A Statutory Sentencing Alternative for Alcohol Related Crimes

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The recidivism rate for alcohol-related crimes must surely be among the highest for any single class of criminal activity. Drinking problems spawn a wide variety of offenses, and the exposure to arrest and conviction abates only when the source of the problem is eliminated.

One may question whether the criminal defense attorney has any obligation to address a client's personal problem as part of his legal representation. But legal representation certainly includes exploration of options designed to avoid future prosecution.

One such option has lain largely dormant for the past 19 years, despite its obvious usefulness in avoiding incarceration or fine and preventing recurring legal problems related to alcohol abuse. The reasons for its disuse are several, including its low visibility among the statutes used by criminal defense lawyers. Recent changes in law and practice have, however, removed substantial impediments to its use. Every lawyer representing clients with alcohol-related legal problems should now review this sentencing alternative for possible application to future cases.

The Act

In 1953, the Legislature passed Article 5561c, creating the Texas Commission on Alcoholism.¹ This enactment was in response to the obvious need for alcohol treatment programs in Texas, especially for the chronic or habitual abuser. Section 12 of the original Act provided what must have seemed to the drafters as an enlightened procedural device enabling judges in misdemeanor cases to remand a defendant to a treatment facility in lieu of imposition of sentencing when the court was satisfied that the defendant has committed the crime as a result of his chronic abuse of alcohol.²

Section 12 was specifically limited to treatment of those who had committed the crime as a result of the "chronic and habitual..."
A defendant could not be sentenced to prison for more than 90 days and the Act only applied to those over 18 years of age. Despite these limitations, the potential of the statute was obvious and quite broad. As written, it invited misdemeanor judges to remand those before them with drinking problems to a state facility rather than to the municipal or county jail. For a number of reasons, this invitation was not accepted.

The paramount problem has probably been that the statute authorizing this sentencing alternative is hidden in a civil enactment creating a state commission. It is hardly the place even the most diligent defense attorney would first turn.

A second and significant problem was the limitation that the treatment must be in "special facilities" available for the treatment of alcohol problems. Since the defendant was to be remanded to the Commission or its authorized representative, the treatment facility, only those facilities operated by the state were likely candidates under the ambiguous statutory language.

The obvious problem caused by limiting the number of authorized facilities is that such facilities were too few to provide a readily available and inexpensive alternative to misdemeanor punishment. The treatment was less attractive to the defendant than the quick and relatively painless punishment for even habitual violation of misdemeanor statutes. Much of this disincentive was caused by the inconvenience of the hospitals and the time required to participate in a treatment program. If the defendant were hospitalized, the interference with living arrangements and earning a living was substantial. Moreover, the cost of treatment would often exceed the possible fine, making the alternative sen-

even impossible.

With these practical concerns to overcome, few defendants ever attempted to convince the court that treatment was preferable to punishment. Assuming the defendant wanted treatment, misdemeanor probation or deferred adjudication undoubtedly appeared more attractive to many for whom it was available than pleading guilty to receive inconvenient and expensive treatment in a state hospital. Some may have simply preferred private treatment facilities.

All of these factors conspired to prevent the widespread use of Article 5561c by the defense bar. On those occasions when the statutory and practical limitations did not dissuade use of the Act, defendants were probably never informed that they might receive medical care rather than a fine or jail time.

In 1977, the Legislature amended Section 12 of Article 5561c, clarifying the availability of the remedy to municipal courts and permitting the remand to a "treatment facility approved by the Commission for alcoholic detoxification or treatment purposes." As insignificant as these changes seem, they have combined with changing circumstances in the law and agency practice to revive the potential of the Act.

The problem of facility availability under the original Act has been largely solved, and its resolution is reflected, in part, by the amended language of the Act. It is not now necessary that the Commission or its authorized representative receive the defendant for treatment; he may be received by any treatment facility approved by the Commission.

