

# Model Demand Reduction Assessment Act

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# Model Demand Reduction Assessment Act Policy Statement

Users of alcohol and other drugs contribute significantly to the personal and societal harm resulting from this nation's drug abuse problem. Approximately 50% of alcohol related motor vehicle accidents result in deaths.<sup>1</sup> Fifty-four percent (54%) of state prison inmates in 1986 were under the influence of alcohol, illegal drugs, or both at the time they committed the offense for which they are currently sentenced.<sup>2</sup> A U.S. Chamber of Commerce study found that "recreational" illegal drug users are 3.6 times more likely than average employees to injure themselves or another person in a work-place accident.<sup>3</sup> An estimated 25% of all hospitalized persons have alcohol-related problems.<sup>4</sup>

Demand reduction sanctions are critical to any effective anti-drug strategy. These sanctions must hold users accountable and help to address an offender's education or treatment needs. However, scarce prison space should be reserved for offenders committing the most serious offenses or failing to demonstrate a willingness to alter their criminal conduct. Disincentives other than incarceration and rehabilitation programs must be made available to courts sentencing drug users. The Model Act imposes a fee on individuals convicted of offenses involving controlled substances, precursor chemicals, and driving under the influence of alcohol. Fees collected are dedicated almost exclusively to the funding of education, prevention, and treatment programs. Indigent offenders do not escape the deterrent or rehabilitative thrust of the law because courts may require community or reformatory service in lieu of cash payment of the fee. Offsets against the fee amount are available to the extent of an offender's out-of-pocket expenditures for his or her own treatment or education program.

<sup>1</sup> Healthy People 2000, the National Health Promotion and Disease Prevention Objectives.

<sup>2</sup> Bureau of Justice Statistics, DRUGS, CRIME, AND THE JUSTICE SYSTEM 7 (1992).

<sup>3</sup> U.S. Chamber of Commerce, Statement on The Impact of the Drug Problem on American Business before The House Select Committee on Narcotics Abuse and Control 4 (October 3, 1990)

<sup>4</sup> Healthy People 2000, *supra* note 1.

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# Highlights of the Model Demand Reduction Assessment Act

- Imposes a fee on all individuals convicted of offenses involving controlled substances, precursor chemicals, and driving under the influence of alcohol.
- Deposits collections into a Demand Reduction Assessment Fund administered by the single state authority on alcohol and other drugs.
- Requires Fund expenditures to be used almost exclusively for education, prevention, and treatment services.
- Allows courts to offset an offender's out-of-pocket expenditures for his or her own treatment or education program against the assessment amount.
- Allows courts to order indigent offenders to perform community or reformatory service in lieu of paying a specified portion of the assessment.

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# Model Demand Reduction Assessment Act

## **Section 1. Short Title.**

This [Act] shall be known and may be cited as the “Model Demand Reduction Assessment Act.”

## **Section 2. Legislative Findings.**

(a) Alcohol abuse in the United States is a leading cause of motor vehicle accidents; is implicated in many fatal intentional injuries such as suicides and homicides; is related to drowning and boating deaths; and is a significant cause of birth defects and other health problems.

(b) Illegal drug use creates a profitable market for drug dealers. Through their constant demand for illegal drugs, users contribute to the growth of the illegal drug trade and its associated violence, crime, and social devastation.

(b) Illegal drug users commit many of the robberies and burglaries that threaten and sometimes take our lives and those of our families; sap the strength of the American economy through decreased productivity, increased use of sick leave, and on-the-job accidents; abuse their children, spouses, and other family members; and flood our emergency rooms.

(c) To be effective a comprehensive state and local anti-drug strategy should seek to create disincentives to alcohol and illegal drug use through imposition of cost-effective sanctions, such as user fees or assessments. Drug and alcohol offenders should share the financial burden of eliminating a societal problem which they have helped create and perpetuate. Assessments can hold users accountable for their illegal conduct without exacerbating current prison and jail overcrowding. The monies collected can positively impact the offender and other users by paying for badly needed alcohol and other drug-related programs.

COMMENT

**Legislative findings are useful in providing guidance to interpreting courts and in publicizing and memorializ-**

**ing the goals and objectives of the [Act]. *Block v. Hirsch*, 256 U.S. 135, 154 (1921) (“entitled at least to great respect”).**

## **Section 3. Purpose.**

The purpose of this [Act] is to reduce the demand for alcohol and illegal drugs through deterrence of continued use and the funding of education, prevention, and treatment services.

