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Since the passage of the Harrison Act[1] in 1914, the principal means of controlling drug addiction in the United States have been rigid controls on importation and domestic production of narcotics, and increasingly heavy penal sanctions for the illegal possession or

* 42 Cal. Rptr. 199, 398 P.2d 391 (Sup. Ct. 1965).

1. 38 Stat. 785 (1914) (now INT. REV. CODE OF 1954, §§ 4701-36). For the background of the act, see ELDRIDGE, NARCOTICS AND THE LAW 7-9 (1962) [hereinafter cited as ELDRIDGE]; LINDESMITH, THE ADDICT AND THE LAW 3-34 (1965) [hereinafter cited as LINDESMITH].

sale of addicting drugs. Effective as these measures have been in restricting the domestic traffic in narcotics and driving up the price of illegal drugs, long prison sentences have not been successful in either deterring or curing drug addiction.[2] Recognizing the unique psychological and physiological aspects of addiction, the United States Public Health Service established hospitals in the 1930's at Lexington, Kentucky, and Fort Worth, Texas, offering medical treatment to addicts in federal prisons and to others voluntarily requesting admission.[3] The two hospitals have had notoriously poor results in effecting permanent abstinence from drugs.[4] Their failure has been attributed largely to the lack of supervision over the patients after release and to the premature release of many volunteer patients who leave against medical advice.[5]

Medical opinion is sharply divided as to the wisdom of the present prohibitionary attitude toward narcotics control. A number of medical authorities argue that controlled amounts of narcotics should be made available to addicts through out-patient clinics and that the addict should be forced to terminate his "habit" only when considered psychologically capable of resisting the temptation to resume the use of drugs.[6] They contend that this approach would

2. It has been estimated that there were two million narcotics addicts in this country prior to the imposition of the Harrison Act controls in 1914. ELDRIDGE 7 n.27. Although it is now officially estimated that this number has been reduced to fifty thousand, other estimates of current addiction run as high as one million. *Compare* PROCEEDINGS OF THE WHITE HOUSE CONFERENCE ON NARCOTIC AND DRUG ABUSE 27 (1962) [hereinafter cited as 1962 CONFERENCE] *with* SCHUR, NARCOTIC ADDICTION IN BRITAIN AND AMERICA 44 (1962) [hereinafter cited as SCHUR]. The problem of narcotics addiction is greatest in New York, Illinois, California, and Michigan. ELDRIDGE 50. For a description of the enforcement of present narcotics laws, see LINDESMITH 35-62.

3. See Act of January 19, 1929, 45 Stat. 1085. Although federal prisoners make up 60% of the population of the Lexington facility, 90% of the 3,500 annual admissions to the hospital are voluntary. The prisoner population of the hospital represents only a small proportion of the total number of known addicts in the federal prison system. O'Donnell, *The Lexington Program for Narcotic Addicts*, Fed. Prob., March 1962, p. 55.

4. 1962 CONFERENCE 92-93.

5. *Ibid.* Estimates of the rate of relapse among patients released from the Lexington hospital are as high as 95%. *Hearings Pursuant to S. Res. 67 on the Causes, Treatment, and Rehabilitation of Drug Addicts Before the Subcommittee on Improvements in the Federal Criminal Code of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess., pt. 5, 1372 (1955); Berger, *Dealing With Drug Addiction, A Reply to Mr. Kuh*, in U.S. BUREAU OF NARCOTICS, TREASURY DEP'T., CONTROL AND REHABILITATION OF THE NARCOTIC ADDICT 13 (1961). See generally ELDRIDGE 30-32.

6. Such a plan is outlined in detail in New York Academy of Medicine, *Report on Drug Addiction*, 31 BULL. N.Y. ACADEMY OF MEDICINE 592 (1955). *Cf.* LINDESMITH 269-302; 1962 CONFERENCE 114. Between 1919 and 1925, 44 clinics were opened to make narcotics legally available to addicts under medical supervision. Alleged abuses in these programs forced their termination. See ANSLINGER & TOMPKINS, THE TRAFFIC IN NARCOTICS 191-206 (1953). Compare LINDESMITH 135-61. The proposed system of out-patient clinics is similar to the treatment of addicts in Britain. See SCHUR *passim*.

