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The law and the treatment of drug- and alcohol-dependent persons

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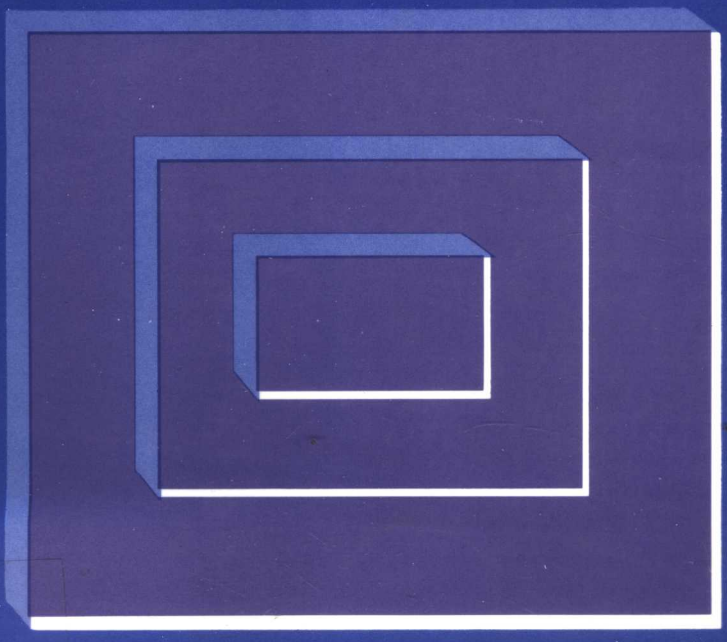

The World Health Organization is a specialized agency of the United Nations with primary responsibility for international health matters and public health. Through this organization, which was created in 1948, the health professions of some 165 countries exchange their knowledge and experience with the aim of making possible the attainment by all citizens of the world by the year 2000 of a level of health that will permit them to lead a socially and economically productive life.

By means of direct technical cooperation with its Member States, and by stimulating such cooperation among them, WHO promotes the development of comprehensive health services, the prevention and control of diseases, the improvement of environmental conditions, the development of health manpower, the coordination and development of biomedical and health services research, and the planning and implementation of health programmes.

These broad fields of endeavour encompass a wide variety of activities, such as developing systems of primary health care that reach the whole population of Member countries; promoting the health of mothers and children; combating malnutrition; controlling malaria and other communicable diseases including tuberculosis and leprosy; having achieved the eradication of smallpox, promoting mass immunization against a number of other preventable diseases; improving mental health; providing safe water supplies; and training health personnel of all categories.

Progress towards better health throughout the world also demands international cooperation in such matters as establishing international standards for biological substances, pesticides and pharmaceuticals; formulating environmental health criteria; recommending international nonproprietary names for drugs; administering the International Health Regulations; revising the International Classification of Diseases, Injuries, and Causes of Death; and collecting and disseminating health statistical information.

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The Law and the Treatment of Drug- and Alcohol-dependent Persons

A Comparative Study of Existing Legislation

by

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Preface

This publication forms part of the World Health Organization's continuing review and analysis of legislation on health matters that are likely to be of interest to Member States. It aims to assist all those concerned with the legal aspects of programmes designed to control and prevent health problems related to alcohol and drug abuse, and to inform workers in both the health and legal fields about relevant issues, problems, and opportunities for research, training and action.

During the preparation of this book, governments of 42 countries and one territory (Hong Kong) were consulted and provided information. Guidance on the content of the study was provided by members of a special advisory group (listed in Annex 1), and experts from over 20 countries provided suggestions and comments. On behalf of the World Health Organization, I thank all those who contributed to this work, and especially the authors, who had the daunting task of bringing together all the information. It is my sincere hope that the collaboration established in the course of this study will continue in the future. I also gratefully acknowledge the support of the United Nations Fund for Drug Abuse Control, without which it would not have been possible to conduct the study in the limited time available.

