

THE WHITE HOUSE

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS



Executive Summary

December 1993

Final Report: The President's Commission on Model State Drug Laws

Executive Summary

Alcohol and other drug problems are among the most significant social issues this nation faces in the 1990s and beyond. These problems have no political, socioeconomic, or human boundaries. They are public health as well as law enforcement problems, community problems as well as individual problems. Alcohol and other drug problems affect 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 suffer from 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 are overcrowded with drug offenders. Some jurisdictions, at great cost to society, have expanded the corrections system 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 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, including family members, friends, neighbors, and others like ourselves. It is critical that the problems of untreated addicts and alcoholics, intoxicated drivers, drug-addicted criminals, alcoholic or addicted pregnant women or women with dependent children, alcohol or other drug abusers in the workplace, underage drinkers, drug traffickers, and alcohol and other drug abusers whose health has been debilitated by their addictions must be addressed for this nation to prove able to limit its alcohol and other drug problems. Their problems are our problems.

Acknowledging that alcohol and other drug abuse pervades all levels of society, this report will be strikingly different from other efforts that have urged a holy war on drug abusers. The legislative remedies offered within do not rely exclusively on punishment and deterrence to "solve" drug problems. Instead, the goal of this report is to establish a comprehensive continuum of responses and services, encompassing prevention, education, detection, treatment, rehabilitation, and law enforcement to allow individuals and communities to fully address alcohol and other drug problems. Tough sanctions are used to punish those individuals who refuse to abide by the law. More

importantly, the recommended sanctions are designed to be constructive, attempting to leverage alcohol and other drug abusers into treatment, rehabilitation, and ultimately, recovery.

FORMATION OF THE COMMISSION AND ITS ACTIVITIES

Responding to growing concern that state governments seemed to be addressing the problems of drugs without sufficient comprehensive planning, the United States Congress mandated the creation of a bipartisan, presidentially-appointed commission to develop model state drug legislation. (See, Anti-Drug Abuse Amendments of 1988, Pub. L. No. 100-690, sec. 7604.)

Twenty-four Commissioners were appointed by the President of the United States in November 1992. The Commissioners included state legislators, treatment service providers, an urban mayor, police chiefs, state attorneys general, a housing specialist, district attorneys, a state judge, prevention specialists, attorneys, and other experts.

The Commissioners developed the following mission statement

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

The Commission divided itself into five task forces, each responsible for a particular aspect of alcohol and other drug problems. During the course of the Commission's six month lifespan, each of the task forces held a public hearing to receive information, gather testimony, and acknowledge the efforts of successful individuals, programs, and policies. The Commission's task forces and public hearings focused on the following issues:

- Economic Remedies Against Drug Traffickers
(San Diego, California, January 6, 1993)
- Community Mobilization
(Detroit, Michigan, January 27, 1993)
- Crimes Code Enforcement
(Tampa, Florida, February 16, 1993)
- Alcohol and other Drug Treatment
(Philadelphia, Pennsylvania, March 10, 1993)
- Drug-Free Families, Schools, and Workplaces
(Washington, DC, March 31, 1993)

In addition to the public hearings, the Commission conducted site visits at three alcohol and other drug treatment programs: Second Genesis in Maryland, a general treatment program; Amity Therapeutic Community at R.J. Donovan Prison in California, specializing in the criminal justice population, and; Operation PAR in Florida, specializing in pregnant women and family members with dependent children.

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 other concerned citizens. These diverse interests represented various perspectives, including law enforcement representatives, treatment providers, community groups, employee assistance professionals, lawyers, legislators, and laymen. They identified 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, national commissions examine particular problems and assemble a body of final recommendations to address those problems. Although these recommendations 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 have merit and are practical, much of the Commission's model legislation is based upon legislation 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 states throughout the country.

In addition, self-funding mechanisms were added to the legislation wherever possible to insure that state and local alcohol and other drug abuse efforts would be sustained, even during times of budgetary constraint. Some of the recommended Model Acts, including the asset forfeiture, nuisance abatement, expedited eviction, and demand reduction penalties statutes, generate resources for communities to use in their prevention, treatment, and law enforcement efforts.

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 kindergarten through grade twelve 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. Com-

munity efforts to protect children from dangerous drug trafficking within their neighborhoods will be bolstered.

The Commission intends to promote drug-free lifestyles for parents as well as for children and youth. The Commission offers legislation that will enable pregnant alcohol and/or other drug abusing mothers to receive treatment for their addictions. The Commission's legislation will insure that Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program funding can be spent for alcohol and other drug treatment services for children in need. Also, parents with alcohol and/or other drug problems will be able to receive assistance through workplace employee assistance programs and rehabilitative resources.