Under the present state of the law, a physician is not forbidden to prescribe narcotics for an addict, either during withdrawal distress or in the course of other treatment. In early cases involving indiscriminate prescription of large quantities of

undermine the present illegal drug traffic and allow greater flexibility in the treatment of addicts. Opponents of this approach contend that it would be ineffective, since past experience has shown that a parallel traffic in illegal drugs would continue, supported by addicts whose desire is not satisfied by the quantity of narcotics they can obtain legally.[7] It is also feared that underworld bosses, unwilling to relinquish their profits from the narcotics traffic, would actively seek to develop new markets for their product by encouraging addiction in young persons. The weight of medical opinion appears to support the attempt to control narcotics addiction through compulsory abstinence, provided that a program of post-withdrawal supervision and rehabilitation is available.[8]

In 1959 California initiated a pilot program which established the value of institutionalizing the drug addict for a limited period so as to provide both medical treatment during the often intense illness which accompanies withdrawal from narcotic drugs, and a rehabilitation program of psychiatric counseling and vocational training. The period of institutionalization was followed by closely supervised out-patient treatment, during which specially-trained state parole officers provided continued counseling, job placement advice, and aid to the addict's family, in an effort to facilitate reentry into the community.[9] In 1961 the California legislature added provisions to the state penal code adopting the treatment procedures developed in the pilot project and authorizing the establishment of a special rehabilitation center to administer the in-patient phase of

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drugs, the United States Supreme Court indicated that the Harrison Act restricted medical use of narcotics to cases in which the life of the addict was in danger. This position was later abandoned by the Court. *Compare* Webb v. United States, 249 U.S. 96 (1919), *with* Linder v. United States, 268 U.S. 5 (1925). However, the Federal Bureau of Narcotics has refused to recognize the *Linder* doctrine in enforcing the Harrison Act. U.S. Bureau of Narcotics, Treasury Dep't., *Prescribing and Dispensing of Narcotics Under the Harrison Narcotic Law*, Pamphlet No. 56 (1960). Under the threat of prosecution and the pressure of public opinion generated by the Bureau, the medical profession has largely abdicated its discretion in the treatment of addicts. LINDESMITH 13.

7. CALIFORNIA SPECIAL STUDY COMMISSION ON NARCOTICS, FINAL REPORT 95-98 (1961). See ANSLINGER & TOMPKINS, *op. cit. supra* note 6, at 185-91.

It is interesting to note that the strongest support for maintaining the status quo in the handling of addicts comes from those involved in the administration of present treatment and drug control programs. Because of the inflexible posture of law enforcement agencies, empirical data are not available to verify the asserted superiority of compulsory abstinence over other proposed methods of treating addicts.

8. See, *e.g.*, 1962 CONFERENCE 295-301. Voluntary organizations such as Addicts Anonymous and Synanon have been recognized as effective aids to post-withdrawal rehabilitation. See MAURER & VOGEL, NARCOTICS AND NARCOTIC ADDICTION 178 (2d ed. 1962); Yablonsky, *The Anticriminal Society—Synanon*, Fed. Prob., Sept. 1962, p. 50.

9. BURKHART & SATHMARY, CALIFORNIA NARCOTIC TREATMENT—CONTROL PROJECT PHASES I AND II (1963). This project grew out of a preliminary study of the problem, CITIZENS' ADVISORY COMMITTEE TO THE ATTORNEY GENERAL ON CRIME PREVENTION, NARCOTIC ADDICTION, REPORT TO THE ATTORNEY GENERAL (1954) (Cal.).

the program.[10] Admission to the rehabilitation center is either voluntary[11] or the result of an involuntary civil commitment proceeding.[12] When it appears that a convicted criminal defendant is the victim of narcotics, the judge in the criminal action is authorized to suspend sentencing and to direct that involuntary civil commitment proceedings be instituted. If the commitment hearing results in a finding that the defendant is "a narcotic addict, or by reason of repeated use of narcotics is in imminent danger of becoming addicted,"[13] the defendant may be committed to the rehabilitation facilities for a period not to exceed ten years.[14] If such a finding is not made, or, if the finding is made, upon release from the rehabilitation program, the defendant is still subject to sentencing on the criminal charge. However, all time spent in the rehabilitation program is credited against the sentence.[15]

