for Treatment as an Alternative to Punishment,* 50 INS. L.J. 133 (1972).

6. FLA. STAT. §396.161 (1971) (enacted in 1971).

7. FLA. STAT. §396.161 (1971). In an extension of the regular session of 1973, the repealing of these statutes was delayed until the 1974 date to allow additional time for the organization of local treatment facilities.

8. FLA. STAT. ch. 396 (1971). The Comprehensive Act provides for the establishment and maintenance of a program for the control of drunkenness and the prevention and treatment of alcoholism throughout Florida. It details the duties and functions of the Divisions

PRIOR LAW

After 1941 chronic alcoholics were deemed not "receivable patients" and thus were excluded from admission to state hospitals.[9] Although this exclusion was repealed by a section of the Baker Act,[10] Florida's recent legislation dealing with community mental health, it is not clear what part that Act plays in the treatment of chronic alcoholics. Its language detailing the procedure for voluntary commitment to a state hospital[11] seems to indicate that a chronic alcoholic could admit himself.[12] Nevertheless, the provisions for involuntary hospitalization[13] state that one may be hospitalized if "mentally ill and likely to injure himself or others if not hospitalized."[14] Most alcoholics are not likely to meet this two-fold requirement.[15]

The use of involuntary commitment for treatment of alcoholics is not new in Florida. Commitment provisions were enacted in 1951 allowing a period not to exceed 180 days in which one could be committed against his will to be treated for alcoholism.[16] Two years later this statute was repealed[17] and replaced by legislation authorizing construction of a state alcoholic rehabilitation center in Highlands County.[18] Admission to the rehabilitation center was strictly voluntary.[19] Although proposals for involuntary treatment of Florida's alcoholics were subsequently made,[20] the 1971 statute[21] was the first to receive legislative approval.[22]

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of Mental Health; outlines the treatment and rehabilitation program; and contains the voluntary, emergency, and involuntary treatment provisions. The Act also covers the promulgation of regulations concerning acceptance for treatment, confidentiality of patients' records, visitation and communication privileges, payments for treatment, penalties for furnishing false information to secure involuntary hospitalization, immunity from liability for certain personnel, and the repeal of all existing state and local intoxication and public drunkenness statutes. An advisory board is also established.

9. Fla. Laws ch. 20504, §5 (1941) (appears as FLA. STAT. §394.26 (1971), repealed by Fla. Laws ch. 71-131, §16 (1971)).

10. Fla. Laws ch. 71-131, §16 (1971).

11. FLA. STAT. §394.465 (1971).

12. The exact wording of FLA. STAT. §394.465 (1971) is: "A facility may receive for observation, diagnosis [or] treatment any individual eighteen (18) years of age or older making application for admission, any individual under eighteen (18) years of age for whom such application is made by his parent or guardian, [or] any person legally adjudged to be incompetent for whom such application is made by his guardian."

13. FLA. STAT. §394.465 (1971).

14. *Id.*

15. FLA. STAT. §394.455(3) (1971) defines "mentally ill" as "having a mental, emotional or behavioral disorder which substantially impairs the person's mental health."

16. FLA. STAT. §396.11 (1951).

17. Fla. Laws ch. 28134, at 14 (1953).

18. FLA. STAT. §396.031 (1953).

19. Fla. Stat. §396.061 (1953) (repealed 1971). This requirement for voluntary entrance to the facility apparently continues under the 1971 legislation. *See* FLA. STAT. §396.052(1)(d) (1971).

20. *See* Note, *The Revolving Door Cycle in Florida,* 20 U. FLA. L. REV. 344, 352-53 (1968).

