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RESOLUTION

WHEREAS, the National District Attorneys Association believes that the most effective means of reducing the abuse and diversion of precursor chemicals is the use of complementary federal and state laws and regulations to govern the manufacture, distribution, and retail sale of precursor chemicals;

WHEREAS, the Association is concerned that the enactment of federal law which preempts existing state laws that are more restrictive will interfere with the individualization of restrictions on precursor chemicals, which is necessary to address the specific needs of individual states; and

WHEREAS, the Crime Control & Drug Enforcement Committee has updated Section VII, (G) "Regulation of Precursor Chemicals" of the *National District Attorneys Association Policy Positions on Drug Control and Enforcement* (Adopted by the Board of Directors on March 20, 2004, Amended April 30, 2005) to incorporate this concern;

BE IT RESOLVED, that the National District Attorneys Association hereby adopts Section VII (G) "Regulation of Precursor Chemicals," as amended.

Adopted by the Board of Directors, July 17, 2005 (Portland, Maine)
2005.05SUM

**NATIONAL DISTRICT ATTORNEYS
ASSOCIATION**

**POLICY POSITIONS ON DRUG
CONTROL AND ENFORCEMENT**

**Adopted: March 20, 2004 by the Board of Directors in
Ft. Lauderdale, Florida**

**Amended: April 30, 2005 by the Board of Directors in
Asheville, North Carolina**

**Amended: July 17, 2005 by the Board of Directors in
Portland, Maine**

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I. INTRODUCTION

There is no American unaware of or unaffected by the dangers of drug use and abuse. The nature and extent of illegal drug use in America is ever evolving. The prosecutorial response to this social evil must itself evolve to remain effective and relevant. It is intended that this NDAA policy statement will accommodate such change. The NDAA drug policy is also intended to be of practical value to prosecutors across the nation regardless of the size of their jurisdiction and regardless of their level of experience.

To accomplish these ends each section of the policy will begin with a general statement of policy followed by a brief discussion of the reasons for the policy.

II. GENERAL PRINCIPLES

A. PERSONAL ACCOUNTABILITY

Policy Statements

1. The National District Attorneys Association believes that those who knowingly possess, use, promote, manufacture or distribute illegal drugs are personally responsible for their actions and should be held fully accountable for their criminal activities.

A basic tenet of the criminal law and common sense is that people are responsible for their actions. Where criminal decisions are made that impact public health and the welfare of society, sanctions¹ are appropriate and necessary. Those who spread the ills of illicit drug use and abuse should suffer appropriate sanctions under both the criminal and civil law for the injury they cause to their fellow citizens.

2. The National District Attorneys Association believes that those persons who abuse, divert, or illegally prescribe prescription drugs are also personally responsible for their actions and should be held fully accountable for their criminal activities.

The National District Attorneys Association recognizes the rise in the number of individuals who misuse prescription drugs for recreational purposes; use prescription drugs in a manner exceeding the scope of medical directives; divert prescription drugs obtained by fraud or theft into the illicit drug market; and illegally prescribe drugs. Such behaviors negatively impact both the individuals involved and society as a whole. The

¹ The National District Attorneys Association acknowledges that the term "sanctions" does not necessarily mean solely incarceration. The use of drug treatment programs, prosecutor-lead diversion programs, drug court participation, and civil remedies such as asset forfeiture, are also recognized by the association as methods to hold offenders accountable.

NDAA believes that both the legal and medical communities share responsibility for the prevention, detection, intervention, and prosecution of such illicit behaviors. Medical care providers have the added responsibility of appropriately prescribing controlled substances and avoiding the inappropriate and unlawful administration or prescription of such drugs.

B. DISEASE OR CRIME

Policy Statement

3. *The National District Attorneys Association believes that prosecutors are charged with the responsibility of enforcing all violations of criminal drug laws in their individual jurisdictions. This responsibility exists regardless of philosophical differences regarding the cause of drug abuse and addiction.*

Drug abuse and addiction are complex and multifaceted issues. They impact innumerable aspects of life in this country from workplace accidents to crime rates to abuse and neglect of children. Surrounding these issues is considerable debate as to whether drug abuse/addiction should be labeled a crime or a disease. While many argue that it is the criminal conduct of drug use that leads an individual to drug abuse and ultimately addiction, many others argue that the state of drug addiction is a medical condition² despite the fact that the individual's actions are voluntary and criminal in nature. There is perhaps no definitive answer to this debate. While it may be important to make this distinction for purposes of determining appropriate treatment modalities³, this distinction becomes irrelevant when the fiscal, emotional, physical, and environmental impacts of drug addiction on this country and its citizens are analyzed.

As a result, it is the National District Attorneys Association's position that where an individual's conduct or behavior, whether as a result of drug abuse or addiction or not, violates a criminal law⁴, a prosecutor is charged with the responsibility of enforcing that

² Tom McLellan, Ph.D., David Lewis, M.D., Charles O'Brien, M.D., Ph.D., and Herbert Kleber, M.D. have concluded that "drug dependence has much in common with chronic illnesses such as diabetes, hypertension and asthma, and should be insured, treated and evaluated in a like manner." "The Costs of Parity for Substance Abuse Treatment-Drug Free Workplace," Office of National Drug Control Policy, available at, <http://www.whitehousedrugpolicy.gov/prevent/workplace/health.html>, accessed January 6, 2004, citing JAMA, October 4, 2000.

³ Some doctors support the theory that addiction is purely a function of the biology of a person and so follow the disease model of treatment programs. Such programs include Alcoholics Anonymous, Narcotics Anonymous, Chemically Dependent Anonymous, Marijuana Anonymous, halfway houses, and the "Minnesota Model" found in centers like the Betty Ford clinic. Others believe that addiction is a behavioral trait and that "addicts always retain a degree of control over their behavior." As a result, they employ more behavioral oriented programs for treatment such as Rational Recovery program, Secular Organizations for Sobriety, and Self Management and Recovery Training. "Drug Wars: What is Addiction, and How Can We Treat It?" Frontline, available at, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/buyers/treatment.html>, accessed January 7, 2004.

⁴ It is important to remember that the possession, manufacture, distribution and sale of illicit substances are crimes because they have been defined as such by the legislatures enacting the laws. The health care community, however, defines addiction, as a disease. Addiction includes activities that have been defined as crimes as well as legal activities such as cigarette smoking, drinking alcohol, and obsessive gambling.

law in his or her jurisdiction. The NDAA believes that this applies regardless of whether the violation of law involves the use or abuse of illicit substances or whether it involves prescription drug abuse or diversion. However, prosecutors should be free to utilize their discretion in disposing of these types of matters. Armed with knowledge concerning an offender's criminal and substance abuse histories, prosecutors are in the best position to recommend dispositions whether they are jail/prison sentences, participation in drug treatment programs, or diversionary programs.

C. TREATMENT & THE SAFETY OF THE COMMUNITY

Policy Statement

4. The National District Attorneys Association believes that the safety of a community is a paramount interest and should be balanced carefully against the interest of a defendant in receiving treatment.

The National District Attorneys Association acknowledges the role that treatment must play in the disposition of drug related crime, an aspect that may be absent in the disposition of many other types of crime. However, the Association believes firmly that the safety of the community should be the paramount concern of a prosecutor. It must be carefully balanced against the offender's need for treatment. It is essential that prosecutors have sufficient information regarding an offender's criminal background, his level of substance abuse, and his substance abuse treatment history before making a determination that drug treatment or diversion is an appropriate disposition in lieu of incarceration.

In cases where treatment or diversion programs are determined to be appropriate, it is vital that prosecutors, treatment providers, and case managers work together as a unit and routinely communicate about an offender's progress. Information regarding a violation of program conditions should be immediately reported to the prosecutor and the court. Sanctions for violations should be graduated and swiftly imposed.

D. PREVENTION OF DRUG USE AND ABUSE

Policy Statement

5. The National District Attorneys Association encourages the participation by or support of prosecutors in preventive drug efforts.

The societal costs associated with drug abuse are approximately \$160 billion per year.⁵ The prevention of drug use, therefore, is imperative because it stops drug use before it begins. As a result, drug abuse and its harmful effects are also avoided. With

⁵ National Drug Control Strategy, The White House, February 2002, p. 9.

less drug use activity there are fewer demands placed upon the medical treatment community and ultimately fewer demands placed upon the criminal justice system.⁶

While the resources of each prosecutor's office will dictate whether they are able to implement their own preventive drug use program, the National District Attorneys Association encourages prosecutors to participate in or support the following preventive efforts: drug testing in and out of the criminal justice system, educating children about the dangers of drugs and equipping them with the skills needed to avoid drug use, employing the help of the medical treatment and faith based communities, and the use of community prosecution and "Weed and Seed" programs.

E. EDUCATION

Policy Statement

6. *The National District Attorneys Association encourages prosecutors to play a pivotal role in educating their individual communities regarding the current drug abuse problem.*

It should be the local prosecutor, not the proponents of drug legalization, who informs both the community and lawmakers about the current "drug reform" movements. Prosecutors should take every opportunity whether at a task force meeting, a community event or during a public service announcement to explain in detail the myths and realities surrounding the movements to legalize, decriminalize, and legitimize drugs.

Where possible, prosecutors should be actively involved in the juvenile targeted substance abuse prevention programs present in their communities. Teaching children the dangers of drug use and equipping them with skills to avoid such activity is vital to children's success in life. It is documented that children who do not experiment with drugs early in life have far greater chances of avoiding abuse and addiction later in life.⁷

It is equally important that education efforts are employed in the medical treatment community so that medical providers are aware of their role in the drug problem and the importance of screening patients and early intervention. Because the abuse and diversion of prescription drugs are significant problems, prosecutors should educate the medical community, particularly physicians and pharmacists, on the importance of implementing prescription drug monitoring programs in order to effectively detect the abuse and diversion of prescription drugs by patients. Medical

⁶ *Id.* at p. 4.

⁷ "Juveniles and Drugs, June 2003," Fact Sheet, Office of National Drug Control Policy, Executive Office of the President, *available at*, <http://www.whitehousedrugpolicy.gov/publications/factsht/juvenile/index.html>. "Results from the 2001 National Household Survey on Drug Abuse show that the earlier in life people initiate drug use, the more likely they are to develop a drug problem. For example, among adults who first used marijuana at the age of 14 or younger, 11.8% were classified as drug dependent or abusers compared with only 2.1% of adults who had first used marijuana at age 18 or older."

providers should also be regularly educated regarding the current prescription drug abuse trends; provided training on the prevention of theft and fraudulent procurement of these controlled substances; and instructed on the criminal liability for the inappropriate prescription and/or administration of controlled substances.

F. COOPERATION

Policy Statement

7. The National District Attorneys Association endorses and encourages cooperation, communication and coordination amongst all law enforcement agencies in efforts to confront drug use and abuse. Prosecutors should assume a leadership role in fostering cooperation, communication and coordination in all such law enforcement efforts.

Addressing the use and abuse of drugs requires a multiple agency approach, which fosters and promotes routine communication and cooperation among the participating agencies. The successful prevention, detection, investigation, and prosecution of drug and drug related crimes requires the collaboration and resources of specially trained agencies from all levels of government—federal, state, and local.⁸ Traditional law enforcement rivalries are counterproductive to efforts addressing drug use and abuse. Turf battles, pointing fingers, and worrying about where to lay the blame defeat effective law enforcement. Federal, state, local, and military law enforcement as well as private security all play crucial roles in dealing with drug use and abuse. The National District Attorneys Association discourages single agency operations because they are generally unable to deal with drug and drug related crimes in a comprehensive fashion.

Coordinated law enforcement efforts produce a synergistic effect in daily enforcement initiatives leveled at criminality arising from drug use and abuse. Just as importantly, cooperation is critical to legislative efforts aimed at changing laws that hamper effective and necessary enforcement activities.

There are frequent opportunities to bring multiple law enforcement organizations together to achieve a common goal. It is vitally important that prosecutors provide the leadership for the multiple-agency team and proactively foster cooperation, communication and coordination. The prosecutor should be responsible, where possible, for coordinating all members of the team and providing for routine communications and meetings among the members. Lastly, the prosecutor should develop procedures and protocols for communication and interaction among the various members. It is imperative to the efficacy of the team that the activities be conducted in a coordinated fashion and

⁸ See United States Department of Justice, Drug Enforcement Administration, High Intensity Drug Trafficking Areas Program (HIDTA) website available at <http://www.usdoj.gov/dea/programs/hidta.htm> and Organized Crime Drug Enforcement Task Forces (OCDETF) website available at <http://www.usdoj.gov/dea/rpograms/ocdetf.htm>. Both programs promote the collaboration among federal, state and local agencies and the sharing of resources and investments.

that prosecutors are involved in all drug related investigations during the beginning stages. Local prosecutors should continue attempts at such proactive efforts despite resistance from cultures and agencies that reject cooperation and fail to share information.⁹

III. FOCUS ON PREVENTION

A. DRUG TESTING OF EXPECTANT MOTHERS AND INFANTS

Policy Statements

8. *As a means of prevention, the National District Attorneys Association endorses the testing of expectant mothers and newborn infants for the presence of drugs. The NDAA believes that such a measure permits the identification of fetuses and infants exposed to illicit drugs and the immediate intervention by medical personnel.*

9. *The National District Attorneys Association encourages all states to enact legislation, which broadens the definition of child abuse and neglect to include infant and fetal drug exposure and which authorizes the testing of infants and expectant mothers for the presence of drugs.*

In 1990, increased parental and caretaker drug use pushed child abuse and neglect reports to 2.5 million. In 1989, an estimated 100,000-400,000 infants were born with medical and potentially long-term developmental problems attributable to maternal drug use during pregnancy.¹⁰ The 1996 National Institute of Drug Abuse National Pregnancy and Health Survey reported "an estimated 5.5 percent of the 4 million women who gave birth in the United States in 1992 used illegal drugs while they were pregnant." The report also indicates that these numbers might "actually underestimate" the amount of drug use during pregnancy.¹¹

The National District Attorneys Association believes that the testing of expectant mothers and newborn infants serves three important purposes:

⁹ Examples of efforts that foster cooperation, coordination and communication include: HIDTA-High Intensity Drug Trafficking Areas; OCDETF-Organized Crime Drug Enforcement Task Forces; LEC-Law Enforcement Coalitions.

