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# THE DIVERSIONARY DRUG PROGRAM OF THE COOK COUNTY STATE'S ATTORNEY

by LEONARD TYRRELL\*

## INTRODUCTION

Early in 1971, the office of the Cook County State's Attorney began a fresh inquiry into the administration of narcotics law enforcement. One special problem was the increase of youthful narcotics offenders filtering through the criminal justice system. The problem had two dimensions: the first offender faced the possibility of being convicted for a relatively minor narcotics violation and of carrying that stigma with him for the rest of his life, but the sole alternative was probation, which offered the defendant no form of treatment. The mechanical probation procedure might serve to keep the offender out of trouble during the probation period, but it provided no means of ascertaining the extent of the individual's drug problem. It was apparent that a new concept was needed to fill this procedural void.

A study to remedy the problem culminated in the birth of the State's Attorney's Drug Abuse Prevention Program in March of 1971.<sup>1</sup> Essentially, the program is an attempt to divert first offenders of narcotics violations away from the criminal process and into a counseling, educational, and treatment atmosphere, by deferring prosecution until the individual has had an opportunity to attend a designated number of seminars. If the individual fails to complete the program, his prosecution resumes in the criminal justice system. However, his case continues during the time that he is attending the seminars, and upon their successful completion, the charges are "nolle prossed" and the individual's criminal record is expunged.

The goals of the program are to give the first offender an opportunity to avoid the consequences of a criminal record, and also to provide him with a chance to examine the manifold aspects of drug abuse. The objective is to eliminate future narcotic violations.

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1. The Chicago Tribune did an article on the program in 1973. Chicago Tribune, Oct. 7, 1973, at 50, col. 1.

When the program was initiated, it was available only to adults who had been processed through the criminal courts of Chicago. In November of 1971, the program was expanded to include adult offenders in the five municipal court districts serving the suburban areas of Cook County. A final extension was made in August of 1972 when the program was implemented in the juvenile division of the Cook County court system. While the benefit of expungement of the criminal record was inapplicable to juvenile offenders it was believed that the therapy sessions could be extremely valuable in minimizing the risks of drug abuse at an early age. The program was a novel approach to the administration of criminal justice in the narcotics field.

#### OPERATION OF THE PROGRAM

The program is primarily directed towards youthful offenders charged with either possession of marijuana, amphetamines, depressants, and hallucinogenic drugs, or with the obtaining of drugs by false pretenses. In order to qualify for the program one must meet the eligibility requirements, which are grounded on four basic criteria:

1. *Age.* Generally, a participant must be under 30 years of age.
2. *Prior Criminal Record.* A participant must not have any previous narcotic, dangerous drug, marijuana, or other serious criminal convictions.
3. *Present Drug Charge.* The quantity of the drug possessed must be relatively small; 100 grams of marijuana or 25 pills are the maximum limits.
4. *Attitude.* An interview is held with the individual in order to determine, insofar as possible, whether he is properly motivated for participation.

The process by which one is accepted into the program is relatively simple. The eligibility of a candidate is determined at the preliminary hearing stage of the prosecution by an evaluation of the four criteria. Either the assistant state's attorney assigned to the case, the defense attorney, or the judge will notify the defendant of the availability of the program as an alternative to prosecution. The decision is totally voluntary and must be made by the individual before any hearings on suppression of the evidence or on probable cause are held. It is believed that the goals of the program can be more readily attained if the defendant makes a free choice to participate. If he so chooses, his case is continued to another date, pending the program's successful completion.

Once a defendant accepts the program he must agree to attend five weekly sessions, not to violate drug abuse or penal laws during the term of the program, and to comply with administrative requirements of the program. When this has been done, the treatment phase begins.

The heart of the program is in the effective use of the seminar groups, which consist of ten to twelve participants and a discussion leader. The leader is responsible for stimulating the group dynamics and channeling the comments of the group toward a constructive end. The leaders are selected from the staffs of Gateway House Foundation<sup>2</sup> and the Illinois Drug Abuse Program. Their backgrounds are varied; some have engaged in structuring and leading group therapy sessions, some have been active in individual resident counseling on behavioral problems, and some have served as consultants with agencies and organizations on drug abuse problems. The Illinois Bar Association, which spent considerable time studying the program, recognized the vital importance of the discussion leader. In the study<sup>3</sup> it was found that the counselors must possess the unique ability to build a confidential and respectful relationship between themselves and the participants, since the fundamental purpose of the seminar sessions is to "open up" the participants in order that they might examine their reasons for turning to drug use. Without that ability, the counselors would not be able to establish the rapport necessary for the success of the program.

