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Policing public inebriates in decriminalized cities: a summary of methods and findings

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There has been increasing interest in recent years in the decriminalization of victimless crime, where the only tangible harm done is to the offender.¹ An area where this movement has been intense and relatively successful is in decriminalization of public drunkenness.² Through formal judicial³ and/or legislative⁴ action and informal diversionary strategies,⁵ the criminal offense is being eliminated in favor of therapeutic alternatives: public drunkenness is defined in terms of a sickness requiring treatment rather than as a crime necessitating punishment.⁶

But while there has been increasing interest in therapeutic alternatives to the criminal justice system, little attention has been given to this intake process whereby the citizen is delivered to the public health system. If the therapeutic model is to prove viable, it is essential that the public in-

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briate be removed from the street and delivered to a treatment facility for emergency services. The purpose of the present study is to describe and assess the performance of the police as the agency usually responsible for the delivery of public inebriates to designated health facilities. Primary emphasis is given to the District of Columbia, the principal locus of the research project. In addition, the study provides a comparison of the criminal and therapeutic intake process of several representative cities in the United States.⁷ The study also explores alternative delivery mechanisms that will contribute to the implementation of legally required use of treatment facilities in place of arrest.

The study focuses on both "microchanges" (*e.g.*, incentives developed by central police administration to pick up and deliver public inebriates to public health facilities) and "macrochanges" (*e.g.*, the replacement of patrolmen with public health officials as the primary agents for picking up public inebriates) as potential modes for inducing conformity to legal policy requirements. The study includes both an interjurisdictional component, comparing the experience of criminal and decriminalized jurisdictions, and an intrajurisdictional component (*i.e.*, case studies), focusing on the experience of three cities with adoption of the therapeutic alternative to the criminal justice model for handling public inebriates.

The approach used in this study contributes to an improved understanding of problems and issues in two related areas of public policy. First, the study describes the potential benefits as well as the limitations of the therapeutic (medical) approach to public intoxication—and to other types of socially deviant behavior that might similarly be "decriminalized"—as compared with the traditional approach of the criminal law. Second, the study provides insight into the nature and process of discretionary police decisionmaking with an emphasis both on improving the lot of the public inebriate (or other recipients of police services in a therapeutic approach to

socially deviant behavior) and on the more effective use of valued police resources. Finally, the study explores proposals for improved delivery mechanisms, using police and alternative methods.

While no overview of the research findings has been published, we have completed an in-depth article on the prescriptive aspects of decriminalization⁸ as well as an empirical piece on the impact phase of the project.⁹ This paper represents a summary of our methods and findings.

Summary of methods

In the analysis of the impact of decriminalization, our objective has been to test the following hypothesis: *if no special ameliorative action is introduced, decriminalization produces a significant quantitative decline in the number of public inebriates formally processed by legally approved means.* In addition, we anticipated that decriminalization would have a qualitative impact (*i.e.*, a funneling effect) with the population of inebriates formally processed by the public system increasingly being identifiable as emergency case "homeless men" or skid row inebriates.

To test the impact of decriminalization, we employed time-series methodology that permits comparison of police arrests before decriminalization with police deliveries to detox centers after decriminalization. Specifically, we collected monthly public drunkenness arrest rates (pre-decriminalization) and monthly rates of police deliveries to detoxification facilities (post-decriminalization) for two of our three experimental cities: (1) Washington, D.C. (a high arrest jurisdiction); and Minneapolis, Minnesota (a moderate arrest jurisdiction). Also, we collected available monthly arrest data for two control cities where decriminalization has not been implemented: Houston, Texas (a high arrest jurisdiction) and San Francisco, California (a moderate arrest jurisdiction).

For our three experimental, decriminalized cities, Washington, Minneapolis, and St. Louis, we also investigated a series of control factors that could not be analyzed under the time-series methodology. In each of these jurisdictions, for example, we analyzed whether a change in the recidivism rate or in the size of the drinking population after decriminalization might explain the apparent reduction in police pickups.