¹⁰ National District Attorneys Association Resolution 92-03, *Drug-Affected Infants and Children*, Adopted by the Board of Directors on February 29, 1992

¹¹ National Institute of Drug Abuse, *National Survey of Drug Use During Pregnancy Available*, [NIDA Notes](http://www.drugabuse.gov/NIDA_Notes/NNVol12N1/Survey.html), Volume 12, Number 1, January/February 1997, available at, http://www.drugabuse.gov/NIDA_Notes/NNVol12N1/Survey.html. "The survey gathered information from self-report questionnaires filled out by a national sample of 2, 613 women who delivered live babies in 52 urban and rural hospitals during 1992. The data indicate that an estimated 221,000 women who gave birth that year had used illicit drugs while they were pregnant. The two illicit drugs most frequently used during pregnancy were marijuana, by 2.9 percent of all women who gave birth, and cocaine, by 1.1 percent."

Identification of drug exposed infants: Infants exposed to drugs during pregnancy suffer from numerous developmental, physical, emotional, and behavioral problems. The impact of these problems upon the child's life can be devastating. "There is a growing body of data showing that fetal exposure to cocaine, phenylcyclidine hydrochloride (PCP), and other CNS-active drugs results in infants and children with abnormal brain wave patterns, short-term neurologic signs, depression of interactive behavior, and poor organizational responses to environmental stimuli."¹² The cost to society, as a result of ongoing medical treatment and educational services for these children, can also be staggering. Drug testing prior to and upon birth ensures that those children exposed to harmful drugs are identified, screened, treated immediately by medical personnel, and if necessary, referred to other professionals for follow-up treatment and care. This early intervention ensures that such infants receive a healthier start in life.

Identification of abusive and neglectful mothers: The relationship between drug abuse and child abuse and neglect is well documented.¹³ The National District Attorneys Association believes that those mothers who use or abuse illicit drugs during pregnancy must be identified for treatment and prosecuted for child abuse and neglect, when appropriate. In those states without legislation authorizing the testing of expectant mothers and infants, it is incumbent upon prosecutors to encourage state legislators to enact such laws. Failure to do so means that drug-exposed infants will most likely return home with a drug impaired parent to a potentially abusive and/or neglectful home.

Provision of treatment services for mothers who abuse drugs: The testing of expectant mothers and infants for drug exposure during pregnancy will also provide health care providers with an opportunity to identify those expectant mothers abusing drugs; to screen them to determine the nature of the abuse and possible addiction; and to intervene with appropriate treatment programs for the nature of the drug abuse before the expectant mother does serious, permanent harm to her child. As a result, the infants benefit from drug-free parents and non-abusive home environments.

¹² Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs, Executive Summary*, September, 1993 citing D.C. VanDyck and A.A. Fox, *Fetal Drug Exposure and its Possible Implications for Learning in the Preschool and School-age Population*, *Journal of Learning Disabilities*, March 23, 1990, p. 160.

¹³ K. Brown, *To Save City's Children, Help Addicted Parents*, *The Baltimore Sun*, November 14, 2002. "The Maryland Citizens' Review Board for Children found that in 74 percent of all cases in which children under age 2 were removed from families because of abuse or neglect, at least one parent was a substance abuser."

United States Department of Health and Human Services, Administration for Children & Families, National Clearinghouse on Child Abuse and Neglect Information, *Gateways to Information-Protecting Children, Strengthening Families*, available at <http://nccanch.acf.hhs.gov/pubs/usermanuals/subabuse/intro.cfm>. "Estimates suggest that 50 to 80 percent of all child abuse and neglect cases substantiated by Child Protective Services (CPS) involve some degree of substance abuse by the child's parents." (footnote omitted); United States Department of Health and Human Services, *Blending Perspectives and Building Common Ground. A Report to Congress on Substance Abuse and Child Protection*. Washington, D.C.: U.S. Government Printing Office, 1999. "Studies have long shown that parents with substance abuse problems are more likely than other parents to maltreat their children. (Famularo et al, 1986; Jaudes et al, 1995; Kelleher et al, 1994)"

B. HEALTHY START

Policy Statement

10. The National District Attorneys Association encourages the use of healthy start activities to prevent the development of drug related problems in developing children.

11. The National District Attorneys Association encourages all states to enact legislation, which broadens the definition of child abuse and neglect to include the exposure of fetuses and children to the use, abuse, manufacture, or distribution of drugs whether committed by either parent or by a custodian.

The National District Attorneys Association believes that all children are entitled to a "healthy start" in life. Community social service agencies and the medical community can provide invaluable services in the prevention of drug related problems in developing fetuses and children. Mothers who use drugs during pregnancy, parents that manufacture methamphetamine in their homes, and drug-addicted parents who are neglectful or abusive all cause physical and emotional damage to their children. As a result, it is imperative that pre-natal counseling from medical providers be provided to expectant mothers and fathers to educate parents about the dangers of drug use to an unborn child. Screening of and visits to at-risk families by local social service agencies are effective ways of monitoring a family's progress and determining if abuse or neglect is occurring as a result of drug use/abuse. Additional services such as drug counseling and parenting classes, which focus on responsible parenting and the development of functional families, are invaluable tools for providing a "healthy start" to America's children.

C. STUDENT DRUG TESTING

Policy Statement

12. The NDAA supports school drug-testing programs as effective drug and crime prevention strategies. The NDAA encourages community collaboration among district attorneys, schools, law enforcement agencies, drug prevention and treatment agencies, and other stakeholders to offer school-based drug testing and assistance programs that discourage drug use among youth prior to the need for law enforcement involvement. Drug testing programs should be part of a comprehensive school-based approach to reduce drug use, rather than a stand-alone strategy.

Student drug testing programs provide important early incentives to deter youth from drug use and to assist students identified as drug users with therapeutic, non-punitive approaches. Drug testing programs that maximize the constitutional authority for compulsory testing and encourage a high level of voluntary participation offer the best opportunity for program impact. Youth who remain drug free until age 21 have reduced

risk for drug use, drug abuse or addiction. Deterring drug use is a meaningful investment in averting the high costs of crime, social welfare, and healthcare.

Programs should be carefully planned prior to implementation. Effective programs should maintain drug-testing records that are strictly confidential, with limited access by designated school staff. Testing methods should be FDA-approved and all positive results reported only after confirmatory testing by gas chromatography/mass spectrometry (or comparable) methods. Non-punitive, tiered or stepped consequences, as outlined in a written drug-testing policy, should be in place for students who test positive and treatment programs should be readily accessible. Programs should be evaluated annually to examine effectiveness on a variety of outcome measures as established in the drug-testing policy.

D. TARGETING JUVENILE DRUG ABUSE

Policy Statement

13. The National District Attorneys Association endorses the development and implementation of youth targeted substance abuse prevention programs. The National District Attorneys Association believes that, whenever possible, prosecutors should be an integral part of these programs.

Teaching juveniles the dangers of drugs, providing them with the skills needed to resist peer pressure to use drugs, and emphasizing the stigma attached to drug usage are paramount to ensuring the success of America's youth. As chief law enforcement officials and positive role models, prosecutors should be an integral part of programs designed to prevent the use and abuse of drugs among today's youth.

The utilization of drug prevention programs will not only reduce the societal costs associated with juvenile drug abuse but will also reduce the amount of juvenile delinquency and crime correlated with such usage. The National Institute on Drug Abuse reports that "[f]or every dollar spent on drug use prevention, communities can save 4 to 5 dollars in costs for drug abuse treatment and counseling."¹⁴ The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that in 2002, the incidence of self-reported delinquent behavior in the past twelve months was greater for those juveniles who used illicit substances within the past month.¹⁵ In addition, "a median of 59.7% of male juvenile detainees and 45.9% of female juvenile detainees tested positive

¹⁴ National Institute on Drug Abuse, *Preventing Drug Abuse Among Children & Adolescents*, available at, <http://www.drugabuse.gov/Prevention/PREVPRINC.html>.

¹⁵ Substance Abuse and Mental Health Services Administration. (2003) *Results from the 2002 National Survey on Drug Use and Health: National Findings (Office of Applied Studies, NHSDA Series H-22, DHHS Publication No. SMA 03-3836)*. Rockville, MD, available at, <http://www.samhsa.gov/oas/NHSDA/2k2NSDUH/Results/2k2results.htm>.

for drug use in 2002" according to initial figures from the Arrestee Drug Abuse Monitoring (ADAM) Program.¹⁶

While the National District Attorneys Association does not endorse any one particular program, programs designed to prevent juvenile drug abuse should be based upon sound research methodology and proven to be efficacious in reducing the abuse of drugs by the juvenile population. The Office of National Drug Control Policy lists the following as possible youth targeted drug abuse prevention programs: Boys and Girls Club of America; Centers for the Application of Prevention Technologies (CAPT); CSAP Model Programs; Drug-Free Communities Support Program; Drug Abuse Resistance Education (D.A.R.E.) Juvenile Mentoring Program (JUMP); and Your Time Their Future.¹⁷ The National Institute on Drug Abuse (NIDA) lists the following as research-based drug abuse prevention programs: Project Star; Life Skills Training Program; Adolescent Alcohol Prevention Trial (AAPT); Seattle Social Development Project; Adolescents Training and Learning to Avoid Steroids: The ATLAS Program; Project Family; Strengthening Families Program; Focus on Families; Reconnecting Youth Program; and Adolescent Transitions Program (ATP).¹⁸

The type of program or strategy used for the prevention of drug abuse will inevitably vary depending upon the size of each prosecutor's jurisdiction and the availability of resources. Where possible, prosecutors should strive to implement collaborative programs, which combine the efforts of schools, families, communities and law enforcement.¹⁹

¹⁶ Arrestee Drug Abuse Monitoring (ADAM) Program, *Preliminary Data on Drug Use & Related Matters Among Adult Arrestees and Juvenile Detainees 2002*, p. 39, available at, http://www.adam-nij.net/files/2002_Preliminary_Data.pdf.

¹⁷ The Office of National Drug Control Policy (ONDCP) website provides a more complete list of programs and provides the websites for each individual program. The ONDCP website is available at <http://www.whitehousedrugpolicy.gov/prevent/programs.html>.

¹⁸ The National Institute on Drug Abuse website provides a brief description for each program. The NIDA website is available at <http://www.drugabuse.gov/Prevention/PROGRM.html>.

¹⁹ Additional resources on the topic of youth targeted drug prevention programs, can be found at the following web sites:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY

- National Youth Anti-Drug Media Campaign, *Pathways to Prevention: A Prevention Guide for Youth Leaders in Faith Communities*, March 2003, available at, <http://www.mediacampaign.org/faith/preventionguide.pdf>
- Office of National Drug Control Policy Drug Prevention, *Programs*, available at, <http://www.whitehousedrugpolicy.gov/prevent/programs.html>
 - Boys and Girls Club of America
 - Centers for the Application of Prevention Technologies (CAPT)
 - CSAP Model Programs
 - Drug-Free Communities Support Program
 - Juvenile Mentoring Program (JUMP)
 - Your Time Their Future

E. DRUG TESTING IN THE WORKPLACE

Policy Statement

14. The National District Attorneys Association encourages all employers to adopt drug-free workplace policies. The National District Attorneys Association also encourages all employers to implement random drug testing for all employees to ensure a drug-free work environment.

Employee drug use, abuse and addiction are extremely costly to employers. Employees who are tardy or absent from work as a result of drug habits diminish the productivity of a business. Employees who embezzle funds or steal property to support their drug habit detract from the company's overall profits. Employees who cause accidents and harm to themselves or to others because they are incapacitated by the effects of drugs also diminish profits when liability insurance premiums are increased or cancelled and workman's compensation claims are made.²⁰

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- Office of National Drug Control Policy Drug Prevention, *Strategies*, available at, <http://www.whitehousedrugpolicy.gov/prevent/strategies.html>
 - Office of National Drug Control Policy Drug Prevention, *Principles of Prevention*, available at, <http://www.whitehousedrugpolicy.gov/prevent/practice.html>

NATIONAL INSTITUTE ON DRUG ABUSE (NIDA)

- *Preventing Drug Abuse Among Children & Adolescents*, available at <http://www.drugabuse.gov/Prevention/CONTENT.HTML>
- PreventionNet, available at, <http://www.preventionnet.com/>

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)

- Center for Substance Abuse Prevention, *SAMHSA Model Programs*, available at, http://modelprograms.samhsa.gov/template_cf.cfm?page=model_list

UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS

- U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Drug Abuse Resistance Education (D.A.R.E.) Fact Sheet*, (FS0000039). Bureau of Justice Assistance, 1995, available at, <http://www.ncjrs.org/pdffiles/darefs.pdf>.

²⁰ See, National Drug Control Strategy, The White House, February 2002, pp. 16-17.

To prevent this overall corporate waste and to provide for personal accountability, the National District Attorneys Association believes that workplaces should be drug-free and that random testing procedures for all employees should be implemented. In the event an employee tests positive for drugs, drug treatment programs should be mandated with the loss of employment as leverage for successful completion of the program.

F. DRUG TESTING IN THE CONTEXT OF THE CRIMINAL JUSTICE SYSTEM

1. PRETRIAL TESTING FOR ADULT AND JUVENILE ARRESTEES

Policy Statement

15. The National District Attorneys Association supports the concept of drug testing for both adults and juveniles arrested of serious offenses as a means of assessing the dangers present in releasing an individual back into the community and as an opportunity for intervention to break the cycle of drug use and violence. The National District Attorneys Association urges state legislative bodies to adopt procedures for arrestee drug testing for the individual states.²¹

The link between violent and property crimes and drug and alcohol abuse is irrefutable. A recent three-year study conducted by the National Center on Addiction and Substance Abuse at Columbia University demonstrated the following:

- In 1996, there were 1.7 million prisoners in the United States. Of that, a staggering 1.4 million had violated drug or alcohol laws, had been high when they committed their crimes, had stolen to support their habit or had a history of drug and alcohol abuse that led them to commit crime.
- From 1980 to 1996, the number of people in prison has tripled due overwhelmingly to criminal activity spawned by drug and alcohol abuse. If this rate of increase continues, then one in every 20 Americans born in 1997 will spend time in prison, including one in every 11 men and one in every 5 black men.
- The number of women inmates on drug and alcohol related offenses are rising at twice the rate of increase for male inmates.
- The crime reduction the nation has experienced in the last few years is due to the huge increase of drug and alcohol addicts in prison. A critical component

²¹ National District Attorneys Association Resolution 96-02. Adopted by the Board of Directors on March 10, 1996 at Phoenix, Arizona.

of reducing crime and sustaining a lower crime rate is to get as many criminal offenders as possible into recovery.

