PENAL LAW PROVISIONS IN THE UNITED STATES OF AMERICA CONCERNING PSYCHIC ABNORMAL, ALCOHOL- AND DRUG ADDICTED OFFENDERS

Donald H.J.Hermann

INTRODUCTION

An understanding of federal and state penal law in the United States must begin with awareness that the United States Supreme Court has interpreted the Constitution to prevent the use of the criminal sanction against a person for merely being an alcoholic, drug addict or even a psychopath[1].

Specifically, the Supreme Court has held that to punish a person for having the "status" of a drug addict amounts to cruel and unusual punishment[2]. This does not mean that instances of actual use of drugs cannot be punished. Nor does it prevent the law from using non-penal measures to compel treatment for addiction, mental illness or even alcoholism. Nor does the Constitution prevent the fact of drug or alcohol use to be taken into account in sentencing an offender for a crime related to its use.

A second feature of American penal law must be taken into account in considering the treatment of the three categories of offenders which are being reported upon here. This is the element of federalism which characterizes American criminal law; the federal government's jurisdiction in penal law matters is limited by the Constitution to matters which directly involve the federal government or which have an inter-state dimension. The states are not so limited and each state has primary responsibility for the punishment of crime which occurs within its borders[3]. Thus the federal or national government is limited to responsibility for inter-state offenses and generally lacks broad jurisdiction over criminal behavior. Drug traffic which is most usually by its nature of an interstate character is subject to federal law; but the national government would have no effective jurisdiction over an offender merely because he was a drug user. The national government does provide resources to the states in the form of research funds and by the funding of special treatment programs. However, each state has exclusive jurisdiction over a vast area of the penal law with the consequence that there is great variation in treatment of the three classes of offenders being considered here. It follows then, that in this report, however, the description of the penal law in these areas must of necessity be of a

general nature and thus reflects only the predominate approach taken by the various states.

I. PSYCHIC ABNORMAL OFFENDERS

Psychopathology in itself has no penal significance. However, under the civil commitment statutes, a mentally ill person can be involuntarily hospitalized for treatment on the basis of a finding that he is mentally ill and dangerous to himself or others[4]. Nevertheless, if a person is charged with a specific criminial offense, mental illness or psychopathology may preclude a trial or conviction, and alternatively may require special disposition at the time of sentencing, or may affect the administrative disposition of a defendant by correctional authorities.

If the mental illness or psychopathology prevents a defendant from understanding the nature of the charges made against him or prevents him from cooperating with his counsel, the Constitutional requirement of due process prohibitis a trial of such an "unfit" defendant[5]. Such a person is judged "unfit" and is entitled to one of the three following dispositions: (1) involuntarily hospitalization if his mental illness makes him dangerous to himself or others; (2) confined for a reasonable time and subjected to treatment which will result in his becoming competent to stand trial but only so long as there is determination that he can be made fit to stand trial; or (3) discharged[6].

The second way that mental illness and psychopathology may preclude a criminal conviction is by serving as the basis for the defense of insanity. Mental illness may preclude the requisite intent specified as an element of a crime or it may preclude the establishment of the voluntary act requirement[7]. More commonly, mental illness may serve as the basis for the establishment of the legal defense of insanity proper. The various states by statute or case law have adopted one of a number of alternative standards for the insanity test. These include; (1) the right-wrong test which provides a defendant a defense to a criminal charge if it can be established the he was unable to understand the nature or quality of his act, or if he did not understand that his act was wrong[8]; (2) the irresistable impulse test which provides a defense if it can be established that a defendant was so mentally diseased that he could not adjust his conduct to the requirements of the law[9]; (3) the product test which provides a defense if the defendant's conduct was the product of a mental disease[10]; and (4) the substantial capacity test which provides a defense if it is established that as a result of mental disease, a defendant lacked substantial mental capacity to appreciate the wrongfulness of his act or to conform his conduct to the requirements of law[11].

Upon acquital by reason of the defense of insanity, many states provide for an automatic temporary commitment to facilitate examination by medical authorities in order to determine whether the defendant is mentally ill and is dangerous to public peace or safety[12]. It has been held that automatic mandatory commit-

ment is constitutionally permissible[13]; however, most states provide mandatory commitment only for a brief period to permit examination, after which an acquitted defendant cannot be further confined except by procedures substantially similar to those required in civil commitment proceedings.