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1. Background

1.1. Introduction

This book is concerned with ways in which the law can serve to create and maintain effective programmes of treatment for both drug- and alcohol-dependent persons. It contains the results of a comparative study of relevant legislation, guidelines for assessing how existing legislation functions, and suggestions for alternative approaches to the development and review of national legislation in this field. It is concerned primarily with how legislation promotes the treatment of persons who are dependent on either alcohol or drugs, or both, and concentrates on an analysis of the legal provisions governing treatment programme administration. It is anticipated that, through comparative review of the legislative provisions, countries will be able to determine more effectively what changes, if any, are needed in their approach to such questions.

International efforts to control the illicit traffic in drugs have been significantly strengthened during the past 25 years with the entry into force of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances, and their amendments. National governments, partly in response to such international conventions and partly as a result of increasing abuse of drugs in their countries, have enacted legislation designed to curb illicit drug traffic. Regional agreements, such as the South American Agreement on Narcotic Drugs and Psychotropic Substances, which came into force in March 1977, have also been drawn up in response to the need for multinational collaboration. Both the two international conventions and the regional agreements on drugs contain provisions on the treatment of drug-dependent persons. Treatment is seen as one of several ways of controlling the demand for illicit drugs since it should reduce the number of people abusing such substances.

Alcohol and substances liable to abuse other than drugs are not the subject of international agreements or conventions, except for a 1919 convention relating to liquor traffic in Africa (*1*).

Because the present publication is concerned with the treatment of drug- and alcohol-dependent persons, it does not cover legislation on drunk driving.

Legislation on drugs and alcohol has many objectives, some of which may be in conflict from time to time. For example, the aims of law-enforcement agencies, public health and welfare institutions, and mental health departments are not always in harmony in a given jurisdiction, although each has a legitimate interest in the treatment of drug- and alcohol-dependent persons. Over several decades, WHO has paid increasing attention to the role of legislation in public health policy development, programme planning, and implementation, and WHO expert committees have made recommendations regarding legislation in these areas. Law, whether in the form of statutory enactments and regulations for implementing them or of judicial decisions, is playing an increasingly important role in public health matters. This is particularly evident in the planning and delivery of treatment services, including those for drug- and alcohol-dependent persons. It is therefore useful to compare the approaches that different countries have adopted in their legislation in these areas and to determine whether or not particular items of legislation will facilitate treatment programmes.

1.2 Purpose and scope of the study

The purpose of the study reported here was to analyse existing legislation on the treatment of drug- and alcohol-dependent persons in selected countries in order to assist countries in reviewing their own legislation and in determining whether it should be revised.

A review of legislation involves two tasks. Firstly, the text of the law must be carefully examined to determine its literal meaning and its legislative history. Statutory definitions and the legislative meaning of terms such as "drug dependence", "alcoholism", and "treatment" are important in this respect. Secondly, it is important to determine whether or not legislation facilitates treatment and how it is perceived to operate by the public and by those who administer programmes set up under the legislation.

A comprehensive review of the national and subnational legislation and their specific provisions in many countries was thus undertaken. The results of the comparative legislative analysis are given in Chapter 4 of this publication.

In order to make the study useful on a comparative basis, attention was focused on several legislative trends in the countries surveyed. The first concerned new national legislation and initiatives to change legislation on the treatment of drug- or alcohol-dependent persons. The next area of inquiry concerned the legislative systems of the countries surveyed. Where were treatment programmes found in a federal system and how were different national and subnational laws reconciled? What was the effect of the international conventions and regional agreements on treatment efforts? Two further aspects of the survey concerned: (*a*) the role of national advisory or coordinating bodies, such as commissions and boards; and (*b*) the implementation of treatment programmes, their strengths and weaknesses.

Some countries have approached the treatment of drug- and alcohol-dependent persons through the use of separate specialized laws, others through more general laws and by including the relevant provisions in the mental health or criminal code. The study compares these different approaches.

