

From Bennett

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July 12, 1956

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Prisons

HR 11619 - Narcotic Control Act of 1956

This is in response to your request for recommendations as to Presidential approval of the above bill.

I strongly urge that H.R. 11619 be vetoed because:

1. It removes every vestige of discretion from both the judicial and executive branches of Government with respect to sentences applying not only to heroin and opium offenders but also the much larger category of marihuana offenders.

(a) It revokes the probation statute and requires therefore that an accidental first offender or a person addicted in the course of legitimate medical treatment be subjected to the sumptuary penalties prescribed by the Act. This is an unwarranted curtailment of judicial powers.

(b) It revokes the applicability of the parole laws and thus requires abandonment of all hope of rehabilitation or future usefulness even of the young offender who may unwittingly have used a marihuana cigarette. Obviously this is an unjustified infringement upon the powers of the executive with no counterpart in any other Federal statute not excluding treason, kidnapping, sabotage or any other Federal offense.

2. It dishonors our civilization by invoking the death penalty for a crime that is far less heinous than the few where this supreme penalty is authorized. Moreover, the definition of the offense of selling heroin to a juvenile is so broad that it might sweep within its catch-all provisions minor and incidental offenders as for instance one who "dispenses" heroin unlawfully brought into the United States. The sale for instance of an "addict-pusher" eighteen years of age (of whom there are estimated to be between three and five

thousand) to a fellow addict who is seventeen years of age would be subjected to the death penalty. If this law were actually implemented and juries were pressured into recommending the death penalty it would bring on wholesale hangings and electrocutions unparalleled in the world since 72,000 persons were hung in the reign of Henry VIII.

This and all other provisions of the Act will bear most heavily upon the disadvantaged, the feeble-minded, the psychopathic, the Negro, the Mexican, the Puerto Rican and those of oriental extraction, particularly in Hawaii and our Pacific territories.

3. The Act has many "ex post facto" aspects. It makes (Sec. 7237-C) offenders convicted prior to its passage subject to its provisions as second or subsequent offenders. It amends the Immigration Act in several respects so as to speed deportation and removes some of the present protections in the Act.

4. It attempts to validate several extremely controversial methods of law-enforcement including granting of immunity to witnesses, issuance of search warrants at any time night or day requires that an "addict" register when departing or returning from the country without defining an addict or taking into account this might violate the self-incriminating clause of the Constitution.

5. It imposes on several agencies of the Government duties they probably do not have the funds or personnel to carry out.

(a) The Immigration Service is required to register and issue certificates to departing and returning "narcotic addicts" and convicted narcotic violators. This will impose a considerable task particularly on the Mexican border.

(b) All Federal agencies including presumably the F.B.I. would be expected to make available the names and identification of all persons who are "known to be narcotic addicts or convicted narcotic law violators". This apparently would apply not only to Federal narcotic law violators but state law violators as well -- probably as many as 60,000. Here again no definition of who is a narcotic addict.

(c) Require the Bureau of Prisons to expand greatly its facilities to take care of narcotic law violators who are not now being sent to Federal prisons. At present approximately 350 narcotic violators are granted probation annually. Hereafter these would go to prison. More space would be required also since under the new law violators would remain in prison far longer because the arbitrary penalties require longer incarceration and the parole statutes are revoked. About 1,300 narcotic violators are now committed annually to Federal prisons and 500 to U. S. Public Health Service institutions. At present the average time served in Federal prisons is 22 months. This average stay in prisons would be tripled at least under the new penalty provisions and the average number of narcotic violators in Federal prisons would increase from 3,300 to close to 10,000.

It is to be borne in mind also that presently from 2,000 to 2,500 violators of state narcotic laws are sent to state prisons. Since the average time served in state institutions for this offense is now only 18 months there will be a tendency to divert these cases to Federal jurisdiction which can easily be done even under existing law.

It seems probable also that the narcotic addicts now going to Lexington and Ft. Worth would under the drastic penalties be transferred to Federal prisons as the existing statute requires their transfer when they have gained the "maximum benefits of hospitalization". This would also greatly complicate the administration of the narcotic hospitals since almost all the committed addicts would have no chance for parole and would therefore not cooperate in efforts to bring about a "cure".

At least four new prisons housing an average of 1,000 men each and costing approximately six million dollars each will be required to carry out the terms of this law.

(d) Further burden the Federal courts with long jury trials and other procedural matters relating to search warrants, communications problems, appeals and reviews of the many questionable matters in the law.

Conclusion

And all of these fundamental changes in law and our traditions respecting the treatment of offenders, equal justice, separation of powers, and consideration of human values are being made to no demonstrably worthwhile end so far as control of the drug traffic is concerned. They are born of hysteria and based on little factual information. For instance, the Senate report makes the absurd statement that 50 per cent of all crimes committed in the larger cities and 25 per cent of all reported crime are attributable to narcotic addiction. That would mean that of 1,861,764 persons arrested annually 465,000 were drug addicts. Similar completely unrealistic statements are made in the report.

The law contains not a single sentence or clause looking to the prevention or care of narcotic addiction which is fundamentally a disease afflicting the underprivileged and the economically and socially handicapped. It all but completely abandons the approach in the law establishing the Public Health Service hospital for treatment of drug addiction. It is grounded on the false notion that drug addiction and the drug traffic can be controlled through the punitive approach rather than by cutting down the demand through sympathetic care and treatment of the victims.

The law is bound to be a monumental failure in its ultimate purpose and objective. This can be predicted from previous efforts along the same lines. When the so-called Boggs Act was passed in November 1951 setting long mandatory penalties it was hailed as the answer to the drug problem. According to the Committee's own report the incidence of drug addiction has been steadily increasing. It says for instance that new names of drug addicts are being reported at the rate of over 1,000 per month despite the drastic mandatory penalties already in effect.

Drug addiction is certainly to be deplored and the drug traffic is to be suppressed by every possible means. There can be no sympathy for anyone who debauches the manhood of America. But blind and unreasoning laws which ignore the fundamental problems and substitute Draconian penalties for the individualized approach merely divert efforts to get at the root of the evil.

For these and the other reasons outlined the law should be vetoed and Congress advised of the need for further study of the problem, the sweep of its provisions narrowed and the inadvisability of withdrawing discretionary power from the judicial and executive branches of the Government.