Those persons suffering from mental or psychopathological illnesses but who have been evaluated as fit and convicted are generally classified as the "criminally insane"; and in about half the states, they are confined to a separate unit in a state mental hospital, while in a number of states they are confined in special units of the state correctional facilities[14]. The segregation and close confinement of the criminally insane in seperate facilities often results in limited treatment alternatives being made available to persons so confined. With psychopaths who require special security arrangements, special individualized confinement is often provided and here usually even less treatment is made available to the individual. Those persons who are judged sufficiently recovered are transferred into the prison system to serve out the remainder of their term. Those persons placed in mental wards who have not recovered by the time of the expiration of their sentence must be processed through procedures substantially similar to the mental commitment law if they are to remain hospitalized[15].

There is one special category of psychopathic abnormal offenders which receives special treatment in the laws of many states, this is the category of sex offenders who are found to be "sexual psychopaths"[16]. The laws dealing with sexually dangerous offenders generally provide for the identification of certain persons, usually those who have repeatedly committed sex offenses and are judged likely to continue to do so, and for the subjecting of those persons to special disposition usually involving referral to special facilities for continuous treatment until they are judged cured and posing no further danger to the community[17]. The procedures and confinement under these provisions is often denominated civil rather than criminal thus avoiding the constitutionally required procedures which are generally required in any criminal proceedings[18].

II. ALCOHOL ADDICTED OFFENDERS

From what has already been said, it should be clear that the fact a person is alcohol addicted or an alcoholic is not an independent basis for subjecting a person to penal confinement. If the person's alcohol addiction results in mental impairment with the result that a person is dangerous to himself or others, he may, of course, be civilly committed or made a ward of the state.

A person who is suffering from the effects of alcohol may be able to use this fact as a defense to a criminal charge. Intoxication is a defense if it negatives a required element of a crime; if can negate either the showing of a requisite mental state or the establishment of the voluntary act requirement[19]. For instance, a crime which is defined to include the element that it be done "knowingly" can not be established if the condition of intoxication prevents the required state of knowledge. In order for intoxication, whether it be voluntary,

or involuntary, to serve as a defense to a crime by precluding the presence of some required intent or knowledge required by the definition of the crime, it is enough that the defendant because of his intoxication, actually lacks the requisite intent or knowledge.

The effect of chronic alcoholism or alcohol addiction is somewhat more problematical. Some courts have held that alcoholism is not the same as the unsound mind which is required by the insanity defense[20]. However, if a defendant can show that alcohol addiction has so affected his mind that he did not know what he was doing or that he was unable to resist what he knew to be wrong, then he may have established the requisites of the insanity defense which will preclude a criminal conviction[21]. It should be noted that some courts have gone so far as to hold that it is "cruel an unusual punishment" to convict a chronic alcoholic of the crime of public drunkenness on the ground that such a person "is powerless to stop drinking" and that the alcoholism has seriously altered "his normal living pattern"[22].

While a person can not be subjected to the penal law for being alcohol addicted he can in some states be criminally punished for drinking in public, and in most states he can be prosecuted for public drunkeness. Less than half the states have a prohibition against drinking in public; most of those that do prohibit public drinking do so under the same provision which makes public intoxication a crime[23]. Those states which do not prohibit public intoxication per se but which do prohibit public drunkenness require some aggravating factor, some apply the prohibition to certain specific public places[24], others provide a general prohibition against intoxicated persons who are engaged in "boisterous or indecent or loud and profane discourse" or who cause any disturbance of "public or domestic peace and tranquility"[25]. These laws provide jail sentence from five days to six months with the most common maximum sentence being thirty days[26]. Some states additionally provide that an offender convicted of "habitual drunkenness" may be punished by a prison term for as long as two years[27].

