COMMITTEE ON DRUGS

DRUG ABUSE LEGISLATION FOR THE 1970'S

The frequent use of marijuana by American youth has compelled the Committee on Drugs to explore the present methods of and recommendations for controlling marijuana.

On October 15, 1970, the Executive Board of the American Academy of Pediatrics endorsed in principle a statement on marijuana which was prepared by the Massachusetts Chapter of the Academy and published in the Academy's Newsletter.1 This statement called for considering possession of marijuana as a misdemeanor rather than a felony, but it was against legalizing use of marijuana at the present time. On October 27, 1970, President Nixon signed into law the Comprehensive Drug Abuse, Prevention and Control Act of 1970 (P.L. 91-513). This law became effective May 1, 1971; it is the Federal Government's attempt to control drug abuse by scientific and medical measures (under control of the Department of Health, Education, and Welfare) and by law enforcement activities (Department of Justice). The new Federal law has stopped short of legalizing marijuana, but it does allow a judge the discretion to withhold criminal charges for the first offense of possession.

The Massachusetts Chapter notes2 that marijuana is not a narcotic and does not produce addiction. Short-term physical effects are innocuous. However, impaired performance on simple intellectual and psychomotor tests is seen after individuals have smoked marijuana for the first time; but, such effects are not seen in regular users. There is no evidence to substantiate the common misconceptions that use of marijuana leads to crime or addiction to opiates. But, so little scientific information is available on the long-term use of marijuana that it should be considered a potentially harmful drug.

FEDERAL LEGISLATION (P.L. 91-513)

P.L. 91–513 schedules or classifies "substances" (drugs) on the basis of criteria pertaining to medical usefulness and "potential for abuse." Substances in Schedule I are drugs which do not have a currently accepted medical use, such as heroin and marijuana. Schedule II contains drugs which have medical use and a high abuse potential, such as methadone, morphine, and injectable amphetamines. Schedule III, for drugs which are used in medical practice and which have less potential for abuse than those in Schedule II, contains the barbiturates and amphetamines. Tranquilizers, such as meprobamate, are classified in Schedule IV. Over-the-counter preparations, such as cough syrup with codeine, are in Schedule V.

The classification of a drug (its schedule) determines regulation of its use in research and criminal penalties for illegal possession, use, sale, and manufacture. Although the law gives the Attorney General responsibility for scheduling a substance and altering its schedule, the scientific and medical basis for the scheduling comes from the Secretary of Health, Education, and Welfare, and it is binding. If the Secretary of Health, Education, and Welfare recommends that a drug or substance not be controlled, i.e., scheduled, by P.L. 91–513, his recommendation will be followed. Thus, there is provision for a scientific classification of dangerous substances to be controlled by the law, and the scientific evaluation is made in the Department of Health, Education, and Welfare—the governmental agency most qualified to do so. It should be noted that marijuana, a relatively harmless substance, and heroin, a hazardous substance, are placed together in Schedule I, indicating that the criteria for scheduling can be improved.

Of the criminal penalties dealing with drug abuse, those pertaining to possession are most pertinent here because current statistics indicate that a large proportion of American youth have possessed or do possess marijuana, a substance which is controlled by P.L. 91–513. Simple possession
for one’s own use is not defined by the law. Apparently the determination of simple possession or possession for the purpose of drug trafficking is made by the prosecuting authorities. The penalty for the first offense of possession of all drugs controlled by this law (including marijuana) is up to 1 year in jail, a fine of up to $5,000, or both. However, a first offender may be placed on probation for a period of up to 1 year; if he fulfills the conditions of his probation, the court may dismiss the proceedings against him. Federal law therefore provides the possibility (at the discretion of the judge) that a first offense of possession of marijuana will be a noncriminal offense. If the individual is under 21 years of age, he may apply for an order to expunge all records relating to the arrest and trial; however, the Justice Department will retain nonpublic records for court use in the event of subsequent proceedings for further violation. It is noteworthy that, under this law, it is possible for first offenders who possess drugs to have no criminal charges placed against them and for there to be no criminal record.