Alternative dispositions were also examined in the decriminalized cities. The reform legislation in these jurisdictions allows an individual to admit him/herself to the detoxification facilities and grants the police the options of taking the person home or delivering him/her to a facility equipped to handle alcoholism (*e.g.*, a hospital). In Minnesota, legislation also authorizes civil pickup of public inebriates. Finally, we investigated whether the police in either jurisdiction are charging public inebriates with other misdemeanors such as disorderly conduct or vagrancy.

Recognizing the central role of intake personnel in case processing and premised on the established linkage between attitude and behavior, it was hypothesized that the impact of decriminalization can be explained in terms of the attitudinal disposition of the pickup agent, the police officer. The adoption of a therapeutic model of handling public inebriates is seen as introducing a mass of disincentives to intervention and formal approved processing by the officer. Incentives and disincentives to action are perceived as operating through a discretion model incorporating organizational, role, strategic environment, strategic interaction, peer relationship and personal background variables. The attitudes of the officer, the environmental context in which they operate, and their relation to police behavior are probed using questionnaire and interview schedules.

Again, the analysis proceeds on both an inter- and an intrajurisdictional basis. Attitudes of officers in jurisdic-

tions retaining the criminal model are compared as a unit with their counterparts in the category of decriminalized or therapeutic jurisdictions. The attitudes and behavior of officers in each of three target therapeutic jurisdictions (D.C., St. Louis, and Minneapolis) are examined by comparing them not only with the remaining therapeutic cities, but also with the criminal target cities (Houston and Richmond).

Prescription was also viewed as a major determinant of impact. Specifically, prescription is viewed as having four principal elements: (1) the goals that a jurisdiction may wish to achieve through its statutes, policy directives, guidelines, and rules for handling public inebriates; (2) the degree of conflict and compatibility of these goals; (3) alternative delivery mechanisms that are available for achievement of the goals; (4) techniques of administration (*i.e.*, the incentives and disincentives that may be used to ensure that delivery mechanisms achieve designated public policy goals) to overcome the impediments of conflicting organizational and self-interest goals.

In our prescriptive analysis, the goals are conceptualized as the dependent variable and the delivery mechanisms as the independent variable. Techniques of administration are treated as the intervening variables. The techniques of administration consist of economic, information, communication, authority power, as well as environmental incentives and disincentives that administrators can use to assure that police discretion is exercised to meet specified goals. In analyzing the relationships of various elements of prescription, we can ask what types of pickup dispositions and what delivery mechanisms best fit a certain goal or set of goals.

Summary of findings and conclusions

- Background to decriminalization** 1. Jurisdictions are seldom purely criminalized or purely therapeutic in their handling of public inebriates. Rather, they range on a continuum from purely criminalized to purely therapeutic.

2. The class of public inebriates is not coterminous with the class of alcoholics or with the class of skid row (homeless men) inebriates. Failure to make these distinctions ignores the reality of policing the public drunkenness problem. The distinction is necessary in assessing the consequences of legal policy change.

3. Urban renewal has increasingly eliminated the traditional concentrated skid row. The skid row inhabitants, however, have not disappeared but have tended to be more dispersed in the city. Often new "mini-skid row" pockets emerge. In any case, the variety of public drunkenness problems and the diversity of policing environmental contexts persist, and are often complicated by the effects of urban renewal.

4. Criminal jurisdictions vary substantially in the extent to which public drunkenness laws are enforced. Among the factors accounting for the variance in enforcement are community culture; community concern over public drunkenness; command priorities; beat conditions for patrol officers; and officers' priorities.

5. In criminalized and decriminalized jurisdictions alike, there is substantial variation in enforcement policy between police districts within the same city.

6. Decriminalization by judicial action tends only to reduce the use of criminal processing but does not end it. The limitations of judicial policy reform can produce confusion over the status of public drunkenness in the jurisdiction. On the positive side, judicial action can provide impetus to legislative and administrative actors. Meaningful decriminalization, however, usually requires legislative or administrative action providing for the establishment of alternative means of disposition and institutions for handling the public inebriate.