A number of jurisdictions have abolished or limited criminal prosection of persons charged with public intoxication offenses and instead provide for treatment services[28]. For example, the law of Maryland abolishes public intoxication as a criminal offense and provides instead that "any person who is intoxicated in a public place may be taken or sent to his home or to a public or private health facility" by the police or other authorized personnel[29]. Alternatively, such a person who is "either incapacitated or whose health is in immediate danger" may be taken involuntarily to a detoxification center[30]. The physician in charge of the detoxification center must determine whether a person is to be admitted as a patient, referred to another facility for care and treatment, or whether he should be denied referral and treatment. If a person is admitted as a patient he maybe required to remain at the facility until he is sober and no longer incapacitated, but in no event can he be detained for longer that five days unless he voluntarily consents to remain for a longer period[31]. At the end of the five day period, a person may voluntarily request transfer to a long-term treatment facility; or, if a proper commitment ground can be established, a proceeding may be instituted to commit him to such a facility for treatment[32].

The Maryland statute also provides that an intoxicated person who has been taken into custody by the police for a criminal offense unconnected or independent of the drunkenness itself may be taken to a detoxification center or other facility whenever "his condition appears to be or becomes such as to require emergency medical treatment"[33]. When the arrested offender has had the necessary medical care, the statute provides for transfer to prosecutorial authorities for further proceedings on the criminal charge.

Drunkenness or alcohol addiction will not aggravate a criminal offense[34]. But if a person who is alcohol addicted is convicted of a criminal offense, the correctional laws generally provide for his separate institutionalization and treatment in a special hospital facility or in a special unit of the correctional facility. Upon conclusion of the treatment program, the convicted person is transferred back to the regular correctional facility[35]. In Illinois, for example, the Corrections Department is required to determine whether a person who is sentenced to imprisonment is in need of mental treatment including treatment for alcoholism. The Corrections Department "may provide special psychiatric or psychological or other counseling or treatment to such persons" in a separate unit within the correctional facility or may transfer the convicted person to the Department of Mental Health "for observation, diagnosis and treatment[36]. A voluntary transfer to the mental health facility can be made for a period of up to six months; if the transfer is involuntary, or will involve a period or treatment in excess of six months, or will involve a period of treatment beyond the period of the remaining sentence, a petition to a court must be submitted, a hearing held, and a finding comparable to that made under the general civil commitment statute must be made[37]. Once treatment has been concluded and the convicted person's sentence has not expired, he must be returned to the correctional facility to complete his sentence[38].

III. DRUG ADDICTED OFFENDERS

As indicated at the outset of this discussion, the United Supreme Court's decision in Robinson v. United States prevents any state from imposing penal sanctions on a person for merely being drug addicted[39]. However, the use of certain specified drugs is subject to both federal and state criminal law provisions. Before outlining the general scope of these drug abuse laws, it should be noted that a person in a drugged condition may be able to assert this condition as a defense to a criminal charge if the drugged condition (a) negatives the existence of a mental state which is an element of the offense charged; or (b) is involuntarily produced and deprives the defendant of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law[40]. Thus a drugged condition acts as a defense to a criminal charge in a manner similar to that which occurs in the case of alcohol intoxication. Generally, however, there is no special provision for the narcotics addict who resorts to crime in order to obtain drugs or to obtain funds for drugs to prevent withdrawal symptoms. Although it has been argued

that such an addicted person is in need of treatment for his addiction rather than deserving imposition of a penal sanction for the crime commited to support his addiction, the courts have refused to recognize any special defense based on addiction alone[41]. However, the condition resulting from addiction has been held in some cases to have resulted in such an effect on the mind of the defendant that he may properly invoke the defense of insanity on the ground that he no longer has the capacity to appreciate the nature of his conduct or to conform his conduct to the law[42].

Since 1970, the federal penal provisions governing use of drugs are found in the Comprehensive Drug Abuse Prevention and Control Act, also known as the Controlled Substances Act[43]. This statute provides a complex scheme of graduated controls on the use and availability of controlled substances which are classified into five schedules or categories on the dual basis of abuse potential and accepted therapeutic utilization. Except for a simple possession penalty which is identical for all controlled substances, the sanctions for the various offenses are graded according to the schedule of the substance involved on the basis of abuse potential and accepted therapeutic utilization. Heroin, with a high abuse potential and no recognized therapeutic utilization is subject to the highest level of regulation. Likewise marijuana is classified at the highest level since it lacks a recognized therapeutic use. Criminal penalities attach to intentional misuse and misappropriation of controlled substances. While addicts who participate in the sale and manufacture of controlled substances are subjected to the highest penalty provided, an addict charged with illicit use will be subjected to the penalty for simple possession.