- Children of substance-involved criminal offenders are at a high risk of addiction and incarceration.

The National Institute of Justice administers the Arrestee Drug Abuse Monitoring (ADAM) program. This program, which interviews and collects urine samples from arrestees in 23 major metropolitan areas, in 1998 found that between 51 and 80 percent of arrested adult males tested positive for drugs.

The Department of Justice, Office of Justice Programs, in the September 2000 report “Promising Strategies to Reduce Substance Abuse” indicates that a close coordination between law enforcement, treatment providers and prevention professionals has been identified as an effective strategy to addressing substance abuse and related problems.

As to adult and juvenile arrestees, the National District Attorneys Association recommends that an identification of risk factors, a substance abuse assessment and drug testing be done upon arrest. For those who test positive, or for those who indicate a history of substance abuse, bail or recognizance conditions should include referral to and compliance with treatment, abstinence from the possession or use of drugs and/or alcohol, and submission to random searches and seizures.

Bail conditions must be monitored either through a pretrial services agency, department of probation, or similar qualified agency through random and frequent home visits, searches, and drug and alcohol testing. Drug testing is essential because it acts as a deterrent to future drug use, it identifies participants who are maintaining abstinence and who have relapsed, and it is a component of drug treatment.

Drug and alcohol testing must be random. Random means testing that is unpredictable as to time, place and day of the week. Random does not mean a random selection of a defendant to be tested. Testing which occurs during regularly scheduled appearances is considered non-random. The drug testing must be monitored. “Monitoring” is defined as “direct observation of the urine stream at the source.” The National District Attorneys Association recognizes that drug addicts will take any drug other than their primary drug. As a result, multi-panel drug tests should be taken randomly. If a defendant is unable to provide a urine sample, he/she must stay within the sight of the official, who requires the urine test. If a sample is not provided within two hours of the request, it should be deemed a refusal and a violation of the bail condition.

If a urine or breath sample is positive for drugs or alcohol, and the defendant insists that he or she has been in compliance with abstinence conditions, a second test may be performed at the defendant’s request. If the breath or urine test is positive, a motion to revoke bail should be filed with the court immediately. The Court, either through increased monitoring, treatment conditions, or bail revocation, must sanction

defendants, who are not in compliance. All recent test results must be available for all court appearances, including the initial appearance and, whenever possible, the defendant should be required to pay the costs of the drug testing.

2. POST-TRIAL TESTING FOR ADULT AND JUVENILE PROBATIONERS & PAROLEES

Policy Statement

16. The National District Attorneys Association supports the concept of drug testing for both adult and juvenile probationers and parolees as a means of insuring compliance with abstinence and treatment conditions of probation and parole. The National District Attorneys Association also believes that the use of impartial drug testing for probationers and parolees serves to reduce and prevent crime, as well as identifying probationers with drug abuse problems.

A drug/alcohol test should be conducted as soon as practicable, but in no event no later than within 30 days after the probationer has been placed on probation. This must be a multi-panel test and testing should be frequent, random, and monitored. In addition, the probation/parole officer should order testing when there is reasonable suspicion that the probationer is intoxicated or under the influence of drugs; when the probationer is found to be in the possession of suspected illicit drugs or such contraband is found in an area controlled, occupied or inhabited by the probationer; or when the probation/parole officer receives information that the probationer/parolee is currently under the influence of drugs, has recently used drugs, or engaged in activity indicating possible drug use or possession of drugs.

Before a test is taken, the probation/parole officer should ask the probationer/parolee if he/she has used any prescription, over-the-counter or illicit drugs or substance. The officer shall list what was taken and when. If the result is positive, the probationer/parolee should be asked what he used and when. If the probationer denies drug use, the specimen should be preserved for further testing, if the probationer requests. Confirmatory tests should be conducted at the probationer/parolee's expense. If the probationer/parolee is not able to provide a specimen within two hours of the request, this should be considered a refusal and a violation of the conditions of probation/parole.

In the event of a refusal or a positive test, probation/parole officers should initiate adverse action including increased reporting, treatment requirements, drug/alcohol testing, curfew adjustments, and a revocation of probation/parole proceeding.

In the event the officer intends to initiate a revocation of probation/parole proceeding, the probationer/parolee should be taken into custody immediately. If the probation/parole officer decides on a sanction other than revocation, the probationer/parolee should be given specific instructions as to the action he/she is to take to address the problem, and subsequent tests should be taken randomly within two weeks of the positive test.

IV. ADDRESSING DRUG LEGALIZATION/ DECRIMINALIZATION/ LEGITIMIZATION ACTIVITIES

Policy Statement

17. *The National District Attorneys Association opposes the legalization of illicit substances and endorses the development and implementation of programs designed to fully educate the public regarding current trends aimed at legalizing, decriminalizing, and legitimizing marijuana and other illicit substances.*

A. NDAA HISTORY AND RESOLUTIONS REGARDING DRUG LEGALIZATION, DECRIMINALIZATION, & LEGITIMIZATION

In 1988 the National District Attorneys Association began expressing concern with and opposition to the legalization/decriminalization of marijuana and other controlled substances when the subject of legalization of illicit drug usage and distribution was being raised in the public arena for debate.²²

In 1996, faced with the "The Compassionate Use Act," a California initiative that supported the cause of legalizing marijuana and purported to be limited to medicinal use, the National District Attorneys Association again expressed opposition to the legalization of marijuana and other controlled substances and specifically opposed the passage of "The Compassionate Use Act."²³

In 1998 several states placed before the voters state initiatives that again supported the cause of legalizing marijuana or other controlled substances and purported to limit the legalization to only medicinal usage. The National District Attorneys Association, in dealing with this continued nationwide wave of attempted legalization/decriminalization of marijuana and other controlled substances, again stated

²² National District Attorneys Association Resolution 88-05, Adopted by the Board of Directors July 28, 1988. "Proponents of drug legalization have been working since the 1960's and 1970's to gain support for liberalizing drug policies at the local, state, and federal levels." United States Drug Enforcement Administration, *A Police Chiefs Guide to the Legalization Issue*, reviewed at <http://www.usdoj.gov/dea/demand/policechief.htm>.

²³ National District Attorneys Association Resolution 96-06, *Legalization of Marijuana*, Adopted by the Board of Directors, July 21, 1996 at Nashville, Tennessee. California Proposition 215, also known as "The Compassionate Use Act of 1996," passed on November 5, 1996 and provided that "State criminal penalties relating to the possession of marijuana and State criminal penalties relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver who possesses or cultivates marijuana for the personal medicinal purposes of the patient upon the written or oral recommendation or approval of a physician." United States Drug Enforcement Administration, *A Police Chiefs Guide to the Legalization Issue*, reviewed at, <http://www.usdoj.gov/dea/demand/policechief.htm>.

its opposition to the passage of any initiative that legalized marijuana or other controlled drugs or that allowed the "medicinal use" of marijuana or other controlled drugs.²⁴

The National District Attorneys Association recognizes that since 1996 incremental changes in state drug laws have continued at an alarming rate across our nation.²⁵ Rarely are these incremental changes promoted for what they really are-- well orchestrated efforts to ultimately legalize drugs. By no means has this movement ended.²⁶ Prosecutors should be greatly concerned that, regardless of whether these changes occur through the state legislative process or through voter ballot initiatives, propositions, measures or questions, the proponents of these drug law movements are very well financed; highly adept at manipulating the media; and have proven to be extremely effective.²⁷

As prosecutors, we know through experience that a majority of the crimes in our communities are drug related. This is an indisputable fact, backed by incontrovertible evidence. Those who seek to decriminalize drug usage ignore the facts and the evidence,

²⁴ National District Attorneys Association Resolution 98-03, *Opposing the Legalization of Marijuana and Other Controlled Substances*, Adopted by the Board of Directors, July 26, 1998 at Jackson Hole, Wyoming.

²⁵ The Drug Policy Alliance, formerly the Lindesmith Center Drug Policy Foundation, also a related organization to the Campaign for New Drug Policies, has reported the following drug law changes which occurred either legislatively or as ballot initiatives: "[O]ver 100 drug policy reforms [have been enacted] in 40 states since 1996; Forty-one of these reforms were enacted in 2001 alone; New Mexico . . . pass[ed] nine reform bills in 2001 and 2002; Arizona voters also called referendums on two bills passed by the legislature that would have water-down [sic] a reform initiative approved by the voters in 1996; Oregon voters called a referendum in 1998 on legislation that would have re-criminalized marijuana . . . and defeated re-criminalization at the ballot box; Connecticut, Indiana, Louisiana and North Dakota . . . overhauled their drug sentencing laws; Nevada decriminalized marijuana; Texas passed ground breaking legislation preventing people from being convicted of drug offenses solely on the word of an informant; California and New Mexico passed . . . overdose prevention legislation although the California legislation was vetoed by the Governor) . . ." Drug Policy Alliance (Formerly The Lindesmith Center Drug Policy Foundation), *State by State Drug Policy Reform*, reviewed at <http://www.soros.org/lindesmith/quick/wireframe/state.html>.

²⁶ Despite seemingly significant losses in the November 2002 elections, proponents of drug legalization, medical use of marijuana, drug decriminalization, and right to treatment programs are continuing to promote state legislative changes across the nation and achieving some successes. *See*, California Assembly Joint Resolution 13 (2003); Colorado Senate Bill 318 (2003); Delaware House Bill 210; Illinois Senate Bill 880; Kansas Senate Bill 123(2003); Maine House Bill 61(2003); Maryland House Bill 702 (2003).

²⁷ In Arizona, \$1.1 million of the \$1.5 million spent by proponents was from out-of-state sources. In California, \$1.4 million of the \$1.8 million spent by proponents was from out-of-state sources. United States Drug Enforcement Administration, *A Police Chiefs Guide to the Legalization Issue*, reviewed at <http://www.usdoj.gov/dea/demand/policechief.htm>. "For the first time, America's War on Drugs has well-financed opposition. It's being bankrolled by three wealthy American Businessmen: New York financier George Soros, Cleveland Insurance executive Peter Lewis and John Sperling of Arizona, founder of the for-profit University of Phoenix. The three men have organized a political machine under an umbrella group called the Campaign for New Drug Policies." Hauserman, *Bush Opposes Ballot Measure in Drug Fight*, St. Petersburg Times, April 11, 2002 available at http://www.sptimes.com/2002/04/11/news_pf/State/Bush_opposes_ballot_m.shtml. Sperling, Soros and Lewis have provided funding for 19 initiatives, which were designed to weaken drug laws and have lost only two times. Bach, *Pot Battle Looming for State*, The Arizona Republic, May 3, 2002, available at, <http://www.arizonarepublic.com/arizona/articles/0503marijuana03.html>.

relying on myths to mislead the public and advance their causes. The crimes related to substance abuse range far beyond drug possession. They run the gamut from environmental pollution to murder. They include gang wars to control drug markets, the creation of biohazards through the manufacture of methamphetamine, and deaths caused by drug-impaired drivers.

As a result, it is imperative that prosecutors educate both the voting public, and state and local lawmakers about the myths and realities surrounding the various trends in the decriminalization and legalization of drugs. It is equally important for prosecutors, as part of the education process, to explain to the public how the criminal justice system is dealing with the problem of drug abuse and why certain measures are absolutely necessary. For example, explaining drug court programs or prosecutor lead diversion programs along with the need for incarceration, when an offender has failed to comply with certain terms and conditions would provide the public with a better understanding of those issues with which a prosecutor deals on a daily basis. While the avenues for educating the public are potentially endless, education efforts may be asserted in schools, community task forces, and/or the media and public service announcements.

B. CATEGORIES OF DRUG LAW MOVEMENTS

Though hardly new trends, there are approximately five major categories of drug law movements that have occurred and continue to occur across the nation. These movements include:

- "Right to treatment" programs for offenders in lieu of prison or jail sentences
- Legitimization of marijuana or other controlled substances through approved medical uses
- Decriminalization of marijuana or other controlled substances
- Legalization of marijuana or other controlled substances
- Needle Exchange Programs (NEPS)

1. LEGISLATION/INITIATIVES THAT CREATE A "RIGHT TO TREATMENT"²⁸

²⁸On November 5, 2002 the District of Columbia election ballot contained Initiative Measure No. 62, the "Treatment Instead of Jail for Certain Non-Violent Drug Offenders Initiative of 2002," which would have mandated treatment instead of jail for certain offenders. The full text of the measure is *available at* http://www.dcbooe.org/htmldocs/Initiative_62_3.htm. The unofficial election results reflect that the measure passed with 77.96% of the voters voting in favor of it and 22.04% of the voters voting against it. The election results are available at <http://www.dcbooe.org/htmldocs/MEAS.LST>. However, Initiative Measure No. 62 was voided by the D.C. Superior Court, which determined that the measure "would constitute an improper intrusion upon the discretion of the Mayor and the Council to allocate the amount of funding for drug treatment that they determine can be provided." *A. Santana, Judge Rejects D.C. Plan to Treat Drug Offenders; Initiative Illegally Dictates Spending, Court Says*, The Washington Post, February 11, 2003 at B01. On November 5, 2002 the Ohio election ballot contained Issue 1, which would have amended Article IV of the Ohio Constitution and would have created a right to treatment in lieu of prison if

Policy Statement

18. *The National District Attorneys Association opposes the passage of any state legislation or adoption of voter initiative that mandates treatment for drug offenders in lieu of prison.*

MYTHS & REALITIES

Proponents of "Right to Treatment" programs generally argue that jails are filled with non-violent, first time offenders who were in possession of drugs for personal use and who are in need of treatment rather than jail. In addition, they assert that prosecutors are opposed to offenders receiving treatment. However, the fact of the matter is that "Right to Treatment" legislation and initiatives, which mandate treatment in lieu of incarceration for non-violent drug offenses, are simply circuitous avenues for legalizing marijuana and other controlled substances. Furthermore, jails are not filled with people who merely possess drugs for personal use. Generally, people are in prison for drug possession after agreeing to a plea bargain whereby the charges of drug distribution have been reduced to possession. Additionally, inmates may be incarcerated for possession with the intent to deliver a controlled substance, a very different offense than possession for personal use. Typically, first time offenders who are found guilty of possession for personal use do not go to prison.²⁹ While prosecutors are by no means opposed to drug treatment as an alternative to incarceration, they are opposed to laws that:

- Remove discretion from the prosecutor; and
- Treat rehabilitation and incarceration as though they are mutually exclusive.