7. Decriminalization of public drunkenness requires the organizational involvement of a cadre of interested individ-

uals, groups and policy subsystems, whose goals are reflected in the legal policy change.

8. The multiplicity of goals impelling decriminalization are often not clearly and fully designated in the resulting legal mandate. These goals often develop and are acted upon without consideration of their potential conflict with one another or with clearly articulated goals emerging from the legal mandate.

9. Reform interests seldom give serious consideration to the potential impact of decriminalization on the police and their order-maintenance functions. Specifically, these interests often ignore the need for ameliorative administrative adjustments to promote the pickup and delivery of the potential client. It is critically important to the success of a treatment oriented system that the police department be involved in the initiation of the decriminalization and be continually involved in its subsequent implementation.

10. Decriminalization results in the forced interaction of two sets of bureaucratic actors, *i.e.*, law enforcement personnel and public health personnel. Tension between these actors is a constant reality in the operations of detoxification programs.

the impact of
decriminal-
ization

1. If a jurisdiction fails to take special ameliorative administrative action, decriminalization of public intoxication will produce a statistically significant decline in the number of public inebriates formally handled by the police in the manner designated by the law on the books.

(a) In comparing the quantitative rate of pickup and delivery of public inebriates by police in decriminalized and criminal model jurisdictions over time, the former experienced a significant decline in the number of public inebriates formally handled by the police following decriminalization while the latter experienced no significant change.

(b) Each of the three case study jurisdictions experienced a decline in the number of public inebriates formally picked up and delivered to public health agencies by police following decriminalization.

1. In all three jurisdictions there is a statistically significant decline in the number of police admissions to the detoxification center compared to the number of criminal arrests prior to the legal change. Even the retention of arrest as an option following introduction of a therapeutic alternative (as in St. Louis) does not restore intake rates to their prechange levels.
2. While hard data are generally unavailable, it does not appear that police deliveries of the public inebriate to other public health facilities or home delivery (where these formal options are available to the police under the law) account for the quantitative decline in the number of public inebriates being formally processed by police following decriminalization.

(c) It is possible that those public inebriates not being processed to treatment centers by the police are getting there by other means. In Washington, D.C., however, self-admissions do not account for the decline in persons handled by the public system. In St. Louis, a large influx of self-admissions in recent years does provide a quantitative explanation. It is questionable, however, that the self-admittees are the kind of homeless inebriates St. Louis police generally process. In Minneapolis, self-admissions and civilian van deliveries do account for the quantitative decline.

(d) The decline in the number of public inebriates formally processed by the police using approved means cannot be explained in terms of a decline of the number of public inebriates available for pickup and delivery. The number of alcoholics and probably the number of public inebriates has either remained constant or increased in all target jurisdictions.

(e) The decline in the number of public inebriates formally processed by police cannot be explained by the migration

of public inebriates to other adjoining jurisdictions following decriminalization.

(f) The decline in the number of public inebriates formally processed by the police cannot be explained in terms of the "revolving door." There is a decline in the number of individuals as well as cases, following a policy change. In fact, the recidivism rate is higher in the postchange period.

(g) Regardless of whether or not as many inebriates are being processed by approved means following decriminalization there is an increase in the nonapproved disposition of public inebriates. This may include ignoring the inebriate, taking informal action to remove the inebriate or the use of other criminal charges to remove the inebriate.

2. Decriminalization, unaccompanied by ameliorative action, will produce a "funneling effect" so that the population of public inebriates formally processed by the police using approved means will be substantially more of the emergency case, "skid row" or "homeless man" type of inebriate. This constitutes a qualitative (as opposed to quantitative) impact. Thus, two standards of policing public drunkenness are operative in decriminalized jurisdictions reflecting the character of the public inebriate involved.