In *People v. Victor*[16] the California Supreme Court was presented for the first time with a challenge to the constitutionality of the involuntary civil commitment of a convicted criminal defendant found to be "in imminent danger of becoming addicted." In prior cases, beginning with *In re De La O*,[17] the California court had upheld the constitutionality of the statute as applied to defendants who had been committed after having been found to be actually addicted to narcotics. In these cases the principal ground of attack had been that civil commitment was sufficiently similar to penal confinement to constitute cruel and unusual punishment, forbidden by the fourteenth amendment.[18] The court, in rejecting this argument, had

10. Cal. Stat. 1961, ch. 850, §§ 2, 3, as amended, CAL. PEN. CODE §§ 6399-6555. Descriptions of the administration of these provisions are found in 1962 CONFERENCE 101-09; Wood, *New Program Offers Hope for Addicts*, Fed. Prob., Dec. 1964, p. 41. Massachusetts and New York have recently adopted legislation similar to the California provisions. MASS. GEN. LAWS ANN. ch. 17, § 12; ch. 111A, §§ 1-10 (Supp. 1964); N.Y. MENTAL HYGIENE LAW §§ 200-216. The New York program is discussed in DISKIND & KLONSKY, RECENT DEVELOPMENTS IN THE TREATMENT OF PAROLED OFFENDERS ADDICTED TO NARCOTIC DRUGS (1964); Kuh, *Civil Commitment for Narcotic Addicts*, Fed. Prob., June 1963, p. 21. As a practical matter, involuntary hospitalization of addicts is frequently accomplished without enabling legislation. Law enforcement agencies may give an arrested person the choice of seeking voluntary admission to treatment centers or facing prosecution. MAURER & VOGEL, *op. cit. supra* note 8, at 176. The wisdom, not to mention the legality, of this procedure is questionable. See AMERICAN BAR FOUNDATION, THE MENTALLY DISABLED AND THE LAW 31 (1961).

11. CAL. PEN. CODE § 6500.

12. CAL. PEN. CODE §§ 6450-51, 6500.

13. CAL. PEN. CODE § 6450.

14. CAL. PEN. CODE § 6521. Post-conviction commitment is normally not available to addicts found guilty of certain felonies. CAL. PEN. CODE §§ 6452, 6450.

15. CAL. PEN. CODE § 6520.

16. 42 Cal. Rptr. 199, 398 P.2d 391 (Sup. Ct. 1965).

17. 59 Cal. 2d 128, 28 Cal. Rptr. 489, 378 P.2d 793, *cert. denied*, 374 U.S. 856 (1963). *Accord*, *In re* Trummer, 60 Cal. 2d 658, 36 Cal. Rptr. 281, 388 P.2d 177 (1964); *In re* Johnson, 59 Cal. 2d 644, 30 Cal. Rptr. 819, 381 P.2d 643 (1963); *In re* Raner, 59 Cal. 2d 635, 30 Cal. Rptr. 814, 381 P.2d 638 (1963); *In re* Butler, 59 Cal. 2d 157, 28 Cal. Rptr. 508, 378 P.2d 812, *cert. denied*, 375 U.S. 11 (1963).

18. *Cf.* Robinson v. California, 370 U.S. 660 (1962).

held that the extensive individual treatment provided for addicts in the California Rehabilitation Center and while on parole clearly indicated the nonpenal nature of civil commitment under the statute.[19] In *De La O*, the petitioner also contended that the operative term, "addict," was unconstitutionally vague. This contention was likewise rejected, on the ground that the word is nontechnical and, when accorded "the approved usage of the language," is not objectionably vague.[20]

In *Victor*, the defendant contended that the statute was unconstitutionally vague in not providing an ascertainable standard of the imminency of addiction sufficient to support commitment.[21] Although the commitment order was reversed on statutory grounds,[22] the court, in the interest of certainty in the administration of the

19. See cases cited note 17 *supra*. *But see* LINDESMITH 290-93.

20. *In re* De La O, 59 Cal. 2d 128, 153, 28 Cal. Rptr. 489, 505, 378 P.2d 793, 809 (1963). "Narcotic addict" is defined in the statute as "any person, whether adult or minor, who is addicted to the unlawful use of any narcotic." CAL. PEN. CODE § 6407. For a compilation of other legislative efforts at defining narcotic addiction, see AMERICAN BAR FOUNDATION, *op. cit. supra* note 10, at 82-86.