21. FLA. STAT. §396.102 (1971).

22. The previously proposed legislation is discussed in Note, *supra* note 20. "The pro-

IMPETUS FOR DECRIMINALIZING ALCOHOLISM

Those who had long urged decriminalization of alcoholism were offered hope by the decision of the United States Supreme Court in *Robinson v. California*[23] that enforcement of a California statute making it a criminal offense to be addicted to the use of narcotics was unconstitutional as cruel and unusual punishment.[24] Narcotics addiction was recognized by the Court as an illness rather than a crime.[25] A footnote to the opinion, quoted from appellee's brief, stated: "[I]t is generally conceded that a narcotic addict, particularly one addicted to the use of heroin, is in a state of mental and physical illness. So is an alcoholic."[26]

The Fourth Circuit Court of Appeal applied this "cruel and unusual punishment" argument of *Robinson* to the public intoxication conviction of a chronic alcoholic in *Driver v. Hinnant*.[27] The appellant had argued that his appearance in public while intoxicated was symptomatic of his addiction to alcohol, "unwilled and ungovernable by the victim."[28] The court accepted this rationale and stated: "[T]he State cannot stamp an unpretending chronic alcoholic as a criminal if his drunken public display is involuntary as the result of disease."[29]

A similar prelude to a direct Supreme Court decision on alcoholism was *Easter v. District of Columbia*[30] in which the District of Columbia court held that chronic alcoholism is a defense to a charge of public intoxication and is not itself a crime.[31] It was pointed out in *Easter*[32] that other cases[33] contain language suggesting the constitutionality of confinement for inquiry or treatment.[34] Nevertheless, in *Powell v. Texas*[35] the Supreme Court upheld by a

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posed legislation would have provided a nonpunitive procedure for ordering hospitalization and treatment of alcoholics. After the filing of a written petition, the county judge was to conduct a hearing and indigent alleged alcoholics would have been afforded court appointed counsel. To aid in the determination whether the alleged alcoholic was in fact an alcoholic, an examining committee would have been appointed. If the individual were found to be an alcoholic, the committee was to recommend treatment." Note, *supra* note 20, at 353 (footnotes omitted).

23. 370 U.S. 660 (1962).

24. *Id.* at 667.

25. *Id.*

26. *Id.* n.8.

27. 356 F.2d 761 (4th Cir. 1966).

28. *Id.* at 764.

29. *Id.* at 765. However, the court further stated that appropriate detention of the alcoholic for treatment and rehabilitation is not proscribed "so long as he is not marked a criminal."

30. 361 F.2d 50 (D.C. Cir. 1966).

31. *Id.*

32. *Id.* at 53-55.

33. Robinson v. California, 370 U.S. 660 (1962); Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966).

34. Robinson v. California, 370 U.S. 660, 664-65 (1962); Driver v. Hinnant, 356 F.2d 761, 765 (4th Cir. 1966).

35. 392 U.S. 514 (1968).

5-4 decision the conviction of an alleged chronic alcoholic for public intoxication. There was no majority opinion, and a careful reading of the various opinions indicates that on a different trial record the Court might have followed the lead of *Easter* and *Driver* in declaring punishment for a symptom of chronic alcoholism cruel and unusual.[36]

THE FLORIDA SCHEME OF INVOLUNTARY COMMITMENT

The statutory section allowing involuntary commitment of alcoholics[37] provides that a petition for commitment may be filed by any of several persons[38] alleging "[t]hat the person is an alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages."[39] Furthermore, a petitioner must allege that the one whose commitment is sought has threatened, attempted or actually inflicted physical harm on himself or others, or that he needs medical treatment and lacks the ability to make a rational decision in that regard due to his alcoholism.[40] Certification by a licensed physician that his examination supports the allegations of the petition is also required.[41] The local circuit court must give notice of the hearing to all interested parties[42] and hold the hearing within ten days of its receipt of the petition. After hearing all relevant evidence,[43] if the court finds that the grounds for commitment have been met by clear and convincing proof, it shall "commit the person to treatment at or through a treatment resource deemed appropriate by the court."[44]

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36. An interesting analysis of the *Powell* opinion detailing the four separate opinions filed appears in Bason, *Chronic Alcoholism and Public Drunkenness*—Quo Vadimus *Post* Powell, 19 AM. U.L. REV. 48 (1970). The author's conclusion is that a more complete trial record might provide the impetus for an overruling of *Powell*. *Id.* at 64. *See also* Fingarette, *The Perils of* Powell: *In Search of a Factual Foundation for the "Disease Concept of Alcoholism,"* 83 HARV. L. REV. 793 (1969); Note, *The Chronic Alcoholic v. The Public Drunkenness Statute,* 73 W. VA. L. REV. 258 (1971).