Under the federal Controlled Substances Act, it is unlawful for any person knowingly or intentionally, to possess a controlled substance unless it was obtained from a medical doctor directly or by prescription. A violation of this provision is punishable by imprisionment of not more than one year, a fine of not more than $ 5 000 or both, in cases involving first offenders[44]. A second or subsequent offense is punishable by imprisonment of not more than two years, a fine of not more than $ 10 000.00, or both[45]. The law further provides that if an offender has not been previously found guilty of violating any federal law relating to drugs, he may be conditionally discharged with provision of probation involving required treatment if appropriate[46].

State drug abuse legislation is usually more severe in its penalities than the federal law. Although, there is some variety in the provisions among the various states, since 1970 forty-two states have enacted the Uniform Controlled Substances Act modeled on the federal Controlled Substances Act. The Illinois drug abuse statue provides an example of a state statute following the model of the Uniform Act[47]. The Illinois state which is modeled on the Uniform Act makes possession of any drug a felony-misdemeanor, punishable by up to one year in a county jail or one to five years in a state penitentiary[48]. In addition, the Illinois law characterizes possession in excess of certain given amounts of drugs as a more serious violation regardless of the state's ability to establish intent to sell. Possessions of more than 30 grams or heroin, morphine, cocaine, or LSD, more than 200 grams of certain amphetamines or 300 grams of certain de-

pressants carry minimum mandatory penalities of not less than 4 years and not more than 30 years, except where a person is judged a habitual criminal when the sentence can be life imprisonment[49]. As part of a program to differentiate the problems of drug use from those of distribution, Illinois does permit conditional discharges of first offenders[50]. The terms of such discharge or of any probation may require a defendant to undergo medical or psychiatric treatment or such treatment and rehabilation as is mandated by the Dangerous Drug Commission[51].

In 1965, Illinois enacted special provisions under the Mental Health Code relating to the prevention and treatment of dangerous drug addiction and abuse, and the rehabilitation of addicts and abusers which places responsibility for such programs under the Dangerous Drug Commission[52]. Under the statute, "addiction" is defined as "(S)uch habitual use of any drug, chemical, substance or dangerous drug other than alcohol so as to endanger the public morals, health, safety or welfare, or the use of dangerous or controlled substance other than alcohol so that the user has lost the power of self control with reference to his addiction"[53].

Under this statute, any person who believes himself to be an addict may request the Commission or one of its licensed facilities to provide him treatment[54]. Moreover, anyone subject to the authority of the Department of Mental Health on the basis of an involuntary civil commitment proceeding and who is found to be suffering from drug addiction may be transferred to a drug rehabilitation and treatment facility while remaining under the jurisdiction of the Department of Mental Health[55].

The Illinois statute provides for treatment in the facilities of the Drug Commission of those charged with a crime and those convicted of a crime. An addict charged with or convicted of a crime is eligible to elect treatment under the supervision of a licensed program designated by the Drug Commission instead of prosecution or probation unless the crime is one of violence, or the crime involves the sale or possession of large amounts of drugs, or the offender has been convicted twice of crime of violence, or if the offender has been admitted to such a treatment program on two previous occassions[56]. Assignment to such programs can be made in certain cases in lieu of prosecution, or as a basis for probation, or as a condition for parole[57].

For those persons convicted of a crime and evaluated to be drug addicted, the Illinois Penal Code, which follows the pattern of most states, provides for transfer to a treatment facility under the jurisdiction of the Department of Mental Health or in special facilities operated by the Department of Corrections[58]. Where a person is transferred to the Department of Mental Health and evaluated to be an addict, the Department is to provide special psychiatric or psychological or other counseling or treatment as it judges appropriate[59]. The offender must consent to this transfer or there must be an involuntary commitment proceeding under judicial supervision[60]. Upon successful completion of such a treatment program, the offender is returned to the correctional institution to serve the remainder of his sentence; if treatment is not concluded prior to the expiration of the sentence, an involuntary commitment proceeding must

be held in conformity with the general provisions of the mental health law or the Dangerous Drug Abuse Act[61].

