THE PRESIDENT'S COMMISSION ON
MODEL STATE DRUG LAWS

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PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS
OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

Jose --

Ricia McMahon asked me to pass along these materials to you. A handful of our commissioners are meeting with Mack McLarty, Bruce Lindsey, Carol Rascoe, and Lee Brown tomorrow about the Crime Bill as well as our Commission's work.

One aspect of our work (in the area of treatment) is not included in this folder. I'll get that piece to you tomorrow.

David Osborne x9644

PLEASE ADD THIS TO YOUR BRIEFING FOLDER ON THE PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS.

THANKS!

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TREATMENT

POLICY STATEMENT

> "The problem of alcoholism and other drug addiction is a most serious health problem in the United States; the fourth major illness; and has the third highest major disease fatality rate."[1]

If the contribution of alcohol and other drug abuse and addiction to accidents, injuries and a wide array of illnesses is considered, then alcohol and other drug abuse and addictions may well be the "No. 1 cause of morbidity and mortality in America."[2]

Like other chronic illnesses, addictive diseases are progressive and move along a continuum of deterioration and severity. Also, as in treatment of other illnesses, addiction treatment reflects the progression of the illness and moves along a continuum of service. Intensity and duration of treatment are dependent on how early in the disease progression diagnosis and intervention occurs.

As with other illnesses, early identification and appropriate treatment enhance the likelihood of recovery. Treatment early in the disease progression is generally less intense, less expensive and of shorter duration than when diagnosis and treatment are delayed.[3]

With these principles in mind, the Commission began the process of examining the existing national treatment system to identify gaps in the continuum of care, problems in obtaining needed treatment and methods to increase early intervention and treatment.

As a result, model state legislation is being proposed in seven areas specific to treatment. This proposed legislation calls for:

(1) Provision of a continuum of treatment for addiction in the health insurance plans of insurers and health maintenance organizations;

(2) Provision of a continuum of treatment for addiction under state Medicaid plans;

(3) Provision of addiction coverage through state implementation of the federal Early and Periodic Screening, Diagnostic and Treatment Program for Medicaid eligible children;

(4) Provision of residential treatment programs for pregnant women and girls and parents with dependent children;

(5) Provision of consumer protection requirements for managed care firms working with alcohol and other drug abusers and addicted individuals and families;

(6) Provision of training in alcohol and other drug abuse and addiction, early detection and intervention in medical school curriculum and as part of continuing medical education;

(7) Provision of addiction diagnosis, screening and treatment as part of involvement with the criminal justice system.

An additional proposed law that would give assistance to responsible caregivers of children deserted by addicted parents is still under development.

The first five proposed bills involve establishing and maintaining a full continuum of treatment services through insurance, health maintenance organizations and through the medicaid system. Many states have pieces of the continuum in place, none have the full array of needed treatment services.

Proposals 6 and 7 provide for the development of improved intervention skills in two systems where alcohol and other drug abusing and addicted people and their families appear and are greatly over-represented.

Repeated contact with the health care system is demonstrated dramatically by the following quote:

> "On the average, untreated alcoholics usually incur general health care costs that are at least 100% higher than those of nonalcoholics over pretreatment levels... In the last 12 months before treatment, the alcoholics costs are close to 300% higher..."[4]

Even with this repeated contact with the health care system, people in need of treatment for an addiction are only "identified less than 5% of the time."[5] The [Model Health Care Professionals Training Act] will routinely provide health care professionals with basic skills needed to seize the opportunity created by this repeated contact with the health care system. It is an opportunity to both alleviate family suffering and to avert additional health care problems and expenditures.

People with alcohol and other drug abuse and addictions are also over-represented in the criminal justice population. The model statute proposed here provides for routine intervention through systematic screening and referral to treatment as part of criminal justice proceedings. Statutes implemented here will lead to reductions in criminal recidivism and will lead to reductions in spending on this population in both the criminal justice and health care systems.

In addition to the model laws proposed here, the Commission urges states to seek appropriate changes in policies of the Health Care Financing Administration to provide matching Medicaid dollars for long term residential rehabilitation. Such changes would greatly assist in the provision of inpatient treatment needs of pregnant addicted girls, women and parents with dependent children and criminal justice populations.

And finally, the Commission urges that the nation's alcohol and other drug problem be seen and addressed in terms of the full continuum of prevention, intervention, treatment and law enforcement.

"SOCIOECONOMIC EVALUATIONS OF ADDICTIONS TREATMENT" - A RUTGERS UNIVERSITY STUDY.

Anticipating questions about the costs of untreated addiction to the health care, criminal justice systems and to the workplace and the costs of providing treatment for the illness, the Commission developed a contract with a research team from Rutgers University. The contract called for an extensive review of the existing research literature to determine the cost of untreated addictions to society and any potential cost benefit in providing addiction treatment for the following populations:

(1) Insured and Medicaid;
(2) Workplace;
(3) Criminal justice;
(4) Pregnant addicted women and girls

The research demonstrates both the high financial drain of untreated addiction on the nation's economy and the reductions in cost that can be realized where appropriate treatment is provided.

A few samples from some of the research in each of the delineated areas:

GENERAL POPULATIONS - INSURED AND MEDICAID

Prior to addiction treatment, "On the average, untreated alcoholics incur general health care costs that are at least 100% higher than those of nonalcoholics..."[6]

After treatment of the addiction, reductions in days lost to illness, sickness claims and hospitalization dropped by around 50%.[7]

WORKPLACE POPULATIONS

Prior to referral for addiction treatment, a high rate of worksite problems are in evidence: "...sick-benefit claims 120% the normal level, days absent 335% of normal, disciplinary actions 235% of normal..."[8]

After addiction treatment, worksite indicators showed over "... a 56% reduction in disciplinary actions, a 55% reduction in absenteeism and a 53% reduction in days on disability ..."[9]

CRIMINAL JUSTICE POPULATIONS AND NARCOTICS USERS

"Virtually all economic measures show that the burden of crime and other economic consequences of drug abuse are lower after treatment than before ..."[10]

Post-treatment decreases in illegal income (73%) appear to track post-treatment decreases (71%) in expenditures on drugs. "The implication is clear that, as drug abuse treatment suppresses demand for illicit drugs, less predatory crime is committed and income from that crime declines."[11]

Cost savings during treatment alone more than recoup the cost of providing treatment, i.e., "Post-treatment gains are virtually an economic bonus."[12]

PREGNANT ADDICTED WOMEN AND GIRLS

Neonatal intensive care hospital costs range from $20,000 to $40,000 per drug-exposed infant.[13]

Overall hospitalization costs for drug-exposed infants and fetal alcohol syndrome create an annual economic loss to the country of $0.6 to $3.3 billion.[14]

SIX RECURRING THEMES

In addition to the cost data requested, the Rutgers research team unearthed six recurring themes key to understanding both the impact of addiction and of treatment. These themes are recurring and at work in most of the populations studied.

(1) Ramping Up of Costs to Society Prior to Treatment.

People with alcohol and other drug problems use health care at rates well above comparison groups prior to treatment. This already high spending on health care accelerates dramatically in the 12 months before treatment by both insured and Medicaid populations.

Criminal justice populations show the same type of "ramping up" in illegal activities prior to treatment.

A similar pattern emerges with workplace populations as well. Although already involved in higher that the norm sick leave use, absenteeism and disciplinary problems, there is a "ramping up" of these problems right before treatment.

After treatment, each of these groups shows a similar, marked "ramping down" in health care use, criminal activities and workplace problems.

Without such intervention and treatment, reductions in costs to these three areas is unlikely.

(2) Durability of Treatment Effects.

The research team located numerous studies that attest to the durability of treatment effects in health care, in the workplace and in the criminal justice system for years after treatment has taken place.

(3) Duration of Treatment.

Success in treatment with insured and with criminal justice populations appears to be related to duration of treatment.

For the insured population:

> "...only 21% of those patients who completed a 22-30 day treatment were readmitted to the hospital for any reason (including relapse)... In comparison, 48% of those treated for seven days or less were readmitted within a year."[15]

For criminal justice populations:

> "...time in treatment is among the most important predictors of positive outcomes."[16]
>
> "Time spent in treatment was among the most important predictors of posttreatment drug abuse for all types of drugs... In contrast to prior studies, however, we found the time in treatment necessary to produce positive outcomes was relatively long: 6 to 12 months."[17]
>
> "...even changes that are initially observable in drug-taking and criminal behavior do not become stabilized in patients who remain in treatment for less than three months."[18]

(4) Additivity of Treatment Effects.

The research team found some indication that treatment effects with criminal justice populations

are "additive" and cumulative in nature.

> "Even while addicts are no longer in treatment or are between treatment episodes, these treatment effects are still apparent."[19]

However, research on this point must be balanced with the findings on duration of treatment. Individuals in treatment less than several months appear to do no better than "detox-only or intake-only groups."[20]

(5) Collateral Effects of Addiction and of Treatment.

The research indicates that addiction in a family drives up the health care use not only of the addicted individual but also the health care use of the family members as well. The health care use of the family members also "ramps up" prior to the treatment of the addicted individual. After treatment of the addicted individual, the health care used by family members is reduced and converges to the same as control groups. These collateral effects also appear to be durable over time.

The research team points to the need for investigation of other collateral effects. An untreated addicted person in the workforce may well have measurable impact on the health care use of co-workers. Similar collateral effects may occur regarding crime with a criminally involved addicted person involving family and co-workers as well.

Considering just the issue of collateral health care cost-offsets:

> "The potential savings here, though, is enormous, much larger that those accruing from cost-offsets from reduced health care utilization of treated alcoholics and addicts themselves, since the target group for these collateral cost-offsets - their families - is many times larger than the core group of substance-impaired individuals.[21]

(6) Effects of Coerced Treatment.

Criminal justice populations who are coerced into treatment do as well as and in some areas better than those with whom no coercion was applied.[22] However, considering the importance of duration of treatment to success:

> "...the effect of court involvement, once thought to hopelessly compromise the privacy of the patient and his/her ability to form a good therapeutic alliance, appears if anything to keep patients in treatment longer and help them to achieve a more favorable and stable outcome."[23]

(7) Patient Matching.

The Rutgers research repeatedly underlines the importance of newly developing patient placement tools. These tools, such as one recently developed by the American Society of Addiction Medicine (ASAM), provide for standardized assessments and matching of patient profiles to treatment types and needed lengths of stay.

However, this necessary development of diagnostic and treatment protocols in the addictions continues to be stifled by the lack of a fully developed continuum of needed treatment services.

Although estimates of the cost of untreated addiction run as high as an ANNUAL $172 billion, dollars directed to supporting prevention and treatment weigh in at less than 1% of the annual cost of untreated addiction.[24]

CITATIONS:

Citation 1: Richard W. Esterly, Doree M. Goodman, Tom L. Meglen, Judith I. Smith, Arland H. Wagonhurst, *Task Force on Substance Abuse and Insurance Benefits* 1 (March 1981).

Citations 2 and 6: *Recognizing and Treating the Alcoholic*, BEHAVIORAL MEDICINE 14 (January 1980).

Citation 3: Anthony W. Clare, *Educating Medical Students about Alcoholism*, DATA 5, 1 (October 1985).

Citation 5: *Why Doctors Miss the Warning Signs*, Washington Post (December 27, 1988).

Citation 24: Research Triangle Institute, *Economic Costs to Society of Alcohol and Drug Abuse as Compared to Allocations for Alcohol and Drug Prevention and Treatment Programs* (1984).

The rest of the citations were taken from: Rutgers University, Center of Alcohol Studies, *Socioeconomic Evaluations of Addictions Treatment*, an unreleased study commissioned by the President's Commission on Model State Drug Laws that will appear in Volume IV Alcohol and Other Drug Treatment of the Commission's final report.

FINAL REPORT: THE PRESIDENT'S COMMISSION
ON MODEL STATE DRUG LAWS

EXECUTIVE SUMMARY: Draft

Alcohol and other drug problems are among the most significant social problems this nation faces in the 1990s and beyond. The problems of alcohol and other drugs know no political, socioeconomic, or human boundaries. They are as much public health problems as law enforcement problems. They are as much community problems as individual problems. Alcohol and other drugs affect the workings of the nursery and the classroom, the home and the business, the health care system and the criminal justice system, the town council and the federal government.