37. FLA. STAT. §396.102 (1971).

38. The complete list found in FLA. STAT. §396.102(1) (1971) is "spouse or guardian, any next of kin, the certifying physician, the head of any state treatment and research center, the sheriff of the county where such person resides or is found, or any three citizens of the state."

39. FLA. STAT. §396.102(1)(a) (1971).

40. FLA. STAT. §396.102(1)(b) (1971).

41. FLA. STAT. §396.102(1)(b)(2) (1971). The examination must have been conducted within two days prior to submission of the petition. A refusal to undergo such examination must also be alleged.

42. FLA. STAT. §396.102(2) (1971). Notice must be given to the petitioner, to the person whose commitment is sought, to his next of kin other than the petitioner, to his parents or legal guardian if he is a minor, to the head of the facility to which he has been committed if he has been committed for emergency care, and to any other person whose presence the court deems advisable.

43. FLA. STAT. §396.102(3) (1971). If the person whose commitment is sought has refused to be examined by a licensed physician, or if more medical evidence is believed necessary, the court is given the power to commit him to a treatment facility for not more than five days for purposes of a diagnostic examination.

44. *Id.*

The initial commitment to treatment is for a period of thirty days unless the treatment resource to which a person is committed chooses to discharge him sooner.[45] The treatment resource may apply for recommitment for an additional ninety-day period on the same grounds required for initial commitment. This application for extension is required if the original ground for commitment was "danger to self or others" unless a likelihood of such danger no longer exists.[46] After the initial thirty- and ninety-day commitments, further extensions are in six-month increments.[47] Once committed to a treatment resource a person may be required to undergo any treatment deemed advisable by the treatment resource.[48] This includes treatment by inpatient, outpatient, and intermediate care facilities.[49]

The person whose commitment is sought is notified that he may contest all proceedings for commitment and recommitment,[50] may be examined by a physician of his choice,[51] and may have counsel appointed.[52] Discharge from commitment[53] prior to the end of the court-ordered period is directed in the case of one initially committed because of danger of physical harm when that danger no longer exists.[54] In the case of one needing medical treatment and care, discharge is also directed when the incapacity to make such a determination of his needs no longer exists, or when further treatment will not significantly improve his condition.[55]

Legal Aspects of Involuntary Commitment

The first problem encountered in Florida's involuntary commitment provision is one of definition. While the section of definitions in the Comprehensive Act lists two categories of persons classified as "alcoholics,"[56] the involuntary commitment provision lists only one of those categories as subject to commitment: the alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages.[57] The definition of "alcoholic" in the

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45. Fla. Stat. §396.102(4) (1971).
46. *Id.*
47. Fla. Stat. §396.102(5) (1971).
48. Fla. Stat. §396.102(7) (1971).
49. *Id.*
50. Fla. Stat. §396.102(9) (1971).
51. *Id.* This section also provides for the court appointment of a physician to examine the person if he cannot afford a private physician.
52. *Id.*
53. Fla. Stat. §396.102(10) (1971) provides that discharge may be sought by writ of habeas corpus.
54. Fla. Stat. §396.102(8)(a) (1971).
55. Fla. Stat. §396.102(8)(b) (1971).
56. Fla. Stat. §396.032(8) (1971) defines "alcoholic" as "any person who chronically and habitually uses alcoholic beverages to the extent that it injures his health or substantially interferes with his social or economic functioning, or to the extent that he has lost the power of self-control with respect to the use of such beverages."
57. Fla. Stat. §396.102(1)(a) (1971). The Model Act (Alcoholism and Intoxication Treatment Act) prepared for the National Institute of Mental Health, by Legislative Drafting

definitions section of the Florida statute is identical to the one found in the similar Maryland act.[58] This act established a program that was examined by the Florida Bureau of Alcoholic Rehabilitation prior to submitting recommendations for legislation.[59] The Maryland provision for involuntary commitment requires that a person whose commitment is sought be a "chronic alcoholic."[60] The ambiguity in the Florida statute, caused by omission from the involuntary commitment provision of the alcoholic who so chronically and habitually uses alcohol that it injures his health or interferes with his social or economic functioning, may cause difficulty. Problems may arise where one whose commitment is sought contends that though he suffers social or economic impairment, he has not lost the power of self-control through the use of alcohol.