- a. In the District of Columbia, while arrest was used for all classes of public inebriates prior to decriminalization, the detoxification center serves almost entirely the skid row class of public inebriates.
- b. In St. Louis, the police have historically concentrated on the emergency homeless man inebriate. Nevertheless, the data suggest that the police admission to the detoxification center is even more likely to have the characteristics associated with the skid row inebriate.
- c. Like St. Louis, the Minneapolis police have historically concentrated on the skid row inebriate. The data indicate that this focus has continued following decriminalization and may have even increased.

d. Interview data indicate that the number of public inebriates processed by the police using approved means produces a greater concentration on the emergency case, when the inebriate's condition may be serious. In such cases, police intervention becomes a practical necessity.

Police discretion The quantitative and qualitative impact of decriminalization can best be explained as a product of attitudinal predispositions of police officers and departmental policy. As we hypothesized, decriminalization introduces a mass of disincentives to formal police pickup and delivery of public inebriates using approved means of disposition. In the absence of compensating incentives, nonaction or informal action serves as a viable mode of patrol officer response in decriminalized jurisdictions.

Organizational variable Police organizations generally give a low priority to the public drunkenness problem. No marked differences were noted between officers in criminalized and decriminalized jurisdictions in regard to their perception of the organizational priority being placed on this policy issue.

In none of the target cities was the police organization actively involved with improving the handling of the public drunkenness problem. There were, however, variations among jurisdictions on the importance of patrol officer conformity to organizational directives.

Role variable Role orientation is an important factor distinguishing attitudinal predispositions of officers in criminalized jurisdictions from officers in decriminalized jurisdictions. Officers in decriminalized jurisdictions perceive a discrepancy in their law-enforcement oriented role expectations and a task of delivering public inebriates to public health facilities. While this discrepancy is present in criminalized jurisdictions, it is significantly less pronounced. Thus, there is a marked disincentive in terms of role expectations produced by decriminalization.

Police in therapeutic jurisdictions approach the processing of public inebriates with markedly different role orientations. St. Louis police, for example, have the greatest degree of law enforcement role orientation and experience the greatest conflict in handling public drunkenness. On the other hand, officers in Washington experience role conflict to a lesser degree than officers in the other therapeutic cities.

Peer variable Police officers in therapeutic jurisdictions perceive their peers as having a negative attitude toward the task of removing inebriates from public places. This attitude is not present in criminalized jurisdictions. In fact, officers in criminalized jurisdictions perceive a positive orientation on the part of their fellow officers toward the job. To the extent that officers respond to cues from their fellow officers, it follows that there is a strong disincentive introduced when a jurisdiction decriminalizes.

In St. Louis, peer influences appear to be especially important. Here, police officers' perceptions of their fellow officers' attitudes toward processing public inebriates provide an especially negative attitudinal predisposition toward the job.

Strategic environment variable Police officers in all jurisdictions share the attitude that institutions charged with handling public inebriates release the inebriate too quickly. This reaction is significantly greater in therapeutic jurisdictions introducing yet another disincentive to formal processing under decriminalization.

The negative police reaction in therapeutic jurisdictions toward the rapidity of turnover of the public inebriates by public health agencies is only part of an overall negative reaction to the public health treatment subsystem. This reaction is common among police officers in decriminalized jurisdictions.

Officers situated in districts having the highest concentration of public inebriates experience negative attitudes to

the treatment centers more intensely than officers elsewhere in decriminalized jurisdictions.

Police officers in criminalized and decriminalized jurisdictions alike generally possess a negative view of the public inebriate which increases their reluctance to intervene in public drunkenness cases. In criminalized jurisdictions, however, the officer tends to perceive the drunkenness situation as more serious; possibly in order to justify his/her intervention as a law enforcement officer. This impetus is not present in a decriminalized jurisdiction. By removing this justification for intervention, decriminalization removes an incentive to intervene.

St. Louis police officers have a more negative reaction to the public inebriate than officers in other jurisdictions. This is consistent with the negative task orientation generally manifested by these officers toward the police handling of public drunkenness.