CONCLUSION

The United States Constitution prevents imposition of penal sanctions on a individual for the mere status of being a psychopath, alcoholic, or drug addict. Civil commitment laws do provide for the involuntary hospitalization of persons suffering from such conditions where they are judged to be in need of treatment and dangerous to themselves or others.

Many jurisdictions have penal provisions providing for the imposition of criminal sanctions for public drunkness. There is, however, a reform movement which is directed at the repeal of these provisions and the substitution of detoxification, voluntary treatment and civil commitment of alcohol addicted persons. Possession and use of certain drugs violates both federal and state law. Such violations are subject to sanctions of fine and imprisonment. There has been a movement to adopt a comprehensive drug abuse treatment statute which provides for treatment of patients voluntarily seeking admission as well as those charged with crime. Where treatment is imposed on those charged with minor crimes, the treatment serves as an alternative to a criminal disposition for a defendant. Where the charged crime is serious, the defendant is subjected to a treatment program and then transferred to the criminal justice system for prosecution.

Mental illness, intoxication, and drugged condition may themselves preclude a criminal conviction if they negate the existence of a required element of any offense. Where such conditions do not preclude a criminal conviction, the fact that a person is psychopath, alcoholic or drug addict will affect the disposition of the defendant. Where the individual is convicted but is judged mentally ill or alcohol or drug addicted, the person will be specially hospitalized until that condition is in remission, at that time the convicted person is transferred into the correctional facility to serve the remainder of the imposed sentence.

Notes:

1) Robinson v. United States, 370 U.S. 660 (1962).

2) 370 U.S. 660 at 667.

3) See W. La Fave and A. Scott, Handbook in Criminal Law (1972) at p. 117.

4) See, Humphrey v. Cady 405 U.S. 504 (1972). For an example of a commitment statue See, e.g. Wisc. Stat. Ann. § 51.75, Art. II (f).

5) See, Bishop v. United States, 350 U.S. 961 (1956).

6) Jackson v. Indiana 406 U.S. 715 (1972).

7) See Annot. 22 A.L.P. 3d 1228, 1239 (1968) and La Fave and A. Scott, supra note 3 at pp. 337-341.

8) M'Naughten's Case, 8 Eng. Rep. 718 (1843).

9) See, e.g. Davis v. United States, 165 U.S. 373 (1897).

10) See, State v. Pike, 49 N.H. 399 (1869) and Durham v. U.S., 214 F.2d. 862 (1954) overruled by United States v. Brawner 471 F.2d. 969 (1972) (CA. D.C.).

11) See, Model Penal Code § 4.01 (P.O.D. 1962).

12) See, e.g. Ill. Rev. Stat. Ch. 38 § 100-5-2-4.

13) See Jones v. United States, 103 S.Ct. 3043 (1983).

14) See generally, S. Rubin, The Law of Criminal Correction (1963) at pp. 517-519.

15) See Baxstrom v. Herald 383 U.S. 107 (1966).

16) See generally, Swanson, Sexual Psychopath Statutes: Summary and Analysis, 51 J. Crim. L. C. and P. S. 215 (1960).

17) See e.g., Ill. Rev. Stat. Chap. 38 Article 105.

18) See e.g., State v. Madary 178 Neb. 383, 133, N.W. 2d 583 (1965).

19) See e.g., Model Penal Code § 2.08 (P.O.D. 1962).

20) See e.g., Rucker v. State, 119 Ohio St. 189, 162 N.E. 802 (1928).

21) See e.g., United States v. Freeman, 358 F.2d 606 (2nd Cir. 1966).

22) Diver v. Hinnant, 356 f. 2d 761 (4th Cir. 1966).

23) See e.g., D.C. Code Ann. § 25-128 (a) (1961).

24) See for example, the statutes reference to in State v. Stevens 36 N.H. 591 (1958); State v. Myrick, 203 N.C. 8, 164 S.E. 328 (1932).

