

Veto No. 3

HB 1104

May 21, 1976

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, House Bill No. 1104, Printer's No. 1265, entitled "An act amending the act of April 14, 1972 (P.L.233, No.64), entitled 'The Controlled Substance, Drug, Device and Cosmetic Act,' changing a reference from drug abuser to drug dependent person."

This bill would amend section 17 of the Controlled Substance, Drug, Device and Cosmetic Act by further limiting the instances in which a court may decide to place a defendant on probation without verdict.

The effect of this legislation would be to seriously weaken a valuable drug rehabilitation program.

As presently written, probation without verdict provides a valuable tool for rehabilitating drug abusers who *have not* previously been convicted of a drug offense under Pennsylvania law or a statute of the United States or another state.

By its very terms, this section of our law is limited to first offenders.

The present law contains strict limitations as to those eligible for probation without verdict. Only a first offender who "pleads nolo contendere or guilty to, or is found guilty of, any nonviolent offense under" the Controlled Substance, Drug, Device and Cosmetic Act is eligible for such consideration.

Moreover, if that person is *charged* (but not necessarily convicted of) illegal possession of controlled substances with intent to deliver or delivery of a controlled substance (a violation of section 13 (a) (30) of the act), the person must be a *drug abuser* in order to be eligible for probation without verdict.

H.B. 1104 seeks to further limit eligibility for probation without verdict by changing the words "drug abuser" to "drug dependent person."

Section 2(a) of the Controlled Substance, Drug, Device and Cosmetic Act defines "drug dependent person" as

"a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuing basis in order to experience its psychic effects, or to avoid the discomfort of its absence. *This definition shall include those persons commonly known as 'drug addicts'.*" (Emphasis supplied)

When the Controlled Substance, Drug, Device and Cosmetic Act was first enacted in 1972, the term "drug abuser" in section 17 was carefully chosen rather than the more restrictive "drug dependent person." The

intent was to make certain that sellers of drugs, who did not themselves have a drug problem, were ineligible for probation without verdict and to assure eligibility to those with drug problems, although not necessary "drug dependent persons."

The change in eligibility contained in H.B. 1104 does not appear justified.

If this bill becomes law, a first offender arrested while in possession of a quantity of, for example, marihuana, who is charged by the authorities with possession and possession with intent to deliver, could only be eligible for probation without verdict if he or she could prove that he or she was *addicted* to a drug. A young person in this situation, who had a drug problem stemming from experimenting with so-called "soft drugs," would be ineligible for probation without verdict.

Such a result is clearly contrary to the rehabilitative emphasis of our drug laws and would be counterproductive to Pennsylvania's efforts to help first offenders who are drug abusers, though not necessarily drug addicts.

The ills sought to be remedied by this piece of legislation are not readily apparent — while its undesirable results are only too clear.

For these reasons, the bill is not approved.

MILTON J. SHAPP