21. This problem had also bothered earlier student commentators. See Note, 1 SAN DIEGO L. REV. 58, 74 (1964); 8 UTAH L. REV. 367 (1963-64).

22. The defendant in *Victor* had been subjected to a commitment hearing after having begun a six-month criminal sentence. The commitment order was reversed on the ground that although the statute provides for involuntary commitment before sentencing or when the person is not charged with a crime, it does not authorize commitment while the person is actually serving a sentence. People v. Victor, 42 Cal. Rptr. 199, 207, 398 P.2d 391, 399 (Sup. Ct. 1965). California courts have consistently required strict adherence to the statutory commitment procedures. See cases cited note 17 *supra*. See also People for the Best Interest of Nelson, 218 Cal. App. 2d 441, 32 Cal. Rptr. 567 (1963); Van Zanten v. Superior Court, 214 Cal. App. 2d 510, 29 Cal. Rptr. 625 (1963). *Cf.* People v. Perez, 198 Cal. App. 2d 460, 18 Cal. Rptr. 164 (1961); *In re* Hofmann, 131 Cal. App. 2d 758, 281 P.2d 96 (1955); In the Matter of Crowley, 95 Cal. App. 219, 272 Pac. 787 (1928). The rationale behind the narrow construction is twofold. First, since civil commitment was not available at common law but is a power conferred by statute, the courts have held that the statutory provisions must be closely followed in order to create jurisdiction. Second, in California due process requires a hearing prior to commitment. In the Matter of Lambert, 134 Cal. 626, 66 Pac. 851 (1901); *accord, In re* Wellman, 3 Kan. App. 100, 45 Pac. 726 (1896); State *ex rel.* Blaisdell v. Billings, 55 Minn. 467, 57 N.W. 794 (1894); State *ex rel.* Fuller v. Mullinax, 364 Mo. 858, 269 S.W.2d 72 (1954); People *ex rel.* Sullivan v. Wendel, 33 Misc. 496, 68 N.Y. Supp. 948 (Sup. Ct. 1900). *Contra*, Hammon v. Hill, 228 Fed. 999 (W.D. Pa. 1915); Payne v. Arkebauer, 190 Ark. 614, 80 S.W.2d 76 (1935); Hiatt v. Soucek, 240 Iowa 300, 36 N.W.2d 432 (1949); *In re* Dowdell, 169 Mass. 387, 47 N.E. 1033 (1897) (all holding constitutional *ex parte* commitment orders where habeas corpus proceedings were available to test the validity of the original commitment). The California courts have stressed the importance of allowing the defendant to remain at liberty to facilitate his preparation for the commitment hearing. *Cf. In re* Raner, 59 Cal. 2d 635, 30 Cal. Rptr. 814, 381 P.2d 638 (1963); *In re* Hofmann, *supra*. It should be noted that the objection is mitigated by the defendant's right to counsel paid by the state. CAL. WELFARE & INST'NS CODE § 5054; CAL. PEN. CODE § 6505. In 28 states, counsel is not available as a matter of right to defendants in commitment proceedings. AMERICAN BAR FOUNDATION, *op. cit. supra* note 10, at 29. Even if due process did not require the result reached in the principal case, a contrary holding would raise equal protection problems. *Cf. In re* Trummer, 60 Cal. 2d 658, 36 Cal. Rptr. 281, 388 P.2d 177 (1964).

statute, considered the constitutional attack. Displaying unusual judicial ability to deal with medical concepts, the court found that the psychological and physiological symptoms of addiction suggested a test for "imminent danger" which both achieved the purposes of the statute and met the vagueness objection. Medical authorities recognize three primary characteristics of addiction: habituation, an emotional compulsion to experience the sense of well-being created by narcotics; tolerance, the gradually developed resistance to the effects of the drugs, causing the addict to require increasingly large doses of narcotics to achieve the same effect; and physical dependence, the occurrence of withdrawal sickness when the use of narcotics is terminated.[23] Considering these characteristics, the court recognized that a person is not "in imminent danger of becoming addicted" after having merely experimented with the use of drugs, nor by reason of occasional use of drugs for personal gratification or under social pressure.[24] Rather, as the statute explicitly requires, the "imminent danger of becoming addicted" intended as a ground for commitment is the danger arising from the "repeated use of narcotics."[25] The court therefore indicated that involuntary commitment under the imminent-danger test must be limited to persons in whom the repeated use of narcotics is gradually causing normal adaptive behavior to be replaced by emotional reliance on drugs, but who have not developed the tolerance, the withdrawal syndrome, and the complete psychological dependence characteristic of narcotic addiction.[26]