25) See e.g., Ga. Code Ann. § 58-608 (1965).

26) The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness (1967).

27) See e.g., N.C.Gen.Stat.§ 14-335 (1953).

28) See e.g., Laws in Hawaii, Maryland and North Dakota.

29) Md.Ann.Code, Art.2 C § 303 (a). See generally, Maryland Annotated Code, Article 2 C § 101-601 codifying the Comprehensive Intoxicated and Alcoholism Act (1969).

30) Md.Ann.Code, Art.2 C § 303 (b).

31) Md.Ann.Code, Art.2 C § 304.

32) Md.Ann.Code, Art.2 C § 306.

33) Md.Ann.Code, Art. 2 C § 303 (d) and § 306. The latter section provides for commitment of a convicted criminal offender to a detoxification or treatment facility where appropriate.

34) See M.Wigersky, A Treatise on the Law of Crimes (1958) at p.386.

35) See e.g., Ill.Rev.Stat.Chap.38 § 100-3-8-5.

36) Ill.Rev.Stat.Chap.38 § 100-3-8-5 (a).

37) Ill.Rev.Stat.Chap.38 § 100-3-8-5 (c) and (d).

38) Ill.Rev.Stat.Chap.38 § 100-3-8-6.

39) 370 U.S.660 (1962).

40) See e.g.Ill.Rev.Stat.Chap.38 § 6-3.

41) See People v.Borrero, 19 N.Y. 2d 332, 280 N.Y.S.2d 109, 227 N.E. 2d 18 (1967) and State v.White, 27 N.J.158, 142 A 2d 65 (1958).

42) See e.g., United States v.Freeman, 357 F.2d 606 (2nd Cir.1966).

43) 21 U.S.C.A.801 et seq. (1970).

44) 21 U.S.C.A.844 (a)(1970).

45) 21 U.S.C.A.844 (a)(1970).

46) 21 U.S.C.A.844 (b)(1)(1970).

47) Ill.Rev.Stat.Ch.56 1/2 § 1100-1603.

48) Ill.Rev.Stat.Ch.56 1/2 § 1401 and Ch.38 § 1005-8-1 (6).

49) Ill.Rev.Stat.Ch.56 1/2 § 1402 (a) and Ch.38 § 1005-8-1 (2) and (3).

50) Ill.Rev.Stat.Ch.56 1/2 § 1410.

51) Ill.Rev.Stat.Ch.56 1/2 § 1410 (c)(4).

52) Ill.Rev.Stat.Ch.91 1/2 § 120.1-120.29 Codifying the Dangerous Drug Abuse Act of 1965 as amended in 1975.

53) Ill.Rev.Stat.Ch.91 1/2 § 120.3-4.

54) Ill.Rev.Stat.Ch.91 1/2 § 120.7.

55) Ill.Rev.Stat.Ch.91 1/2 § 120.6-14.

56) Ill.Rev.Stat.Ch.91 1/2 § 120.8.

57) Ill.Rev.Stat.Ch.91 1/2 § 120.9-120.11.

58) Ill.Rev.Stat.Ch.38 § 1003-8-4 and § 1003-8-5.

59) Ill.Rev.Stat.Ch.38 § 1003-8-5 (a).

60) Ill.Rev.Stat.Ch.38 § 1003-8-5 (a),(c) and (d).

61) Ill.Rev.Stat.Ch.38 § 1003-8-6.

ZUSAMMENFASSUNG

Die Verfassung der Vereinigten Staaten verbietet die Anwendung des Strafgesetzes, um Psychopathen, Alkoholiker oder Drogensüchtige zu bestrafen oder zu inhaftieren. Zivilrechtliche Gesetze schreiben jedoch Zwangsbehandlung für Personen vor, die als geistesgestört und gefährlich für sich selbst und andere eingeschätzt werden.