There is some evidence that reactions to the public inebriate will vary between police districts or precincts within a jurisdiction. In precincts with important commercial districts, for example, the police officer feels more pressure to keep the streets clear of skid row inebriates.

*Strategic
interaction
variable*

There was general uniformity among jurisdictions regarding the ordering of the sources of community pressure for increased pickup of public inebriates. The greatest sources of pressure of increased pickup and the most important are provided by the business community and the general public. This is a critical source of incentives/disincentives affecting police behavior in handling public drunkenness.

In the decriminalized jurisdictions there is some evidence that police officers perceive detox personnel as hostile to an increased police delivery of public inebriates. This may serve as a disincentive for formal police action.

The perception of pressure for increased pickup varies between police districts or precincts within the jurisdiction. A greater police sensitivity to business community and political influences tends to be present in areas where people tend to congregate (e.g., business district, tourist areas). There is some evidence of a higher public toleration of public inebriation or at least less police perception of pressure in low income areas.

*Situation
specific
variable*

While the study did not focus on the influence of the characteristics of the particular situation on police intervention and disposition, interview and observational data suggest it is of major importance. The condition of the inebriate, his/her location, the intensity of the radio traffic are examples of such situation specific factors that influence police behavior in particular cases.

The attempt to demonstrate the correlation between police attitudes and different modes of policing behavior generally was not successful because of methodological difficulties. However, there are some notable findings concerning the relations of attitude to behavior both on a citywide and district basis.

- a. A concern on the part of the officer with the well-being of the inebriate is more likely to result in formal institutional action.
- b. In the District of Columbia the personal background factor of race is important. Black officers are more likely to take institutional action.
- c. In St. Louis, officers in patrol areas with more "winos" formally process a lower percentage of the inebriates they encounter but take more inebriates to detox. Officers from poorer areas take less action while officers from wealthier areas take more action.
- d. In St. Louis, officers in the central police district who perceive groups as wanting increased pickup of public inebriates will take more action.
- e. In the District of Columbia, there is a direct relation between the officer's perception that detox is too "far away" and the frequency with which she/he delivers public inebriates to the detoxification center.

Policy alternatives A clear formulation of the goals and priorities in the pickup and delivery of public inebriates is a prerequisite to fashioning a pickup and delivery system that will be fully responsive to those goals.

Goals often receive different emphasis in different locations within the same city. This diversity within particular jurisdictions is not only a result of differences in circumstances, but is also due to objectives of the various policy subsystems in handling public inebriates seldom being well thought out or effectively implemented. As a result, the formulation of goals and priorities often is delegated to lower levels of decisionmakers within a police organization. Also, within a decriminalized jurisdiction, the goals of police and public health personnel may be in conflict.

The realization of public policy goals in the pickup and delivery of public inebriates may be thwarted by conflicting organizational and self-interest goals in the absence of special ameliorative administrative action. Action that may be taken includes economic, informational, communication, and authority/power incentives and disincentives.

Although jurisdictions articulate goals in different ways, we have identified five different public policy goals emphasized in various jurisdictions in handling public inebriates:

1. Removal of public inebriates, usually skid row persons, from the streets and other public areas—(*i.e.*, dealing with a “public nuisance” by clearing the streets). This goal often receives special emphasis in downtown business areas of a city;
2. Saving overburdened criminal justice resources (and removing criminal sanctions from what is deemed an illness). The emphasis on saving resources usually is directed to local, in contrast to outside (*e.g.*, federal) resources. In decriminalized jurisdictions the goal of removing criminal sanctions from conduct that is a manifestation of an illness is usually applied to publicly intoxicated persons, irrespective of whether an underlying illness is present;

3. Humanizing the handling of public inebriates, especially the provision of prompt care and services to the emergency case public inebriate;
4. Longer term rehabilitation, resocialization or reintegration of public inebriates into the community;
5. Prevention of crime either by or against public inebriates, particularly preventing and suppressing disorder in and around honky-tonks and places where skid row persons congregate, which may result in assaultive behavior.