This approval is part and parcel of the licensing of private alcohol treatment facilities made possible in 1977 by passage of Article 5561c. Although this licensing is not mandatory, hospitals are apparently taking advantage of the opportunity to be so approved. One may suppose that an increase in the number of patients admitted would add further incentive to become licensed.

Eight private facilities are licensed or will be licensed within the near future and several other applications are now being processed by the Commission. Each of these licensed facilities is one "approved by the Commission" for purposes of Article 5561c, and the geographic dispersion of these hospitals, added to the available state hospitals, should soon resolve a major difficulty in implementation of the original Act.

The cost problem is also less burdensome than in the past. Some state and private hospitals will accept patients without cost. For others, medical insurance, Medicare and Medicaid will provide funds to cover the expenses. Since the Act does not require that patients be committed to hospitalization for defined periods, outpatient treatment is possible, permitting defendants to maintain their home lives and jobs.

Admittedly, limitations remain that discourage use of this sentencing alternative. For example, the statute applies only to misdemeanors, crimes often resulting in probation, deferred adjudication or low fines without incarceration.

DUI or public intoxication offenders might, however, be well served by obtaining treatment rather than even relatively slight punishment. Money spent by defendants on treatment would at least inure to the benefit of the defendant in a way a fine could not. And this alternative may become especially important if the penalties for alcohol-related crimes increase and the prerequisites for probation or deferred adjudication become more restrictive.

There is also a limitation on the age of the defendants eligible for this disposition. Despite the growing awareness of the alcohol problem among young offenders, the Act is unavailable to those 18 years of age or younger. In its

Interim Report, the Subcommittee
The availability of facilities, the obvious advantages of treatment over punishment, and the wide scope of offenses related to alcohol abuse make the treatment option very attractive for many defendants. Obtaining this disposition from the court is also relatively straightforward if defense counsel has prepared properly.

Obtaining Relief Under the Act

The implementation of the remand provisions of the Act are discretionary with the judge finding the defendant guilty. The defendant wishing to avail himself of this option should, therefore, file a written motion for remand to a treatment facility in lieu of imposition of fine or sentence. A form motion for this purpose is set forth below, incorporating the requisite allegations under the Act.

It should be noted that the person applying for relief must not have demonstrated criminal tendencies. A broad reading of this provision is that the person, although he may have a criminal history, has committed whatever offenses for which convicted because of his chronic use of alcohol. The correlation between alcohol and the defendant's criminal behavior is not specified in the statute; it is within the discretion of the sentencing judge, and ought to be explained in the defendant's motion.

Also within the discretion of the judge is the finding that the defendant is not likely to become a psychotic. If the defendant does suffer from such an infirmity, commitment for alcohol treatment is clearly inappropriate in any case.

The defendant should contact the facility at which he desires treatment to insure that the facility is approved by the Commission and willing to accept him as a patient. This written acceptance from the hospital may be attached to the written motion filed with the court, or written approval of the facility by the Commission may be attached.

A sample judgment and Writ of Commitment is also set forth below which contains the required findings by the trial court and an order respecting transportation of the defendant to the facility. If the defendant is being held in jail at the time of the commitment, a letter should be drafted for the judge's signature directing the jail to release the prisoner to the custody of the person transporting the defendant to the hospital.

Conclusion

Any sentencing alternative offering, as this one does, an opportunity to afford the client assistance that may prevent future prosecutions is an important part of the defense arsenal. The law is in place and now provides a workable sentencing alternative for many clients. There is no reason for this useful provision to continue to lie dormant.