We were particularly concerned to see whether key terms, including "drug dependence", "alcohol dependence", and "treatment", were defined in the legislation and whether these definitions met current needs. Our final concern was with the various routes of entry into the treatment system and access to services. We therefore reviewed and compared national and subnational statutory provisions governing: (*a*) compulsory civil commitment; (*b*) diversion to treatment from the criminal justice system; and (*c*) the legal provisions governing reporting, central registration, laboratory testing, and community surveillance of drug- and alcohol-dependent persons.

The review revealed a wide variety of legislative approaches to treatment and many different routes of access to treatment services. Coordinating mechanisms for reviewing the legislation were also found to be varied and to have different objectives. There is clearly a need for effective evaluation programmes and for harmonizing such mechanisms.

1.3 Methodology

The survey considered legislation enacted up to 1982. No research was done on legislation received after September 1982. The legislation reviewed was generally found to have been enacted within the past 20 years. Copies of the legislation were obtained from the following sources:

(*a*) complete texts of legislation and summaries of such texts published in the *International digest of health legislation*;

(*b*) complete texts of legislation published by the United Nations Division of Narcotic Drugs (E/NL series);

(*c*) personal communications from professionals in the countries surveyed; and

(*d*) United Nations and national government legislative document repositories.

WHO documents and reports on drug and alcohol abuse were analysed, and United Nations reports and publications, especially on the international drug conventions, were reviewed. Various legal and health agencies and individuals were consulted. WHO collaborating centres in mental health and in drug and alcohol dependence were contacted and consulted. Among others consulted were the United Nations Fund for Drug Abuse Control, the United Nations Division of Narcotic Drugs, and the International Narcotics Control Board. The International Labour Office and other international organizations, including the International Council on Alcohol and Addictions (a nongovernmental organization), were also consulted.

A total of 42 countries and one territory (Hong Kong) were included in the comparative legal survey. The selection criteria were designed to include countries of varying social, cultural and economic characteristics, legislative systems, pattern of health services, economic development, and population size. Both countries in which drugs originate and those in which they are abused were included. Some countries where the legislation was concerned predominantly with the treatment of alcohol-dependent persons were included (e.g., Hungary, USSR) as well as some where the major emphasis was on the treatment of drug-dependent persons (e.g., Burma, Thailand). We have also included a few countries (e.g., Sweden, Switzerland) where the legislation contains provisions governing the treatment of both drug and alcohol dependence. In a few countries, new draft laws or provisions

on treatment were being considered at the time of the survey; these are mentioned here, as are provisions in some countries that have special laws prohibiting or controlling the sale and use of narcotics or mental health laws as the sole legislation on the treatment of drug or alcohol dependence.

For countries with a federal structure, it was not practicable to include an analysis of the law in every state, province, or canton; it was therefore decided that the legislation of at least one state or its equivalent should be analysed.

The 51 jurisdictions included in the survey, by WHO Region, are as follows:

African Region: Kenya, Madagascar, Mauritius, Nigeria, Senegal, and Zambia.

Region of the Americas: Argentina, Brazil, Canada (Federal, British Columbia, Nova Scotia), Colombia, Mexico, Peru, Trinidad and Tobago, and the United States of America (Federal, Massachusetts, Wisconsin).

Eastern Mediterranean Region: Cyprus, Egypt, Iraq, Pakistan, Somalia, and Tunisia.

European Region: Finland, France, the Federal Republic of Germany (Federal, Bavaria, Hamburg), Hungary, Israel, Italy, Norway, Poland, Sweden, Switzerland (Federal, Geneva, St Gallen), the Union of Soviet Socialist Republics (Russian Soviet Federal Socialist Republic) and the United Kingdom (England and Wales).

South-East Asia Region: Bangladesh, Burma, India, Indonesia, and Thailand.