## **Section 4. Demand Reduction Assessment.**

(a) Every person convicted [or adjudicated delinquent] for a violation of [state controlled substances act, Model State Chemical Control Act or similar legislation, and laws which involve driving under the influence or while intoxicated] shall be assessed for each such offense a sum of [\$500.00] in the case of a misdemeanor, or in the case of a felony an amount not less than [\$750.00] nor more than [\$3,000.00.]

(b) Every person who applies for a conditional discharge pursuant to [citation to appropriate conditional discharge provision under state law] shall be assessed a sum as prescribed in subsection (a), except that the court shall impose only one such assessment regardless of the number of offenses charged which are subject to conditional discharge pursuant to [citation to appropriate conditional discharge provisions under state law].

(c) All assessments made pursuant to this [Act] shall be in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law.

COMMENT

**The assessment in Section 4 is based on New Jersey’s Drug Education and Demand Reduction (DEDR) fee which was successfully pioneered in 1987. New Jersey assesses convicted drug offenders, including juveniles,**

offenders placed on probation, and offenders involved in pretrial intervention, a fee in addition to other fines, penalties, or forfeitures. Building on the New Jersey legislation, Section 4 expands the assessment to driving while intoxicated offenses. This expansion signals that serious consequences will flow from alcohol abuse and widens the potential pool of funds available for treatment and education services under Section 7. Because some state laws prohibit the imposition of such a fee on juveniles, the reference to juvenile offenders in subsection (a) has been bracketed.

New Jersey's fee ranges from \$500 to \$3,000 depending on the gravity of the offense. Subsection (a) brackets this range as an example for states to follow in arriving at appropriate assessment amounts for their jurisdictions. This section clarifies that an assessment must be imposed for each separate offense and cannot be waived because fines or penalties have been imposed, or property has been seized for forfeiture.

### ***Section 5. Collection of Demand Reduction Assessments.***

All assessments provided for in this [Act] shall be collected as provided for the collection of [insert appropriate term, e.g., fines, restitution, etc.] and shall be forwarded to the [single state authority on alcohol and other drugs] as provided in Section 6.

### ***Section 6. Deposit in Demand Reduction Fund.***

All monies collected under this [Act] shall be forwarded to the [single state authority on alcohol and other drugs] for deposit in a non-lapsing revolving fund to be known as the "Demand Reduction Assessment Fund." Monies in the Fund shall be appropriated on a continuing basis and shall not be subject to [insert citation to applicable state lapsing and related fiscal restraint provisions of law].

### ***Section 7. Administration of Demand Reduction Fund.***

Option 1 [The [single state authority on alcohol and other drugs] shall administer all expenditures from the Fund. Monies from the Fund are to be distributed to programs licensed by the [single state authority on alcohol and other drugs] and used for drug education, prevention, and treatment services. Monies from the

Fund may not supplant other local, state, or federal funds.]

Option 2 [The [single state authority on alcohol and other drugs] shall administer the Fund and distribute monies as follows:

(a) ten percent (10%) of the monies shall be distributed to the office of the [attorney general, district attorney or other appropriate reference] for deposit in the Special Asset Forfeiture Fund. Monies from the Forfeiture Fund shall be distributed in accordance with [option 2 of the Commission Forfeiture Reform Act.]

(b) the balance of the monies shall be distributed to programs licensed by the [single state authority on alcohol and other drugs] and used for drug education, prevention, and treatment services.

Monies from the Fund may not supplant other local, state, or federal funds.]

#### COMMENT

Sections 6 and 7 create a procedure by which assessment collections become a stable funding source for education, prevention, and treatment services. Assessment collections can be both consistent and substantial. Every jurisdiction convicts drug and Driving Under the Influence (DUI) offenders so there will always be a source from which to try and collect payment which often comes in a steady stream of installments. With a collection rate of approximately 35%, New Jersey's DEDR program collects approximately \$9 million dollars per year from drug (excluding alcohol) offenders. Since its inception the DEDR program has raised over \$36 million, every dollar having been expended for treatment and education purposes.

Section 6 creates a new Demand Reduction Assessment Fund into which all assessment collections are deposited. This mechanism ensures that the monies are not returned to the general treasury and diverted to uses other than those specified in this section. Section 7 provides two distribution options which correspond to the two distribution options for forfeiture proceeds in the Commission Forfeiture Reform Act (CFRA). Option 1 requires that 100% of Fund monies be used for education, prevention, and treatment purposes. The section clarifies that monies are to pay for actual services and not overhead or other administrative expenses. To ensure that monies are allocated to qualified programs,

the single state authority on alcohol and drugs is responsible for administering and making allocation from the Fund. Concomitantly, Option 1 in CFRA deposits 100% of forfeiture proceeds in a Special Asset Forfeiture Fund. The proceeds are to be used for law enforcement purposes which is defined to include education, prevention, and treatment services.