The goal of clearing the streets of public inebriates implies a substantial commitment of personnel and transportation for the pickup and delivery of public inebriates and usually substantial resource commitments for facilities—jails and detoxification centers—providing services to public inebriates. It generates a high level of enforcement tending toward indiscriminate intervention in removing public inebriates from designated areas. The more limited capacity of most detoxification facilities—as compared with drunk tanks and work farms in criminal jurisdictions—and the fact the detoxification centers may return chronic skid row inebriates to the streets more rapidly, suggest that this goal may be more difficult to attain through legally authorized dispositions in decriminalized jurisdictions.

The goal of saving scarce criminal justice resources is preferred in all decriminalized jurisdictions visited by our study, generally without any formal consideration of whether increased costs of other governmental agencies—especially public health agencies—are similar, less, or more than the anticipated savings through the criminal justice system. Whether any overall costs savings to society occurs depends on the cost of the services that are substituted for criminal justice processing and the results of those services.

A review of secondary data consisting of short-term cost studies suggests, preliminarily, that therapeutic programs often are more expensive than their criminal justice counterparts and that the impact on criminal justice resources has been smaller than anticipated.

The goal of rehabilitation of skid row public inebriates had generated controversy. In most jurisdictions inadequate resources and facilities exist to implement a "continuum of care" approach. There is also controversy over diverse treatment modalities (*e.g.*, medical vs. social welfare approaches) and the civil liberties implications of longer term involuntary civil confinement. Some contend that the primary needs of skid row inebriates relate to housing and other resource needs rather than the need for treatment of alcoholic problems.

When the goal of crime prevention is given emphasis in decriminalized jurisdictions, it is likely to lead to the use of substitute criminal charges, such as disorderly conduct. In Minneapolis, Minnesota and Erie, Pennsylvania, disorderly conduct arrests increased following the introduction of therapeutic alternatives.

A major finding of the prescriptive phase of the study is that in decriminalized jurisdictions the public policy goals are, as a practical matter, in conflict. These policy conflicts tend to be resolved not at the top levels of police administration but by police officers on the beat and public health intake workers. The existence of tension or strain among public policy goals and the different perspectives of police and public health personnel increase the likelihood of police use of other than approved means of disposition. It also leads to other than approved intake policies by public health personnel such as "do not admit" lists.

A major source of conflict is between traditional law enforcement order maintenance goals (clearing the streets to abate a "public nuisance" and crime prevention) and decriminalization goals (providing more humane treatment and improved services, rehabilitation, and saving scarce criminal justice resources). Providing improved emergency services, for example, is discriminate in that it is directed to picking up inebriates who present emergency public

health problems. Clearing the streets, on the other hand, is indiscriminate, leading to pickup of inebriates irrespective of their need for emergency services. Indiscriminate pickup and delivery overwhelms the limited capacity of most detoxification centers and prevents use of therapeutic resources for those most in need. The goal of clearing the streets of public inebriates also conflicts with the goals of rehabilitation and saving scarce criminal justice resources.

Conflict also exists among the decriminalization goals, such as between providing services to the emergency case public inebriate and rehabilitation or reintegration of public inebriates into the community. For example, public health personnel in St. Louis over time tended to define "success" in terms of rehabilitation, resulting in disenchantment in seeing the same skid row type in need of emergency services. Consequently, the center has emphasized voluntary admissions involving more middle class type public inebriates. This change in intake policy resulted in disincentives for police deliveries to the detoxification center.

Recognizing conflicts among public policy goals can lead to improved procedures for evaluating trade-offs and setting priorities, specifying workable policy directives and guidelines, improving methods of pickup and delivery of public inebriates, and selecting techniques of administration and implementation designed to increase the likelihood of achieving public policy goals. The conflict between traditional law enforcement and decriminalization goals in Boston, Massachusetts, for example, resulted in the use of both detox centers and civil protective custody/release-when-sober jail options.