Western Pacific Region: Australia (Victoria), Hong Kong, Japan, Malaysia, Philippines, and Singapore.

A first draft report of the study was completed in the late summer of 1982 and was circulated for review and comment to experts on the treatment of drug and alcohol dependence and legislation and to selected national and international organizations, including the United Nations Fund for Drug Abuse Control, the United Nations Division of Narcotic Drugs, the International Narcotics Control Board, the International Council on Alcohol and Addictions, as well as to each of the six WHO regional offices.

The most important review of this first draft took place during a meeting of an Advisory Group held on 7–10 September 1982 at Harvard University, Cambridge, USA, and attended by 23 persons, including staff members from WHO headquarters and the Regional Office for the Americas. The meeting was also attended by representatives of relevant United Nations and nongovernmental agencies and WHO collaborating centres (see Annex 1 for list of participants).

After this meeting, a new draft was produced and circulated to the same experts as before. The data were reorganized and expanded and emphasis was placed on the objective evaluation and comparison of the texts of the various legislative provisions. The materials were brought together under three headings, as follows: (1) compulsory civil commitment; (2) diversion to treatment from the criminal justice system; and (3) provisions on compulsory reporting, central registries, and laboratory testing of addicts and suspected addicts, and community surveillance of addicted and formerly addicted persons. In addition, as recommended by the Advisory Group, a series of tables and lists was prepared in order to present the data in a simple, easily readable form.

After the revised draft had been circulated, it was presented for review to a second WHO Advisory Group meeting at Harvard University on 5–7 April 1983, attended by 14 persons, a number of whom had participated at the first meeting. The governmental and nongovernmental representation was largely the same. This smaller group, all experts in some aspect of treatment programmes or legislation in this field, or both, thoroughly reviewed the document, and endorsed the conclusions adopted at the first meeting.

1.4 Previous WHO studies

The present study brings up to date the WHO comparative survey of legislation of 1962 (*2*) and the 1977 WHO study entitled *The law and mental health: harmonizing objectives* (*3*) which did not specifically cover legislation on the treatment of drug and alcohol dependence.

1.4.1. *WHO Expert Committee on Mental Health: fourth report (1955)*

WHO has paid considerable attention in the past to national legislation on mental health, as well as drug and alcohol dependence. Thus the fourth report of the WHO Expert Committee on Mental Health, entitled *Legislation affecting psychiatric treatment* (*4*), emphasized that "the principles governing good psychiatric legislation arise out of the need both for adequate mental health services and for care of the patient and the protection of society". The report specifically mentioned the need for legislation that authorized compulsory treatment for alcoholics who were dangerous to themselves or others, but not for all patients suffering from alcohol dependence.

1.4.2 *Survey of legislation on treatment of drug addicts (1962)*

In 1962, WHO prepared and published a survey of existing legislation on the treatment of drug-dependent persons in a number of countries (*2*). This survey pointed out that, in some areas, individual clinical treatment was not feasible because of lack of facilities and professional manpower, and that the only alternative was to take more active measures directed primarily against sources of supply of narcotics. Even where official figures showed a low rate of drug addiction, many countries (e.g., Norway) nevertheless considered it to be a serious public health problem. It was noted in the survey that public attitudes varied in different sociocultural contexts, with the result that in some countries severe penalties for addiction were considered appropriate whereas in others a "habit" was considered "normal". Attitudes were found to be changing, however, leading towards the recognition that the drug addict was above all a sick person in need of suitable and effective treatment and rehabilitation. It was pointed out that drug addicts do not usually show marked criminal tendencies, but that the need to obtain supplies of narcotic drugs often leads them to commit breaches of the laws relating to traffic in such drugs. In the judicial systems studied, there was a tendency to resort to social aid instead of routinely imposing the prison sentences authorized by law for such offences. Subject to the consent of the addict and to certain specific conditions, therefore, addicts were not sent to prison but instead medical treatment (i.e., diversion from the criminal justice system) was ordered.