Clearly, many major societal ills have their roots in substance abuse. Health care costs are unacceptably increased by alcohol and other drug abuse. Twenty-five to 40 percent of all general hospital patients are there for alcoholism-related complications. Drug-related emergencies tax health care resources and staff. Alcohol and other drug abusers use medical services many times more than non-abusers. The contributions of alcohol and other drugs to crime and violence are readily apparent. A large percentage of criminal defendants have alcohol and/or other drug problems, or were under the influence of alcohol and/or other drugs at the time of their offense. Prisons overcrowded with drug offenders have begun releasing other offenders and some jurisdictions have expanded the corrections system at a great cost to society in order to accommodate the increased criminal justice population. In the workplace, alcohol and other drug problems contribute to absenteeism, reduced productivity, accidents, increased worker's compensation claims, and workplace crimes. Alcohol and other drug problems have contributed to breakdowns of the home and community, disintegrating what some treatment experts have called the "crucible in which the values we recognize as human are formed."[1]

At the core of these alcohol and other drug problems are people: family members, friends, neighbors, and people like ourselves. Hard-core addicts and alcoholics, casual drug users, intoxicated drivers, drug-addicted criminals, alcoholic or addicted pregnant women or women with dependent children, underage drinkers, drug traffickers, and alcohol and other drug abusers whose health has been debilitated by their addictions, to name but a few, all represent different populations that must be addressed for this nation to prove able to limit or eliminate its alcohol and other drug problems.

The goal of the final report of the President's Commission on Model State Drug Laws will be strikingly different than other reports that have sought to wage a holy war on alcohol and other drugs. The goal simply is to address the problems of alcohol and other drugs in the most comprehensive, forthright, and effective manner possible.

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[1] Rod Mullen and Naya Arbiter, "Against the Odds: Therapeutic Community Approaches to Underclass Drug Abuse," *Drug Policy in the Americas*, Peter H. Smith, ed. (Boulder, CO: Westview Press, Inc., 1992).

The Commission also met with and received input from hundreds of interest groups, companies, national organizations, individuals in personal recovery from alcohol and other drug addictions, and others concerned about the problems of alcohol and other drugs. These diverse interests represented all aspects of alcohol and other drug-related fields, from law enforcement representatives to treatment providers, community groups to employee assistance professionals, lawyers to legislators to laymen. These groups pointed out problem areas that could be remedied by state legislation, offered suggestions, and kept the Commission's ideas focused on the short and long-term realities of alcohol and other drug problems.

DEVELOPING EFFECTIVE RESPONSES

Early in the Commission's process, a decision was made that model legislative language would comprise the bulk of the Commission's efforts, rather than general recommendations. Often, commissions of this sort examine particular problems and assemble a body of final recommendations to address those problems. Though these recommendations often reflect good ideas, the gap between meaningful ideas and their implementation is vast. To avoid the problems associated with translating good ideas into action, the Commission sought to go a step further. It culled and developed good ideas with the guidance and assistance of all those who participated in the Commission's process and distilled those ideas and experiences into model state legislation, thus giving the ideas effect.

To insure that the ideas not only have merit but also that they would be practical, much of the Commission's model legislation is based upon legislation that has been enacted and implemented somewhere in the country. These model statutes represent not only good ideas, but good ideas that work. The Commission has sought to extract lessons learned from the laboratories of the states and to build upon those lessons in its recommended model legislation. In this manner, ideas that are working in a small number of states may be disseminated and tailored to local conditions in places across the country, broadening the positive impact of those ideas.

CONTINUUM OF CARE

The Commission focuses many of its legislative ideas on the front-end: prevention and education. It targets a number of its initiatives towards children and the parents and family members who care for them. The raising and educating of healthy, drug-free children is paramount in the effort to address and eliminate drug use.

Government can only do so much. However, the Commission's model legislation intends to aid and reasonably support all stages of that development. Mandatory K-12 drug education curricula will be required each year at every grade level in all public schools. Student assistance programs will be expanded. Children of alcoholics and addicts will be allowed to pursue needed counseling to cope with and address their parent's addictions. Community efforts to protect children from dangerous drug trafficking within their neighborhoods will be bolstered.

But the overall effect is clear: treatment works. Treatment improves, and at times, saves, the lives of those afflicted with the diseases of alcoholism or addiction and of their families. Treatment is beneficial, saving billions of dollars currently being spent to address the fallout from alcoholism and addiction. Given the demonstrated economic and social drain of untreated alcoholism and addiction on the nation's economy and on society, this nation can little afford to not implement a full continuum of treatment services and interventions, in conjunction with a broader continuum of prevention, intervention, treatment, and law enforcement.

ROLE OF LAW ENFORCEMENT

Law enforcement is equipped with many of the laws it needs to arrest, prosecute, and incarcerate drug offenders. Police, prosecution, court, and corrections systems are in place and working at maximum capacity. Innovative interdisciplinary task forces continue to interdict drugs and to infiltrate criminal enterprises, disrupting the supply of drugs. In short, law enforcement has used these tools effectively to respond to the problems of alcohol and other drugs.

However, despite these laudable efforts and despite record numbers of drug arrests, convictions, and offenders under the supervision of the courts and corrections systems, alcohol and other drug problems continue to plague society and to overwhelm the criminal justice system. This finding reflects a sad truth about the nature of alcohol and other drug problems. Police alone cannot end drug activity if drug demand remains high. Police cannot end alcohol and other drug abuse if offenders pass through the criminal justice system with their addictions intact. Prosecutors and courts cannot be expected to properly respond to these problems and to alleviate prison overcrowding that leads to a "revolving door" system of justice if the capacity or the will to offer effective alternatives to incarceration does not exist. The approach of some jurisdictions to simply release offenders without treating their addictions is irresponsible.

Law enforcement does need additional tools and support and this model legislation intends to bolster law enforcement's efforts to address the problems of alcohol and other drugs. Asset forfeiture legislation improves the way in which assets of drug traffickers may be seized, liquidated, and used to fund other anti-drug efforts. Other economic remedies against drug trafficking, including money laundering and financial transaction reporting statutes, will also strengthen law enforcement efforts. Crimes code enforcement legislation will enable law enforcement agencies to penetrate criminal enterprises more readily.

In addition, the Commission's legislation intends to give the criminal justice system the freedom to expand beyond the traditional boundaries of law enforcement to identify, address, and solve the problems of alcohol and other drugs, rather than to respond to them retroactively. For example, the Commission's treatment legislation allows law enforcement to intervene in the cycle of alcohol and other drug abuse for all offenders entering into the criminal justice system. A truancy recommendation suggests that police officers be given the legal right to intervene with truants and to bring them back to the school setting. Model community mobilization legislation will enable law enforcement to selectively evict drug traffickers from public housing, removing

One discovery was that treatment providers need the support of tough law enforcement; effective treatment demands that addicted offenders be held responsible for their actions like everyone else and that consequences be exacted. Indeed, the criminal justice system too often is not tough enough for the purposes of effective treatment, and undermines treatment programs by not carrying out their recommendations to jail criminal justice clients who are not cooperating with the course of treatment.

Similarly, it became readily apparent that prosecutors and police are not opposed to treatment *per se*. The hesitation of law enforcement to vigorously support treatment primarily stemmed from the public misperception that treatment does not work. In light of compelling evidence that treatment can be effective in substantially reducing both criminal justice system recidivism and relapse into alcohol and other drug addiction, and thereby protects public safety, the expansion of treatment resources within both the criminal justice system and the public and private health care systems became a top priority for the Commission.

It became apparent very early on in this process that all sides of the alcohol and other drug issue had similar goals, priorities, and concerns. These were approached from all sides and at all levels of discussion. The comprehensive, interrelated initiatives that ensued reflect this epiphany.

ALCOHOL AND TOBACCO

The Commission decided early in the process to include alcohol and tobacco within its overarching definition of drugs of abuse. The detrimental impact of alcohol and tobacco on this nation cannot be understated. The economic, social, and personal costs of alcohol and tobacco far outweigh the combined comparable costs of illicit drug abuse and trafficking. Over 400,000 deaths annually are caused by or related to the use of tobacco and nearly 100,000 deaths annually are caused by or related to alcohol. Alcohol and tobacco contribute to over $100 billion annually in related health care, criminal justice, educational, social service, and workplace costs. Although political, media, and social forces have focused more attention in recent years on the problems associated with illicit drugs, the Commission believes that this nation cannot afford to minimize the impact of alcohol and tobacco when addressing the substance abuse problem.

Also, the linkage between early alcohol and/or tobacco use to illicit drugs has been established. Etiologic research has clearly indicated that drug use tends to follow an orderly pattern that begins among youth with illicit use of alcohol and tobacco. Since the public policy continuum of responses to alcohol and other drug abuse must begin with prevention, the Commission felt an added obligation to address alcohol and tobacco in a meaningful, forthright manner.

This final report does not represent comprehensive model legislation on alcohol and tobacco. The Commission has sought to address alcohol and tobacco particularly with respect to children and minors, for whom alcohol and/or tobacco use are illegal. However, the Commission did pursue alcohol and tobacco abuse by adults on a limited basis as it pertains to drinking and driving. Clearly, since most of the costs to society are borne by adults, more work is needed to adequately address the problems of alcohol and tobacco abuse by adults.

Model Money Laundering Act
Model Financial Transaction Reporting Act
Model Money Transmitter Licensing and Regulation Act
Model Ongoing Criminal Conduct Act

U.S. financial institutions are believed to launder $40 billion to $80 billion annually in illegal drug proceeds. The illegal drug industry thrives on the profit motive. Criminal entrepreneurs are drawn by the promise of huge sums of money which can be used to finance a drug operation and to support a luxurious lifestyle. However, illegal drug proceeds can only be used to purchase goods and services if they appear to be legitimate income. Attorneys, accountants, bankers and others, motivated by quick easy cash, create this veil of legitimacy through money laundering activities. Without these individuals' protection, transactions with illegal drug proceeds are exposed, making illegal drug activity vulnerable to law enforcement efforts. Seeking to drive potential launderers away from the illegal drug industry, these four Models Acts together:

- Penalize the act of knowingly dealing in the proceeds of unlawful activity;
- Penalize the act of knowingly conducting transactions that conceal or disguise the source of illegal proceeds;
- Provide state law enforcement access to the same financial data on significant cash and other suspicious transactions that federal law enforcement has;
- Regulate institutions which sell or issue payment instruments or transmit money which are susceptible to drug dealers' efforts to launder their illegally derived profits;
- Limit entry into the money transmitter field to qualified persons and sound businesses;
- Allow revocation of business licenses for conduct tolerant of money laundering;
- Penalize the knowing participation in or facilitation of a criminal network; and
- Penalize the negligent loan, lease or other provision of property for the facilitation of specified unlawful activity.

VOLUME 2: COMMUNITY MOBILIZATION

Neighborhood and community groups are zealous participants in reclaiming buildings and streets from drug traffickers and violent criminals. The Commission's laws are intended to inspire, support, and strengthen these grass roots efforts.

Model Community Mobilization Funding Act

Vigorous involvement of neighborhood groups is critical to any successful struggle against alcohol and other drugs. Through state grant programs, the Model Act provides groups modest financial resources to collaborate with enforcement, treatment, education, prevention, health care and business leaders.

Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act

Many state anti-drug agencies work with insufficient knowledge of, or cooperation with, the efforts of other agencies. Scarce anti-drug resources are used in duplicative or conflicting efforts. Turf wars over budgets and responsibilities are common. The Commission offers a series of features and characteristics which states use to institutionally coordinate drug policy formulation and implementation. The Model Act:

- Establishes a cabinet level executive council composed of cabinet officers, state agency heads, and alternatively, members of the public;
- Requires the Council to submit a statewide alcohol and other drug abuse master plan, and make legislative and budgetary recommendations;
- Establishes a statewide advisory board to gather the widest possible input on alcohol and other drug issues.

VOLUME 3: CRIMES CODE ENFORCEMENT

Model Prescription Accountability Act
Model State Chemical Control Act

While the illegal drug industry captured America's attention, another major criminal drug enterprise emerged: illegal diversion of prescription drugs. The Drug Enforcement Administration (DEA) estimates that prescription drug diversion constitutes a $25 billion annual market. Simultaneously, precursor chemicals became readily available on the open market or easily diverted from legitimate commerce. Domestic illegal laboratories surfaced and became capable of producing enough stimulants, depressants, hallucinogens and narcotics to satisfy the country's illegal drug demand.

Model Act to Permit Continued Access by Law Enforcement to Wire and Electronic Communications Model Wiretapping and Electronic Surveillance Control Act

Drug kingpins and others motivated principally by avarice are the most culpable drug offenders. Often these high level entrepreneurs are insulated within the bureaucratic layers of a drug trafficking conspiracy. While many traditional law enforcement techniques cannot reach them, electronic surveillance is an effective weapon in apprehending and prosecuting major narcotics traffickers. Patterned after federal law, the Model Acts:

- Require telephone companies and other telecommunications service providers, when served with a court order, to be able to identify and provide the content of a targeted telephone conversation;
- Permits court-ordered interceptions and use of pen register and trap and trace devices for short, definitive periods of time;
- Requires minimization of interceptions so only pertinent, relevant information is intercepted;
- Requires that when possible tapes be made of intercepted material for future scrutiny by the court and counsel for the intercepted party.