The realities surrounding "Right to Treatment" programs are as follows:

adopted. Issue I reviewed at <http://www.state.oh.us/sos/2002General/02Issue1Info.htm>. The unofficial election results reported that 987,398 of the voters voted for the Issue and 2,015,663 of the voters voted against the Issue. Election results reviewed at <http://www.state.oh.us/sos/2002General/02GenIss1.htm>. Until April of 2002, the Florida Campaign for New Drug Policies was also contemplating a constitutional ballot initiative entitled the "Right to Treatment and Rehabilitation for Nonviolent Drug Offenses" that would also have created a right to treatment for certain drug offenders. Hauserman, *Drug Amendment Effort Ends*, St. Petersburg Times, April 18, 2002, available at, http://www.sptimes.com/2002/04/18/State/Drug_amendment_effort.shtml. While the proponents of that initiative have since ceased their efforts in that state, it appears they will concentrate on similar initiatives in other states and attempt to promote the same initiative on the Florida November 2004 ballot. Florida Alcohol and Drug Abuse Association (FADAA) 2002 Legislative Summary, *Constitutional Ballot Initiative 'Right to Treatment'-Withdrawn*, reviewed at, <http://www.fadaa.org/gov-aff/legsum2002.pdf>.

²⁹ According to a study published by the New York Department of Corrections, "[o]f the 22,000 people in jail in New York for drug crimes, 87% were incarcerated for selling drugs or intent to sell . . . Of the 13% doing time for possession, 76% of them . . . were arrested for selling drugs and pleaded down to possession." Additionally, the study found "that most convicted first-time drug offenders end up on probation or in drug treatment." Partnership for a Drug-Free America, *Bulletins* (June 1999), citing, The Wall Street Journal, *Editorial*, (May 25, 1999). According to the Florida Department of Corrections, "of the 1,555 inmates in prison for drug possession on July 31, 2001, none were first time offenders." Bridges, *Treatment Proposal for Drug Offenders Sparks Debate*, Bonita Daily News, March 3, 2002.

"Right to Treatment" Legislation/Initiatives Remove Discretion from the Court and the Prosecutor:

"Right to Treatment" laws generally set forth, in a regimented fashion, the eligibility standards, treatment standards and the sanctions to be imposed for non-compliance with the treatment program. These standards remove the discretion from both the court and the prosecutor as to which offenders should be placed in the program, the types of appropriate treatment for individual offenders, and the appropriate sanctions for individual non-compliance with treatment. It is vital that information, which is available to the courts and prosecutors, be utilized in determining those individuals that would be appropriate for such programs and for determining the types of treatment that they should complete. It is equally important that prosecutors make the decision regarding who will be eligible for the program. The safety of the public is, otherwise, compromised and the effectiveness of treatment is substantially reduced. With the "Right to Treatment" programs the hands of the courts and prosecutors are tied by the standards set forth in the initiative language.³⁰

"Right to Treatment" Legislation/Initiatives Detract from Already Successful Drug Courts:

The "Right to Treatment" legislation and initiatives detract from already effective drug court systems. Drug courts are effective because they contain not only a component of rehabilitation tailored to each individual offender but they also contain the threat of incarceration for noncompliance and intensive involvement by the court system in the offender's treatment. The "Right to Treatment" initiatives do not provide the sanctions imposed by the drug courts that encourage offenders to act responsibly; they do not provide for the judicial monitoring that makes drug courts so effective; and they do not require successful completion of treatment. Drug courts make those who violate the law by using illegal drugs personally responsible for their actions and hold them accountable. Since drug courts already provide for the effective treatment of offenders, the adoption of "Right to Treatment" initiatives or legislation would simply be duplicative and create additional expenses for states adopting such programs.³¹

"Right to Treatment" Legislation/Initiatives Do Not Place Responsibility on the Offender:

While treatment for substance abuse may be a viable option in certain cases, a mandated right to such treatment is not. The "Right to Treatment" legislation and initiatives create such a right for the drug offender but do not require any responsibility to

³⁰ Ohio Prosecuting Attorneys Association, *Position Paper, Ohio Drug Treatment Initiative*; James R. McDonough, Director, Florida Office of Drug Control, June 15, 2001 letter to Betty Sembler, Founder and Chair, Drug Free America Foundation, Inc.

³¹ Ohio Prosecuting Attorneys Association, *Position Paper, Ohio Drug Treatment Initiative*; James R. McDonough, Director, Florida Office of Drug Control, June 15, 2001 letter to Betty Sembler, Founder and Chair, Drug Free America Foundation, Inc.; Martin, Epstein, Initial Brief of Amicus Curiae, Florida Association of Drug Court Professionals, Inc., Supreme Court of Florida, Advisory Opinion to the Attorney General, Case No. SC01-1950.

the criminal justice system from the offender. The structure of the initiative essentially places the offender in control of the criminal justice system. He/she is free to invoke this "right" at any time in the process. For example, if the offender decides that he/she wants a trial, the state must bear the expense of a full trial. Upon conviction, if the offender decides that he/she wants to invoke the right to treatment he/she may do so, thereby creating additional expenses for the state and removing him/her from the purview of the drug court. Furthermore, once the offender has invoked the right he/she only has to remain in the program for a set period of time without any obligation to successfully complete the treatment. The fiscal impact of this type of initiative could be overwhelming for the state and the overall effectiveness of treatment substantially would be reduced, as individuals will be in the treatment programs without any real incentive to complete it.³²

2. LEGISLATION/INITIATIVES THAT LEGALIZE MARIJUANA FOR MEDICINAL PURPOSES³³

Policy Statement

19. The National District Attorneys Association opposes the passage of any state legislation or adoption of voter initiative that legitimizes and legalizes the "medicinal use" of marijuana or any other controlled substance.

MYTHS & REALITIES

Proponents of drug legalization have strategically transformed the legalization of drugs debate by focusing on the legitimization of marijuana for medical purposes. Rather than admit that their overall strategy is to legalize all illicit drugs, they have focused on legalizing marijuana for medical purposes. In doing so they have mounted an emotionally driven campaign, which has employed the sick and dying as pawns. They do so without disclosing to the public the scientific evidence regarding the true pharmacological properties of marijuana. Proponents assert the myths that marijuana has value as medicine and that it is not harmful. The debate must be redefined; the focus must be

³² Ohio Prosecuting Attorneys Association, *Position Paper, Ohio Drug Treatment Initiative*; James R. McDonough, Director, Florida Office of Drug Control, June 15, 2001 letter to Betty Sembler, Founder and Chair, Drug Free America Foundation, Inc.

³³ Arizona Proposition 203, which was on the November 5, 2002 election ballot, would have, *inter alia*, permitted the use of marijuana for medical purposes and would have required the Department of Public Safety to distribute marijuana to those individuals with valid registry identification cards. The full text of Proposition 203 is available at <http://www.sos.state.az.us/election/2002/info/pubpamphlet/english/prop203.htm>. Proposition 203 failed at the polls. The unofficial election results indicate that 57.4% of the voters voted against the proposition and 42.6% of the voters voted for the proposition. The unofficial election results are available at <http://www.sosaz.com/results/2002/general/BM203.htm>; San Francisco, California voters voted to adopt Proposition S, Medical Marijuana, a policy statement which provides that the Mayor, Board of Supervisors, District Attorney, City Attorney, and Department of Public Health shall explore the possibility of creating a program to grow and distribute marijuana for medical use. The text of the proposition is available at <http://www.ci.sf.ca.us/election/guides/digests110502/props.htm>. The election results are available at <http://www.ci.sf.ca.us/election/results1102/results.htm>.

adjusted; and the public must be informed of the truth. In redefining the debate it is imperative to recognize the following realities regarding marijuana:

Marijuana Has No Recognized Medical Value:

Marijuana has no medical value that cannot be met more effectively by legal and regulated drugs.³⁴ "The Institute of Medicine conducted a comprehensive study in 1999 to assess the potential health benefits of marijuana and its constituent cannabinoids. The study concluded that smoking marijuana is not recommended for the treatment of any disease condition. In addition, there are more effective medications currently available. For those reasons, the Institute of Medicine concluded that there is little future in smoked marijuana as a medically approved medication."³⁵ In addition, the movement to legalize marijuana for medicinal purposes "is not encouraged by the pharmaceutical companies, Federal Food and Drug Administration, health and medical associations or medical experts."³⁶ Specifically, the American Medical Association has stated, *inter alia*, it "believes cannabis is a dangerous drug and as such is a public health concern."³⁷

Marijuana is an Unregulated Substance:

Presently there are no quality control standards for marijuana. Marijuana is not subject to the product liability regulations nor is it governed by daily dose criteria. Marijuana is also self-prescribed and administered by the individual consumer and unknown strengths of THC are delivered when smoked.³⁸ State legislation or voter initiatives that legalize marijuana for medicinal purposes, in effect, permit individual states to regulate a controlled substance. It is inappropriate for individual states to take on the role of the United States Food and Drug Administration. Just as each individual state does not regulate aspirin or other over-the-counter medications, each state should not be regulating, through the legislative or initiative process, a substance such as marijuana. The FDA has the primary responsibility for researching, approving and regulating drugs.

³⁴ "The main psychoactive ingredient in marijuana (THC) is already legally available in pharmaceutical capsule form [(known as Marinol)] by prescription from medical doctors." The California Narcotics Officers' Association, *Position Papers: The Use of Marijuana as Medicine*, available at, www.cnoa.org/position-papers-1.htm

³⁵ United States Department of Justice, Drug Enforcement Administration, *Marijuana: The Facts*, citing "Marijuana and Medicine: Assessing the Science Base," Institute of Medicine, 1999, available at, <http://www.dea.gov/ongoing/marijuana.html>

³⁶ The major medical and health organizations that have not accepted smoking marijuana as a safe and effective medicine are: The American Medical Association, the American Cancer Society, National Sclerosis Association, the American Glaucoma Association, American Academy of Ophthalmology, National Eye Institute, National Cancer Institute, National Institute for Neurological Disorders and Stroke, National Institute of Dental Research, and the National Institute on Allergy and Infectious Diseases. California Narcotic Officers' Association, *Position Papers, The Use of Marijuana as a Medicine*, available at, <http://www.cnoa.org/position-papers-1.htm>.

³⁷ H-95.998 AMA Policy Statement on Cannabis (Marijuana). www.ama-assn.org/apps/pf_online/pf_online?f_n=resultLink&doc=policyfiles/HOD/H-95.995.HTM&s_t=marijuana&catg=AMA/CnB&catg=AMA/CEJA&catg=AMA/HOD&&nth=1&&st_p=0&nth=2&

³⁸ California Narcotic Officers' Association, *Position Papers, The Use of Marijuana as a Medicine*, available at <http://www.cnoa.org/position-papers-1.htm>.

It follows strict criteria and protocol in carrying out its responsibilities in order to ensure the public's safety. Chemically, marijuana is not a simple substance- "Marijuana contains more than 400 chemicals, including most of the harmful substances found in tobacco smoke."³⁹ Irrespective of any of the potential health benefits of marijuana and its constituent cannabinoids, the delivery of this “medication” by smoking it represents a danger to the health of anyone who uses marijuana. Clearly the safety of the public is compromised when there are absolutely no regulations governing such a substance.

Marijuana is Harmful:

Marijuana is a dangerously addictive drug that poses significant health risks to users and others. "In 1999, 225,000 Americans entered substance abuse treatment primarily for marijuana dependence," which is second only to heroin dependence.⁴⁰ The use of marijuana has numerous harmful long and short-term effects. "According to the National Institute of Health, studies show that someone who smokes five joints per week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of cigarettes every day."⁴¹ Smoking marijuana also weakens the immune system⁴² and raises the risk of lung infections.⁴³ "Short-term effects of smoking marijuana include: memory loss, distorted perception, trouble with thinking and problem solving, loss of motor skills, decrease in muscle strength, increased heart rate, and anxiety."⁴⁴ Smoking marijuana impairs the judgment of the smoker and increases the risk of accidents. Drivers using marijuana caused as many car accidents as were caused by drivers using alcohol.⁴⁵ In addition, "[i]n 1999 alone, there were 87,150 emergency room cases in which patients admitted to having used marijuana before their injury."⁴⁶

³⁹ United States Department of Justice, Drug Enforcement Administration, *Marijuana: The Facts*, available at, <http://www.dea.gov/ongoing/marijuana.html>.

⁴⁰ DEA Director, Asa Hutchinson, Modernizing Criminal Justice Conference Speech, London, England (June 18, 2002)

⁴¹ United States Department of Justice, Drug Enforcement Administration, *Marijuana: The Facts*, available at, <http://www.dea.gov/ongoing/marijuana.html>.

⁴² United States Department of Justice, Drug Enforcement Administration, *Marijuana: The Facts*, citing, I.B. Adams and B.R. Martin, "Cannabis: Pharmacology and Toxicology in Animals and Humans" *Addiction* 91:1585-1614. 1996, available at, <http://www.dea.gov/ongoing/marijuana.html>.

⁴³ United States Department of Justice, Drug Enforcement Administration *Marijuana: The Facts*, citing, National Institute of Drug Abuse, "Smoking Any Substance Raises Risk of Lung Infections" NIDA Notes, Volume 12, Number 1, January/February 1997, available at, <http://www.dea.gov/ongoing/marijuana.html>.

⁴⁴ United States Department of Justice, Drug Enforcement Administration *Marijuana: The Facts*, citing National Institute of Drug Abuse, Journal of the American Medical Association, Journal of Clinical Pharmacology, International Journal of Clinical Pharmacology and Therapeutics, Pharmacology Review, available at, <http://www.dea.gov/ongoing/marijuana.html>.

⁴⁵ DEA Director, Asa Hutchinson, Modernizing Criminal Justice Conference Speech, London, England (June 18, 2002)

⁴⁶U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *ER Stats Prove Marijuana Is Not-So-Harmless High*, Reality Check, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, available at, <http://www.samhsa.gov/>

3. DECRIMINALIZATION⁴⁷/LEGALIZATION⁴⁸:

Policy Statement

20. *The National District Attorneys Association opposes the passage of any state legislation or adoption of voter initiative that legalizes or decriminalizes marijuana or any other controlled substance.*

Proponents of the decriminalization/legalization movements adhere to the following myths: drugs are not harmful; decriminalization and legalization will not increase drug use and crime; and drug abuse is a victimless crime. Unfortunately for the criminal justice system, the proponents have been very successful in convincing the public of these fallacies. It is imperative that prosecutors explain to the public the movements and their potential consequences;⁴⁹ otherwise, our communities will find themselves facing an onslaught of violence and death directly attributable to the use of dangerous and poisonous drugs that had previously been controlled.