Despite the emphasis on prevention and education, the Commission recognizes that many people will enter into patterns of abusive alcohol and other drug use. Thus, the Commission establishes a number of provisions for the treatment and rehabilitation of alcoholic and drug-addicted individuals. Some legislation expands the points of intervention for such individuals. For example, most drunk drivers and offenders entering the criminal justice system will be assessed for alcohol and other drug problems. In this manner, alcohol and other drug problems can be identified and referred to appropriate forms of treatment, potentially preventing their occurrence in the future. Other legislation expands the length and comprehensiveness of treatment services.

The Commission places considerable emphasis on this continuum of care, and in particular, on alcohol and other drug treatment. In the past, some have argued that treatment does not work, that addicts and alcoholics never recover, or that treatment does not reduce alcohol and other drug-related problems. However, study after study shows the benefits of treatment, to the individual and to society, so long as the treatment facilities are licensed by the state and the treatment provided includes proper assessment, referral, and a full continuum of care. Addiction is a chronic disease, marked by periods of relapse. Like other chronic illnesses, addictive diseases progress along a continuum of deterioration and severity. Addiction treatment reflects the progression of the illness, also advancing along a continuum of service. Intensity and duration of treatment depends 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. Studies show that treatment early in the disease progression is generally less intense, less expensive, and shorter in duration than when diagnosis and treatment are delayed.

In an effort to ascertain scientific evidence of the benefits of addiction treatment, the Commission asked researchers at the Center of Alcohol Studies at Rutgers University to prepare a socioeconomic evaluation of such evidence. This report, which examines numerous cost-benefit, cost-effectiveness, cost-offset, and cost-of-illness analyses, clearly indicates the benefits of treatment, whether in economic and budgetary terms or in the quality of life of individuals and their families.

After alcoholism or addiction treatment occurs, numerous studies find marked reductions in health care use by the treated individuals and by their families, in workplace accidents, absenteeism, and sickness claims, and in alcohol and other drug related injuries and crime. For some, these reductions are sustained over a lifetime. For others, the reductions are shorter in duration.

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 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 overwhelm the criminal justice system. This finding reflects a truism 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 respond properly 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.

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 such dangerous individuals for the benefit of the larger community. By empowering all facets of the criminal justice system to recognize the nature of alcoholism and addiction and to become problem solvers, police, the courts, and corrections will prove better able to address the underlying problems of alcohol and other drug abuse and to affect long-term, positive change.

During America's long struggle with drug abuse, debate often has revolved around the issue of whether to focus the nation's efforts on restricting the supply of drugs or on reducing the demand for drugs. In the past, more attention has been given to reducing the supply of drugs, primarily through law enforcement efforts. International operations, interdiction programs, and intensive law enforcement efforts against the various levels of drug trafficking organizations have received the bulk of attention and funding. While the Commission supports continued efforts to address the problems caused by and related to the supply of drugs, it also believes that sound public policy must increase its focus on the demand for drugs.

Even here, there is a role for law enforcement. Beyond its traditional criminal justice functions, law enforcement can be an effective prevention and drug demand reducing tool. Police officers who work in schools not only develop strong positive relationships with schoolchildren but also embody the threat of punishment that keeps many individuals from breaking the law in the first place. Law enforcement also can be an effective point of intervention for alcoholics and addicts who come in contact with the criminal justice system, by conducting mandatory alcohol and other drug problem assessments and offering opportunities for treatment. And, of course, law enforcement remains a necessary tool of punishment and a means to protect society from those dangerous individuals who cannot be rehabilitated. The Commission intends to support all such efforts through its model legislation and recommendations.

BUILDING A CONSENSUS

Recognition of these fundamental shifts in thinking did not occur overnight. The Commission's efforts are marked by the development of understanding between all represented aspects of alcohol and other drug problems and the convergence of mutual goals, priorities, and concerns. Inherent tension between the various fields involved in alcohol and other drug problems often exists. At times, law enforcement officials have viewed alcohol and drug treatment as a "soft," easy alternative to prison that drug traffickers or alcohol and other drug abusing offenders should be serving. Conversely, treatment advocates often look upon law enforcement as myopically focused on punishing addicted offenders while failing to examine and address the broader, underlying contributors to their criminal behavior.

Law enforcement and treatment were well represented on the Commission, leading to fears of a potential ideological stalemate. However, a broad understanding between the two disciplines was reached through hours of frank, open discussions. None of the perspectives truly were in opposition to the others.