Viele Rechtsprechungen kennen strafrechtliche Verfügungen, um Sanktionen wegen öffentlicher Trunkenheit zu verhängen. Es besteht aber eine Reformbewegung, die dahin zielt, diese Verfügungen aufzuheben und sie durch andere zu ersetzen, die auf die Entziehung, freiwillige Behandlung und zivilrechtliche Verpflichtungen für Alkoholiker hinzielen. Der Besitz und der Gebrauch gewisser Drogen verletzen sowohl Bundes- wie auch Staatsgesetze. Solche Verletzungen werden durch Bußen und Gefängnisstrafen geahndet. Es hat eine Bewegung gegeben, um ein umfassendes Drogenmißbrauchs-Behandlungs-Statut auszuarbeiten für die Behandlung von Patienten, die sich freiwillig behandeln lassen wollen wie auch für solche, die kriminell geworden sind. Wo jenen, die kleinere Verbrechen begangen haben, eine Behandlung auferlegt wird, gilt dies als Alternative für strafrechtliche Sanktionen. Wo das eingeklagte Verbrechen gewichtiger ist, wird der Täter einem Behandlungsprogramm unterworfen und dann dem Strafsystem für die weitere Verfolgung überwiesen.

Geisteskrankheit, Drogenabhängigkeit und Drogensucht können für sich selbst eine kriminelle Verurteilung ausschließen, wenn keine Straftat vorliegt. Wo eine kriminelle Tat nicht ausgeschlossen werden kann, wird dies die rechtliche Stellung des Psychopathen, des Alkoholikers oder des Drogenabhängigen beeinflussen. Wo eine Person als geisteskrank, als Alkoholiker oder als Drogensüchtiger erklärt wird, wird er zuerst hospitalisiert, bis sich der Zustand gebessert hat. Darauf muß er den Rest der auferlegten Strafe in einer Strafanstalt verbüßen.

RESUME

La Constitution des Etats Unis défend l'emploi de la loi pénale pour punir ou emprisonner des psychopathes, des alcooliques ou des toxicomanes. Les lois d'arrestation, par contre, préscrivent la procédure coercitive pour des personnes qui sont jugées être souffrantes d'une maladie mentale ou être dangereuse pour elles-mêmes ou pour d'autres personnes.

Il n'y a pas d'uniformité dans la loi pénale du gouvernement national dans la façon dont les états traitent les délinquants qui sont jugés être psychiquement anormal, alcooliques ou toxicomanes. Toutes les décisions judiciaires, par contre, sont d'accord sur le point qu'il existe la possibilité d'utiliser l'effet d'une maladie mentale ou d'une toxicomanie comme défense contre un verdict de culpabilité. Dans le cas d'un défenseur qui serait psychiquement anormal, la défense ne peut être acceptée que si l'accusé peut faire preuve de sa maladie

en correspondant aux requêtes d'un teste qui peut le déclarer malade. Dans un tel cas la défense exclut chaque sentence. Dans le cas d'ivresse ou d'influence de drogues, une défense ne peut être acceptée qu'au point où elle explique un aspect du crime.

L'ivresse en public et l'utilisation de drogues sont des crimes selon la plupart des jugements étatiques. Malgré ça, il y a eu une tendance à traiter l'ivresse comme une affaire de la médécine, en en éliminant alors l'aspect criminel, le substituant par le traitement dans des centres de désintoxication en accordant des facilités de traitement. L'utilisation de drogues, par contre, continue d'être regardée comme un crime sérieux et elle est donc punie avec de respectables châtiments et pour la simple possession et pour l'utilisation de la substance contrôlée.

Les conditions de sentence dans les différentes lois pénales et les codicilles préscrivent dans la plupart des cas des facilités de traitement pour les délinquants. Ces facilités devraient prendre place ou dans le cadre d'un établissement pénitentiaire ou alors hors d'elle, dans le cas où le délinquant souffre d'une maladie mentale, s'il est alcoolique ou toxicomane. Pour le cas de délinquants qui sont jugés être toxicomanes, on a développé de certains schémas spéciaux qui permettent de faciliter aux délinquants qui ont commis des crimes non-violents, ou qui ont été arrêtés pour la simple possession de drogues, un traitement de désintoxication, au lieu de les persécuter comme des criminels.

Donald H.J.Hermann
Prof.Dr.iur.
College of Law, De Paul University
25 East Jackson Boulevard
Chicago, Ill. 60604, USA