One who meets the definition of "alcoholic" may be involuntarily committed for either of two reasons. First, commitment is permissible if one has threatened, attempted, or inflicted physical harm on himself or others. Second, one may be committed if he is in need of medical treatment and, due to his chronic alcoholism, is incapable of appreciating or making rational decisions in regard to his need for care.

Commitment of a person dangerous to himself or others is doctrinally justifiable either on the grounds of the state's police power[61] or on the basis of *parens patriae*.[62] While danger to others is a clear justification for exercise of the police power, danger to self is not so easily accepted as a justification for commitment on either ground.[63] Indeed, it has been postulated that danger to self or others by itself is not a sufficient reason for commitment unless it is accompanied by a mental or physical condition that calls for medical treatment.[64]

Research Fund of Columbia University, July 18, 1969, (app. 18, at 211), which provided the basis for Florida's Act, has an abbreviated definition of "alcoholic" and a separate definition of "loss of self-control with respect to the use of alcoholic beverages." "Alcoholic" is there defined as any person who chronically, habitually or periodically uses alcoholic beverages to the extent that they injure his health or substantially interfere with his social or economic functioning." *Id.* at 214. Loss of self-control is defined as "to lose the power to abstain from alcoholic beverages, or to lose the power to refrain from drinking to intoxication whenever drinking an alcoholic beverage." *Id.* at 214-15.

58. MD. ANN. CODE art. 2c, §103(b) (Supp. 1972).

59. Fla. Division of Mental Health, Report of Alcoholism Task Force at 193 (Feb. 12, 1971).

60. MD. ANN. CODE art. 2c, §306(a) (Supp. 1972). Since the definitions section of the Florida Act is identical to the Maryland Act and the pertinent section of the involuntary commitment statute is identical to the Model Act, it seems likely that the partial omissions of Florida's Act are due to the fact that separate sections were taken from separate sources.

61. *See* F. GRAD, A. GOLSBERG & B. SHAPIRO, ALCOHOLISM AND THE LAW 73 (1971).

62. *Id.* at 72.

63. *Id.* at 78-79.

64. L. Tao, Alcoholism, Drunkenness and the Law, September 1969 (unpublished thesis in Cornell Law School Library). The author points out that under the standards both tuberculars and venereal disease carriers could be committed, since they present a danger to themselves or others and they have a treatable medical condition. *Id.* at 149. *See also* Tao,

There is little legal support for the proposition that one may be treated against his will when the only danger he presents is danger to himself. *Application of Georgetown College*[65] required a dying mother to receive a blood transfusion over her objection on religious grounds on the theory that her young children had a right to her services. A year later, however, a contrary result was reached on similar facts.[66] One who refuses to seek treatment, although self-destructive or suicidal when intoxicated, might be found to lack judgmental capacity in regard to his need for treatment. Nevertheless, if a religious objection to treatment is raised, no solution can be found within the Florida statute.

It is toward the alcoholic whose judgment is impaired that the second ground for involuntary commitment under the Florida statute is directed. Not only must he be in need of medical treatment,[67] but his chronic alcoholism must have impaired his judgment to such an extent that he is incapable of appreciating his need for care and making a rational decision with regard to his condition.[68] Furthermore, it is expressly provided that "a mere refusal to undergo treatment shall not . . . by itself constitute evidence of lack of judgment with respect to the need for care."[69] The legal justification proffered for this type of involuntary commitment is the doctrine of *parens patriae,* a sovereign's power of guardianship over persons under some disability.[70]

The Draftsman's Notes to the Model Act[71] and comments in a book by the director of the Model Act Project[72] indicate that the question for determination in this type of involuntary commitment is primarily a medical one. The judgmental incapacitation must be great enough to justify govermental interference with one's decision not to undergo treatment. Mere poor judgment is not enough. A ready example of this standard is the fact that though both cigarette smoking and obesity are hazardous to one's health,[73] there is no

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Criminal Drunkenness and the Law, 54 IOWA L. REV. 1054 (1969); Tao, *Legal Problems of Alcoholism,* 37 FORDHAM L. REV. 405 (1969).