The realities of the decriminalization/legalization movement are:

- Decriminalization/legalization of controlled substances will increase the use of drugs and the associated addiction rate.
- Decriminalization/legalization of controlled substances will increase the crime rate in this country.
- Decriminalization/legalization of controlled substances will dramatically increase the costs to society.

⁴⁷ The term "decriminalization" is "used to describe the removal of, or reduction in, criminal penalties for particular acts. Used in the context of drug policy, it is a broad term that often encompasses a range of measures such as removal of criminal sanctions for simple possession of drugs or lowering of penalties for possession of small amounts of illegal drugs." United States Department of Justice, Drug Enforcement Administration, *Speaking Out Against Drug Legalization, A Guide*, available at, <http://www.usdoj.gov/dea/demand/druglegal/index.html>.

⁴⁸ "The term legalization means making legal what is currently illegal. Used in the context of drug policy, it is a broad term that can mean different things to different people. To some it means making all illegal drugs legal for anyone to use, to others it means making certain illegal drugs legal for certain people to use. There is no specific definition of legalization because the parameters of legalization differ among supporters." United States Department of Justice, Drug Enforcement Administration, *Speaking Out Against Drug Legalization, A Guide*, available at, <http://www.usdoj.gov/dea/demand/druglegal/index.html>.

⁴⁹ On November 5, 2002, the Nevada election ballot contained Ballot Question 9, which would have legalized the possession of 3 ounces or less of marijuana for persons over the age of 21. The Question would also have required the state to provide a regulatory system for the cultivation, taxation, sale, and distribution of marijuana to authorized persons. The full text of Ballot Question 9 is available at http://sos.state.nv.us/nvelection/2002_bq/text9.pdf. The ballot question failed at the polls. The election results are available at, <http://sos.state.nv.us/nvelection/2002General/ElectionSummary.htm>.

- Decriminalization/legalization of controlled substances will send the incorrect message that drug use is harmless.

Increased Drug Usage and Addiction Rates:

Decriminalizing or legalizing drugs sends a message to society that drugs are not harmful. It further sends the message that it is socially acceptable to use them. It is obvious that the combination of increased availability of drugs and a decrease in the stigma associated with drug usage will result in increased usage and addiction.⁵⁰ "Mathea Falco, in *The Making of a Drug-Free America*, states, '. . . there is general agreement that drug abuse would increase under legalization. In the absence of any empirical evidence, estimates vary widely, ranging from a low of 250,000 new addicts to a high of 20 million.'⁵¹

This conclusion is illustrated by the history of decriminalization and re-criminalization laws. "During the 1970's, when about half the states passed decriminalization laws, use of marijuana in the United States hit an all time high. By the late 1980's, after the repeal of these state decriminalization laws, use dropped to less than a third of its previous levels."⁵²

This conclusion is also further illustrated by the legalization of alcohol and tobacco. According to the New England Journal of Medicine in 1994:

There are over 50 million nicotine addicts, 18 million alcoholics or problem drinkers, and fewer than 2 million cocaine addicts in the United States. Cocaine is a much more addictive drug than alcohol. If cocaine were legally available, as alcohol and nicotine are now, the number of cocaine abusers would probably rise to a point somewhere between the number of users of the other two agents, perhaps 20 to 25 million . . . the number of compulsive users might be nine times higher than the current

⁵⁰ "In Vietnam 20 percent of our soldiers were addicted to heroin when it was cheap, available, and had minimal sanctions. When they returned to the United States, where heroin was expensive, more difficult to obtain, and illegal, addiction dropped to only two percent. The Harrison Act in 1914, making drugs illegal, caused a tremendous drop in drug use as witnessed by the 1920's through the 1950's. Private industry has repeatedly demonstrated that tough drug policy sharply reduces sick days, on-the-job accidents, and Workers Compensation claims." California Narcotics Officers' Association, Deputy Chief Thomas J. Gorman, California Bureau of Narcotic Enforcement, *Position Paper, The Myths of Drug Legalization*, available at, <http://www.cnoa.org/position-papers-2.htm>

⁵¹ Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs*, Portland, Oregon (September 1990, Revised September 1993).

⁵² William J. Bailey, M.P.H., Executive Director, Indiana Prevention Resource Center and Associate Professor of Applied Health Science, *Clearing the Marijuana Smokescreen*, Indiana Prevention Resource Center at Indiana University, available at, <http://www.drugs.indiana.edu/publications/iprc/misc/smokescreen.html>.

number. When drugs have been widely available--as . . . cocaine was at the turn of the century--both use and addiction have risen.⁵³

Increased Crime Rates

Decriminalization and legalization will increase the availability of drugs in the community. Because there is a strong correlation between drugs and crime, the increased availability of drugs will necessarily increase the rate of crime in the community. Drug usage "has been argued to contribute directly and indirectly to other forms of crime--both property crime and violent crime--and to hinder the establishment of prosocial relationships and lifestyles."⁵⁴

Drugs and drug related activities (possession, trafficking, manufacturing) generate violent crime in the community. Although the number of drug related homicides have been decreasing in recent years, "murders related to narcotics still rank as the fourth most documented murder circumstance out of 24 possible categories."⁵⁵ In addition, in 2000, the Uniform Crime Reporting Program (UCR) of the Federal Bureau of Investigation "reported 4.4% of the 12,943 homicides in which circumstances were known were narcotics related."⁵⁶

The use of drugs also impairs the user's judgment leading to the commission of other crimes not necessarily considered "drug-related." According to the U.S. Bureau of Census, 29.4% of federal prison inmates and 26.8% of state prison inmates reported being under the influence of drugs at the time they committed murder, 27.8% of federal prison inmates and 39.9% of state prison inmates reported being under the influence of drugs at the time they committed robbery and 13.8% of federal prison inmates and 24.2% of state prison inmates reported being under the influence at the time they committed assault.⁵⁷

Studies also show that users of drugs are generally more likely to commit crimes than non-users. The National Household Survey on Drug Abuse (NHSDA) conducted by the U.S. Department of Health and Human Services (HHS) found that in 1997, illicit drug users were 16 times more likely than nonusers to report being arrested for larceny or

⁵³ Statement by Donnie Marshall, Deputy Administrator, Drug Enforcement Administration, United States Department of Justice before the Subcommittee on Criminal Justice, Drug Policy and Human Resources, (June 16, 1999), available at, www.dea.gov, citing Dr. Herbert Kleber, Columbia University College of Physicians and Surgeons.

⁵⁴ R. Haapanen & L. Britton, *Drug Testing for Youthful Offenders on Parole: An Experimental Evaluation*, Criminology & Public Policy, Volume 1, Number 2, p. 217 (2002) (Citations omitted)

⁵⁵ Executive Office of the President, Office of National Drug Control Policy, ONDCP Drug Policy Information Clearinghouse Fact Sheet, *Drug-Related Crime* (March 2000), available at, <http://www.whitehousedrugpolicy.gov/publications/pdf/ncj181056.pdf>

⁵⁶ U.S. Department of Justice, Bureau of Justice Statistics, *Drugs and Crime Facts, Drug Use and Crime*, available at <http://www.ojp.usdoj.gov/bjs/DCF/duc.htm>

⁵⁷ Executive Office of the President, Office of National Drug Control Policy, ONDCP Drug Policy Information Clearinghouse Fact Sheet, *Drug-Related Crime* (March 2000), available at, <http://www.whitehousedrugpolicy.gov/publications/pdf/ncj181056.pdf>

theft; 14 times more likely to be arrested for alcohol related offenses; and 9 times more likely to be arrested on assault charges.⁵⁸

Increased Costs to Society

The buying, selling, and using of drugs are not victimless crimes. They are crimes that have far reaching consequences that touch the lives of people across our nation. The victims of drug related crime range from those physically harmed by drug-induced crimes to taxpayers footing the bill for drug treatment, criminal prosecution and the expenses associated with incarceration. We are all victims, either directly or indirectly. From a strictly financial standpoint, "[b]etween 1992 and 1998 the overall cost of drug abuse to society increased at a rate of 5.9 percent annually."⁵⁹ "By 1998 the societal cost of drug abuse was \$143.4 billion."⁶⁰

There are three categories of costs incurred by society as a result of drug usage and abuse: healthcare costs; workplace costs; and criminal justice costs. Healthcare costs are incurred because of the physical impact that drugs have on individual users and the long-term demands that this in turn places on the healthcare system.⁶¹ The health care system must treat babies born of drug addicted mothers; treat drug users infected with HIV/AIDS; deal with increased cases of child abuse which occur as a result of drug use⁶²; and handle the numerous emergency room episodes created by drug use and abuse. The healthcare costs alone in 1998 included: \$969 million in hospital and ambulatory care costs; \$503 million due to drug exposed infants; \$127 million for crime victim health care costs; and \$287 million for health insurance administration.⁶³ The work place suffers enormously also because of drug use and abuse. In 1998 the estimated workplace cost due to lack of productivity was \$98.5 billion dollars.⁶⁴ Productivity is primarily affected by employee absenteeism. In the case of employees who are drug users, absenteeism often occurs as a result of drug abuse related illness; institutionalization or

⁵⁸ *Id.*

⁵⁹ Executive Office of the President, Office of the National Drug Control Policy, *The Economic Costs of Drug Abuse in the United States 1992-1998*, p.2 (September 2001).

⁶⁰ *Id.*

⁶¹ Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs*, Portland, Oregon (September 1990, Revised September 1993).

⁶² "Oregon, like other states, has experienced an increase in the number of incidents of physical abuse and threat of harm to children. The Children's Services Division ascribes these increases to the growing problems of substance abuse within families. Suspected drug and alcohol problems within families of child abuse victims more than tripled in Oregon between 1983 and 1989 and was found to be the second most common stress indicator in families of child abuse victims." Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs*, Portland, Oregon (September 1990, Revised September 1993) citing, *Child Abuse Report*, Children's Services Division, Oregon Department of Human Resources, 1989, Salem, Oregon, pp. 5-6. "The Maryland Citizens' Review Board for Children found that in 74% of all cases in which children under age 2 were removed from families because of abuse or neglect, at least one parent was a substance abuser." Brown, *To Save City's Children, Help Addicted Parents*, Baltimore Sun, November 14, 2002, available at,

<http://www.sunspot.net/templates/misc/printstory.jsp?slug=bal%2Dop%2Edrugs14nov14>.

⁶³ Executive Office of the President, Office of the National Drug Control Policy, *The Economic Costs of Drug Abuse in the United States 1992-1998*, p. 5 (September 2001).

⁶⁴ *Id.*

hospitalization; and even premature death. Employers also suffer when victims of drug related crime are injured or hospitalized⁶⁵ or when workplace accidents result from employees working while under the influence of controlled substances.⁶⁶ Lastly, in 1998 the criminal justice and social welfare systems incurred \$32,083 million dollars worth of expenses in dealing with drug abuse.⁶⁷ While legalization of controlled substances would negate the need to enforce prior drug laws, the criminal justice and social welfare systems would require additional resources to deal with the increased levels of violent crimes and property crimes that would occur with the increased usage of drugs.⁶⁸

Drugs are Harmful

Controlled substances are currently illegal because they are harmful both to the immediate user and to other members of society who become victimized by the effects of the drug on the user. Until experts provide empirical evidence that controlled substances are no longer harmful, they should remain illegal. In 1999, there were 19,102 deaths from drug-induced causes (legal and illegal drugs).⁶⁹ There were 168,763 cocaine-related emergency room episodes in 1999.⁷⁰ Additionally, in 1999, 87,000 people sought treatment at hospital emergency rooms for medical problems related to marijuana, which is about the same number as sought treatment for heroin related problems.⁷¹ In 2000, the Substance Abuse and Mental Health Administration's (SAMHSA) Drug Abuse Warning Network (DAWN) indicated 601,563 drug-related episodes in hospital emergency departments across the nation.⁷²

4. NEEDLE EXCHANGE PROGRAMS (NEPS)

Policy Statement

⁶⁵ Executive Office of the President, Office of the National Drug Control Policy, *The Economic Costs of Drug Abuse in the United States 1992-1998*, (September 2001), p. 6.

⁶⁶ Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs*, Portland, Oregon (September 1990, Revised September 1993), pp. 6-7.

⁶⁷ Executive Office of the President, Office of the National Drug Control Policy, *The Economic Costs of Drug Abuse in the United States 1992-1998*, (September 2001) p.8.

⁶⁸ Regional Drug Initiative, *Position Paper in Opposition to the Legalization of Drugs*, Portland, Oregon (September 1990, Revised September 1993), p. 9. "Dr Frank Gawin at Yale and Dr. Everett Ellinwood at Duke report ' . . . a substantial percentage of all high dose binge users become uninhibited, impulsive, hypersexual, compulsive, irritable, and hyperactive. Their moods vacillate dramatically, leading at times to violence and homicide.'" *citing*, James Q. Wilson, "Against the Legalization of Drugs," *Commentary* February, 1990, p. 23.

⁶⁹U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Illegal Drug Use*, (current as of 6/12/02) available at <http://www.cdc.gov/nchs/fastats/druguse.htm>.

⁷⁰ *Id.*

⁷¹ DEA Director, Asa Hutchinson, Modernizing Criminal Justice Conference Speech, London, England (June 18, 2002)

⁷² U.S. Department of Justice, Bureau of Justice Statistics, *Drugs and Crime Facts, Drug Use*, available at, <http://www.ojp.usdoj.gov/bjs/DCF/du.htm>.

21. *The National District Attorneys Association opposes the development and implementation of needle exchange programs.*

MYTHS

Needle exchange programs can be considered a subset of the decriminalization and legalization movements, but deserve special attention as they have been touted as a public health and safety means of preventing the transmission of HIV and Hepatitis A and B. While it appears to the public that the programs are designed for the safety of the community, the programs are simply another incremental step towards the "legalization" of drugs.⁷³ Proponents of needle exchange programs assert that drug addicts share needles because clean needles are unavailable. Proponents also assert that providing needles to drug abusers will protect the abuser from the associated health risks such as HIV and hepatitis transmission.