Prior to the 1962 study, much had been written about the nature of appropriate medical treatment. Some commentators were of the opinion that the only feasible solution to the problem of drug addiction was to order compulsory detention in closed high-security institutions. A WHO Study Group, investigating the subject of the medical and social treatment of drug addicts, considered that "traditional concepts of treating the first and second phases of addiction in closed institutions only should not necessarily be followed in all cases" (*5*) and that there should be legislative provision for treatment at home, at the physician's office, or in outpatient clinics in selected cases.

The 1962 study reported that the laws surveyed generally allowed for lengthy treatment, that the consensus of opinion among most of the commentators recommending commitment was that, in order to prevent relapses, the treatment must be of long duration (i.e., for two or three years), and that the period allotted for rehabilitation and psychotherapeutic care should also be of prolonged duration, followed by rigorous supervision in order to prevent possible relapses after discharge.

In the majority of countries surveyed in the 1962 report, legal provisions regarding treatment and hospitalization of drug addicts were included in legislation relating either to the treatment of mental patients or to traffic in narcotic drugs. Mental health legislation had been enacted in Brazil, Canada (province of Saskatchewan), the Federal Republic of Germany (in various *Länder*) and in Switzerland (the cantons of Neuchâtel and Vaud), while legislation on the control of drug traffic was found in the Dominican Republic, Egypt, Greece, Guatemala, the Islamic Republic of Iran, Italy, Morocco, Panama, the United Kingdom, Venezuela, and Viet Nam. A more unusual type of legislation was found in Australia (Western Australia), Finland, and Norway, where legal provisions relating to the treatment of alcoholics had been amended or adapted to include measures appropriate to the treatment of drug addicts.

The 1962 survey also called attention to special provisions on offences committed by drug addicts, whether against the narcotic drug laws or public law, which were laid down in the respective penal codes of many countries and, occasionally, even in special laws (e.g., the Belgian Social Aid Law). In Switzerland, provision was made for so-called security measures against offenders who were alcoholics or drug addicts. The same type of law also existed in the Federal Republic of Germany, where the courts could impose suspended sentences for terms of imprisonment not exceeding nine months. In such cases, the courts were also em-

powered to order addicts to undergo treatment for the duration of the probationary period.

Some countries included in the survey had no specific legal provisons on the subject, since the authorities considered that cases of abuse of narcotic drugs were so few in number that special legislation was unnecessary.

The majority of the legislative texts reviewed in the 1962 study had been enacted after 1945. Among the few earlier enactments were those of Brazil (1934), Switzerland (cantons of Neuchâtel, 1936 and Vaud, 1939) and Venezuela (1934).

The great majority of the legislative provisions considered did not contain any legal definition of a drug addict, but exceptions to this rule were found in the legislation of Canada (Saskatchewan) and the United States of America (District of Columbia). In Saskatchewan, the addict was defined as being "a person suffering from a disorder or disability of mind as evidenced by his being so given over to the use of alcohol or drugs that he is unable to control himself or is incapable of managing his affairs, or endangers himself or others". In the District of Columbia, a "drug user" was defined as "a person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction". The 1962 survey emphasized that it was difficult for public health authorities to track down drug addicts or to keep up to date any register of such persons unless there was a system of notification. In many countries, however, notification was not compulsory and information was therefore not uniformly reliable. The 1962 survey included a review of laws governing standards and procedures for compulsory commitment for treatment. Provisions for such compulsory commitment were found in many countries, while in others, voluntary treatment was preferred.

1.4.3 *WHO Expert Committee on Mental Health: fourteenth report (1967)*

The fourteenth report of the WHO Expert Committee on Mental Health was published in 1967 (*6*) and brought together WHO policies and programmes for the prevention and treatment of dependence on alcohol and drugs. Similarities and differences in causation and treatment were carefully analysed. The report considered: (*a*) an approach to problems of dependence on