The discussion leader, however, while an essential member of the seminar unit, can do no more than give it direction. The real burden of benefiting from the "rap" sessions is on the individual participant. He must make the seminar group work to fortify his own socio-psychological make-up. In most instances, this can only be accomplished by taking an active part in all five of the sessions.

At the initial meeting, the participants' attitudes range from apathy to open hostility. However, by the final session, these same individuals exhibit an acute sense of togetherness and belonging. This change is not only visually evident, but is also

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2. Gateway House Foundation is a non-profit organization operating with governmental and private funding. Its staff is composed of rehabilitated drug addicts whose function is to help cure others of drug addiction. They provide help for the drug abuser and try to increase his awareness of the negative effect of drugs on his life. Emergency help and consultation are also offered to distraught parents unable to cope with their drug-using children. The organization tries to provide young people with a positive and responsible environment in which to socialize.

3. This study is on file at the offices of the Illinois Drug Abuse Program, room 243, 2600 S. California Avenue, Chicago, Illinois, 60608. It is available to the public and is on pages 23-36, 28-29, of a publication called *Narcotics Clinic* (1975).

borne out statistically. Nearly 5,000 participants have enrolled in the program. Approximately 20% have been dropped for failure to attend a session without legitimate excuse. However, of this 20%, the largest percentage of attrition (12%) occurs at the first session. The number of absences then decreases until it is a rare occurrence for a participant to miss a final session, suggesting that once a participant overcomes any initial dislike for the program, he is quite likely to become involved in the group concept and finish the program satisfactorily.

The final step in the process is the participant's return to court, at which time the charge is "nolle prossed." As provided for by statute,<sup>4</sup> the offender's criminal record is expunged and the fact of his arrest may not be used against him in the future. Thus, by two short court appearances and participation in five seminar sessions, the individual avoids the consequences of a criminal conviction and receives valuable counseling.

#### AN EVALUATION OF THE PROGRAM

In some respects the success of the program is easy to measure; in others it is more difficult. For example, expunging one's criminal record is an obvious benefit requiring little analysis. However, the problem of recidivism is not so easily resolved. The underlying theme of a deferred prosecution program is that by treating an individual at an early stage of his "criminal" career, he will abstain from engaging in future illegal activity. Reduction in the recidivism rate is, therefore, one measure of a program's success. Consequently, each participant is checked by a screening of the records of the Chicago Police Department six months to one year after his completion of the program. Of the 2,746 records checked to date, only 151 participants have been re-arrested and convicted (5.4%). Of these convictions, 83 were for drug related offenses. This results in a total of only 3% of those who finished the program being re-arrested and convicted for narcotics violations. While this is a strong indicator of the success of the program, and shows that the deferred prosecution concept can work in keeping first offenders out of the court system, the method is not without its weaknesses. The

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4. ILL. REV. STAT. ch. 38, § 206-5 (1973):

A person, not having previously been convicted of any criminal offense or municipal ordinance violation, charged with a violation of a municipal ordinance or a felony or misdemeanor, if he was acquitted or released without being convicted, may petition the Chief Judge of the Circuit wherein the charge was brought to have the record of arrest expunged from the official records of the arresting authority. . . .

The Chief Judge shall enter an order either denying the motion to expunge or an order expunging the arrest record.

major drawback is that it provides no feedback on the life styles and behavioral patterns of the former participants. So, while it is evident that they manage to avoid the criminal justice system after being subjected to the program, it is impossible to determine what effect the program has on their subsequent use of narcotics.

The office of the State's Attorney is currently considering an extension of the program to include first offenders of auto theft, burglary, and other non-violent crimes. The concept of these programs would be the same as with the narcotic program. It is possible that such diversionary programs would assist in the reduction of the case load in the criminal court system and help individuals solve personal problems.

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