REALITIES

Providing clean needles and syringes to drug abusers does not reduce the health risks associated with intravenous drug use.⁷⁴ Proponents fail to acknowledge the overall health risks associated with and the damage done by drug abuse. Drug addicts, despite using clean needles, suffer from homicide, suicide, overdoses, heart disease, kidney failure, HIV and hepatitis infections due to their drug usage and resulting risky behaviors.⁷⁵ In addition, unborn children are affected permanently by drug abuse during pregnancy and society bears the costs of medical care and increased criminal activity.⁷⁶

Studies indicate that even when drug addicts are given the opportunity to participate in needle exchanging programs, they continue to share needles.⁷⁷ A drug addict's only goal is to obtain drugs and reach his/her next high. Sound judgment and an appreciation for behavioral consequences are not tools that a drug addict employs.⁷⁸

⁷³ George Soros donated \$1 million dollars to needle exchange programs in 1997 and offered \$1 million (matching funds) in 1998. *George Soros Institute Offers \$1 Million for Needle Exchange*, Associated Press, April 23, 1998, available at, <http://www.freerepublic.com/forum/a199306.htm>.

⁷⁴ See, *Montreal: Higher HIV Rates with Needles*, Hassela Nordic Network Press Release June 24, 1997 and *Needle Sharing in Vancouver NEP*, The Institute on Global Drug Policy, available at, <http://www.estreet.com/orgs/dsi/Needles/NeedleSharinginVancouverN.html>.

⁷⁵ J. Loconte, *Killing Them Softly*, Policy Review, July-August 1998, No. 90, The Heritage Foundation, available at, <http://www.policyreview.org/jul98/needles.html>.

⁷⁶ See, Janet Lapey, M.D., *The Problem with Needle Handouts*, posted July 23, 1997 on The Institute on Global Drug Policy web site, available at, <http://www.estreet.com/orgs/dsi/Needles/TheProblemwithNeedleHandouts.h>; *Hepatitis C and Needle Handouts*, posted on The Institute on Global Drug Policy web site, available at, <http://www.estreet.com/orgs/dsi/Needles/TheProblemwithNeedleHandouts.h>.

⁷⁷ Joyce Howard Price, *Education Does Not Stop Needle Sharing, Study Shows*, The Washington Times, September 27, 2002.

⁷⁸ See, *The Illogic of Needle Exchange*, Alcoholism & Drug Abuse Weekly, October 13, 1997 posted November 27, 1997 on The Institute on Global Drug Policy web site, available at, <http://www.estreet.com/orgs/dsi/Needles/TheIllogicofNeedleExchange.htm>; J. Loconte, *Killing Them*

Taking time to locate a needle exchange program and to exchange dirty needles for clean ones is not feasible. America's police and prosecutors have learned through interviews of addicts and seizures from addicts that needle sharing occurs as part of the drug culture even when addicts have unused needles readily available. Addicts often share the drugs contained in a single syringe and view needle sharing as an expression of trust with one another. Drug abusers also find needle sharing to be part of the drug culture and form of trust among users. In addition, despite having a clean needle, addicts often do not have the resources for the drugs themselves, which leads many to engage in other risky behaviors such as prostitution. Such risky sexual behavior increases the risk of transmitting both hepatitis and HIV despite the use of a clean needle and defeats the premise upon which the needle sharing programs are based.⁷⁹

Lastly, making needles available through exchange programs encourages addicts to continue illegal drug usage and is inconsistent with drug abuse prevention programs, enforcement and control of illicit drugs, and treatment for drug addiction.⁸⁰

V. COORDINATED COMMUNITY INVOLVEMENT

A. MEDICAL COMMUNITY

Policy Statements

Softly, Policy Review, July-August 1998, No. 90, The Heritage Foundation, available at, <http://www.policyreview.org/jul98/needles.html>.

⁷⁹J. Loconte, "Killing Them Softly," Policy Review, July-August 1998, No. 90, The Heritage Foundation, available at, <http://www.policyreview.org/jul98/needles.html>.

⁸⁰ Additional resources on the issue of needle exchange programs can be found at the following web sites:

- U.S. Department of Health and Human Services
<http://www.os.dhhs.gov/>
- Centers for Disease Control and Prevention
<http://www.cdc.gov/>
 - *Update: Syringe Exchange Programs --- United States, 1998*, Morbidity and Mortality Weekly Report, May 18, 2001, 50(19); 384-8, Centers for Disease Control, available at
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5019a4htm>.
- Children's AIDs Fund
<http://www.childrensaidsfund.org>
 - Fred J. Payne, M.D., *An Evidence-Based Review of Needle Exchange Programs, HIV-AIDS Perspectives*, available at,
<http://www.childrensaidsfund.org/resources/needlex.pdf>
- Institute on Global Drug Policy
<http://www.estreet.com/orgs/dsi/>

22. *The National District Attorneys Association believes that medical health providers are an integral part of the community's efforts to prevent drug abuse. The NDAA encourages all health providers to develop programs whereby patients are routinely screened, identified, educated, and treated for substance abuse issues before addiction occurs.*

23. *When possible, the National District Attorneys Association believes that prosecutors should educate the medical profession about the importance of early intervention in drug abuse and its impact on the community.*

Prevention of drug abuse and its associated problems requires that health care providers (to include those in emergency rooms, health clinics, private doctor's offices, and schools) screen all patients for drug abuse issues, identify the nature of the drug abuse, educate the patient on the issue of drug abuse through a brief intervention and refer the patient to either short or long term treatment, if appropriate. It is imperative that these steps be taken to prevent further drug abuse and possibly addiction. As equally important is the opportunity to stop the message that unaffected drug abusers carry to the rest of society-- that drug use and abuse do not have negative consequences.

Prosecutors, where feasible and resources exist, can support educational efforts and focus advocacy strategies on developing adequate resources for comprehensive drug treatment and health care along with improved access to such care within their communities, apart from any formal involvement of the criminal justice system. This can include participation in multidisciplinary task forces to support coordinated services and public awareness campaigns, as well as encouragement of consistent testing protocols within public and private medical facilities to identify all patients at risk from substance abuse.⁸¹

B. FAITH BASED COMMUNITIES

Policy Statement

24. *The National District Attorneys Association supports the role of faith-based communities in the prevention of drug abuse.*

According to the Office of National Drug Control Policy, National Youth Anti-Drug Media Campaign, "th[e] inverse relationship between religious involvement and substance abuse is remarkably robust across different regions, ages, ethnic groups and

⁸¹ National District Attorneys Association Resolution No. 92-03 adopted by the Board of Directors on February 29, 1992.

substances."⁸² As a result, it is equally important that prosecutors utilize the resources associated with faith-based communities, along with other community components, to prevent the use and abuse of drugs by youth and adults alike.

Prosecutors, where appropriate, should engage faith-based communities in the fight against drug abuse. In addition, faith based communities should be encouraged to develop and implement drug prevention programs. Such programs can combine the tenets and worship services of all faiths with the following themes in order to combat drug use and abuse:

- Drug use is not an accepted norm
- Drug use results in negative consequences
- The benefits of being drug free
- The life skills useful in the prevention of drug abuse⁸³

VI. COOPERATIVE EFFORTS

A. COMMUNITY PROSECUTION

Policy Statement

25. The National District Attorneys Association supports the principles of community prosecution to empower communities to combat drug crimes and improve public safety. The NDAA encourages prosecutors to cultivate community and interagency partnerships and to mobilize their communities in collaborative crime prevention and law enforcement initiatives.

Community prosecution is a proactive, community oriented, problem-solving approach to law enforcement that embraces the role of the community in solving community crime and safety problems. A key component of community prosecution is collaboration. Partnerships among community residents, businesses, private institutions and law enforcement and other governmental agencies are developed and directed toward crime prevention goals.

Drug crimes, nuisance offenses, quality-of-life crimes, urban blight, and other neighborhood problems associated with drug trafficking are so pervasive that they have

⁸² *Pathways to Prevention, Guiding Youth to Wise Decisions, A Prevention Guide for Youth Leaders in Faith Communities*, March 2003, National Youth Anti-Drug Media Campaign, Office of National Drug Control Policy, p. iii.

⁸³ For additional information on the use of faith based communities in prevention efforts, see the Office of National Drug Control Policy and Substance Abuse and Mental Health Services Administration websites available at, <http://www.mediacampaign.org/faith/preventionguide.pdf> and <http://www.health.org/initiatives/faithbased/>, respectively.

become the focal point of community prosecution programs across the nation. The NDAA supports the continuation of these programs and the emergence of new ones to address drug crimes and related problems at the community level.

Problem-Identification and Needs Assessment

The universal “model” for community prosecution programs is nonexistent. Community prosecution programs are community-tailored and often community-driven. In this respect, a good starting point is identifying the community crime and safety problems that the new program would seek to address. Problem identification and needs assessments techniques include community surveys, interviews, census data, crime statistics, and/or crime mapping. Once the needs and problems have been identified, the prosecutor, community and agency partners may work collaboratively to prioritize needs and problems, brainstorm and research possible solutions and strategies, and then proceed to implement them.

Program Organization

Current community prosecution programs vary in terms of organization, staffing, location, case processing and prosecutions, and the degree and nature of community participation. How a prosecutor proceeds to establish a new program will depend largely on jurisdictional size and authority, state and local laws, population, demographics, crime statistics, the target (i.e., crimes, problems/needs, geographical area identified), agency resources, community partners and resources, and other variables.

Community Prosecution Strategies⁸⁴

Notwithstanding program variations, several effective strategies are readily adaptable for purposes of launching a new program or improving an existing one. Some communities are affected by gang violence while others are plagued with quality-of-life offenses. Some jurisdictions experience more crime in urban and inner city areas than in the business districts. Some prosecutors prefer to have the community serve in an advisory role in the community prosecution programs while others prefer to have the community involved in the implementation of the program. The development and implementation, or the restructuring of a community prosecution program impacts the organization and administration of an office. As a result prosecutors must determine whether all attorneys in the office will handle the prosecution of such cases, or those assigned specifically to the program, and perhaps whether community prosecution attorneys will prosecute cases at all. Notwithstanding program variations, these themes run through all of the thirty-six community prosecution programs across the country. While the needs and resources of each prosecutor's jurisdiction will dictate the type of

⁸⁴ See United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Goldkamp, Irons-Guynn & Weiland, *Community Prosecution Strategies Monograph*, August 2003, NCJ 195062, available at, <http://www.ncjrs.org/pdffiles1/bja/195062.pdf>

community prosecution program that is developed, the above themes should be considered when implementing a program.⁸⁵

Community Prosecution Funding

There are a number of ways by which local prosecutors can effectively pursue grant funding for community prosecution programs.

First, it is imperative to find out what monies are available to local prosecutors. This can be done by networking with other agencies in and outside of the legal field; subscribing to newsletters pertaining to various areas of interest; reviewing the *Federal Register* for grant announcements; and performing regular Internet searches to determine the availability of funding and the associated eligibility requirements.

Second, it is important for prosecutors to understand how to prepare a grant application. As a result, prosecutors should, when feasible, participate in workshops on both grant writing and fiscal management; become familiar with the grant writing process and procedures in their state; and complete the preliminary concept work in advance of grant writing so that the current foundational work (i.e. census data for the jurisdiction, demographics, crime data and mapping) is readily available. Once funding is awarded it is important for prosecutors to participate in government-sponsored research projects in order to take advantage of independent assessments; utilize the technical support provided by the funding source; and tout prior successful programs and agency recognition to underline the agency's ability to receive, implement, and complete projects.

Many community prosecution programs are initiated with grant funds appropriated by the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (US DOJ/OJP/BJA).⁸⁶ If pursuing a community prosecution program with a juvenile component, prosecutors should consider seeking funding through

⁸⁵ *Id.* The following strategy typologies have been identified:

- a. The target problem bringing about the need for the community prosecution strategy.
- b. The geographic target area addressed by the initiative.
- c. The role of the community in the community prosecution strategy.
- d. The content of the community prosecution approach to the community problems addressed.
- e. The organizational adaptations made by the prosecutor's office for community prosecution.
- f. Case processing adaptations.
- g. Interagency collaboration or partnerships relating to community prosecution initiatives.

⁸⁶ Information on OJP funding opportunities for State, local and private organizations may be found at the National Criminal Justice Reference Service (NCJRS) website at www.ncjrs.org/fedgrant.html. Additional grant funding information can be found at the following websites: Office on Violence Against Women - <http://www.ojp.usdoj/yawo/applicationkits.htm>; TGCI/The Grantsmanship Center - <http://www.tgci.com/funding/federal.asp>; FedGrants/Federal Funding Opportunities - <http://fedgrants.gov/Applicants/>; FirstGov (The U.S. Government's Official Web Portal - <http://firstgov.gov> .

the US DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP)⁸⁷. Native American tribal applications for community prosecution funding may also be submitted to the National Tribal Justice Resource Center.⁸⁸

B. DRUG COURTS

Policy Statement

26. *The National District Attorneys Association endorses the establishment and funding of drug court programs for substance abusing offenders as an effective and cost effective means of reducing crime and enhancing public safety.*

In the intervening years since President Nixon declared a “War on Drugs,” the federal and state governments have searched for alternative methods and tools, which might be effective in the interdiction of drugs and the treatment of the addicted drug offender. It is unlikely, in the embryonic years, that the duration and true economic cost of this war could have been known or even predicted. In 1972, the total amount budgeted by Congress to sustain the federal effort was \$101 million. Since that time, that number has grown to an estimated \$11.7 billion for 2004. Not considered in those amounts is the separate cost to the states, which in 1998 was estimated to total \$77.9 billion. The state estimates cover the entire panoply from, investigation, arrest prosecution, incarceration and treatment for the drug offender.

Also not considered are the costs to citizens who suffer losses due the attendant thefts and property crimes related to an addicted drug offender’s search for the money necessary to maintain an addiction. It has been estimated that as much as 60% of the total thefts in all categories is related to drug addiction. The ongoing costs of sustaining the work necessary to stem the flow of illegal drugs into the country, to stifle the manufacture and distribution of controlled substances to the population together with the attendant costs of the arrest and prosecution of the drug criminal and possible treatment of the addicted drug offender has necessitated a quest for alternatives in the system which will reduce the demand for drugs. It seems logical that a reduced demand may result in spending reductions in all other areas of the “War on Drugs.” Foremost in this effort has been the development of drug courts now exceeding 700 in operation nationwide.