FOOTNOTES

1. TEX. REV. CIV. STAT. ANN. art. 5561c (Vernon 1953).
2. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1953).
3. Id.
4. Id.
5. Id.
6. Id.
7. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1977).
8. Id.
10. A representative of the Commission, Lucille Gray, has indicated that an approval of the facility by the Texas Commissioner of the Department of Human Services would constitute the kind of approval required.
11. Facilities approved for licensing are listed in the Texas Register when licenses are granted. Counsel wishing the latest information on licensed facilities should be able to readily obtain such data from the Texas Commission on Alcoholism. It is unclear whether the Commission would approve a facility for Article 5561c purposes unless that facility had also obtained a license under 5561c; but it is unlikely that such approval would be granted on an ad hoc basis. (For information on approved facilities, contact Judy Van Hillyer at TCA. —Editor, The Magazine)
12. TEX. REV. CIV. STAT. ANN. art. 5561c, §12 (Vernon 1977). For more serious crimes involving drinking, it may be possible to use the remand procedures of 5561c to persuade the State to reduce a felony to misdemeanor status if the defendant will enter a bona fide treatment program.
13. Id.
15. Id.
17. Id.
18. Id.
19. Id.
20. The Act actually reads that the court have “notice from the Commission that such facility will receive such person as a patient.” Id. A broad reading of this language suggests that acceptance of the patient by the approved facility would constitute the kind of approval required. Such written acceptance would clearly indicate that the “special facilities” were available. Should the court require further notification directly from the Commission that the facility will receive the patient, such notice may be obtained without difficulty. Actually, the notice from the commission language makes sense only in the context of the original Act, and has probably been rendered virtually useless by the licensing procedure.
Remanding Defendant to an alcohol treatment facility in lieu of incarceration or imposition of a fine would better serve the rehabilitative needs of the Defendant for the following reasons:

VI.
WHEREFORE, premises considered, the Defendant prays that the Court remand Defendant to an alcohol treatment facility approved by the Texas Commission on Alcoholism for care and treatment for a period not to exceed ninety days in lieu of imposition of a sentence or fine under the provisions of Article 5561c, Section 12, Texas Revised Civil Statutes.

Respectfully submitted,

ATTORNEY FOR DEFENDANT

THE STATE OF TEXAS

NO.

COUNTY, TEXAS

DEFENDANT'S MOTION TO REMAND
FOR ALCOHOL TREATMENT IN LIEU
OF IMPOSITION OF SENTENCE
OR FINE
TO THE HONORABLE JUDGE OF SAID
COURT:
COMES NOW, JOHN DOE,
defendant in the above styled and numbered cause by and through his attorney of record and moves the Court to remand Defendant to the Texas Commission on Alcoholism, its authorized representative, or a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes for a period not to exceed ninety days in lieu of imposition of a sentence or fine under the provisions of Article 5561c, Section 12, of the Texas Revised Civil Statutes. In support of this motion, Defendant would show the Court as follows:

Defendant has (pled guilty to) (been convicted of) a misdemeanor offense resulting from Defendant's chronic and habitual use of alcohol.

Defendant is over the age of eighteen years and has not exhibited definite criminal tendencies. (Defendant has no prior criminal record.) (Defendant's prior record is attributable to Defendant's chronic use of alcohol as evidenced by the attached criminal history marked Exhibit — and incorporated herein for all purposes.)

Defendant is not feeble-minded or psychotic. Defendant's behavior is solely the result of the chronic and habitual use of alcohol for which Defendant seeks treatment.

Special facilities are available for treatment of Defendant and Defendant will be received as a patient at which facility is approved by the Texas Commission on Alcoholism as shown in the letter from the Commission attached as Exhibit and incorporated herein for all purposes.

IT IS FURTHER ORDERED that the Clerk of this Court issue a Writ of Commitment in duplicate to the Transporting Agent of this County authorizing and commanding said Transporting Agent to take charge of Patient and to transport Patient to the above designated hospital.

IT IS FURTHER ORDERED that the Clerk of this Court issue a Writ of Commitment in duplicate to said party authorizing and commanding said party to take charge of Patient and to transport Patient to the above designated hospital.

The head of the above named hospital, upon receiving a copy of the Writ of Commitment and admitting Patient, shall give the person transporting Patient a written statement acknowledging acceptance of Patient and of any personal property belonging to Patient and shall file a copy with the Clerk of this Court.