Model Driving While Under the Influence of Alcohol and Other Drugs Act

Alcohol and other drug use significantly contributes to this country's annual highway death toll. Traffic accidents are the leading cause of death for individuals between 6 and 33 years of age. Fifty-six percent (56%) of those fatalities involve alcohol and/or other drugs. Ten to twenty percent (10%-20%) of all fatally injured drivers have drugs, often in combination with alcohol, in their bloodstream.

The Model Act follows the lead of states dedicated to decreasing alcohol or drug-related highway fatalities. The Act:

- Establishes a blood alcohol concentration of .08% for adults and any measurable or detectable amount (.02% or more) for minors;
- Prohibits the operation of a motor vehicle with the presence of a controlled substance in the driver's blood;
- Provides for administrative revocation of licenses and administrative and judicial appeals procedures to protect due process rights;

- Establish minimum levels of coverage within each treatment modality;
- Prevent deprivation of coverage for legal or criminal justice referrals.

Model Managed Care Consumer Protection Act

Managed care firms are relatively new and are almost entirely unregulated in the 50 states. The absence of regulation creates serious inconsistencies in the way managed care firms interact with health care consumers. The inconsistencies can lead to underutilization of health care benefits which perpetuates spending on addiction related accidents and illnesses. The Model Act encourages full utilization of the alcohol and other drug treatment benefit through consumer protections which:

- Require use of alcohol and other drug abuse and addiction criteria when doing assessments;
- Establish credentials of personnel conducting assessments;
- Bar conflicts of interest by clinical decision makers;

Model Family Preservation Act

Few inpatient programs are physically constructed or programmatically structured to handle the needs of mothers with newborns and parents with dependent children. In response, the Model Act encourages the establishment of residential addiction treatment programs for this population.

Model Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services Act

The federal EPSDT program was modified in 1989 to include alcohol and other drug screening, counseling, and treatment among the services provided to Medicaid eligible children under age 21. Through amendment of state welfare codes, the Model Act makes available to children the alcohol and other drug abuse services now allowed under the federal EPSDT program.

Model Health Professionals Training Act

Individuals with untreated alcohol and other drug problems appear frequently in the health care delivery system for a wide array of addiction-related illnesses and injuries. The Model Act facilitates health care professionals' ability to diagnose addictive diseases. It requires such licensed professionals to receive a course on addictive diseases during their professional training, and ongoing instruction as part of continuing medical education requirements.

- Comprehensively prohibit the purchase, possession and consumption of alcohol by minors, and the fraudulent use of identification to obtain alcohol;

- Require underage violators to undergo an assessment, and if appropriate, participation in a treatment or education program;

- Allow licensed facilities to provide counseling services to children of alcoholics and other addicts without parental consent if sufficient documentation is maintained;

- Mandate placement of rotating health and safety messages on state originated radio, television (excluding cable), and print advertising of alcohol.

Model Tobacco Vending Machine Restriction Act

Ninety percent (90%) of all smokers start smoking before they are 18 years old. The Model Act restricts adolescents' access to tobacco products. It allows placement of tobacco vending machines only in establishments in which the minimum admission age is 18.

Model Revocation of Professional or Business Licenses for Alcohol and Other Drugs Act

The substance involvement of doctors, lawyers, and tradespersons who must acquire state licenses poses a special risk to public health and safety. In consideration of this, the Model Act:

- Restricts, suspends, or revokes the license of an individual convicted of specified alcohol and other drug offenses;

- Conditions reinstatement of license upon successful completion of a treatment program.

DRUG-FREE SCHOOLS

Model K-12 Substance Abuse Instruction Act

Development of healthy lifestyles and attitudes is essential to successfully tackling alcohol and other drug abuse. The Model Act therefore:

- Mandates integrated substance abuse education in school curricula for kindergarten through grade twelve, and ongoing teacher training;

- Provides for student assistance and employee assistance programs.

- Requires all state funded colleges and universities to create comprehensive plans to combat student alcohol and other drug abuse;

- Mandates development of student assessment and referral procedures to assist students in obtaining needed treatment services.

Truancy, Expulsion, and Children Out of School

Truancy often leads to a higher drop-out rate and criminal involvement. The policy statement recommends that schools and law enforcement work together to ensure youth remain in school.

DRUG-FREE WORKPLACE

Model Drug-Free Private Sector Workplace Act
Model Drug-Free Workplace Workers' Compensation Premium Reduction Act
Model Employee Assistance Programs and Professionals Act
Model Drug-Free Public Work Force Act
Model Drug-Free Workplace Act
Model Employee Addiction Recovery Act

Two-thirds of adult drug users are employed. The annual cost of alcohol and other drug abuse to American business is nearly $100 billion in increased medical claims, medical disability costs, injuries, theft, absenteeism and decreased productivity. The Commission offers several measures designed to reduce these costs while assisting employees with treatment of their alcohol and other drug problems. The Model Acts:

- Require a comprehensive drug-free workplace program to include written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions;

- Provide private employers protection from litigation regarding certain legal claims for acting in good faith on a confirmed substance abuse test, if the employers establish and maintain a comprehensive workplace program;

- Provide a five percent reduction to an employer's workers' compensation insurance premium if the employer establishes a comprehensive drug-free workplace program;

- Establish a process for alcoholic or other drug addicted public sector employees to identify their problems and be referred to treatment without the loss of employment;

- Provide probationary employment or termination of any public employee convicted of a

- If the threat of imminent eviction from public housing motivates drug dependent offenders to enter and actively engage in treatment, and to successfully gain recovery, they no longer will contribute to drug-related crime and mayhem that plagues many public housing communities;

- If an effective treatment program gets a pregnant woman or a family member with dependent children into recovery, the interruption in the deleterious cycle of abuse and the parenting skills learned during the treatment program may improve the ability of the adult to be a better parent and to positively affect the lives of the children.

- If monitoring systems regulate the transactions of known precursor chemicals and help curb the manufacture of drugs, they contribute to reduced drug trafficking and increased public safety.

- If the number of drugged and drunk driving accidents is reduced through effective enforcement of stricter drunk driving laws and the implementation of an assessment, referral, and treatment system for such offenders, insurance and health care costs will fall.

- If a teacher confronts a student with an alcohol problem, refers that student to a student assistance program and to an appropriate treatment program, and the student goes sober, that teacher may have helped reduce the pain and abuse that the student could have inflicted in the home and community and affected the future well-being of that student.

- If a treatment program successfully reduces the incidences of alcohol and other drug abuse among its patients, health care utilization rates and insurance claims will decline.

The nature and effect of alcohol and other drug problems demand coordinated, comprehensive responses. This blueprint for action helps to develop such responses and ultimately seeks to make a difference in the manner in which this nation addresses the problems of alcohol and other drugs. In some instances, positive results will emerge quickly from the implementation of these legislative responses. In others, results will take years to develop, as whole systems of addressing the problems of alcohol and other drugs are redesigned and implemented.

Nevertheless, the problems of alcohol and other drugs continue to accumulate at great costs to individuals and society. This nation can ill afford to postpone a coherent, comprehensive response to those problems. The Commission believes that now is the time to address the problems of alcohol and other drugs and it encourages each state to consider this package of model legislation as part of any state strategy to combat the problems of alcohol and other drug abuse.

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS
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THE FOLLOWING COMMISSIONERS OF THE PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS WILL ATTEND THE SEPTEMBER 2 WHITE HOUSE MEETING:

KENT B. AMOS, of Washington, DC. Mr. Amos has devoted much of his life emotionally and financially encouraging young people to reject drugs and complete their education. Mr. Amos established the Triad Group consulting corporation in 1986, after serving as Director of Urban Affairs for the Xerox Corporation from 1971 to 1986.

SHIRLEY D. COLETTI, of Florida. Chair of the Commission's Drug and Alcohol Treatment Task Force. Ms. Coletti is President of Operation Parental Awareness and Responsibility, and served as a member of the Department of Health and Human Service's National Advisory Council on Drug Abuse. Ms. Coletti served on the Florida Juvenile Justice and Delinquency Prevention Advisory Committee, and as a member of the United States Senate Caucus on International Narcotics Control.

RICHARD P. IEYOUB, of Louisiana. Mr. Ieyoub serves as Attorney General of Louisiana following his tenure as the Lake Charles District Attorney. He is the former President of the National District Attorneys Association.

MICHAEL MOORE, of Mississippi. Mr. Moore is currently the Attorney General of Mississippi. Mr. Moore recently served as Chairman of the Criminal Law Committee for the National Association of Attorneys General.

ROBERT T. THOMPSON, JR., of Georgia. Chair of the Commission's Drug-Free Families, Schools, and Workplaces Task Force. Mr. Thompson is with the firm of Thompson and Associates. Mr. Thompson also serves as Chairman of the Allied Georgia Employers Network on Drug Abuse Agenda.

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"Our mission is to develop comprehensive model state laws to significantly reduce, with the goal to eliminate, illicit drug use in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections."

Responding to growing concern that state governments were addressing the problems of drugs in a manner without rhyme or reason, the United States Congress mandated the creation of a bipartisan presidentially-appointed commission to develop model state drug legislation (*Anti-Drug Abuse Amendments of 1988, Pub. L. No. 100-690, sec. 7604*).

In developing model legislation that addresses the spectrum of drug issues at the state and local level, the 23-member Commission held a series of public hearings around the country, focusing on the following issues:

- Economic Remedies Against Drug Traffickers (*San Diego, CA, January 6, 1993*)
- Community Mobilization (*Detroit, MI, January 27, 1993*)
- Crimes Code Enforcement (*Tampa, FL, February 16, 1993*)
- Drug and Alcohol Treatment (*Philadelphia, PA, March 10, 1993*)
- Drug-Free Families, Schools, and Workplaces (*Washington, DC, March 31, 1993*)

Having completed its comprehensive body of recommended state legislation, the Commission officially ended its six-month term of existence on May 16, 1993. The Commission will submit a final report, including the recommended legislation, in September 1993. This report will be sent to the governors of all fifty states and disseminated widely through professional conferences and organizations in the prevention, education, treatment, law enforcement, and corrections fields.

Its Commissioners, 12 Democrats and 11 Republicans, include police chiefs, state legislators, treatment service providers, prevention specialists, an urban mayor, state attorneys general, district attorneys, and other experts.

Since May, the Commission has continued its work, with emphasis on developing the final report and planning announcement and dissemination strategies. The ultimate goal of passage of this legislation can only be realized through full coordination and cooperation of the White House, Office of National Drug Control Policy, Department of Justice, and Governors and Legislatures of the states. In that effort, the Commission has formed a non-profit corporation, "The National Alliance for Model State Drug Laws." The group elected a chairman, Attorney General Mike Moore of Mississippi, and will pursue the passage of these model laws in all 50 states.

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS
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EXECUTIVE DIRECTOR'S INTRODUCTION

Like a parasite sapping the strength from its host organism, alcohol and other drug addiction is eroding the vitality of our nation in ways we do not even realize. Drug-trafficking crimes and crack babies grab headlines, but as a society we fail to acknowledge, and public policy fails to reflect, that many of the other major problems of our day have their roots in widespread substance abuse.

***Health care costs*, for example, are driven up dramatically by untreated addiction; the average alcoholic or other drug addict is conservatively estimated to be using ten times the medical services of a non-addict. The disease of addiction destroys the body in many ways not commonly known, and all of us pay the costs of treating this physical breakdown through higher taxes or higher insurance premiums. Until the health care system provides sufficient access to effective treatment, as recommended in the Commission's model legislation, health care costs will remain unacceptably high no matter how the health care system is redesigned.**

***Crime and prison overcrowding* is another example. Sixty to eighty percent of criminal defendants are addicted. Those who are convicted and jailed continue their habits in prison, where alcohol and drugs are readily available despite regulations and enforcement to keep them out. Offenders not imprisoned for life or executed will ultimately be released into society, still addicted and still dangerous. It is hardly surprising that crime rates remain high even though the number of people imprisoned in America has increased 168 percent since 1980.**

Offenders entering the criminal justice system are in the perfect place at the perfect time to be assessed for addiction and referred to treatment. The burglaries, assaults, thefts, rapes and murders committed by that addicted sixty to eighty percent are closely connected to their alcohol and drug problems. Crime and prison overcrowding will not diminish to an acceptable level until the criminal justice and treatment systems are integrated, as recommended in the Commission's Model Comprehensive Criminal Justice Treatment Act. It will take years before every person arrested is assessed for substance addiction and where appropriate referred into treatment, but our country cannot afford to do anything but begin this transition.