Where police are retained as the exclusive pickup agents in decriminalized jurisdictions, alternative pickup and delivery approaches include: (1) the increased use of specialized transport vehicles, especially the police wagon or van; (2) increased use of specialized foot patrol officers; (3) use of jails as a drop-off point for subsequent delivery

to a therapeutic facility and for civil protective custody/release when sober.

Several alternatives may be considered for adoption in a jurisdiction setting up a decriminalized program that also involve the services of nonpolice personnel. Civilian van pickup systems are in use in such cities as San Francisco, California; Erie, Pennsylvania; Minneapolis, Minnesota; and Salem, Oregon. Other approaches include combined police-nonpolice teams (Manhattan's New York Bowery Project), use of public transportation (e.g., taxicabs), and increased emphasis on private agency referrals.

- Notes**
1. On the increasing interest in decriminalization of victimless crimes, see N. Kittrie, *The Right to be Different* (1971); N. Morris and G. Hawkins, *The Honest Politician's Guide to Crime Control* (1969); H. Packer, *The Limits of the Criminal Sanction* (1968) (see especially pt. 3); E. Schur, *Crimes Without Victims* (1965); E. Schur and H. Bedau, *Victimless Crimes: The Sides of a Controversy* (1974); Kadish, "The Crisis of Over-Criminalization," 374 *Annals* 157 (1967).
 2. In the mid-1960's, three prestigious commissions (the United States' and District of Columbia's Crime Commissions and the cooperative Commission on the Study of Alcoholism) rejected the criminal approach to public drunkenness and recommended the substitution of a public health approach. In 1969, the American Bar Association and the American Medical Association collaborated on model legislation for divesting public intoxication of its criminal status. In 1971, the National Conference of Commissioners on Uniform State Laws drafted model legislation for decriminalization—the Uniform Alcoholism and Intoxication Treatment Act. In Washington, D.C., the Washington Area Council on Alcoholism and Drug Abuse worked toward decriminalization throughout the 1960's and in Minneapolis, Minnesota, a similar group worked as members of the Minnesota Council on Alcohol Problems.
- See generally F. Grad, A. Goldberg, B. Shapiro, *Alcoholism and the Law* (1971); R. Nimmer, *Two Million Unnecessary Arrests* (1971); U.S. Department of H.E.W., "The Legal Status of Intoxication and Alcoholism," in *Alcohol and Health* 85 (1971); Hollister, "Alcoholism and Public Drunkenness: The Emerging Retreat from Punishment," 16 *Crime & Delinquency* 238 (1970); Hutt, "Perspectives on the Report of the President's Crime Commission—The Problem of Drunkenness," 43 *Notre Dame Lawyer* 857 (1968); Murtagh, "Arrests for Public Intoxication," 35 *Fordham L. Rev.* 1 (1966); Tao, "Criminal Drunkenness and the Law," 54 *Iowa L. Rev.* 1059 (1969).

3. The two ground-breaking cases were *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966) and *Driver v. Hinnant*, 356 F.2d 761 (4th Cir. 1966); holding that a chronic alcoholic having lost control over his drinking behavior, could not be criminally punished since his act was not voluntary, a prerequisite for criminal sanctions. *Hinnant* placed emphasis on the constitutional prohibition against infliction of cruel and unusual punishment. *U.S. Const.* amend. VIII. See generally, sources cited in note 2 *supra*; Hutt, "The Recent Court Decisions on Alcoholism: A Challenge to the North American Judges Association and Its Members," in *President's Comm'n. on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness* (1967).

But in *Powell v. Texas*, 392 U.S. 514 (1968), the Supreme Court narrowly rejected the contention that criminal punishment of the chronic alcoholic violated the constitutional ban, placing heavy emphasis on the lack of any general consensus regarding the nature and treatment of alcoholism. The Court quoted from the President's Commission on Law Enforcement and Administration of Justice, stating: "[T]he 'strongest barrier' to the abandonment of the current use of the criminal process to deal with public intoxication 'is that there presently are no clear alternatives for taking into custody and treating those who are now arrested as drunks.'" 392 U.S. at 528 n.22.