65. 331 F.2d 1000 (D.C. Cir.), *cert. denied,* 377 U.S. 978 (1964). *See also* Winters v. Miller, 446 F.2d 65 (2d Cir. 1971), *cert. denied,* 404 U.S. 985 (1972); Holmes v. Silver Cross Hosp., 340 F. Supp. 125 (N.D. Ill. 1972).

66. *In re* Estate of Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965). This question has not been decided by the Florida courts.

67. FLA. STAT. §396.102(1)(b)(2) (1971).

68. *Id.*

69. *Id.*

70. L. Tao, *supra* note 64.

71. Draftsmen's Notes to Model Act, *supra* note 57, at 13 provides: "Commitment would not be warranted merely because the person is an alcoholic and in need of treatment, or because he is an alcoholic and likely to commit property crimes, or likely to appear repeatedly in public intoxicated, or has disturbed his family or other social relationships. Commitment would be warranted, however, when the alcoholic exhibits cognitive deficiencies, generally confused thinking or other manifestation of disorientation which shows an inability to make judgments about areas of behavior that do not directly relate to his drinking problem."

72. F. GRAD, A. GOLSBERG & B. SHAPIRO, *supra* note 61, at 78.

73. *Id.* at 72.

mechanism for requiring one to undergo treatment in order to stop smoking or lose weight.[74]

Involuntary commitment[75] and other alternatives to punishment for intoxication[76] are gaining popularity as more enlightened approaches to the handling of the problem of alcoholism. This trend may be partially due to the success of increased use of civil commitment for the treatment of narcotics addicts.[77] There have been several expressions of doubt, however, concerning the legality of "treating" rather than "punishing."[78] Language from several cases dealing with treatment as an alternative to punishment in general and for alcoholism in particular commands the use of treatment,[79] but other Supreme Court cases have indicated an uneasiness over the practical results of civil restraint.[80] Additionally, the Court has shown a readiness to strike down commitments that are procedurally deficient.[81] Further, in *Powell,* the Court's most recent holding in the area of alcoholism, a warning was given against "hanging a new sign reading 'Hospital' over one wing of the jail house."[82]

The use of civil commitment for alcoholics should be subjected to close scrutiny not only to determine if there is a valid basis for the deprivation of personal liberty,[83] but also to insure that the one whose commitment is sought has been afforded due process.[84]

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74. *See* Anderson & Whitmen, *The Control of Behavior Through Law: Theory and Practice,* 47 NOTRE DAME. LAW. 815, 848-49 (1972) (examination of aid that psychology and psychiatry can give to other disciplines in accomplishing certain goals and exposition of differing attitudes toward one's choice regarding health questions in mental and physical areas).

75. Koshiba, *Treatment of Public Drunkenness in Hawaii,* 7 AM. L.Q. 228 (1969); Comment, *Civil Commitment of Alcoholics in Texas,* 48 TEXAS L. REV. 159 (1969).

76. *See* Levin, *The San Francisco Court School for Alcoholism Prevention,* 53 A.B.A.J. 1043 (1967).

77. *See* Aronowitz, *Civil Commitment of Narcotics Addicts,* 67 COLUM. L. REV. 405 (1967); Kramer, Bass & Berecochea, *Civil Commitment for Addicts: The California Program,* 125 AM. J. PSYCHIATRY 816-23 (1968).

78. Bazelon, *Alcoholism: An Ounce of Prevention,* 43 J. AM. JUD. SOC'Y 408, 411-12 (1969). Chief Judge Bazelon of the D.C. Circuit Court expresses his concern over the idea of exchanging "striped uniforms . . . for white smocks." His suggestion is that greater emphasis be placed on prevention of alcoholism.

79. *See* text accompanying notes 30-34 *supra.*

80. Powell v. Texas, 392 U.S. 514, 529 (1968); Lynch v. Overholser, 369 U.S. 705 (1962).

81. *In re* Gault, 387 U.S. 1, 27 (1967); Specht v. Patterson, 386 U.S. 605 (1967). However, there appear to be no procedural deficiencies in the Florida Act regarding notice, right to be heard, et cetera.