Productivity in the workplace (which affects our global economic competitiveness) is another area where substance abuse has tremendous impact. Untreated addictions cost American businesses from $50 billion to $100 billion each year in increased medical claims and disability costs from illness and injuries, theft, absenteeism, and decreased productivity. These costs are comprehensible when one considers that fully two-thirds of all drug abusers in America are in the workplace.

The workplace is also a highly effective point of intervention for adult abusers. While much of the attention to drug-free workplaces in recent years has focused on drug testing, testing is only one tool to address the problem. A *comprehensive* drug-free workplace program is essential: written policy statements, employees assistance programs and rehabilitation resources, employee education programs, supervisor training programs, testing, and confidentiality protections. Employers consistently report that these bring tremendous cost savings.

As staggering as are the obvious economic costs of alcohol and other drug abuse, the costs in human suffering are even greater. Millions of American babies are born into families ruined by the disease of addiction. The neglect, the cruelty and the abuse they suffer rob them of their innate innocence, hope, spontaneity and enjoyment of life. The bewilderment of children who can't count on a rational, nurturing, secure framework to grow up in causes incalculable emotional and spiritual damage.

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Those who offer solutions for our country's drug problems have traditionally misunderstood each other. Many law enforcement officials, for example, have been suspicious of those advocating treatment for criminal offenders. They believe that treatment advocates do not care about making criminals pay for their crimes, that they are cavalier about protecting public safety, and that treatment is just a "soft," easy alternative to the hard prison time that serious offenders should be serving. Many treatment advocates, on the other hand, have countervailing suspicions. They believe the law enforcement community is myopically focused on punishment without looking at the broader picture of how to create a safer society by changing addicted offenders' lives.

The President's Commission on Model State Drug Laws was a microcosm of the diverse viewpoints on the drug crisis. The law enforcement perspective was well represented, with three state attorneys general, five big city prosecutors, and two police chiefs. Those representing the treatment and prevention disciplines, though fewer in number, were not deterred from persuasively championing their own perspectives.

The challenge of reaching consensus initially seemed insurmountable to many of us. But after hundreds of hours of frank, honest exchanges about goals, priorities, concerns and doubts, both during formal meetings and hearings, and informally during off hours, something remarkable happened. Virtually every Commissioner learned that the "other"

perspectives were not in opposition to his or her own.

Law enforcement Commissioners learned that treatment providers actually need the support of tough law enforcement; that instead of "special breaks," addicted offenders have to be held responsible for their actions like everyone else. Indeed, some treatment providers complained that the criminal justice system too often is not tough enough, and undermines treatment programs by not carrying out their recommendations to jail criminal justice clients who are not cooperating with the course of treatment.

Similarly, the treatment Commissioners found that prosecutors and police are not opposed to treatment *per se*. They learned that prosecutors' hesitations have sprung primarily from the public misperception that treatment does not work. When presented with compelling evidence that treatment *can* be effective in substantially reducing both recidivism and relapse, and thereby protects public safety, law enforcement Commissioners unanimously supported the expansion of treatment resources within both the criminal justice system and the public and private health care systems.

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The model legislation this Commission created integrates an unprecedented diversity of credible approaches into a single, comprehensive proposal. Bringing together leading professionals from different fields to address a common problem, and seeking to broaden the understanding of each by all the others, is itself a model for effective change.

By opening their minds to the broad picture of drug problems and solutions, these Commissioners were able to contribute to a richer whole than any of us thought possible in the beginning. By sincerely striving to understand approaches and perspectives they weren't always familiar with, they helped to create a package of legislation that will finally, and truly, make a difference.

GAROLD TENNIS
Executive Director

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ECONOMIC REMEDIES

POLICY STATEMENT

For every minute spent reading this report, drug dealers earn over $100,000 in profits[1]. This means drug dealers net more money in one minute than 98.8% of working Americans received in gross income for 1991[2]. U.S. financial institutions are believed to launder $40 billion to $80 billion annually in illegal drug proceeds[3]. As one Houston police lieutenant declared, "Drug dealers no longer count their money, they weigh it."[4]

Money and property fuel the creation and perpetuation of the illegal drug industry. The promise of enormous profits motivates criminal entrepreneurs to engage in drug trafficking. Profit seekers repeatedly come together to undertake the clandestine production, manufacture, transportation, and distribution of illegal drugs. A person's ability to share in illegal drug proceeds depends on that person's ability to access money and property needed to accomplish trafficking activities. The continuous flow of money and property into illegal drug uses requires a veil of legitimacy to avoid arousing suspicion. The apparent legitimacy is provided through money laundering efforts of financial advisors, lawyers, and others drawn to the illegal drug trade by the allure of quick, easy wealth.

Criminal sanctions alone are unable to stop or seriously impair the conduct of the illegal drug industry. Incarceration is intended to physically remove and isolate individuals from the criminal activity. However, the money and property which are the economic forces driving the illegal drug business remain relatively undisturbed. Drug proceeds are still

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[1] American Prosecutors Research Institute, STATE DRUG LAWS FOR THE '90s, *Overview* 4 (1991).

[2] Census Bureau.

[3] Holmes, Arizona Attorney General's Office, *Combating Money Laundering* 1.

[4] American Prosecutors Research Institute, *supra* note 1 at 5.

available to anyone capable of successful participation in a drug venture. One convicted drug dealer is quickly replaced by another equally eager to reap large sums of money. The convicted dealer's property is often still available for illegal drug use through operation of the dealer's enterprise.

A fight which only targets individuals involved in drug trafficking is doomed to failure. Application of legal remedies which remove the illegal drug industry's economic lifeblood, money and property, is critical to a successful attack on the industry. Volume I of the Commission's report presents an array of economic remedies designed to accomplish the following:

- Seize and forfeit illegal drug money and property;
- Require strict reporting of financial transactions to prevent and detect money laundering attempts;
- Require licensing and regulation of businesses susceptible to money laundering efforts; and
- Prohibit participation in money laundering and other financial crimes which assist drug traffickers.

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COMMUNITY MOBILIZATION

POLICY STATEMENT

State legislatures should be encouraged to authorize a host of innovative civil actions to supplement traditional criminal sentencing sanctions directed against convicted drug offenders. The ability to use innovative civil remedies to redress injuries related to the illicit drug trade, to safeguard the interests of citizens who are the constant victims of drug trafficking and drug-related crimes, and to leverage drug dependent dealers into treatment, are especially important given the level of prison and jail overcrowding which exists in most jurisdictions. Budgetary constraints and the current strain on the nation's correctional system are imposing inherent limits on the ability of the criminal justice system to deal with the evolving drug crisis.

Even more importantly, the state remedial legislation contained in this volume will help to provide law abiding citizens with important new protections and incentives to organize and to work cooperatively with law enforcement, other government officials, and with private sector concerns, in addressing the drug problem at the neighborhood and community level. These laws are designed to inspire, support and strengthen grass roots efforts to reclaim buildings, streets and entire neighborhoods from the influence of drug traffickers and violent street criminals.

The model legislation recommended for consideration by state legislatures will:

- **Provide qualified immunity from civil liability for anti-drug volunteers for their volunteer activity;**

- **Authorize civil actions to evict tenants or members of tenants' households who commit drug offenses on the residential premises or use those premises in furtherance of drug trafficking activities;**

- **Authorize civil actions to permanently remove and bar persons from leased residential premises where those persons have engaged in drug trafficking activities on or near the premises, even though they are not tenants or residents and thus have no recognized "property rights" to terminate in a traditional eviction proceeding;**

- **Afford legal standing to tenant associations so as to authorize such**

organizations to bring civil eviction actions in appropriate cases where the owner/landlord refuses to initiate the eviction proceeding against a resident drug dealer in the owner/landlord's own right;

- Authorize courts in appropriate cases to refrain from ordering the eviction of a tenant where the tenant was not personally involved in drug trafficking activities and where a traditional complete eviction would pose an undue hardship to innocent persons. The model legislation nonetheless imposes carefully prescribed standards and procedures where this "safety valve" provision is to be invoked, so as to ensure that drug trafficking activities do not recur;

- Authorize a tenant association or criminal prosecuting agency to recover from the landlord/owner the costs of successfully litigating an eviction action where the landlord/owner refused to bring the lawsuit. This provision would be designed to provide financial incentives for landlord/owners to protect the interests and rights of their law abiding tenants and residents;

- Use the threat of imminent eviction to motivate drug or alcohol dependent offenders to enter and positively participate in treatment, and to successfully gain recovery;

- Authorize a new sentencing option following a conviction or adjudication of delinquency which would expressly allow a court, as a condition of probation or parole, to prohibit the defendant from returning to the site of the leased residential premises at which the drug-related crime occurred;

- Authorize juvenile courts to apply this prohibition to juveniles adjudicated delinquent for drug-trafficking in a particular residential area. This provision is intended to counteract adult drug traffickers' common practice of using children (because they are subject to lighter sanctions in most jurisdictions) to deal or to assist in dealing their drugs.

- Authorize a court to issue a pretrial restraining order as a condition of bail which would prohibit the defendant from returning to the site of the leased residential premises at which the drug-related crime is alleged to have been committed, where that person is not a lawful resident at the premises and thus has no lawful or legitimate business or need to enter the premises;

- Expressly reject the notion that drug distribution offenses are "victimless" crimes, by treating law abiding tenants and residents as crime victims within the meaning of state victims' rights legislation, thereby expressly authorizing such persons to provide victim impact statements or personally to address the court at the time of sentencing;

- Authorize courts to "abate" a "drug nuisance" by closing a building or premises which is the site of drug trafficking, by ordering the owner/landlord to develop and implement an effective "abatement plan", or by imposing civil penalties against culpable owners/landlords who unreasonably permit or tolerate drug trafficking activities to occur on their premises;

- Strongly encourage the transfer of drug nuisance properties to non-profit anti-drug neighborhood organizations and treatment centers by owners who unreasonably permitted the property to be a drug nuisance, by imposing a mandatory $25,000 fine upon such owners, which fine may be waived only if the owner conveys the premises to such an organization;

- Enable anti-drug organizations to secure representation of counsel by requiring the payment of their attorneys' fees where the action is successful;

- Authorize persons who have been injured in their businesses or property by reason of a drug nuisance to bring a civil action for actual damages against any person who knowingly conducted, maintained, aided, abetted or permitted a drug violation constituting the nuisance;

- Encourage each state legislature to establish an Executive Council within the executive branch of government to coordinate state drug control policies, programs and initiatives designed to address the alcohol and other drug abuse problem. The functions of the Executive Council include the responsibility to develop a statewide "master plan" setting forth short and long term goals and objectives; to review and making recommendations concerning the budgets of all state agencies involved in drug and alcohol abuse programs; and to review and endorse applications by state and local agencies for federal grant funding;

- Encourage each state to establish advisory boards to represent a wide range of alcohol and other drug abuse interests and constituencies, so as to provide the Executive Council with input and information concerning the development and implementation of the state's alcohol and other drug abuse master plan.

In sum, many neighborhood and community groups have become zealous participants in fighting the scourge of drugs in their communities, an arena that historically has been the relatively exclusive arena of government. When these courageous groups' efforts cannot make positive, concrete gains, their efforts, often frustrated by the lack of government resources to support them, may understandably falter. This Commission urges state legislatures to give these groups the legal tools they need to drive flagrant drug-trafficking, with all its destructive effects, out of their midst. The motivation, to have safe homes and neighborhoods, clearly is there; this set of statutes is intended to help provide the wherewithal.

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CRIMES CODE

POLICY STATEMENT

Alcohol and other drug abusing individuals represent a significant proportion of America's criminal justice population. A quarter of convicted jail inmates, a third of state prisons, and two-fifths of youths in long-term, state-operated facilities admit to being under the influence of an illegal drug at the time of their offense.[1] Fifty-four percent (54%) of state prison inmates serving time for a violent offense in 1986 used drugs or alcohol at the time of the offense.[2] Profit seeking drug traffickers and manufacturers also find their way into our jails and prisons. In 1988, 79,503 drug traffickers, 71% of persons convicted of drug trafficking, were sentenced to incarceration in state facilities.[3]

Addressing America's crime problem by necessity means addressing America's alcohol and other drug problem. Criminal justice officials can perform several activities that will prove important in reducing the individual and societal harm associated with alcohol and other drug abuse.