The advent of specialized drug courts really began in the 1980's, when traditional courts and local incarceration facilities were inundated with a rising number of drug offenders. Drug courts were developed to reduce recidivism and thereby reduce caseloads by limiting the numbers of repeat offenders. The success of drug courts lies in the close scrutiny that the court is able to give to each offender. In the drug court setting, the court, acting in a position of *loco parentis* can monitor on a frequent basis, the behaviors of those who appeared before it. Then as now, the court reached offenders at the pre-adjudication stage, supervising them from initial induction into the program until

⁸⁷ The Office of Juvenile Justice and Delinquency Prevention (OJJDP) website is available at <http://ojjdp.ncjrs.org>.

⁸⁸ The National Tribal Justice Resource Center website is available at <http://www.tribalresourcecenter.org>.

they have gone up to a year being drug-free. Though drug court programs vary widely from state to state, the goal and their apparent success merits their continued use in the criminal justice system.

Prosecutors occupy a unique position from which to advance the drug court concept. They are capable of bringing together essential parties and components necessary to develop a court, which, where appropriate, can provide a consistent alternative to the current reliance on the traditional application of conviction, punishment and probation. As America's prosecutors, the National District Attorney's Association should be at the front edge in the development of the drug court concept and encourage prosecutors to explore them throughout the United States. The use of drug courts is an essential part of the drug policy promoted by the National District Attorney's Association.

Drug courts may be established under the supervision of the local prosecutor. If not under the direct supervision of the prosecutor, then the creation of the court should avail itself of a prosecutor's perspective in developing the model. At the very least, the prosecutor should establish the criteria under which a drug offender may be admitted to the program. The prosecution office should screen the cases to determine who qualifies to enter the program. A prosecutor should attend each court setting prepared to make recommendations in conformity with an overall plan for each participant.

The drug court should operate as a team whose membership includes a judge, prosecutor, defense counsel, human services worker, and probation officer. Each of these individuals should work together to provide for consistency in the search for a solution to each offender's addiction. The offender must be required to pay the costs of admission and maintenance in the program. Each offender must sign an agreement setting out the requirements of the program. The offender must agree to submit to search and seizure, frequent testing, counseling, and promise to stay drug free once in the program. The court should have at its disposal the availability of graduated sanctions for violations of the agreement. Fines, community service, day jail, and increasing jail terms should be a part of the system.

Each court should monitor the progress of each offender, both while in the system and after graduation. Failures to complete the program should also be tracked. Data collection post graduation continues to be a difficult problem. To date, there is a paucity of accurate and reliable data to establish the success of drug court programs nationwide. Since each court is slightly different, thorough, uniform outcomes testing defies computation. Available literature places success, one year after completion of the program at anywhere from 30% to 70% of the participants remaining drug free.

C. "WEED AND SEED" PROGRAMS

Weed and Seed is a federal program administered by the United States Department of Justice (DOJ) Executive Office of Weed and Seed (EOWS) to fight neighborhood crime, drugs and poverty and to enhance the quality of life in the

neighborhood. "Weed and Seed" is often described as a two-pronged "strategy": first, law enforcement agencies "weed" out violent offenders and drug traffickers from targeted high crime neighborhoods; second, "seeding" brings human services, crime prevention, restoration and economic development programs to these areas. Since its inception in 1991, neighborhoods in over 360 sites have benefited from this dynamic community building process.

Integral to this process are the "weeding" efforts of state and local prosecutors who vigorously prosecute the multitude of criminal cases resulting from heightened law enforcement. The NDAA applauds these prosecutors who bring to justice the drug traffickers and violent offenders responsible for neighborhood crime and deterioration. Their untold contributions are vital to the lasting success of "Weed and Seed."

Policy Statement

27. The National District Attorneys Association endorses the "Weed and Seed" program as a model framework for the collaborative leveraging of multiple agency and community resources. The NDAA believes that "Weed and Seed" programs galvanize federal, state and local agencies, residents, social service providers, and public and private organizations to pool their efforts in reducing crime and revitalizing neighborhoods.

'Weed and Seed' is defined as a community-based, comprehensive, multi-disciplinary approach to combating drug-trafficking, drug-related and violent crime in targeted high crime neighborhoods. Partnerships among federal, state, and local agencies, social service providers, the public and private sectors and residents are developed and directed toward crime prevention and neighborhood revitalization. The goal is to transform unstable, high crime neighborhoods into safe, clean, thriving communities.

The "Weed and Seed" strategy is based on collaboration, coordination, community participation, and leveraging resources. Each participant has a responsibility to the community and its future. There are four components of the "Weed and Seed" Strategy:

- Law enforcement
- Community policing
- Prevention, intervention and treatment
- Neighborhood restoration and economic development.

Law enforcement and community policing comprise the "Weed" aspect of the strategy. Law enforcement activities weed out violent offenders by coordinating and integrating the efforts of federal, state and local law enforcement. Their goals are the identification, arrest, prosecution, conviction and incarceration of violent criminals and drug traffickers operating in a target area. The key for the law enforcement agencies is communication and collaboration; federal, state and local police and prosecution must communicate and share information to plan a viable strategy. Normally, these agencies

work independently of each other; federal agencies with the U.S. Attorney's Office, and local police with the state or local prosecutor; and oftentimes strategies overlap. Rather than simply investigating and processing cases, federal and state law enforcement agencies cooperate and take a proactive approach towards dealing with crime problems. Some law enforcement initiatives in the "Weed and Seed" sites focus on intensified narcotics investigations, drug trafficking, and targeted prosecutions.

To increase the effectiveness of law enforcement, active community participation is encouraged. Community policing is an essential component of "Weed and Seed." Community policing is improving the relationship and accountability between law enforcement and residents. Community members assist police investigations by serving as the "eyes and ears" of the community. They form neighborhood watches, gather information on drug houses, and relay the information to the police.

Prevention, intervention and treatment, and neighborhood restoration and economic development comprise the "Seed" component of the strategy. The goal is to revitalize the community, improve the physical environment, assess the needs of the community members, then have social service agencies work with the members to restore the community so that it can recover, progress and function independently.⁸⁹

The authority, policy, and regulations for the "Weed and Seed" program are federally determined. An official Department of Justice designation of a "Weed and Seed" site is required. The U.S. Attorney spearheads the application process for official recognition of a "Weed and Seed" site, and, if approved, orchestrates the overall strategy, design and direction for that site.⁹⁰

The extraordinary success of "Weed and Seed" may be attributed to the collective commitment, resources, and hard work of multiple stakeholders in the community. State and local prosecutors are essential to the coordinated federal, state, and local law enforcement effort. Under the leadership of the U.S. Attorney, state and local prosecutors participate in the interagency planning and deployment of "weeding" strategies resulting in the arrest, prosecution and incarceration of offenders. Their principal responsibility lies in prosecuting the vast number of criminal cases generated by intensified police enforcement. The resources required can be considerable. If contemplating a new "Weed and Seed" site, prosecutors should examine the availability of resources to sustain the initiative over the long term.

⁸⁹ For more information, check the Executive Office for Weed and Seed website at <http://www.ojp.usdoj.gov/eows>. For models that have worked effectively in other jurisdictions, refer to *Weed and Seed Best Practices: Evaluation-Based Series* available at www.usdoj.gov/eows/publications.htm.

⁹⁰ Information about the "Weed and Seed" program, the application process, program implementation, technical assistance, evaluation processes, and federal resources available may be accessed at the Executive Office for Weed and Seed web site at <http://www.ojp.usdoj.gov/eows>.

"Weed and Seed" is federally funded. Funds are limited, and participants may or may not receive a portion.⁹¹ Many local law enforcement programs are initiated with grant funds appropriated by the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (US DOJ/OJP/BJA). These funding opportunities may be applied to support the local law enforcement component of "Weed and Seed."⁹²

Parameters and requirements for the Weed and Seed program are separate from, but may overlap with, those for grant funding. Of course, adherence to both is important. To ensure dual compliance, identify in the grant application goals, objectives, activities and projected expenditures that conform to Weed and Seed program standards and restrictions. To bolster the grant application, consult the U.S. Attorney's application for DOJ recognition for the site description, demographics, problem identification, needs assessment, crime data, objectives and other helpful information.⁹³

D. HIGH INTENSITY DRUG TRAFFICKING AREAS (HIDTA)

Policy Statements

28. The National District Attorneys Association endorses the use of High Intensity Drug Trafficking Area Programs (HIDTA) as a valuable cooperative effort among federal, state and local law enforcement agencies in the fight against drug trafficking.

29. The National District Attorneys Association encourages prosecutors whose jurisdiction falls within a high intensity drug trafficking area to actively participate in the HIDTA program, and encourages the federal government to provide appropriate fiscal and other support services to state and local HIDTA members.

The High Intensity Drug Trafficking Area program is a federally created program governed by the Office of National Drug Control Policy. Currently there are twenty-six regions in the country that have been designated as high intensity drug trafficking areas. The HIDTA program is designed primarily to integrate the efforts, resources, technology, and information of federal, state, and local law enforcement agencies in a designated area to effectively counter illegal drug production, manufacture, distribution, transportation and chronic use of illicit substances.⁹⁴ The HIDTA program is also designed so that local, state, and federal agencies jointly "assess regional drug threats, develop strategies to combat the threats, and develop initiatives to implement the strategies."⁹⁵

⁹¹ For information on "Weed and Seed" funding opportunities see the Executive Office for Weed and Seed website at <http://www.ojp.usdoj.gov/eows>.

⁹² Information on OJP funding opportunities for state, local and private organizations may be found at the National Criminal Justice Reference Service (NCJRS) website at www.ncjrs.org/fedgrant.html. See also, <http://grantwritingusa.com/hsu.html> for a list of USDOJ grant awards for FY2003.

⁹³ See also, the "Community Prosecution" section above for tips on seeking grant funding.

⁹⁴ "High-Intensity Drug Trafficking Areas," Office of National Drug Control Policy, available at, <http://www.whitehousedrugpolicy.gov/hidta/overview.html> accessed January 6, 2004.

⁹⁵ *Id.*

The HIDTA Program has provided over 1,300 participating local, state, and federal agencies the means to physically co-locate personnel within HIDTA funded space and setup a national information-sharing system complete with tactical and strategic intelligence analysis capability. While HIDTA is a counterdrug program, the HIDTA intelligence centers operate in a general criminal intelligence environment, thus leveraging all criminal intelligence information for the program's primary mission. Analysts and law enforcement officers in the HIDTA have direct access to thousands of criminal and public source databases and state-of-the-art analytical tools. This means that everyone is sharing the same information.

The core mission of each individual HIDTA is to provide tactical, operational and strategic intelligence support to its Executive Board, a group of participating local agency heads responsible for the daily management of their respective HIDTA, HIDTA-funded task forces and other regional HIDTA functions. Developing regional threat assessments and providing event and target deconfliction are also among the HIDTA's core missions. These core functions are critical to building trust and breaking down parochialism between and among the participating local, state, and federal law enforcement agencies.

Over 90% of our nation's law enforcement personnel are at the state/local level. Consequently, the vast majority of crucial domestic intelligence lies with the state and local partners. Paradoxically, the analytical assets to harvest, analyze and exploit that rich source of information reside with the federal government and is sorely lacking at the local level. One of the most effective ways to provide analytical resources is to have the HIDTA program fill that gap, with cooperation from the local, state, and federal partners. The smallest to the largest law enforcement agency can now participate, to varying degrees, in the HIDTA intelligence process.

It is critical to the successful detection, investigation and prosecution of drug related crimes that multiple agencies and multiple jurisdictions coordinate their efforts, combine their resources and technologies, and engage in effective information gathering and intelligence sharing. It is equally important that local prosecutors become involved with and play a pivotal role in the activities of their regional HIDTA program.

VII. PROSECUTORIAL TOOLS

A. ASSET FORFEITURE

Policy Statements

30. The National District Attorneys Association believes that administrative, civil, and criminal asset forfeitures are invaluable tools for dismantling the financial foundation of drug organizations. The NDAA encourages prosecutors to utilize these tools, where available.

31. *The National District Attorneys Association encourages all state legislatures to enact legislation, which permits the administrative, civil, and criminal forfeiture of all real estate, personal property, money and financial instruments connected with the possession, manufacture, sale or distribution of illicit substances.*

The total amount of money spent by Americans on illegal substances is staggering. In 2000 alone, 64.8 billion dollars was diverted from legitimate economic enterprises and spent on the drug market.⁹⁶

Asset forfeiture statutes allows law enforcement to expand its efforts beyond merely arresting and prosecuting criminals to allow law enforcement to seize the assets used in, and obtained from, the commission of criminal offenses.⁹⁷ As a result, asset forfeiture assists in the destruction of the money base necessary for the continuation of illegal drug enterprises and attacks the economic incentive to engage in organized drug activity. Forfeiture is particularly useful in attacking highly organized criminal enterprises, where convictions mean only mandatory retirement of subordinates, with no direct impact on the criminal activities of the organization.⁹⁸

Forfeiture programs then benefit law enforcement. Forfeited property or the proceeds of its sale are turned over to law enforcement and are used to further the fight against crime. While the purpose of forfeiture should never be based solely on the generation of revenue, it is only fitting that the forfeited property be used to combat those who seek to profit from crime.

The National District Attorneys Association believes that law enforcement agencies and prosecutors should aggressively pursue forfeiture actions to eliminate the instrumentalities of drug related crime and to confiscate the proceeds from those criminal acts.⁹⁹

B. DIVERSION PROGRAMS

Policy Statement

⁹⁶ "Drug Data Summary," Fact Sheet, Drug Policy Information Clearinghouse, Office of National Drug Control Policy, Executive Office of the President, March 2003, *available at*, http://www.whitehousedrugpolicy.gov/pdf/drug_datasum.pdf. "In 2000, Americans spent an estimated \$36 billion on cocaine, \$11 billion on marijuana, \$10 billion on heroin, \$5.4 billion on methamphetamine, and \$2.4 billion on other illegal substances."

⁹⁷ All fifty states and the District of Columbia now have some type of civil and/or criminal forfeiture law in effect. *See* National Criminal Justice Association, "Asset Seizure and Forfeiture: Developing and Maintaining a State Capability", App. A (1988).

⁹⁸ *See*, State of Hawaii, Department of the Attorney General, "Proceedings Under the Hawaii Omnibus Criminal Forfeiture Act," Annual Report 2002, pp. 1-4. *See also*, *Hawaii Omnibus Criminal Forfeiture Act*, Chapter 712A of the Hawaii Revised Statutes [H.R.S.]