The Court added that "it would be tragic to return large numbers of helpless, sometimes dangerous and frequently unsanitary inebriates to the streets of our cities without even the opportunity to sober up adequately which a brief jail term provides." *Id.* at 528. It followed that "before we condemn the present practice across-the-board, perhaps we ought to be able to point to some clear promise of a better world for these unfortunate people. Unfortunately, no such promise has yet been forthcoming." *Id.* at 530.

In fact, the Justices divided 4-4, with Justice White concurring in the holding dismissing Powell's appeal, but basing his decision on the lack of evidence that Powell could not avoid being in public. Much of his reasoning, however, supports the principles formulated by the dissent.

A 1970 Senate report stated: "Five of the nine Justices agreed that alcoholism is a disease, that the alcoholic drinks involuntarily as a result of his illness, and that an alcoholic who was either homeless or who could not confine his drunkenness to a private place for some other reason could not be convicted for his public intoxication. Powell's conviction was upheld by a 5-to-4 vote, however, because the record failed to show that he was homeless or otherwise unable to avoid places when intoxicated." S. Rep. No. 1069, 91st Cong. 2d Sess. 3 (1970). See U.S. Dep't. of H.E.W., *supra* note 2.

4. By the end of April 1975, some 24 states had enacted the Uniform Alcoholism and Intoxication Treatment Act (1971) or essentially similar legislation. Well over half of the states have decriminalized

as of this writing. Many others have diversionary strategies in cities where current statutes remain in effect. See generally, U.S. Dep't. of H.E.W., *supra* note 2, at 89-96; Goodman & Idell, "The Public Inebriate and the Police in California: The Perils of Piece-Meal Reform," 5 *Golden Gate L. Rev.* 259 (1975); Hollister, *supra* note 2.

On the interaction of the legislative and judicial actors in producing legal change responsive to social change, see: C. Dienes, *Law, Politics and Birth Control* (1972); Dienes, "Judges, Legislators, and Social Change," 13 *Am. Behav. Sci.* 511 (1970).

5. In St. Louis, for example, persons arrested for public drunkenness who "consent" are generally diverted to a detoxification center by the arresting officer. If the person "voluntarily" remains at the center for 7 days, the summons is not processed. See *infra*. On the Manhattan Bowery Project, see Vera Institute, *In Lieu of Arrest: The Manhattan Bowery Project Treatment for Homeless Alcoholics* (1971).

On diversion from the criminal justice system, see R. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution* (1974).

6. The Uniform Alcoholism and Intoxication Treatment Act (1971), in section 1, provides: "It is the policy of this State that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society."

Similarly, John N. Mitchell, former Attorney General, states in a speech: "[A]lcoholism as such is not a legal problem—it is a health problem. More especially, simple drunkenness per se should not be handled as an offense subject to the process of justice. It should be handled as an illness, subject to medical treatment." Address by John N. Mitchell, "Alcoholism—To Heal, and Not to Punish" (Dec. 10, 1971).

7. In this report, the terms "decriminalization" and "therapeutic" will be used interchangeably in referring to the categorization of a jurisdiction. In fact, many jurisdictions have converted to a therapeutic model for handling public drunkenness even while retaining the facade of the criminal model. In St. Louis, for example, public drunkenness remains a criminal offense but the public inebriate is typically handled through a civilian detoxification center. Thus, the jurisdiction is treated as employing a variant of the "decriminalized" or "therapeutic" model. Philadelphia, on the other hand, continues to arrest and jail public inebriates even though those arrested are released without ever appearing before a magistrate. It is classified as a criminal jurisdiction.
8. David Aaronson, C. Thomas Dienes and Michael Musheno, "Improving Police Discretion Rationality in Handling Public Inebriates," (2 parts), 29; 30 *Administrative Law Review* 4; 1 (1977; 1978).

9. David Aaronson, C. Thomas Dienes and Michael Musheno, "Changing the Public Drunkenness Laws: The Impact of Decriminalization," 12 *Law and Society Review* (1978).