First, officials can protect public health and safety through effective enforcement of alcohol and other drug control laws. They can hold offenders accountable for their criminal actions and deter future alcohol and other drug-related activity. Second, officials can prevent offenses by applying statutory monitoring systems which stop illegal diversion of chemicals and controlled substances. Third, officials can use the criminal justice system as leverage to intervene with the cycle of addiction. They can require assessment and treatment of alcohol and other drug addicted offenders. The Commission's model crimes code legislation recognizes and facilitates these vital alcohol and other drug-related functions.

Several months of review, analysis and drafting have culminated in the following model crimes code acts recommended by the Commission and discussed in Volume III of the Commission's Final Report:

- **Model Prescription Accountability Act**
- **Model State Chemical Control Act**
- **Uniform Controlled Substances Act - Controlled Substance Analog Provisions**
- **Model Wiretapping and Electronic Surveillance Control Act**
- **Model Law Enforcement Access to Wire and Electronic Communications Act**
- **Model Driving Under the Influence of Alcohol or other Drugs Act**

Drug testing in the criminal justice system are incorporated as a part of the comprehensive Criminal Justice Treatment Act. A collaborative effort between criminal justice and treatment professionals, the Treatment Act is discussed in Volume IV of the Commission's Final Report.

1. Bureau of Justice Statistics, DRUGS AND CRIME FACTS, 1991 3 (September 1992).

2. *Id.* at 5.

3. *Id.* at 13.

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DRUG-FREE FAMILIES, SCHOOLS, AND WORKPLACES

POLICY STATEMENT

Any comprehensive effort to address the problems of alcohol and other drug abuse must seek to prevent those problems in the first place. These preventive efforts must aid and reinforce those areas where prevention holds the greatest promise: among families, in schools, and in the workplace.

The work of this volume focuses on prevention as its unifying theme. It includes the implementation of a continuum of other services to promote and maintain drug-free families, schools, and workplaces. The prevention efforts proposed here include strategies to avert the onset of alcohol and other drug abuse among children generally and among adults in the home and workplace.

The Commission recognizes that the prevention message will not reach everyone. Thus, the Commission also seeks the implementation of a continuum of other services, encompassing not only prevention, but education, detection, treatment, and rehabilitation to help individuals stop abusing alcohol and other drugs.

The Commission proposes 16 model state laws and one recommendation in the areas of families, schools, and workplaces. Many of the model laws emphasize children and youths, seeking to prevent the onset of alcohol and other drug abuse. The proposed laws also place heavy emphasis on addressing alcohol and tobacco, the most widely abused drugs by children and adults and potential "gateways" to the use of illicit drugs.

In all of the proposed model laws mandating punishment for violations, offenders have an option to seek assistance and rehabilitation. Simply identifying and punishing alcohol and other drug problems usually will not resolve them; dealing with the problems through education, treatment, or rehabilitation programs must be essential components of any alcohol and other drug abuse strategy. Student assistance programs, employee assistance programs, and state-licensed treatment and rehabilitation programs are all vital to this effort.

The model legislation in the drug-free families area recommended to state legislatures will:

- **Confront underage alcohol consumption by establishing comprehensive legislation that closes all loopholes by banning the purchase, consumption, and possession of alcoholic beverages by those under the age of 21.**

- **Eliminate legal barriers to the provision of preventive counseling for children of alcoholics and addicts;**

- **Mandate health and safety warning messages on alcohol advertising appearing in or on newspapers, magazines, television, and radio;**

- **Mandate professional and business license revocation for alcohol and drug law convictions; and**

- **Ban tobacco vending machines from all areas accessible to anyone under the age of 18.**

The model legislation in the drug-free schools area recommended to state legislatures will:

- **Mandate K-12 integrated substance abuse curricula in schools for each and every school year and provide for on-going teacher in-service training and program development;**

- **Establish additional drug-free school zones law amendments that ban alcohol and tobacco advertising within drug-free school zones, prohibit the sale of alcohol within drug-free school zones, and expand drug-free school zones to include school buses, school bus stops, colleges and universities, and areas used for activities sponsored by or through a school;**

- **Ban all smoking in schools;**

- **Provide processes for teacher and school intervention on behalf of students with alcohol and other drug abuse problems;**

- **Promote alcohol- and drug-free colleges and universities through the development and monitoring of comprehensive alcohol and other drug abuse plans; and**

- **Offer recommendations on how states and local school districts should address the problems of truancy, expulsion, and children out of school.**

The model legislation in the drug-free workplace area recommended to state legislatures will:

- Provide a framework for drug-free private sector workplaces that establishes written policy statements, employee assistance programs or rehabilitation resources, employee education programs, supervisor training, drug testing policies and procedures, and confidentiality protections. Employers that implement such comprehensive workplace substance abuse programs can qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test;

- Establish workers' compensation premium reductions for employers that establish comprehensive drug-free workplace programs that include written policy statements, employee assistance programs or rehabilitation resources, employee education programs, supervisor training, drug testing policies and procedures, and confidentiality protections;

- Establish a process that allows alcoholic or drug-addicted public sector employees to identify their problems and be referred to treatment without the loss of employment; provide for the probationary employment or termination of any public employee, including any elected official, convicted of a criminal drug offense;

- Insure that all contractors, subcontractors, and grantees conducting business with or for the state implement drug-free workplace programs;

- Establish a state entity or process through which employee assistance professionals are licensed by the state to guarantee consumer protection and an acceptable level of quality employee assistance services; and

- Establish a tax credit for employers who provide alcoholic and/or drug-addicted employees with alcohol and other drug treatment services.

These model laws and recommendations do not address every aspect of alcohol and other drug abuse prevention; however, they do address many current and urgent concerns. These laws serve as tools that ultimately will help parents and communities raise children free from the problems associated with alcohol and other drugs, will help teachers and schools supplement those efforts by further aiding the development of healthy students, and will help workplaces reinforce the efforts of parents and adults by providing drug-free working environments, education, and assistance.

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS

Summary Descriptions of MODEL LEGISLATION

COMMUNITY MOBILIZATION

Expedited Eviction of Drug Traffickers Act
(companion to Drug Nuisance Abatement Act)

The Model Act provides for expedited eviction procedures to quickly remove and bar drug traffickers from leased residential premises by tenants associations and prosecutors' offices. It expands the scope to include permissible plaintiffs evicting drug dealers and traffickers.

The Model Act authorizes civil actions to evict, remove and bar drug traffickers who are not themselves signatories to a lease and who therefore have no contractual obligations to the landlord. It creates a new "partial eviction", which removes specific drug dealers, but permits an innocent tenant who has acted responsibly, to remain in the residential premise.

The court, under certain circumstances, may establish a "probationary tenancy", whereby a tenant who would otherwise be subject to complete eviction, but whose illegal activities have resulted from his or her addiction, is allowed to remain on the premises as long as he or she is constructively participating in an appropriate and carefully supervised course of drug treatment.

Where the landlord/owner has refused to bring the action, the Model Act authorizes a prevailing tenant organization or prosecutorial agency to recover the cost of the suit, including but not limited to reasonable attorney fees and costs from the landlord/owner.

Drug Nuisance Abatement Act
(companion to Expedited Eviction of Drug Traffickers Act)

The Model Act strengthens the ability of community groups to close down properties (or portions thereof) which constitute a drug nuisance. It creates a legal duty on landlords to expeditiously evict drug-trafficking tenants as a means to abate drug nuisances.

An anti-drug neighborhood organization, a person residing or working within 1,000 feet of the nuisance, the municipal attorney or the criminal prosecutorial agency may bring a nuisance abatement action for injunctive relief to close down the premises and for monetary penalties.

Drug-addicted residents who are evicted shall receive notification of treatment resources where they can seek help for their illness.

The Model Act imposes a fine of $25,000.00 or the value of property (whichever is greater) against defendants who refused, after having been requested, to abate the nuisance. Proceeds of fines go to neighborhood rehabilitation and treatment programs. The fines may be waived if the defendant transfers title to the premises to any 501(c) neighborhood anti-drug organization or treatment provider approved by the court. The waiver provides incentive to culpable defendants to transfer the nuisance property to eligible plaintiffs or other 501(c) anti-drug organizations.

Nuisance owners are required to pay attorney fees and other litigation costs of prevailing plaintiffs.

Alcohol and Other Drug Abuse Policy and Planning Coordination Act

The Model Act provides a process to institutionalize coordination of statewide drug efforts, offering features and characteristics that, in some combination, varying according to the needs of each state, would characterize such an institutionalized effort.

The Model Act establishes a single entity, a cabinet level executive council, comprised of cabinet officers and state agency heads from all of the major departments involved in alcohol and other drug abuse enforcement, prevention, education and treatment. The chairperson of the Council is to be selected by the governor and to report directly to the governor.

The Model Act provides principles to coordinate statewide anti-drug efforts. It offers options for possible methods of coordinating state drug policies, reflecting different state governmental structures.

Crimes Code Provisions to Protect Law-Abiding Tenants and Neighbors

The Model Act enables law enforcement agencies to act more effectively against drug traffickers and facilitates their ability to apprehend recidivist drug dealers. It creates a new bail option and a sentencing option as a condition of probation or parole to prohibit recidivist drug dealers from returning to specified locations where they committed their drug distribution offenses and at which they have no legitimate business. These "stay-away orders" allows arrest of drug traffickers for returning to their trafficking sites.

Anti-Drug Volunteer Protection Act
(Similar to Good Samaritan laws and limitation of liability provisions of volunteer protection laws in nearly every state.)

The Model Act provides immunity for civil liability if the anti-drug volunteer was:

(1) acting in good faith; and
(2) acting within the scope of the volunteer's role with the anti-drug volunteer organization; and

(3) not engaging in willful or wanton misconduct; and
(4) acting legally.

Community Mobilization Funding Act

The Model Act uses any existing state grant programs to establish incentives for community groups to develop effective collaborative working partnerships within the community. It sets forth a detailed list of application requirements which effectively serve as guidelines for effective, coordinated community-wide action.

Funding applications must:

(1) demonstrate that a community has developed a meaningful coordinated strategy of prevention, treatment and law enforcement activities; and
(2) present evidence of active commitment and involvement of local leaders from the education, treatment, law enforcement and local government fields, as well as meaningful involvement from neighborhood groups, businesses, human service organizations, health organizations and job training organizations.

The Model Act requires a minimum of 25% local matching funds or in-kind resources.

TREATMENT

Addiction Costs Reduction Act (ACRA)

The Model Act requires all group health insurance and health maintenance organizations providing health care coverage in the state to provide coverage of a full continuum of alcohol and other drug abuse and addiction treatment services including:

(1) detoxification;
(2) inpatient rehabilitation;
(3) outpatient;
(4) intensive outpatient; and
(5) family treatment.

Additionally, the Model Act:

(1) establishes minimum levels of coverage within each modality of treatment;
(2) limits provision of services to facilities and programs licensed by the single state authority on alcohol and other drugs;
(3) allows deductibles and copayments if applied similarly to other physical illnesses in the policy; and
(4) prohibits deprivation of coverage in the event of identification and referral from the legal or criminal justice system.

Medicaid Addiction Costs Reduction Act (MACRA)

The Model Act:

(1) requires state Medicaid to provide a full continuum of alcohol and other drug abuse and addiction treatment services as in the Addiction Costs Reduction Act;
(2) establishes minimum levels of coverage within each modality of treatment;
(3) limits provision of treatment services to facilities and programs licensed by the single state authority on alcohol and other drugs; and
(4) prohibits deprivation of coverage in the event of identification and referral from the legal or criminal justice system.

Family Preservation Act

Pregnant addicted girls and women and parents with dependent children face many obstacles when seeking treatment for addiction. Although outpatient services are generally available, there is a severe shortage of alcohol and other drug addiction residential treatment programs designed to serve the inpatient treatment needs of this population. Few inpatient programs are physically constructed or programmatically structured to handle the needs of mothers with newborns and parents with dependent children.

The Model Act encourages development of residential rehabilitation centers which address a parent's addiction in a setting where children can accompany the parent. Additionally, the Model Act encourages these centers to teach parenting, nutrition, and other life skills as well as provide preparation and linkage to educational and vocational programs.

Managed Care Consumer Protection Act

Research has brought to light the cost of untreated alcohol and other drug problems to health care and to the workplace. As the research became increasingly available to business and policymakers, more and more states passed laws requiring coverage of addiction treatment in health insurance policies. The end result of the research and legislative process is that 43 states have now put laws into effect requiring such coverage.