Option 2 deposits 10% of assessment collections in CFRA's Special Asset Forfeiture Fund. Option 2 in CFRA deposits 10% of forfeiture proceeds in the Demand Reduction Assessment Fund. The 10% options are offered for states that wish to encourage better working relations between enforcement, prosecution, treatment, and education. In some jurisdictions these constituencies interact positively with one another; in others contact is more strained and uncooperative. Option 2 provides additional incentive for all the constituencies to support both forfeiture and enforcement of the drug assessment.

States may also wish to consider expressly authorizing the principal collection agency to retain a percentage of successful collections. Such a provisions might enhance collection efforts and thus result in a net increase in revenues generated pursuant to this [Act].

***Section 8. Paying Rehabilitation Costs in Lieu of Assessment.***

- (a) The court may suspend the collection of an assessment imposed pursuant to this [Act] during a defendant's [or juvenile's] participation in a court approved alcohol or other drug treatment or education program if the defendant [or juvenile] agrees to pay all or some of the costs associated with the program.
- (b) Upon application by the defendant [or juvenile] and a finding by the court that the defendant [or juvenile] has successfully completed the program, the court may reduce the assessment imposed pursuant to this [Act] by any amount actually paid by the defendant [or juvenile] for participation in the program.
- (c) If the defendant's [or juvenile's] participation is terminated before successful completion of the program because of the defendant's [or juvenile's] failure to constructively participate in the program, collection of the entire assessment imposed pursuant to this [Act] shall be enforced.
- (d) Nothing in this section shall be construed to authorize a court to reduce the penalty imposed pursuant to

this section by reason of payments or expenditures made by any form of public or private insurance program.

COMMENT

An offender's payment of his or her participation in a court-ordered education or treatment program accomplishes the same goals as payment of the assessment. Agreed upon payments to the program which are monitored by the court provide the same financial disincentive to continued use and accountability as the assessment. The offender is reducing alcohol or illegal drug demand by funding his or her own treatment or education. Therefore, it is appropriate to offset the offender's actual out-of-pocket expenditures for a court-ordered treatment or education program against the drug assessment amount.

***Section 9. Performing Community or Reformativ Service in Lieu of Paying the Demand Reduction Assessment Entirely in Cash.***

- (a) Authority of Court to Suspend Collection of Assessment. The court shall require a defendant [or juvenile] to pay immediately or within a specified period of time and in specified installments the maximum amount of the assessment imposed under this [Act] which the courts finds to be consistent with the defendant's [or juvenile's] ability to pay. The court may order a defendant [or juvenile] to perform community or reformativ service, as defined in subsection (b), in lieu of payment of a specified portion of an assessment imposed pursuant to this [Act] if the court finds the defendant [or juvenile] is indigent as defined in subsection (c).
- (b) Definition. For the purposes of this section, the term "reformativ service" means supervised activities or participation in a publicly or privately operated program of supervision, which the court finds will help the defendant [or juvenile] to correct a dependence on alcohol or other drugs or enhance the defendant's [or juvenile's] vocational, educational or social skills. Reformativ service may include documented participation
  - (1) in or attendance at an alcohol or other drug abuse evaluation, counseling, treatment, aftercare or support program, including meetings conducted by Alcoholics Anonymous or Narcotics Anonymous; or

(2) in a job skills, specific employment training, high school diploma equivalency program, other program of vocational or academic instruction, or program emphasizing self-reliance such as an intensive outdoor program teaching survival skills.

(c) Determination of Indigency.

(1) In determining inability to pay under subsection (a), the court shall consider the amount and sources of the defendant's [or juvenile's] income, employment status and assets, including all real and personal property and bank accounts. The court shall also consider the possibility of the assessment to be paid in specified installments within a specified period of time and the court's authority to order the defendant [or juvenile] to obtain and continue in gainful employment. The court's specific findings as to the facts set forth in this paragraph shall be placed on the record. The prosecutor shall be afforded an opportunity to be heard and to provide information concerning the defendant's [or juvenile's] assets, financial condition or prospects for finding or continuing in gainful employment.

(2) The court shall take judicial notice of any information concerning the defendant's [or juvenile's] employment status and financial condition which was provided or obtained in the course of determining the defendant's [or juvenile's] eligibility for the services of a court-appointed defense attorney. However, the fact the person was found to be eligible for the services of a court-appointed defense attorney shall not in and of itself constitute sufficient grounds for the court to order the defendant [or juvenile] to perform community or reformatory service in lieu of payment of a specified portion of the assessment imposed under this [Act].