P.L. 91–513 treats an individual who gives a small amount of marijuana to another individual as a possessor. The law deals harshly with those who sell marijuana, LSD, or amphetamines (“pushers”) with a prison sentence of up to 5 years, a fine of up to $15,000, or both. This penalty may be doubled for individuals over 18 years of age who sell drugs to persons under 21 years of age. Criminal penalties for more serious offenses are also set out by the law.

P.L. 91–513 also deals with governmental research, education, and rehabilitation programs for drug abuse. This includes the appropriation of funds for programs which fall under the responsibility of the Department of Health, Education, and Welfare. Research projects involving the substances controlled by this law are monitored by a registration and review mechanism under control of the Department of Justice and the Department of Health, Education, and Welfare, respectively. A national Commission on Marijuana and Drug Abuse is authorized to conduct a comprehensive study of marijuana, including marijuana laws, pharmacology, and the relationship of marijuana to crime and other drugs. The Federal law deals with educational and training programs for law enforcement purposes and authorizes no-knock entry by Federal agents in search of controlled substances after an appropriate warrant is obtained. Finally, wording of the law indicates that Congress recognizes that the treatment of narcotic addiction is a medical problem rather than a problem involving law enforcement.

STATE LAWS

The Federal law is not the only one to deal with drug abuse. State laws also pertain to control of and penalties for drug abuse, and these laws are not uniform. In some states possession of marijuana is considered a crime; in others it is a misdemeanor. More often than not, an offender is prosecuted under state rather than Federal law. Thus, it appears that control activities for drug abuse are not uniform, despite passage of new Federal legislation. The Federal government is drawing up model legislation, presumably based on P.L. 91–513, which it is hoped the states will adopt. Chapters of the Academy can be extremely helpful in supporting this legislation in their respective states.

CANADIAN LAWS

In Canada the control of drug abuse involves two laws, the Narcotics Control Act, which classifies opium and its derivatives and marijuana and hashish as narcotics, and the Food and Drugs Act, which deals with abuse of “controlled” drugs (such as amphetamines and barbiturates) and “restricted” drugs (such as LSD). Possession of narcotics and restricted drugs is punishable by fine, prison, or both; but, there is no penalty for simple possession of controlled drugs. Conviction for trafficking in narcotics can result in imprisonment for life, and trafficking in restricted and controlled drugs can bring about a 10-year sentence. The interim report of a Commission of In-
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quiry into the nonmedical use of drugs has recommended that no one should be liable to imprisonment for simple possession of a psychotropic drug for nonmedical purposes. A maximum fine of $100 was the suggested punishment for simple possession. Furthermore, the Commission recommended that marijuana, hashish, and other cannabis derivatives be transferred to the provisions of the Food and Drugs Act from its present listing under the Narcotics Control Act. If marijuana were then to be classified as a controlled drug, there would be no penalty for its simple possession in Canada.

COMMENT

There is an urgent need for scientific studies on long-term effects of marijuana, and such studies are now being organized. At the present time, the Committee on Drugs cannot condone the use of marijuana because it has no known medical utility as a drug and because of its potential for harm.

Recognizing potential for harm and recommending research does not directly deal with the issue of widespread use of marijuana by American youth. Society is now being affected by the individual and social harm to our youth caused by the use of criminal law to control marijuana. Easing of the Federal law indicates that our society is beginning to recognize the widespread use of marijuana despite controls, which have been too punitive, and the destructive consequences of a criminal record for the future of a youth. P.L. 91–513 still permits some first offenders for possession to be labeled criminals, although others may be absolved of all guilt. There are no known effects associated with the use of marijuana which warrant criminal charges against the user. The Committee recognizes that trafficking of marijuana could be encouraged if penalties for simple possession were to be appreciably eased or abolished. The Committee recognizes that new information on the pharmacology of marijuana will be forthcoming which may well require revisions in the laws dealing with this substance—for more control or less, or no control. After prolonged consideration and weighing all of the factors discussed here, the Committee on Drugs concludes that it is currently in the best interest of children and youth to recommend that the Academy, while not condoning the use of marijuana, urge and support legislation which abolishes any penalty whatsoever for the simple possession of marijuana.

Committee on Drugs

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REFERENCES

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Pediatrics 1971;48;990

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