82. Powell v. Texas, 392 U.S. 514, 529 (1968).

83. *See* text accompanying notes 61-64 *supra.*

84. FLA. STAT. §396.102 (1971) contains provisions for adequate notice, representation of counsel, notification of right to contest any and all proceedings, right to be examined by one's own physician and right to have both counsel and a physician appointed by the court if the person whose commitment is sought so desires and is unable to afford same. *See* F. GRAD, A. GOLSBERG & B. SHAPIRO, *supra* note 61, at 88-98.

MEDICAL ASPECTS

In examining a procedure providing for treatment rather than punishment, it is necessary to deal with the current state of medical knowledge of alcoholism. There is no general agreement on either the causes[85] of alcoholism or its best treatment.[86] "[A]lthough numerous kinds of therapy and intervention appear to have been effective with various kinds of problem drinkers, the process of matching patient and treatment method is not yet highly developed."[87]

The range of medical opinions on proper treatment is represented by an article containing differing views of two psychiatrists.[88] One psychiatrist emphasizes the appropriateness of psychotherapy and warns against the use of nonprofessionals, such as Alcoholics Anonymous members, in a therapeutic role;[89] his fellow practitioner urges proper training of nonpsychotherapeutic personnel to deal with the broad range of problems that the total alcoholic population contains.[90] Other doctors are reluctant to endorse the notion of alcoholism as a disease because of the public tendency to conclude that doctors will readily accept alcoholics as patients and that the solution to the problem is purely medical.[91] "Labeling alcoholism as a disease does not make it immediately amenable to medical approaches, nor does it make it the sole responsibility of physicians."[92] At present, the most sensible conclusion seems to be that alcoholism must be attacked on several levels if it is to be overcome successfully.[93]

Even assuming medical treatment of alcoholism is effective, there remains the question of whether treatment should be administered involuntarily. Furthermore, Thomas Szasz, psychiatrist and chief spokesman for opponents

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85. F. KANT, THE TREATMENT OF THE ALCOHOLIC 29-34 (1954). Kant outlines various theories of causation ranging from metabolic disease to latent homosexuality. His opinion is that there is no one cause but that alcoholism is "a psychobiological-sociological problem, which means that certain mental and physical traits have to be present in a certain sociological setting so that alcoholism will develop." *Id.* at 32.

86. R. CANTANZARO, ALCOHOLISM — THE TOTAL TREATMENT APPROACH xvii-xviii (1968). The author lists nine different methods of treating alcoholism including group therapy, conditioned reflex therapy, hypnotherapy, antabuse therapy, other pharmacologic and metabolic therapies, counseling, social casework, vocational rehabilitation and LSD therapy.

87. JOINT INFORMATION SERVICE OF THE AMERICAN PSYCHIATRIC ASSOCIATION AND THE NATIONAL ASSOCIATION FOR MENTAL HEALTH, THE TREATMENT OF ALCOHOLISM, A STUDY OF PROGRAMS AND PROBLEMS 13 (1967). *See* E. JELLINEK, THE DISEASE CONCEPT OF ALCOHOLISM (1960).

88. Krystal & Moore, *Who Is Qualified To Treat the Alcoholic?*, 24 Q.J. STUDIES ON ALCOHOL 705 (1963).

89. *Id.* at 710.

90. *Id.* at 717.

91. Finn & Clancy, *Alcoholism, Dilemma or Disease: A Recurring Problem for the Physician*, 13 COMPREHENSIVE PSYCHIATRY 133 (1972).

92. *Id.* at 137.

93. *See* Liebson, *The Token Economy as a Research Method in Alcoholism*, 45 PSYCHIATRIC Q. 574 (1971), detailing the results of an experiment involving reinforcement of abstinence by the use of token economies.

of mandatory treatment, has asserted that mental hospitals are analogous to prisons[94] and that mental illness is socially rather than organically determined.[95]

Some commentators believe that one of the reasons for failure in the treatment of alcoholics is the poor motivation of subjects.[96] It is difficult to imagine a patient more poorly motivated than one who is being treated against his will. Because of this motivational problem and medical disdain for involuntary treatment of any sort, courts should exercise restraint in the use of Florida's provision.