The defendant in *Victor* also questioned the constitutionality of extending the police power of the state so as to permit involuntary confinement of persons not actually afflicted with the disease of drug addiction but only in danger of becoming so afflicted. Concluding that a constitutional defect might exist if the statute were construed to allow the commitment of persons suffering only from a psychological predisposition to addiction, the court felt that the provision making the repeated use of narcotics a prerequisite to a

23. This widely accepted description of addiction was first proposed by the World Health Organization. ELDRIDGE 2, n.1. See, *e.g.*, MAURER & VOGEL, *op. cit. supra* note 8, at 32. In addition, the court recognized the importance of learning through experience in the process leading to addiction, as the narcotics user first experiences the adaptive effects of the drug, and later learns of the illness he incurs when his intake of drugs is reduced. It has been suggested that this is the most scientific explanation of addiction possible. SCHUR 40. See LINDESMITH, OPIATE ADDICTION (1947).

24. Empirical studies of drug addicts in this country have pointed to common personality and psychological factors that suggest it may be possible to predict the likelihood of addiction in an individual. See, *e.g.*, Ploscowe, *Some Basic Problems in Drug Addiction and Suggestions for Research*, in JOINT COMMITTEE OF THE A.B.A. AND THE A.M.A. ON NARCOTIC DRUGS, DRUG ADDICTION—CRIME OR DISEASE? 50-64 (1961). However, other writers have questioned the existence of any identifiable psychopathic predisposition to addiction. SCHUR *passim*.

25. CAL. PEN. CODE §§ 6450-51, 6500.

26. People v. Victor, 42 Cal. Rptr. 199, 214-15, 398 P.2d 391, 406-07 (Sup. Ct. 1965).

finding of "imminent danger" brought the statute within the police power of the state. This conclusion was based on a questionable analogy to sexual psychopath laws, which authorize the civil commitment of persons predisposed, by reason of mental defects, to the commission of sexual offenses. The United States Supreme Court has upheld a sexual psychopath statute construed by the state court as requiring evidence of actual prior sexual misconduct.[27] Nevertheless, the mere fact that involuntary civil commitment is based on prior physical acts is not alone sufficient to bring it within the police power of the state.

Civil commitment is a proper exercise of the police power when the state is acting either to protect the community or, as *parens patriae*, the individual committed.[28] However, since civil commitment involves a deprivation of liberty without many of the procedural safeguards available in a criminal prosecution,[29] courts have required, as a prerequisite to civil commitment, that the person committed be utterly lacking in capacity to control his dangerous propensities.[30] Civil commitment is indistinguishable from criminal prosecution when applied to an individual who has the power to control his anti-social tendencies, even if he shows no desire to utilize that power.[31] An additional prerequisite to the exercise of the police power is that the danger to the individual or the community on which the exercise is based must be actual, not merely theoretical.[32]

It is highly questionable whether either justification for the use of the police power—protection of the individual or of society—is present when the addiction is only "imminent." It does not appear that the interests of the individual justify the exercise, through civil commitment proceedings, of the *parens patriae* power of the state

27. Minnesota *ex rel.* Pearson v. Probate Court, 309 U.S. 270 (1940), *affirming* 205 Minn. 545, 287 N.W. 297 (1939). The Court in *Pearson* did not deal with the limits of the police power. The prior sexual misconduct required as a prerequisite to involuntary commitment was considered important only in answer to the asserted unconstitutional vagueness of the statute. *But cf.* Overholser v. O'Beirne, 302 F.2d 852 (D.C. Cir. 1961).