Many insurers and Health Maintenance Organizations (HMOs) are subcontracting this insurance benefit through managed care firms. Managed care firms are a relatively new phenomenon and are almost entirely unregulated in the 50 states and by the federal government. The absence of regulation can create serious inconsistencies in the quality of the service managed care firms provide to health care consumers. Staff with insufficient skills and training in alcohol and other drug diagnosis and referral; failure to use acknowledged alcohol and other drug criteria to assist in diagnosis and placement decisions; and financial arrangements that can create incentives to undertreat are not uncommon. These factors contribute to consumers' difficulty in accessing the alcohol and other drug treatment benefit already provided and paid for in the health insurance policy. Underutilization of the benefit perpetuates health care spending on addiction related accidents and illness, and limits

capturing of health care savings through treatment of the primary illness.

The Model Act encourages full utilization of the alcohol and other drug treatment benefit through consumer protections which:

(1) require the use of alcohol and other drug abuse and addiction criteria when assessing clients;
(2) establish a method to approve alternative alcohol and other drug assessment criteria and the credentials of personnel performing alcohol and other drug assessments;
(3) bar conflict of interest by clinical decision-makers;
(4) establish procedures for handling emergency and non-emergency admissions;
(5) establish a grievance procedure;
(6) set standards for recruitment practices;
(7) set rules for disenrollment and establishes performance standards;
(8) bar discrimination against individuals referred to treatment as a result of contact with the legal or criminal justice system;
(9) establish reporting requirements; and
(10) require consumer materials to be reviewed for simplicity and clarity of language.

Early and Periodic Screening, Diagnosis and Treatment Services Act

Through amendment of state welfare codes, the Model Act makes available to children with alcohol and other drug problems services provided under the federal Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. EPSDT is a preventive and comprehensive health program for all Medicaid-eligible individuals under age 21.

Health Professionals Training Act

Research and surveys find that individuals with untreated alcohol and other drug problems appear frequently in the health care delivery system for a wide array of addiction related illnesses and injuries. Diagnosis and treatment of addictive diseases is clearly critical to proper patient care and to any health care cost containment strategy that is intended to be effective.

The Model Act facilitates health care professionals' ability to diagnosis addictive diseases. It requires all medical, nursing, dental, chiropractic and certain other health professionals who are licensed by the state to complete a course of education on addictive diseases during their professional training. The Model Act also helps ensure that these professionals remain up-to-date on the nature and scope of alcohol and other drug diseases. Instruction on addictive diseases is also a component of their continuing medical education requirements.

Criminal Justice Treatment Act

The Model Act links the criminal justice and treatment communities in a cooperative effort to

identify and provide treatment services for alcohol and other drug addicted individuals entering the criminal justice system. The Model Act requires alcohol and other drug diagnostic assessments of individuals arrested for specified offenses, and inmates convicted of specified offenses. Upon the recommendation of a treatment program, a court may require constructive participation in a treatment program as a condition of pre-trial release, probation, or parole.

Caregivers' Assistance (Policy Statement)

The policy statement endorses the concept that family members, neighbors, or others who take in and provide for the child of an addicted parent should receive state assistance to help care for the child. Because of the complexities of financial assistance programs such as Medicaid, the foster care system, and other child welfare laws and regulations, specific statutory recommendations are still under development.

ECONOMIC REMEDIES

Commission Forfeiture Reform Act (CFRA)

CFRA is a civil, remedial statute which:

(1) removes financial incentives to engage in illegal activity;
(2) restores economic integrity to the marketplace; and
(3) compensates society for economic damages suffered due to illegal activity by rededicating forfeited property to socially beneficial uses.

CFRA preserves civil forfeiture's effectiveness while eliminating the risk of unfair forfeitures.

Substantive and procedural safeguards are built into the Model Act to minimize the impact of forfeiture on legitimate parties. Several mechanisms expedite determination and release of lawful interests. For example, the state may stipulate in a nonjudicial procedure to the exempt interest of an individual. Interest holders with uncontroverted or presumptively legitimate interests may hold an interlocutory sale of property which will perish or be foreclosed prior to resolution of the forfeiture action. The sale proceeds are used to pay sale costs and satisfy exempt interests.

Property management options avoid waste and deterioration of seized assets. Access to and use of seized property pending final judgment is provided for through several property release procedures. Exemptions are established for good faith purchasers for value and those generally without knowledge or reason to know of the unlawful conduct.

CFRA provides in personam procedures and other mechanisms to reach the out-of-state assets of a multijurisdictional drug enterprise. CFRA also defines property subject to forfeiture to capture drug proceeds and other such property illegally used or obtained.

Several of the Model Act's provisions prevent successful use of a drug dealer's evasive techniques. For example, CFRA includes the relation back doctrine which vests title to forfeited property in the state as of the commission of an offense. To prevent disruption of legitimate transfers consistent with a recent Supreme Court decision, CFRA explicitly makes relation back inapplicable to interests found exempt under the Model Act.

Money Laundering Act

Money laundering provides a veil of legitimacy to drug activity. Without this veil, drug money cannot be spent without arousing suspicion and it becomes valueless to the drug dealer. The profit motive on which the drug industry thrives begins to disappear. Money laundering becomes a prime target for enforcement efforts.

The Model Act criminalizes the following activities which facilitate the flow of money and property into illegal channels:

(1) knowingly dealing in the proceeds of unlawful activity;
(2) making property available for the purpose of furthering specified unlawful activity;
(3) knowingly conducting a transaction that conceals or disguises illegal proceeds or avoids transaction reporting requirements; and
(4) engaging in money laundering as a business.

Financial Transaction Reporting Act

Mandated records of significant cash and other suspicious transactions force money movement into the open. People and property involved in illegal transactions are thus exposed.

The Model Act provides states the access to financial data needed to fight money laundering. Federal law requires banks and other financial institutions to submit numerous reports. State and local law enforcement may obtain some reports from federal agencies upon request; others are unavailable. Comprehensive access to information in federal reports helps state and local authorities in several ways, including intervention at early signs of unsound business or illegal conduct and assisting in the proof of cases under investigation.

The Model Act provides the needed access to data by creating state reporting requirements for suspicious and currency transactions, currency or monetary instruments, foreign bank accounts and IRS Form 8300 data. Persons required to file, circumstances triggering filing, and contents of reports parallel federal requirements. Additionally, the filing of certain reports with the appropriate federal agency is deemed compliance with the corresponding state requirement. This avoids dual compliance expenses as much as possible and obviates the need for non-identical training of business employees.

Money Transmitter Licensing and Regulation Act

The U.S. Senate Permanent Subcommittee on Investigations in 1992 reviewed the susceptibility of non-bank money transmitters to money laundering activities. The Subcommittee concluded that these institutions launder billions of dollars annually due to inadequate regulation and supervision at state and federal levels and recommended Arizona's 1991 money transmitter statute as a guide for other states. The Arizona legislation was the result of negotiations between industry and business representatives, regulators, and enforcement officials.

This Model Act is patterned after the Arizona legislation and includes recommendations of the Money Transmitter Regulators Association (MTRA). Through licensing procedures, the Model Act limits entry into the money transmitter field to qualified persons and sound businesses. It regulates businesses in the field and authorizes revocation of licenses for money laundering or other conduct dangerous to consumer funds.

Ongoing Criminal Conduct Act

The Model Act is designed to deter and hold financially accountable persons who knowingly participate in or facilitate a criminal network. Similar to existing RICO and CCE statutes, the Model Act provides criminal sanctions and civil remedies for defined illegal conduct. Violations of the Model Act include the conduct of an enterprise through specified unlawful activity; money laundering; and negligent provision of property and services to assist specified unlawful activity.

Civil remedies of the Model Act include: a tort remedy for the negligent provision violation; private injunctive and treble damages actions; a state action on behalf of injured persons; and a state action on behalf of the general economy, resources and welfare of the state. The civil remedies are narrowly tailored to prevent abuse and to assure equitable division of lawsuit proceeds among victims.

Demand Reduction Assessment Act

Demand reduction sanctions are critical to any effective anti-drug strategy. These sanctions must hold users accountable and help to address an offender's treatment needs. Disincentives other than incarceration, and rehabilitation programs, must be made available to courts sentencing drug users.

The Model Act imposes a fee on all individuals convicted of offenses involving controlled substances, precursor chemicals, and driving under the influence of alcohol. It deposits collections into a Demand Reduction Assessment Fund administered by the single state authority on alcohol and other drugs. Fund expenditures are to be used almost exclusively for education, prevention, and treatment services. Courts may offset an offender's out-of-pocket expenditures for his or her own treatment or education program against the assessment

amount. Also, courts may order indigent offenders to perform community or reformative service in lieu of paying a specified portion of the assessment.

CRIMES CODE

Prescription Accountability Act

Illegal diversion of prescription drugs is estimated to be a $25 billion annual market. The Model Act addresses this problem through creation of a statewide Electronic Data Transfer (EDT) system. The system compiles prescription information; compares it to pre-established program criteria; and excerpts out certain prescriptions for further review and investigation. The EDT system merges the triplicate prescription, drug utilization review (DUR) and other existing systems to achieve a new level of technology. While state officials receive relevant information rapidly, the system protects patient privacy. Most data exist only in computer encoded form, and access to information is limited to officials directly involved in investigations.

State Chemical Control Act

Domestic illegal laboratories are capable of producing enough stimulants, depressants, hallucinogens and narcotics to satisfy America's illegal drug demand. These laboratories thrive where chemicals are readily available on the open market or easily diverted from legitimate commerce. The Model Act is a preventive measure, designed to halt the diversion of precursor chemicals into illegal channels.

The Model Act creates a monitoring system which tracks a chemical from its source to its final use. It authorizes the state to regulate transactions involving 35 precursor chemicals frequently used in illicit drug production. The Model Act requires possessors, distributors, and manufacturers to register or obtain permits, maintain inventories, keep records, and submit reports regarding chemical transactions. To facilitate lawful chemical transfers, the Model Act establishes exemptions for legitimate medical products and simplified compliance procedures for those with a history of legal chemical use.

Controlled Substances Analogs or Dangerous Synthetic (Designer) Drugs Act

America has experienced a growth in the popularity of "designer drugs", or controlled substance analogs. Analogs vary only slightly in molecular structure from commonly abused controlled substances. Because of their different chemical structure, these dangerous new drugs are exempt from regulation.

The Uniform Controlled Substances Act (UCSA), promulgated by the National Conference of Commissioners on Uniform State Laws, defines and prohibits the creation and distribution of "designer drugs". The UCSA allows emergency scheduling of analogs to avoid an imminent hazard to the public safety. Simultaneously, the UCSA permits legitimate scientific research

to continue and protects the use of analogs for purposes other than human consumption.

Wiretapping and Electronic Surveillance Control Act

Electronic surveillance is a critical weapon in any effort to apprehend and prosecute major narcotics traffickers. The Model Act, based on federal law, combines effective access to this tool with appropriate safeguards. The Model Act allows court authorized interception of wire, oral or electronic communications that are being conducted to further certain criminal activity. The Model Act also permits, upon court approval, limited use of pen register and trap and trace devices. The Model Act requires minimization of interceptions; sets time limits for use of intercept, pen register, and trap and trace devices; and contains other safeguards to protect innocent parties.

Continued Access to Electronic Communications Act

The nation's telecommunications systems are often used in the furtherance of serious and sometimes violent criminal activities, including illegal drug trafficking. The Model Act relies on the telecommunications industry to develop technical solutions which will ensure that technology continues to meet the needs of law enforcement while remaining cost effective. The Model Act requires telecommunications service providers, when served with a court order, to be able to identify and provide the entire content of specific telephone conversations to the exclusion of all others, regardless of the technology involved.

Driving While Under the Influence "DUI" of Alcohol and Other Drugs Act

Alcohol and other drug use significantly contribute to this country's annual highway death toll. The Model Act follows the lead of states dedicated to decreasing alcohol and other drug related highway fatalities. It incorporates a per se illegal blood alcohol concentration limit of .08% for adults; makes it per se illegal for persons under age 21 to operate a motor vehicle with an alcohol concentration of any measurable or detectable amount (.02% or more); and authorizes administrative revocation of licenses for refusal to take a chemical test or for a chemical test failure. While permitting swift revocation, the administrative procedures protect an offender's due process rights through an appeals and judicial review process.

DRUG-FREE FAMILIES

Preventive Counseling Services for Children of Alcoholics or Other Drug Addicts Act

Minor children of alcoholics or other drug addicts may face substantial difficulty in obtaining preventive alcoholism or addiction counseling services without the involvement of their alcohol and other drug addicted parents. Given the circumstances of denial and stigma associated with alcoholism or other drug addiction, alcoholic or other drug addicted parents may refuse to consent to such counseling services for their children. As these children are at high risk for a number of preventable problems related to their parents' involvement with

alcohol and other drugs, this legislation establishes a means through which those children of alcoholics or other drug addicts can be referred to and receive appropriate preventive counseling without obtaining parental consent.