The work of psychologists indicates that incarceration may actually aggravate alcoholism by increasing the fears and anxieties of one whose abuse of alcohol stems from an inability to handle normal fears and anxieties.[97] If involuntary treatment produces this same anxiety in an alcoholic, similar aggravation of his condition may occur. Researchers studying alcoholism have, however, come to different conclusions concerning the effectiveness of involuntary treatment. Some have claimed substantial cure rates,[98] while others have indicated serious problems with the use of this type of treatment.[99] The findings of a recent project designed to examine the efficacy of compulsory clinical treatment for chronic alcoholic offenders led the director of the project to conclude that "compulsory clinic treatment of this 'revolving-door' alcoholic group was a marked failure."[100] Since neither doctors nor researchers have reached a consensus in favor of mandatory treatment, it seems that involuntary commitment of alcoholics is inappropriate as a frequently and indiscriminately applied technique.

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94. Sander, *Some Thoughts on Thomas Szasz,* 125 AM. J. PSYCHIATRY 1429 (1969).

95. *Id.* Szasz, an outspoken critic of the paternalistic treatment of unwilling patients in the name of love and concern, has said: "[J]ustice and freedom are closely related . . . if freedom is debased, so is justice." *See* Szasz, *Justice in the Therapeutic State,* 11 COMPREHENSIVE PSYCHIATRY 433, 442 (1970). However, some medical authorities favor involuntary treatment of alcoholics. *Cf.* KANT, *supra* note 85, at 35-36; Rehrer, *Proposed Involuntary Commitment for Alcoholics,* 52 J. FLA. M.A. 100, 101 (1965).

96. *See* Bennett, *Reasons for Failure in the Treatment of Alcoholism,* 8 RECENT ADVANCES IN BIOLOGICAL PSYCHIATRY 9 (1965). Other reasons listed by the author include alcoholic brain damage, inadequate social outlets, poor mental or family adjustments, or both, lack of responsibility, rejection of Alcoholics Anonymous, financial problems, and sociopathic personality disorders.

97. *See* Singer, *Psychological Studies of Punishment,* 58 CALIF. L. REV. 405, 422 (1970).

98. Gallant & Faulkner, *Enforced Clinic Treatment of Paroled Criminal Alcoholics: A Pilot Evaluation,* 28 Q.J. STUDIES ON ALCOHOL 743 (1967).

99. R. Cantanzaro, *supra* note 86, at 44-50, details two involuntary treatment programs, one in the federal correctional facility in La Tuna, Texas, and one in British Columbia. The researcher's conclusion was that those who are incorrectly diagnosed as alcoholics have a detrimental effect on others in the program where a group therapy program is utilized. *Id.* at 341.

100. Gallant, *Evaluation of Compulsory Treatment of the Alcoholic Municipal Court Offender,* in RECENT ADVANCES IN STUDIES OF ALCOHOLISM 730, 742 (N. Mello & J. Mendelson ed. 1971).

CONCLUSIONS

Some proponents of involuntary commitment answer opposing arguments with the assertion that one who seeks treatment for alcoholism or some other alcohol-related problem rarely does so without the coercion of some person or situation.[101] Some professionals involved with alcoholism contend that those receiving treatment are generally doing so because of a threatened divorce, a lost job, a conviction for drunkenness or driving while intoxicated, or a similar occurrence. Proper use of the power of a court to involve a patient in a treatment program against his will requires recognition of the statutory distinction between voluntary and involuntary treatment. As previously noted,[102] legal authorization for sweeping use of involuntary commitment for treatment has not developed. Several sources,[103] including Florida's statute,[104] indicate the strong preference for voluntary treatment. These factors, combined with the medical controversy over involuntary treatment, indicate that this procedure should be viewed with suspicion and used with restraint.

One way to safeguard the rights of those for whom commitment is sought is for courts to acknowledge the basically medical nature of the determinations that must be made. Only a licensed physician is qualified under the statute to make the determination of chronic alcoholism and, as indicated previously,[105] the question of judgmental impairment is also a medical one. While the initial basis of danger to self or others is a question of fact,[106] recommitment hearings transfer even this category to the medical realm, since the question on recommitment is the likelihood of an act,[107] a matter beyond the competence of the court.[108]

Florida's involuntary commitment statute provides no protection for one who might have religious objections to medical treatment. While counseling or group therapy might be acceptable to such a person, other forms of treatment such as antabuse or drug therapy could conceivably be administered in violation of his constitutionally protected religious freedom.[109]

Furthermore, it is not clear that habeas corpus[110] is an adequate means for review of the legality of one's commitment. The Florida statute[111] sets forth

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101. *See* Rehrer, *supra* note 95.