28. See, *e.g.*, Porter v. Ritch, 70 Conn. 235, 39 Atl. 169 (1898) (protection of public); State *ex rel.* Larkin v. Ryan, 70 Wis. 676, 36 N.W. 823 (1888) (*parens patriae*). The police power has been exercised to confine insane persons, inebriates, sexual psychopaths, juvenile delinquents, defective delinquents, and narcotics addicts. 8 UTAH L. REV. 367, 370 (1963-64).

29. See, *e.g.*, *In re* Keddy, 105 Cal. App. 2d 215, 233 P.2d 159 (1951) (no protection against double jeopardy); People v. Chapman, 301 Mich. 584, 4 N.W.2d 18 (1942) (no protection against ex post facto commitment). See generally Kadish, *A Case Study in the Signification of Procedural Due Process—Institutionalizing the Mentally Ill*, 9 WESTERN POLITICAL Q. 93 (1956); 8 UTAH L. REV. 367 (1963-64).

30. *E.g.*, State *ex rel.* Pearson v. Probate Court, 205 Minn. 545, 287 N.W. 297 (1939), *aff'd*, 309 U.S. 270 (1940).

31. *Cf.* Trop v. Dulles, 356 U.S. 86 (1958).

32. Meyer v. Nebraska, 262 U.S. 390 (1923).

before actual addiction is reached. Unlike the alcoholic, the user of narcotics experiences no permanent deleterious physical or mental effects from his habit.[33] Moreover, there is no evidence that the rehabilitation of a narcotics user is more successful if initiated before total addiction is reached. Indeed, it has been suggested that once a withdrawal from narcotics has been experienced, the fear of ever having to repeat the process is a powerful factor in discouraging recidivism.[34] Neither does it appear that a person taking narcotics, even though he is "in imminent danger of becoming addicted," is a threat to society. Although addicts frequently resort to criminal activity to obtain money to support their habit, there is no indication of any such tendency on the part of drug users who are not yet under the compulsion symptomatic of narcotics addiction.[35] Likewise, although anyone using narcotics has necessarily been in unlawful possession of the drug used, and has probably been a party to an illegal sale of narcotics, these are comparatively minor infractions and should be dealt with as such. It is doubtful whether either of these actions is sufficiently injurious to society to justify a long-term commitment under the police power.

Even if it is assumed *arguendo* that the user of narcotics is a danger to society and to himself, involuntary commitment of the noncompulsive narcotics user is nevertheless an unprecedented extension of civil confinement into areas in which criminal procedural safeguards have traditionally been required.[36] The involuntary commitment of sexual psychopaths is analogous to the civil commitment of *actual* narcotics addicts, in that both types of individuals have demonstrated an inability to control their anti-social acts.[37] However, under the *Victor* test for "imminent danger,"[38] involuntary commitment is extended one step further back along the chain of causation, to a point where it is not yet certain that the individual will develop a condition by reason of which he is likely to represent a danger to society. The only justification for commitment prior to addiction is that early treatment may obviate the dangers which result if the defendant eventually becomes addicted. The laudable intent indicated by the statutory provisions, however, does not mitigate the danger to individual freedom.

The California post-conviction commitment provisions and the extensive treatment and rehabilitation provided thereunder would seem to be a rational and effective approach to the problem of

33. ELDRIDGE 16-18; SCHUR 22; *Medical Views on the Narcotics Problem*, 31 F.R.D. 53, 93 (1961).
34. *Cf.* MAURER & VOGEL, *op. cit. supra* note 8, at 83, 178.
35. *Cf.* SCHUR 138.
36. See 8 UTAH L. REV. 367 (1963-64).
37. *Cf.* Ploscowe, *supra* note 24, at 64-68.
38. See text accompanying note 26 *supra*.

actual narcotics addiction.[39] The detailed analysis of addiction in *Victor* establishes medically valid criteria for subsequent judicial administration of criminal and civil regulation of addiction.[40] However, the extensive dicta in the *Victor* opinion, upholding the involuntary commitment of persons not yet addicted to narcotics, indicate approval of an extension of civil commitment into an area currently protected by criminal procedural safeguards. Should the court actually be called upon to decide the question, proper consideration of the threat to individual liberty may require that the procedure be held violative of due process.

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39. *But see* LINDESMITH 290-93.

40. *Cf.* People v. O'Neil, 44 Cal. Rptr. 320, 401 P.2d 928 (Sup. Ct. 1965) (construing statute making driving an automobile while addicted a felony).