(3) If the defendant [or juvenile] has not applied for representation by a court-appointed defense attorney, the court shall not order the defendant [or juvenile] to perform community or reformatory service in lieu of cash payment pursuant to this subsection unless the defendant [or juvenile] completes and files with the court an appropriate affidavit or form as may be prescribed by [insert designation of appropriate judicial or executive agency], which shall be made under oath and which shall fully describe the defendant's [or juvenile's] employment status and financial condition.

(4) The court or a designated court support office

may require the defendant[, juvenile or member of the juvenile's family] to execute and deliver such written requests or authorizations as may be required under applicable law to provide the court or office with access to records of public or private sources, otherwise confidential, as may be of aid to the court or office in evaluating the defendant's [or juvenile's] financial condition. The court or court support office is also authorized to obtain information from any public record office of the state or any subdivision or agency thereof on request and without payment of the fees ordinarily required by law.

(d) Community or Reformatory Service Plan. A defendant [or juvenile] ordered to perform community or reformatory service pursuant to subsection (c) shall present to the court a proposed community or reformatory service plan. The plan may require the defendant [or juvenile] to perform, attend or participate in any combination of work, education, training or non-residential or residential alcohol or other drug abuse counseling programs or any other activities authorized pursuant to this [Act]. If the defendant [or juvenile] is unable to develop and propose a suitable plan, a plan shall be developed by the [appropriate probation agency or other court support office]. Any proposed plan under this subsection is subject to the approval of or modification by the court or [appropriate probation agency or other court support office].

(e) Credit for Community or Reformatory Service Satisfactorily Performed. If the agency or person designated by the court to supervise the defendant's [or juvenile's] community or reformatory service certifies that the defendant [or juvenile] satisfactorily performed the service, the defendant [or juvenile] shall be entitled to credit towards the satisfaction of the outstanding balance of any assessment imposed pursuant to this [Act]. The credit shall occur at the rate or rates fixed by [appropriate judicial or executive agency] for each hour or day of community or reformatory service actually completed. Nothing in this section entitles a defendant [or juvenile] to reimbursement in cash for any type of community or reformatory service completed pursuant to this section.

(f) Option to Satisfy Assessment Debt in Cash. The defendant [or juvenile] may at any time, after giving notice to the court or [insert designation of appropriate probation agency or court support office], terminate participation in a community or reformatory service program and instead pay entirely in cash the outstand-

ing balance of any assessment imposed pursuant to this [Act]. The court shall thereupon fix a schedule for payment of the outstanding balance of the assessment in accordance with the provisions of [general fine collection law].

(g) Non-Exclusivity of Court's Authority to Order Community or Reformatory Service. Any community or reformatory service ordered pursuant to this section shall be in addition to and not in lieu of any community service required by any other law, or which ordered by the court pursuant to any other law. Nothing in this section precludes the court from ordering a defendant [or juvenile] who is able to pay the entire assessment imposed pursuant to this [Act] to participate in beneficial activities or programs.

COMMENT

**Certain offenders are unable to pay the entire amount of the assessment in cash, even when provided an opportunity to pay in installments. Because collection efforts against such indigents are cost-ineffective, Section 9 provides community or reformatory service options in lieu of cash payment. These options ensure that an offender does not escape the deterrent and accountability thrust of the [Act] because of economic status. They also provide courts an opportunity to require individuals who would not otherwise do so to participate in socially beneficial programs. However, courts should only impose community or reformatory service when all other collection methods have been exhausted without success.**

***Section 10. Collection of Assessment Against Inmates.***

If a defendant [or juvenile] at the time of sentence [or adjudication] has not paid the entire assessment imposed pursuant to this [Act], any order committing the defendant [or juvenile] to a correctional institution shall express require that the assessment be deducted from any income the defendant [or juvenile] may receive as a result of labor performed at the institution or any type of work release program.

***Section 11. Annual Report.***

The [insert designation of appropriate judicial or executive agency] shall file annually a report to the governor and the legislature concerning the collection of demand reduction assessments and the use and implementation of the provisions of this section which authorize courts to allow defendants [or juveniles] to perform community or reformatory service in lieu of paying their assessments entirely in cash.

***Section 12. Severability.***

If any provisions of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provisions or application, and to this end the provisions of this [Act] are severable.

***Section 13. Effective Date.***

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].