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 and that consequences be exacted. At times, the criminal justice system is not tough enough for the purposes of effective treatment, undermining 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 protecting public safety by substantially reducing both criminal justice system recidivism and relapse into alcohol and other drug addiction, 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 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.² Alcohol and tobacco contribute to nearly \$150 billion annually in related health care, criminal justice, educational, social service, and workplace costs.³ 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.

SUMMARY OF MODEL LEGISLATION

This section summarizes the highlights of the 44 model state drug laws and recommendations offered to state legislatures by the Commission. The statutes, policy statements, and legislative commentary appear in full in each task force's respective volume of this final report

VOLUME I: ECONOMIC REMEDIES

For every minute spent reading this summary, drug dealers earn over \$100,000 in profits.⁴ This means drug dealers net more money in one minute than 98.8% of working Americans received in

gross income for 1991.⁵ As one Houston police lieutenant declared, “Drug dealers no longer count their money, they weigh it.”⁶

Money and property are the economic lifeblood of the illegal drug industry. The Commission presents an array of economic remedies designed to unravel the financial underpinnings of illegal drug enterprises.

Commission Forfeiture Reform Act (CFRA)

Drawing upon existing state and model/uniform acts, CFRA represents a balanced approach: preserving civil forfeiture's effectiveness while eliminating the risk of unfair forfeitures. In creating the approach, CFRA:

- Excludes forfeiture of real property for amounts of drugs for personal use;
- Requires state, owner and interest holder to meet the same civil burden of proof - preponderance of the evidence;
- Prohibits evictions from seized homes without a prior hearing before a judge, except in emergencies;
- Provides for interim sales of seized property and other mechanisms to expeditiously release legitimate property interests;
- Allows states to contract with mortgage companies and other interest holders to maintain the property pending a final forfeiture judgment;
- Allows states to obtain a personal forfeiture judgement against a drug dealer which can be satisfied from in-state or out-of-state assets;
- Allows forfeiture of a substitute asset if the original forfeitable property is destroyed, removed from the state, or otherwise made unavailable.

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.⁷ 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' protections, 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 II: 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 Expedited Eviction of Drug Traffickers Act

Model Drug Nuisance Abatement Act

Operating in tandem to eradicate drug distribution activity on private or commercial premises, the Model Acts:

- Authorize tenant associations to initiate expedited eviction procedures to remove and bar drug traffickers from leased property;
- Allow partial eviction to remove specific drug dealers who are not signatories to a lease;
- Permit a probationary tenancy if the otherwise evicted person constructively participates in a supervised course of alcohol and other drug treatment;
- Authorize anti-drug neighborhood organizations or persons working within 1,000 feet of a nuisance to bring an abatement action for injunctive relief or monetary damages;
- Provide drug addicted residents who are evicted after an abatement action notice of treatment programs where they can seek help;
- Waive civil nuisance abatement fines against defendants who transfer the property title to an anti-drug organization or treatment program.

Model Crimes Code Provisions to Protect Tenants and Neighbors

Recidivist drug dealers consistently return to their “turf” to sell illegal drugs. Their activities are increasingly disguised through use of sophisticated hand signals, code words, and hidden stashes. Evasive techniques, however, are futile under the Model Acts. The presence of a drug offender in a prohibited location can itself be sufficient cause for an arrest. The Model Acts:

- Authorize a court, as a condition of probation or parole, to prohibit a defendant from entering upon the leased residential premises where the drug-related crime occurred;
- Permit a court, as a condition of bail under certain instances, to preclude a person from returning to the leased premises where the alleged crime was committed.

Model Anti-Drug Volunteer Protection Act

Fear of litigation and personal liability deters individuals from offering free services to help fight alcohol and other drug abuse. Similar to Good Samaritan laws, the Model Act protects these badly needed volunteers. It provides civil immunity for legal, good faith, non-malicious conduct within the scope of a volunteer’s role with an anti-drug volunteer organization.

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 that 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 III: 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.⁸ 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.

While criminal law traditionally responds to a problem after a violation of law has occurred, these Model Acts are preventive measures. They stop illegal distribution and manufacture before they happen by creating monitoring systems to trace the flow of prescription drugs and precursor chemicals. The Model Acts together:

- Establish an electronic data transfer (EDT) system which collects information on doctors, pharmacists, and patients receiving controlled substances, and compares it with programmed criteria to detect suspicious prescriptions;
- Protect patient privacy by coding most data within the EDT system and limiting access to officials directly involved in investigations;
- Minimize financial costs through development of an EDT network compatible with existing electronic pharmacy communications equipment;
- Require chemical manufacturers and distributors to register annually, and chemical possessors to obtain permits to possess chemicals
- Provide exemptions from regulation for legitimate products containing regulated chemicals, e.g., Primatene;
- Impose civil assessments for the cleanup of hazardous illegal laboratory sites.