The Model Act provides that in cases where seeking parental consent is not in the child's best interest, counselors may help children if they document the reasons for providing services; keep complete records of the services; and periodically evaluate the desirability of contacting the parents. Family participation in alcoholism and addiction counseling is recommended, but should not be allowed to form a barrier to needed services.

Underage Alcohol Consumption Act

The Model Act establishes a comprehensive law that addresses all aspects of the purchase, possession, or consumption of alcohol by those under the age of 21. While all states have established a minimum legal drinking age of 21, many do not prohibit all aspects of illegal alcohol consumption in a comprehensive fashion. Also, some states do not have statutes addressing the use of fraudulent identification to purchase, possess, and consume alcohol by underage drinkers.

Sanctions for violations of the Model Act include the loss of one's driver's license or a delay in the eligibility to receive a driver's license. The sanctions also require that youths who violate this Model Act be assessed for alcohol and other drug problems and must successfully complete any required education or treatment program.

Provisions also address adults and establishments that provide alcohol to underage drinkers.

Revocation of Professional or Business License for Alcohol and Other Drug Convictions Act

Individuals licensed to practice in a state have a special duty to perform and work in a drug-free manner. Under the Model Act, any individual to whom any entity or agency of the state has issued any license or other authorization to conduct an occupation shall generally have his or her license suspended or revoked if that individual is convicted of an illicit drug offense or driving while under the influence of alcohol. Provisions are made to allow a person to have his or her license reinstated following successful completion of an alcohol and other drug treatment or education program.

Tobacco Vending Machine Restrictions Act

The Model Act restricts the sale and accessibility of cigarettes and other tobacco products through public vending machines to minors under the age of 18. It prohibits the sale of cigarettes and other tobacco products from public vending machines unless the vending machine is located in a bar, tavern, cabaret, club, or any establishment for which the minimum age for admission is 18. Provisions are included for the placement of warning stickers on all tobacco vending machines.

Sensible Advertising and Family Education Act

The Model Act mandates the placement of health and safety warnings on all alcohol advertising originating within the state, including TV, radio, and print advertising. Alcohol advertising appearing on cable television would not be covered due to preemption of federal regulations. This Model Act is based on the proposed Sensible Advertising and Family Education Act currently being considered by the U.S. Congress.

DRUG-FREE SCHOOLS

K-12 Substance Abuse Instruction Act

The Model Act establishes mandatory, integrated K-12 substance abuse curricula for all students in a state. The alcohol and other drug abuse curricula must be integrated into the health curriculum, which indicates the emphasis on building healthy people instead of focusing on risks and problems. Further, the instruction also must be integrated into other appropriate courses of study.

Local school districts, with guidance and approval from the state, shall develop and implement their own alcohol and other drug abuse curricula; train their teachers through in-service programs; and offer informational and educational programs for parents and students. Provisions are included for the development of student assistance programs and employee assistance programs. An evaluation component is also included to measure the efficacy of the substance abuse instruction.

Smoke-Free Schools Act

The Model Act prohibits smoking or the use of tobacco or tobacco products in schools or on school grounds or property by anyone.

School Intervention for Students with Substance Abuse Problems Act

The Model Act allows teachers and school administrators to intercede in the best interest of their students when possible personal or family alcohol and other drug problems interfere with their education. It establishes a mechanism through which teachers and administrators can refer students for assessment and treatment of suspected or known alcohol and other drug abuse problems.

Alcohol- and Other Drug-Free Universities and Colleges Act

The Model Act tightens the Federal Drug-Free Schools and Campuses Act by placing more responsibility on colleges and college students to control underage and abusive alcohol consumption. Under the Model Act, colleges must develop and implement a plan that assures to the highest degree possible that underage drinking and alcohol and other drug abuse by

college students is curbed through the use of preventive and educational programming, student assistance programs, counseling and referrals to treatment, off-campus alcohol consumption reduction strategies, and effective enforcement of policies and laws.

Drug Free School Zone Amendments

The Amendments improve current drug-free school zone provisions by enhancing punishment for sale of tobacco, tobacco products or alcoholic beverages to underage individuals. Certain areas frequented by children and school-sponsored events are also included in the definition of drug-free school zones. The Amendments also addresses restrictions on advertising of tobacco, tobacco products, or alcoholic beverages with drug-free zones.

Truancy (Policy Statement)

The Policy Statement recommends that state legislatures address the issue of truancy and its impact on drug-free schools and their students. The recommendation calls upon schools to address truancy problems with the assistance of local law enforcement to insure that youth remain in school where they can be educated or taught a skill, rather than allowing the problem to persist, which often leads to a higher drop-out rate and criminal involvement. This Statement also offers mechanisms through which effective truancy programs can be developed at the local school district level.

DRUG-FREE WORKPLACE

Drug-Free Private Sector Workplace Act

The Model Act provides the framework for the development of comprehensive private sector drug-free workplace programs. It establishes employee assistance program or rehabilitation resources; mandates employee substance abuse education; mandates supervisor alcohol and other drug abuse education and training; provides guidelines and requirements for substance abuse testing; and mandates strict confidentiality provisions.

Employers who establish all aspects of the above comprehensive private sector drug-free workplace program shall qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test.

Drug-Free Workplace Workers' Compensation Premium Reduction Act

The Model Act authorizes the state insurance agency to provide a five percent discount on workers' compensation insurance policies for employers who establish and maintain a comprehensive drug-free workplace program. As with the Private Sector Act, the drug-free workplace must include employee assistance programs or rehabilitation resources, employee substance abuse education, supervisor substance abuse training and education, substance abuse

testing requirements, guidelines, and safeguards, confidentiality provisions, and other matters relative to the establishment of such a workplace.

Employee Assistance Programs and Professionals Act

The Model Act provides for the licensure and regulation of employee assistance professionals. It creates a means through which individuals must be licensed and certified to practice as employee assistance professionals. The Model Act provides guidelines for evaluating the efficacy of employee assistance programs and employee assistance professional supervision requirements. It also establishes an allowance tax credit for employer expenditures for certain employee assistance programs, and a state employee assistance consortium demonstration grant.

Drug-Free Public Work Force Act

The Model Act provides for the suspension or termination of any public employee, including any elected official, who is convicted of any criminal offense involving a controlled substance or for driving under the influence of alcohol and other drugs. Provisions are made to allow public employees who abuse alcohol and other drugs to receive treatment without the loss of employment.

Employers who establish all aspects of the above comprehensive private sector drug-free workplace program shall qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test.

Drug-Free Workplace Act

The Model Act sets forth a condition that each state contractor or grantee certifies that it provides a drug-free workplace. All contractors, subcontractors and grantees must implement a drug free workplace by: publishing written policy statement on substance abuse; establishing an alcohol or drug awareness/education program; notifying the state agency of an employee convicted of any criminal drug statute conviction or DUI; and requiring the employee convicted to engage in a drug treatment or rehabilitation program.

The Model Act requires suspension or debarment of contractors/grantees that violate its requirements.

Employee Addiction Recovery Act

The Model Act amends the state revenue code to encourage employers to provide alcohol and other drug abuse treatment programs and services to their employees by providing a state tax credit for the cost of such programs and services.

U.S. Department of Justice

Office of Policy Development

Deputy Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Grace L. Mastalli
Deputy Assistant Attorney General
Office of Policy Development

SUBJECT: Preliminary Review of the Recommendations of the President Commission's Model State Drug Laws

At your request OPD staff quickly reviewed and analyzed the five reports and recommendations of the President's Commission on Model State Drug Laws. The results of that preliminary review were provided in draft form on October 1, 1993 to Laurie Robinson. It was my impression that the results of our review also had been provided to you and Phil Heymann for use in conversations with Mike Moore at that time. I subsequently learned that was not the case and am therefore providing the following OPD analysis for your information. The same information will be the basis of our discussion with the Commission.

I. Introduction

The President's Commission on Model State Drug Laws was created in 1990 (and funded in 1992) to review and identify the most effective state laws pertaining to reducing the supply and demand for illegal drugs. To that end, the Commission is in the late-stages of producing a comprehensive, five-volume set of model drug legislation, recommended for consideration by state legislatures, spanning issues of (1) community mobilization; (2) economic remedies against drug traffickers; (3) law enforcement; (4) drug treatment; and (5) prevention (drug-free families, schools and workplaces). The Commission has asked for federal funding to complete its work, and the question is whether the Commission's work supports our own drug policy agenda -- as reflected in Administration pronouncements and the ONDCP's 1994 Interim Strategy -- and, as such, may deserve additional federal financial support.

Much of the model legislation (with a few exceptions) relies on the "carrot and stick" approach, by holding out the threat or the promise of various sanctions unless and until the drug offender submits to an appropriate treatment program. Also, much of the legislation -- in keeping with your emphasis on drug prevention and treatment -- is geared to (1) improving the quality of existing drug education and treatment programs (through better-trained professionals and improved community-level organization); and (2) making treatment services more available in schools and the workplace through, for example, expanded health insurance coverage and tax credits to employers who provide alcohol and other drug treatment programs. Finally, with respect to law enforcement, the model legislation makes available to the States various weapons to combat organized drug activity that are already, for the most part, available at the federal level and fully consistent with the Administration's priorities. In short, the model legislation -- excepting a few proposals discussed below -- reinforces the Administration's emergent drug-control strategy and should be supported.

This assessment (1) discusses (in some detail) the Commission's recent model state drug legislation, with preliminary comments on its major initiatives; and (2) identifies where the Commission's proposals may conflict with, and where they reinforce, the Administration's drug-control priorities.

II. Discussion of the Model State Drug Laws (by subject area.)

- Community Mobilization

The so-called "Community Mobilization" acts give community organizations new tools to drive out drug-trafficking tenants, and, consistent with our efforts to help empower communities, offer incentives and a structure for coordinating drug strategy at the state and local levels. Although some of these proposals are a powerful complement to federal community-policing initiatives and empowerment-zone strategies, **others, in present form, may inadvertently and unadvisedly displace drug users from their communities.**

- The "Expedited Eviction of Drug Traffickers Act" authorizes landlords/owners or tenant organizations to sue to evict from his premises any resident involved in drug-related criminal activity at those premises. This legislation would be desirable if major traffickers' operations could be disrupted by such eviction procedures; however, it is more likely that major drug operations would survive, shuttled to new bases of operation one step ahead of the next interested plaintiff. Instead, because the Act **allows permanent removal of any member of a**

tenant's household (even a minor member who is not a signatory to a lease) who has even one time distributed drugs (or permitted or tolerated such an offense to occur), this expansive legislation may simply disrupt the fragile family setting of the young, low-level drug offender-- and, with it, federal hopes of his re-integration into the community. In this respect, it is crucial that the act retains some flexibility by allowing courts to order "probationary tenancy," whereby a drug-dependent resident, otherwise subject to complete eviction, can be allowed to stay on the condition that he or she undergo an appropriate course of drug treatment. Still, this safeguard does not answer the underlying question: is it best to separate young drug-offenders from their homes and families, leaving them subject to the custody of welfare agencies or in the streets where they may pose even a greater threat to the community?

o The companion legislation to the "Expedited Eviction" act -- "The Drug Nuisance Abatement Act" -- lets neighborhood organizations close down properties constituting a drug "nuisance." Although the act is directed to shooting galleries or crack houses, it, in present form, extends to fairly casual use in personal residences by defining as a "nuisance" any premises on which two or more non-residents repeatedly meet to consume illicit drugs. Given its breadth, the act threatens to eject onto the street numerous drug-using residents (including mothers with small children and pregnant women), and the Act's only solution is to provide the evictees with information about where they can go to get drug-treatment information. (Unlike the "Expedited Eviction" Act, drug-dependent residents may not remain on the premises on the condition that they agree to submit to treatment). More troubling still, the landlords face stiff penalties if they do not evict drug-trafficking tenants (as broadly defined in the "Expedited Eviction" Act); therefore, landlords have an incentive to seek preemptively to remove any tenants suspected of drug involvement. Finally, there are concerns that this legislation will simply move the drug problem to other locations and/or become a vehicle for false, retaliatory claims. However, if "nuisances" were limited to places of large-scale and recurrent drug consumption or distribution involving numerous non-residents, with better care taken of evictees left homeless, this legislation might prove to be a valuable means of empowering people to take back their communities from drug dealers.