102. *See* text accompanying notes 79-82 *supra*. *See also* Tao, *Legal Problems of Alcoholism*, 37 FORDHAM L. REV. 405, 423-25 (1969).

103. *See* Report of Alcoholism Task Force, *supra* note 59, at 56.

104. *See* text accompanying notes 94-100 *supra*.

105. *See* text accompanying notes 71-74 *supra*.

106. FLA. STAT. §396.102(1)(b)(1) (1971).

107. FLA. STAT. §396.102(8)(a) (1971).

108. There is some support for the proposition that potential dangerousness is not a valid basis for confinement. *See In re* Williams, 157 F. Supp. 871 (D.D.C.), *aff'd*, 252 F.2d 629 (D.C. Cir. 1958).

109. Winters v. Miller, 446 F.2d 65 (2d Cir.), *cert. denied*, 404 U.S. 985 (1971) (medication administered to a Christian Science mental patient, over objection, held violation of freedom of religion).

110. FLA. STAT. §396.102(10) (1971).

111. FLA. STAT. ch. 79 (1971).

neither the proper scope of a court's inquiry nor whether the findings of fact sustaining commitment should be accepted or examined *de novo*. If the statute allows one seeking discharge from commitment in a state court to challenge only jurisdiction or provision of due process rights, there will be no examination of the sufficiency of the grounds for commitment or recommitment. Alternatively, if the grounds for commitment are to be examined *de novo*, court appointment of a physician, as well as a counsel, is necessitated by the medical nature of the issues.

Though these uncertainties are not encountered by one seeking a writ of habeas corpus under the federal statute,[112] it is not clear that the habeas corpus remedy in state or federal court would result in a determination of whether the grounds for commitment still exist. In any event, medical testimony would be essential to this determination.[113]

Florida's commendable legislation offers some hope of solution to the growing social problem of alcoholism, but this problem must not be solved at the expense of unnecessary curtailment of the personal freedom of citizens, alcoholic or otherwise. Certain changes to the statute could uphold the stated legislative objectives and yet guard against possible injustices to the individual.

The rights and liberty of an alleged alcoholic should be safeguarded by the addition to section 396.102 of language providing: "In implementation of this section the court and the concerned treatment resources shall bear in mind the stated legislative preference for voluntary rather than involuntary treatment, as well as outpatient rather than inpatient treatment where involuntary treatment must be used."

Also, the entire definition of "alcoholic" in the definitions section of the statute should be added to the involuntary commitment section.[114] Furthermore, religious freedom would be safeguarded by the addition of a section providing: "In implementation of this section the court shall determine whether the person whose commitment is sought has any objections to involuntary treatment on religious grounds, and, if so, shall limit the types of treatment that may be administered accordingly."[115]

The habeas corpus provision section should be expanded by a statement that:

> Inquiry under this writ shall extend to the validity of the original proceedings and all subsequent proceedings, sufficiency of establishment of the grounds for commitment in the original and all subsequent proceedings, the current existence or non-existence of grounds for commitment, whether beneficial treatment is actually being provided, and any other matters the

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112. 28 U.S.C. §2254(d) (1970). This section delineates eight grounds on which a federal court may grant relief, including inadequate development of the facts and lack of a full, fair, and adequate hearing.

113. *See* notes 105-108 and accompanying text *supra*. For recommitment, both categories — danger to self or others and need of medical treatment — require medical testimony.

114. *See* notes 56-60 and accompanying text *supra*.

115. *See* text accompanying note 109 *supra*.

court may consider appropriate.[116] In all proceedings of this type the right to examination by a physician of one's choice and appointment of a physician by the court shall be made if the party seeking the writ does not obtain his own.[117]

It is believed that the policies expressed by the legislature by the enactment of this Act will be carried out with less risk of abuse and injustice by the adoption of these modifications.

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116. *See* text accompanying notes 110-113 *supra.*
117. *See* text accompanying notes 71-78, 113 *supra.*