Uniform Controlled Substances Act**Controlled Substance Analogs**

During the 1970s and 1980s, analogs or "designer drugs" grew in popularity. Because the synthetically produced drugs varied slightly in chemical makeup from controlled substances, they went unregulated. Drug dealers with rudimentary scientific knowledge and no concern for public health consequences manufactured analogs with devastating results. For example, "China White," an analog of the controlled substance fentanyl, is 3,000 times more potent than heroin and has resulted in hundreds of drug overdoses in Southern California and other areas.⁹

In 1990 the National Conference of Commissioners on Uniform State Laws promulgated the Uni-

form Controlled Substances Act provisions to help states deal fairly and effectively with the designer drug problem. The Commission adopted these provisions which:

- Define and prohibit the production of analogs, except those which are the subject of legitimate scientific research or are intended for non-human consumption;
- Permit emergency regulation of analogs to avoid an imminent hazard to public safety contemporaneously with commencement of general comprehensive rulemaking proceedings.

**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;
- Permit court-ordered interceptions and use of pen register and trap and trace devices for short, definitive periods of time;
- Require minimization of interceptions so only pertinent, relevant information is intercepted;
- Require 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.¹⁰ Fifty-six percent (56%) of those fatalities involve alcohol and/or other drugs.¹¹ Ten to twenty percent (10%-22%) of all fatally injured drivers have drugs, often in combination with alcohol, in their bloodstream.¹²

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;
- Requires offenders to undergo an assessment, and where appropriate, to constructively participate in a court-ordered treatment program.

VOLUME IV: TREATMENT

Untreated addiction is a most serious health problem, contributing to or causing accidents, injuries, and a wide array of illnesses. Untreated addiction also contributes to increased crime, violence, and abuse as well as other family and social problems.

Untreated addiction also causes a serious financial drain on the nation's economy. Conversely, the cost savings which can be realized where appropriate treatment is provided are equally substantial. A Rutgers University study contracted for by the Commission confirms that:

“On the average, untreated alcoholics incur general health care costs that are at least 100% higher than those of nonalcoholics...” After treatment of the addiction, reductions in days lost to illness, sickness claims and hospitalization dropped by around 50%.¹³

Prior to treatment, worksite indicators showed “...sick-benefit claims 120% the normal level, days absent 335% of normal, disciplinary actions 235% of normal...” After treatment, the indicators revealed “...a 56% reduction in disciplinary actions, a 55% reduction in absenteeism and a 53% reduction in days on disability...”¹⁴

“Virtually all economic measures show that the burden of crime and other economic consequences of drug abuse are lower after treatment than before...”¹⁵

With these and other concerns in mind, the Commission drafted legislation to fill gaps in the continuum of care, eliminate problems in obtaining needed treatment, and increase early intervention and treatment.

Model Addiction Costs Reduction Act

Model Medicaid Addiction Costs Reduction Act

Addressing the continuum of care, the Model Acts:

- Require health insurance, health maintenance organizations, and state Medicaid to provide a full continuum of alcohol and other drug abuse and addiction treatment. Services include detoxification, inpatient, outpatient and intensive outpatient rehabilitation, and family treatment;
- 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.

Model Criminal Justice Treatment Act

Most violent and property crimes are committed by persons under the influence of alcohol and other drugs. Enhancing the criminal justice system's ability to provide meaningful treatment opportunities is therefore an important crime prevention strategy. The criminal justice system can also provide the necessary pressure or coercion to persuade offenders to enter and stay in treatment. Accordingly, the Model Act:

- Requires mandatory drug testing of individuals arrested for felonies and specified misdemeanors;
- Requires designated arrestees and inmates to undergo an alcohol or other drug abuse assessment;
- Requires participation in treatment, where needed, to be a condition of pretrial release, sentence, probation, or parole or other release from a correctional facility.

Caregiver's Assistance

This policy statement recommends that states devise methods of assisting family members, neighbors, or others who take in and care for the child of an addicted parent.

VOLUME V: DRUG-FREE FAMILIES, SCHOOLS, AND WORKPLACES

Any comprehensive alcohol and other drug strategy must seek to reinforce those areas where prevention efforts hold the greatest promise: families, schools, and workplaces.