o Crimes Code Provisions to Protect Law-Abiding Tenants and Neighbors" would allow a court, as a bail or sentencing option, to prohibit drug dealers from entering the residential premises at which the drug-related crime occurred. It is apparently designed to prevent non-resident drug traffickers -- not otherwise affected by the previous two model laws -- from resuming their drug operations. Insofar as this proposal (1) is

not designed to keep drug convicts or indictees away from their homes and families, and (2) is structured to encourage courts principally to restrain recidivist drug dealers, it is more appropriate. However, **it is presently drafted too broadly and authorizes -- indeed, in some cases, requires -- courts to prevent even first-time drug defendants from returning to their own residences.**

o The proposed establishment in each state of a multi-disciplinary, single state-wide entity -- comprised of all state agency heads involved in drug abuse, education, and treatment -- is consistent with federal emphases on coordination of local drug control efforts and integration of criminal justice and public health perspectives.

o The "Community Mobilization Funding Act" would use state grants to create incentives for community groups to develop collaborative, anti-drug partnerships within the community and become more involved in the development of anti-drug strategies. This proposal works well with federal community policing initiatives that call upon community groups to enter partnerships with local law enforcement.

o Economic Remedies

The Administration is committed to stripping the profits from major drug dealers and using the full force of the investigative and prosecutive tools at its disposal to ensure that drug trafficking organizations are dismantled. On the whole, the model state legislation deserves praise for attempting to equip the states with some similar tools.

o The Commission's "Forfeiture Reform Act," which draws upon existing model asset seizure legislation drafted by a collection of state and DOJ prosecutors, would preserve civil asset forfeiture-- which has generated claims of abuse by the DEA and others for allowing seizures from innocent persons. However, the Commission's proposal attempts to minimize the impact of forfeiture on legitimate parties by excluding real property from forfeiture in use and simple possession cases (limiting forfeiture to personal property used to facilitate a possession case), and creating a good-faith purchaser exception in all civil forfeiture cases. This very elaborate and complex legislation warrants further scrutiny by the Deputy's office in the light of policy changes for federal forfeiture now under consideration.

o The Administration believes in the importance of creating disincentives to drug use other than incarceration. **To that end, the "Demand Reduction Assessment Act" would impose a fee on all individuals convicted of substance-related offenses (including drunk driving), those funds to be used mainly for**

education, prevention and treatment services. Addressing the concern that indigent drug-dependents might be deprived of resources needed to return on the path toward productivity, the proposed act would authorize courts to (1) offset an offender's out-of-pocket expenses for his drug treatment or education program; and (2) order an indigent offender to perform community service in lieu of payment. Therefore, this legislation is promising, because it may well help provide additional funds for treatment resources and steer drug-dependent offenders toward treatment and/or productive community involvement.

o The Commission provides a model for criminalizing certain money laundering activities that are widely recognized as critical to the perpetuation of drug enterprises. (At present about half the States have money laundering or related statutes). The Commission's version is compatible with the federal money laundering statute and with federal supply-reduction efforts.

o The Commission also would create state reporting requirements for currency transactions in an effort to provide state authorities, who now rely on information in federal reports to which they have only limited access, with more of the financial data used to fight money laundering. Duplication is a concern here, because federal law already mandates a battery of reports. The legislation attempts to eliminate dual compliance expenses by excusing persons who meet federal requirements and making state requirements virtually parallel to the federal requirements. Still, a more simple solution might be appropriate, such as increasing state access to federal reports.

o The Commission proposes an "Ongoing Criminal Conduct Act" similar to the existing RICO statute (and adopting some recent reform efforts suggested for RICO).

o Law Enforcement

The Model legislation properly attempts to keep pace with high-tech illegal drug manufacture and hi-tech, anti-drug surveillance.

o The "Model Prescription Accountability Act" is designed to control the diversion of prescription drugs with a potential for abuse. The federal Controlled Substances Act (CSA) classifies prescription drugs according to their potential for abuse and, for drugs on the danger list, requires close record-keeping and creates information systems to detect diversion. Most states have adopted their own CSAs that, though similar to the federal law, often contain more restrictive classifications and prescription systems. The model legislation builds upon what is already in place in several states-- electronic data networks, connecting dispensing pharmacies to a central data repository. These systems allow rapid regulation of sales of classified

prescription drugs. The electronic monitoring system also has the added advantage of identifying persons who may be addicted to prescription drugs, so that they may be referred to treatment.

o The model legislation creates a mechanism for tracking precursor chemicals from source to use, to prevent diversion of those chemicals into illegal channels. (At present, only 18 states have specific chemical tracking requirements, and the need for coordinated, state-by-state tracking is apparent.) By requiring annual registration of persons who manufacture, sell, or deliver regulated chemicals and a permit for each person who seeks to possess a regulated chemical, the legislation creates the risk of commercial disruption. However, the Act attempts to cure such problems by excluding from regulation certain presumptively legitimate classes of persons -- such as medical practitioners and pharmacists -- as well as those who maintain a regular supply and purchase relationship with a distributor or who have a record of lawful use. After preliminary review, this seems like a good idea.

o The Model Act, based on federal law, allows court-authorized interception of wire, oral, and electronic communications. (At present, 37 states have some type of electronic surveillance statute, but these statutes are rarely utilized).

Treatment

The President strongly believes that all individuals who need drug treatment can get it. The Commission's proposals work toward that end by mandating provision of a range of treatment services through insurance plans, HMOs, and the Medicaid system.

o 43 states have now put laws into effect requiring coverage of addiction treatment in private health insurance policies. The model act would require all group health insurance plans and HMOs to cover a broader range of alcohol and drug abuse treatment services. A related "Managed Care Consumer Protection Act" would place fairly strict regulations on the alcohol and drug treatment programs offered through health insurance by so-called "managed care" firms. **We need to look into whether, and to what extent, such state legislation contemplated by the Commission would be preempted by federal health care legislation.**

o The Commission would require state Medicaid to provide a full range of drug abuse treatment services.

o The model "Health Professionals Training Act" supports the Administration's commitment, articulated in the ONDCP's Interim Strategy, to ensure that those in the health care profession are properly trained to treat substance abusers.

o The proposed "Family Preservation Act" would encourage, through grant money, the development of residential rehabilitation centers geared to pregnant addicts and drug dependent parents with young children. The Act addresses the problem noted in the Interim strategy that a very small percentage of pregnant addicts presently receives drug treatment. Another proposed act would amend state welfare codes to make available to children with drug and alcohol problems services under the federal Early and Periodic Screening, Diagnostic and Treatment program. These proposals would reinforce our commitment to orient drug-control efforts to our Nations' children.

o The "Criminal Justice Treatment Act" coincides with the Administration's view that the criminal justice system should be used as a primary locus for treatment, and advocates (1) mandatory drug testing immediately following a felony arrest; (2) comprehensive diagnostic assessment to determine drug dependency of anyone who tests positive, refuses to be tested, or has a criminal drug history; (3) immediate court-ordered, licensed treatment (even before final conviction) for those determined by the assessment process to be in need of treatment; (4) use of the treatment process as a condition of pretrial release, sentence, probation or parole or supervised release; (5) provision of treatment during terms of incarceration; and (6) careful monitoring of defendants referred to treatment, including but not limited to periodic drug testing. This legislation has real promise, as it embraces the Administration's call for linking the criminal justice and treatment communities in a cooperative effort to identify and provide treatment services for drug-addicted individuals entering the criminal justice system. One possible concern, however, is that the Act, in seeking the earliest possible intervention, authorizes courts to order treatment of arrestees prior to adjudication of their offenses and, apparently, even to those who are not released pre-trial. If additional sanctions could be imposed upon an addicted arrestee who remained in jail (perhaps because he had been denied bail or could not post bail) and who refused court-ordered treatment while in jail (that is, if the court could do more than merely take away the "benefit" of pre-trial release), this might pose constitutional problems by approaching the criminalization of the status of drug dependency. In addition, it is not clear the extent to which treatment must be effective, multidisciplinary and include adequate followup or aftercare.

o <u>Drug-Free Families</u>

The model legislation in this area is consistent with the federal goal of turning our youth away from substance use.

o The "Underage Alcohol Consumption Reduction Act," building on suggestions from the Office of the Inspector General

of HHS and the National Transportation Safety Board, attempts to close loopholes that exist in many states' legislation pertaining to underage drinking laws by prohibiting (1) minors' attempts to purchase, or solicitation of someone to purchase, alcohol; (2) minors' consumption or possession of any alcoholic beverage; (3) sale or furnishing of alcohol to underage persons and (4) use of fake ID. Sanctions for unlawful purchase, consumption or possession of alcohol, and for use of fake ID, include mandatory suspension of driver's license (90 days for first offense; 6 months for second offense; one year for any offense thereafter), as well as fines and community service. (The possibility of license reinstatement after successful completion of an alcohol treatment program exists). These penalties, recommended by the National Highway Traffic Administration, seem excessive (especially the mandatory license revocation) and raise the possibility that such laws will be underenforced or, worse, applied more often to minority offenders. Further, it seems likely that the license revocation sanction for underage drinking would be harsher than many states' drunk-driving penalties, which makes little sense.

o Model legislation would facilitate the provision of preventive counselling services to children of alcoholics or other drug addicts by removing the requirement that exists in many states that children must first have prior permission from a parent or legal guardian to receive such services. Instead, counsellors who have been independently approached by children of drug abusers might offer their services without first getting parental consent if they determine in good faith that consulting the parents would not be in the child's best interest, document such reasons, and keep complete records of the service.

o Because most states ban the sale of tobacco to persons under age 18, the Commission proposes limiting the placement of tobacco vending machines to locations where the minimum age of admission is 18.

o Drug-Free Workplace

The model legislation, to its credit (and consistent with federal aspirations), seeks adoption of comprehensive drug-free workplace programs that focus not merely on drug testing, but also on substance-abuse education and treatment programs.

o The "Drug-Free Private Sector Workplace Act" legalizes (though does not require) drug testing on the job, and provides that as a reward for implementing a comprehensive drug-free workplace program (as defined in the Act), private employers will be shielded from legal claims for acting in good faith on the results of a substance abuse test (provided the employer also adheres to various procedural safeguards). A related piece of legislation offers employers who establish and maintain a

comprehensive drug-free program a 5% discount on workers' compensation insurance policies offered by state insurance agencies. These are innovative approaches to encouraging employers to develop comprehensive drug-free programs.

o The "Drug-Free Workplace Act," which mirrors the 1988 Federal Drug-Free Workplace Act, requires that all state contractors and grantees certify that they have a drug-free workplace. To so certify, each entity must establish an annual alcohol and drug awareness program, publish and distribute a written policy statement that use of drugs is prohibited in the workplace, and inform each employee that as a condition of employment on the grant they must abide by the written policy.

o The "Drug-Free Public Work Force Act" allows public employees who are substance abusers to identify themselves and come forward for treatment without losing their jobs "solely on the basis of . . . drug dependence." Those who fail to come forward and are subsequently convicted of a criminal offense involving the possession or use of drugs or driving under the influence of alcohol are placed on probationary employment pending their successful completion of a recommended treatment or education program (and terminated if they fail so to participate). A second such conviction -- or a first conviction for drug trafficking -- results in immediate job termination. This "carrot and stick" approach is likely to lead more drug-dependent employees into treatment, and, for this reason, is commendable. However, this section warrants a review in the light of ADA and related civil rights requirements.

o The "Employee Addiction Recovery Act" would provide employers with a state tax credit for 50% of their qualified expenses on alcohol and drug abuse treatment programs.

o <u>Drug-Free Schools</u>

o The Commission would mandate that schools establish an integrated substance-abuse curriculum for all students from K-12. The legislation would describe system mandates, not prescribe individual activities and programs. Certainly a challenging anti-drug curriculum is critical, because education is one of the most effective antidotes to substance abuse. However, it is not clear whether, and to what extent, the proposed legislation would go beyond the existing requirements of the federal Drug Free Schools and Communities Act that schools institute comprehensive drug prevention programs.

o The "Intervention for Students With Substance Abuse Problems Act" would (1) require any teacher or school administrator with reasonable cause to suspect that a student has a drug or alcohol problem to notify the school's student assistance professional; and (2) establish a process through

which teachers in schools without a student assistance professional can refer students to a licensed treatment program, and would shield such teachers from civil liability for such referrals. The second part of this Act seems to be an important and effective way to get at drug problems early; however, placing on teachers a legal "duty" to report is of questionable value and might even encourage needless references by teachers concerned about getting in trouble.

o The ONDCP Interim Strategy calls on institutions of higher education to strengthen their efforts to insure that our youth can learn in a drug-free environment. Modelled in part on the federal Drug-Free Schools Act, the "Alcohol and Drug-Free Colleges and University Act" sensibly requires, on the threat of loss of state funding, that colleges and universities develop, submit, and implement comprehensive and detailed strategies to curb underage drinking and drug abuse.

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