DRUG-FREE FAMILIES**Model Underage Alcohol Consumption Reduction Act****Model Preventive Counseling Services for Children of Alcoholics and Addicts Act****Model Sensible Advertising and Family Education Act**

Alcohol consumption has become commonplace among youth. The average age at which youth begin drinking is now 13.¹⁶ Influenced by peer pressure, pervasive advertising, and other factors, large numbers of teens engage in regular and potentially harmful drinking episodes. As their consumption increases, teenagers often remain ignorant of the potential hazards of alcohol abuse. For example, more than 25% do not view daily "binge" drinking as entailing substantial health risks.¹⁷ In addition, children of alcoholics and addicts must contend with the problems of an adult member of their families. These children may face legal and family barriers when trying to access helpful counseling programs. The obstacles increase the risk that the children themselves will turn to alcohol and other drugs. Addressing these problems, the Model Acts:

- 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 under certain circumstances if sufficient documentation is maintained;
- Mandate placement of a series of rotating health and safety messages on radio, television (excluding cable), and print advertising of alcohol beverages.

Model Tobacco Vending Machine Restriction Act

Ninety percent (90%) of all smokers start smoking before they are 18 years old.¹⁸ 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.

Model Drug-Free School Zone Act

Model Ban on Tobacco Use in Schools Act

Schools offer windows of opportunity to change young people's perceptions about substance use. However, instilling healthy, anti-drug messages is made more difficult by the presence of influences which promote substance use. In recognition of this, the Model Acts would, within a designated drug-free school zone

- Enhance punishment for the illegal sale of controlled substances, and of alcohol and tobacco to minors;
- Ban billboards and similar advertising forms designed to stimulate demand for alcohol and tobacco;
- Ban the use of cigarettes and other tobacco products in schools.

Model Intervention for Students with Substance Abuse Problems Act

Teachers and school administrators are often in the best position to detect a child with personal or family alcohol and other drug problems. The Model Act therefore requires school officials to refer notice of a student with a substance abuse problem to a student assistance professional or to a state-licensed treatment program with whom the school has an agreement.

Model State Safe Schools Act

Students, teachers, and administrators have a right to learn and work in an environment free from drugs, weapons, and violence. To preserve such an environment, the Model Act:

- Authorizes public school officials to conduct a reasonable search of a student and the student's effects in accordance with *New Jersey v. T.L.O.* 469 U.S. 325 (1985);
- Allows school officials to refrain from referring a violation to law enforcement if the student involved voluntarily surrenders the alcohol or other drugs and seeks treatment.

Model Alcohol and Drug-Free Colleges and Universities Act

Alcohol is the most widely abused drug on American college and university campuses. To assist institutions of higher education in addressing the problems of alcohol and other drug abuse among their students, the Model Act:

- Requires all state funded colleges and universities to create and implement comprehensive strategic 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 that 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.¹⁹ 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 for a five percent reduction in 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 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 program services;
- Provide employers an alcohol and other drug abuse treatment tax credit equal to 50 percent of qualified employee treatment expenses paid or incurred during a taxable year.

CONCLUSION

This final report represents a blueprint for states to address their alcohol and other drug problems in a truly comprehensive manner. This report, though comprehensive, is not offered to the states as the sole answer to all alcohol and other drug problems. A single report cannot solve every problem involving alcohol and other drugs. However, the legislation included within this final report represents a portfolio of responses that work. States are encouraged to consider the model legislation, to select from the portfolio of legislation those model statutes that might remedy a particular problem, to tailor those needed model statutes to the particular subtleties of that state, and, finally, to enact the spirit that these model statutes encompass. In most instances, the Commission is not tied to specific legislative language, but rather, it embraces the ideas, reasoning, and experience behind the recommended model state statutes.

The Commission has sought to reflect the interrelated nature of alcohol and other drug problems in its legislative responses. For example, in the nuisance abatement statute, fines against negligent property owners can be waived if the owner agrees to transfer the title of the property to a community anti-drug group or a treatment organization. In the model safe schools legislation, cooperative working agreements between school officials and law enforcement are developed to govern those instances when law enforcement is needed to address drug problems found within schools. The model criminal justice treatment statute redesigns the way in which the criminal justice and treatment systems interact to address drug-abusing offenders.

This comprehensive, interrelated approach to addressing the problems of drugs is not an exercise in simple rhetoric, but a well-reasoned basis for alcohol and other drug policy.

- 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 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 becomes 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 company identifies drug abusing employees through drug testing, refers them to an employee assistance program and subsequently into a treatment program, and they are able to go into recovery, those employees no longer fuel the drug market. They no longer contribute, directly or indirectly, to drug-related crime and violence. They no longer contribute to the burgeoning prison population or strain law enforcement budgets.
- 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 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 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 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 alcohol and other drug abuse problems.

ENDNOTES

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18. American Cancer Society.
19. Alcohol, Drug Abuse, and Mental Health Administration.

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