⁹⁹ "National District Attorneys Association Guidelines for Civil Asset Forfeiture," Resolution No. 93-0,1 Adopted by resolution of the Board of Directors, National District Attorneys Association, March 6, 1993, Colorado Springs, CO.

32. *The National District Attorneys Association believes that diversion programs offer an effective alternative-to-prosecution for first offenders of drug possession offenses and other non-violent, drug-initiated crimes. Benefits include reductions in criminal recidivism, drug use, court dockets, and incarceration rates.*

Treatment programs for drug users available within the continuum of the criminal justice system are cost-effective approaches. For first offenders, a district attorney-directed diversion program can be a meaningful first point of intervention, offered as a voluntary option to prosecution. Studies have demonstrated that individuals mandated or coerced into treatment programs have higher treatment retention rates and better outcomes.

Well-defined and structured diversion programs that include the critical components of assessment, case management, drug testing, a range of substance abuse and mental health treatment options, other adjunctive services, and graduated sanctions offer the best results. Program staff that includes addiction treatment professionals offers specialized treatment planning and oversight. Charges are dismissed for offenders who successfully complete the program. Offenders are prosecuted for the diverted charges should they fail to complete program requirements. Thus, those who knowingly use illegal drugs are held personally accountable for their criminal activities.

C. DRUGGED AND DRUNK DRIVING

Policy Statements

33. *The National District Attorneys Association endorses the vigorous prosecution of drunk and drugged drivers as a means of controlling drug use and abuse.*

34. *The National District Attorneys Association encourages all states to enact legislation, which enables law enforcement to collect evidence against drunk and drugged drivers. The NDAA also endorses the enactment of legislation, which enhances the administrative and judicial penalties for drunk and drugged driving, including mandatory substance abuse evaluation and treatment.*

According to the 2002 National Household Survey on Drug Abuse (NHSDA) "[o]ver 8 million persons aged 12 or older, or 3.6% of the U.S. population, reported driving under the influence of illegal drugs during [] 2001."¹⁰⁰ Furthermore, "illegal drugs are used by approximately 10-22 percent of drivers involved in all motor vehicle crashes often in combination with alcohol," according to the National Highway Traffic Safety Administration.¹⁰¹ The costs to society due to such reckless behavior are staggering.¹⁰²

¹⁰⁰ United States Drug Enforcement Administration, *Get the Facts about Drugged Driving*, available at, http://www.dea.gov/driving_drugged.html.

¹⁰¹ *Id.*

¹⁰² United States Department of Transportation, National Highway Traffic Safety Administration, *Impaired Driving Prevention Tool Kit*, available at, <http://www.nhtsa.dot.gov/people/injury/alcohol/1DPToolkit/1DPToolkit.pdf> . "Recent HG TSA statistics

The National District Attorneys Association believes that the vigorous enforcement of existing impaired driving laws is mandated in light of such statistics. Furthermore, the enactment of laws, which lower the permissible blood alcohol levels while operating a vehicle; laws, which facilitate the collection of evidence in impaired driving cases; and laws, which enhance penalties for such conduct are imperative.

Law enforcement contact with impaired drivers during routine traffic stops or motor vehicle accidents provides an excellent opportunity for the identification of drug use and abuse, intervention, and ultimately treatment in addition to punishment for the conduct. It is equally important that law enforcement agencies receive the necessary training to qualify as drug recognition experts, particularly in those cases where testing fails to show the presence of alcohol. Lastly, funding for research and development of technology to detect drug usage in the field is of utmost importance in the prosecution of drugged driving cases.¹⁰³

indicate that alcohol-related crashes cost society \$40 billion. This conservative estimate does not include pain, suffering, or lost quality of life." (citation omitted).

¹⁰³For additional information see United States Department of Transportation, National Highway Traffic Safety Administration website available at <http://www.nhtsa.dot.gov/>; Office of National Drug Control Policy website available at <http://www.whitehousedrugpolicy.gov/>; and Mothers Against Drunk Driving (MADD) website available at <http://www.madd.ca/>.

D. INCAPACITATION THROUGH THE AVAILABILITY OF MANDATORY INCARCERATION

Policy Statement

35. *The National District Attorneys Association believes that incapacitation of certain drug offenders through mandatory incarceration is an effective tool in the fight against drug related crime.*

Prison serves its most important purpose when users, sellers, and illegal manufacturers of drugs are removed from their milieu and restrained from committing further offenses. The protection of the community from these individuals and the crimes resulting from their use and abuse of drugs is equally as important when drug offenders are incapacitated through incarceration.

According to the National Center for Policy Analysis, "[o]ne study found that each additional prisoner incarcerated reduces the number of crimes by approximately 15 per year, and yields a social benefit of at least \$53,900 annually. Thus, even at \$25,000 a year, the cost of keeping the average criminal in prison is worthwhile."¹⁰⁴

Along with incarceration and removal from the drug environment, incarceration provides a period of abstinence for drug offenders. The criminal justice system then has the opportunity to evaluate those individuals in need of drug treatment and to implement treatment programs, where appropriate. While proponents of "Right to Treatment" programs insist that prosecutors are opposed to treatment, the National District Attorneys Association believes that treatment is appropriate during periods of incapacitation when drug offenders can more fully reflect upon the consequences of their criminal activities. Protecting the public while providing a means of rehabilitation for drug offenders certainly is a better way of serving the community.¹⁰⁵

While reduction in crime rates has been attributed to incapacitation, the deterrence effect of incarceration should certainly not be overlooked as an argument in support of mandatory incarceration. According to the National Center for Policy Analysis "[b]etween 1950 and 1980, expected punishment declined more-or-less continuously from an average of seven weeks for every serious crime committed to only 10 days-an 80 percent drop. In response, the serious crime rate more than quadrupled during those years. In the 1980s, expected punishment began to increase, accompanied by the leveling off and then a decline in the serious crime rate. Between 1980 and 1996, expected

¹⁰⁴ The National Center for Policy Analysis, Study No. 219, *Crime and Punishment in America: 1998*, September 1998, available at, <http://www.ncpa.org/studies/s219.html>.

¹⁰⁵ "[N]umerous studies refute the once-fashionable idea that "nothing works" in the rehabilitation of criminals, showing that, other things being equal, offenders who participate in certain types of institutional or community-based treatment programs are less likely to be repeat offenders than the nonparticipants." (footnote omitted) United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Performance Measures for the Criminal Justice System, Discussion Papers from the BJS-Princeton Project*, October 1993, NCJ-143505, available at, <http://www.bja.evaluationwebsite.org/html/documents/documentf.html>

punishment for serious crimes increased from 10.1 to 21.7 prison days, a 115 percent increase, and serious crime declined."¹⁰⁶

E. MONEY LAUNDERING & RACKETEERING

Policy Statement

36. *The National District Attorneys Association encourages the use of money laundering and racketeering statutes, where possible, as effective tools in dealing with organized drug traffickers.*

While money laundering and racketeering prosecutions often fall within federal jurisdiction because of the multi-jurisdictional and international aspects of these crimes, local prosecutors should be mindful of and consider the use of state statutes which permit similar prosecutions in their localities.

The amount of money involved in money laundering is staggering. It is estimated by the International Monetary Fund to be 600 billion dollars per year.¹⁰⁷ Because drug organizations rely so heavily upon money laundering to legitimize money obtained from illicit activities, the use of money laundering is an extremely effective tool in disintegrating the financial infrastructure of complex drug organizations. In order to effectively detect, investigate and prosecute these crimes, however, there must be cooperation between prosecutors and the financial community. Adequate laws must be enacted to eliminate the secrecy surrounding financial transactions and to provide strict reporting requirements on the movement of currency.

F. NUISANCE ABATEMENT AND EVICTIONS: GANG INJUNCTIONS¹⁰⁸

Policy Statements

37. *The National District Attorneys Association endorses the use of civil injunctions, which target gangs, as an effective law enforcement tool to suppress gang activity while permitting communities and responsible government agencies to organize and reassert control over affected neighborhoods. When appropriate and feasible, civil injunctions should be used by prosecutors as part of an overall strategy against gang violence and specifically, drug related crimes.*

¹⁰⁶ *Supra* note 104, *Crime and Punishment in America: 1998*.

¹⁰⁷ "Money Laundering," United States Drug Enforcement Administration, available at, <http://www.usdoj.gov/dea/programs/money.htm>.

¹⁰⁸ For additional information on the topic of gang injunctions, the following individuals can be contacted: Martin Vranicar, Jr., Assistant City Attorney, 222 S. Hill Street, 6th Floor, Los Angeles, CA 90012-3503, 213-847-0127, mvrnic@attylacity.org & David R. LaBahn, Executive Director, California District Attorneys Association, 731 K Street, 3rd Floor, Sacramento, CA 95814, 916-443-2017, dlabahn@cdaa.org.

38. *The National District Attorneys Association encourages state legislatures to adopt legislation, which permits prosecutors to utilize civil injunctions to enjoin, abate, and prevent gang related activities and their impact upon communities.*

The gang injunction, a civil remedy, is a strategy that targets illegal narcotics trafficking and other neighborhood problems associated with gangs. The gang injunction is a public nuisance lawsuit brought on behalf of the people of the state, which seeks to prohibit gang members from engaging in activities that bring crime and fear to neighborhoods. A gang injunction restricts members of a targeted street gang in a specific community from loitering in public with other gang members, intimidating victims and witnesses, possessing or using guns, weapons, alcohol and illegal narcotics, disobeying a curfew imposed on the gang, and trespassing. The court restricts those activities because those are the activities prosecutors have documented as leading to the gang's criminal activity.

In California, a state that has made use of gang injunctions for several years, such efforts have proven to be successful, resulting in overall reductions in gang crime and public nuisance activity.¹⁰⁹ The California Supreme Court has upheld the use of the gang injunction to take back a community from a street gang.¹¹⁰

In communities where injunctions have been in place, public drug sales have diminished and large groups of gang members no longer loiter publicly. "Gang members have admitted to changing their street behavior as a direct result of injunctions."¹¹¹ Local communities report that quality-of-life crimes such as graffiti, vandalism, drinking in public, and loitering by the gangsters decrease when a gang injunction is in effect. A recent study of the impact of gang injunctions on violent crime by UCLA Professor Jeff Grogger "documented an 8% reduction in overall violent crime in injunction areas. These statistics also reflect that while gang crime attributed to a targeted gang is impacted significantly, overall gang and other crime is also impacted, a ripple effect of the injunctions. Lastly, gang injunctions provide gang members the discipline and an excuse to leave the gang if they want to. Gang injunctions give the community a break from the constant street presence of the gang so that outreach programs and community empowerment programs have an opportunity to work."¹¹²

¹⁰⁹ See California Penal Code, Section 186.22a and California Health and Safety Code, Sections 11570 *et seq.*

¹¹⁰ See *Gallo v. Acuna*, 14 Cal. 4th 1090, 929 P.2d 596 (1997).

¹¹¹ Los Angeles City Attorney, Gang Unit website available at <http://www.lacity.org/ATTY/atycb1c2g.htm>.

¹¹² *Id.*

G. REGULATION OF PRECURSOR CHEMICALS

Policy Statements

39. *The National District Attorneys Association believes that regulations governing the production, wholesale and retail sale, and importation and exportation of precursor chemicals are vital to stemming the increasing manufacture of illegal drugs.*

40. *The National District Attorneys Association encourages state and federal legislators to enact precursor chemical laws, which schedule certain identified precursor chemicals as controlled substances; regulate the sale and purchase of precursor chemicals; and mandate the reporting of such sales and purchases to law enforcement. The NDAA also urges the adoption of prescription monitoring programs to prevent the diversion of legitimate pharmaceuticals into the illicit drug market.*

41. *The National District Attorneys Association encourages prosecutors to educate, where possible, retailers and pharmaceutical companies about suspicious sales and purchases of precursor chemicals and to encourage them to voluntarily control and report such activity.*

The National District Attorneys Association has expressed serious concerns over the growing methamphetamine abuse problem in this country. Methamphetamine can be produced in sophisticated “Super-Labs” and can also be produced in primitive, easily constructed labs variously described as “user,” “tweaker,” “addict,” or “Mom & Pop” labs. The number of labs manufacturing methamphetamine in the United States has increased significantly since the mid-1990s; the number of labs seized nationally exceeded 16,000 in 2004, as opposed to fewer than 1,700 seizures reported in 1996. In 2003 every state reported at least one meth lab seizure. It is apparent that the prevalence of such labs has become a national crisis for our justice, health, and environmental systems with primary clean-up costs running into the hundreds of millions of tax dollars annually.

Contributing to this problem is the relatively simple process that exists for the manufacture of methamphetamine and the fact that the key precursor chemical needed to produce the drug is pseudoephedrine, a chemical contained in numerous cold remedies which are sold over the counter 24 hours a day, seven days a week, throughout the country. The chemical structure of pseudoephedrine is identical to methamphetamine and the only step necessary to convert pseudoephedrine to methamphetamine is the removal (reduction) of one oxygen atom from the pseudoephedrine molecule. All the materials needed to remove the oxygen atom from the pseudoephedrine molecule are also legally available in numerous stores at relatively low prices in every section of the country. After doing a little research and buying about \$80 of common household products including pseudoephedrine, a teenager can make half an ounce of methamphetamine in his or her parent’s bathroom. The various ingredients used in the many “recipes” to cook methamphetamine include asphyxiants that can suffocate; others that act as anesthetics that render the victim unconscious before killing them; anhydrous ammonia associated

with swollen larynx, vomiting, deep ulceration of the skin, caustic burns, stinging pain, fluid accumulation in the lungs and blindness; petroleum solvents that create vapors that can catch fire or explode; battery acid; drain cleaner; lye and lithium metal which has an explosive reaction when it comes into contact with water.

Due to the ease with which methamphetamine is manufactured in clandestine labs, the following harms result:

- More than 20% of meth labs seized have children present;
- Children live in filthy conditions rife with guns and pornography where meth covers their skin, covers what they crawl on, covers their toys, and covers what they put in their mouths;
- Meth vapors permeate carpets and draperies rendering the homes and apartments uninhabitable;
- Children found in meth labs must undergo the trauma of a decontamination procedure oftentimes in makeshift showers in the yard before most child protective services agencies will take them into custody; and
- The production of one pound of methamphetamine yields five to six pounds of toxic waste which is often dumped into streams, rivers, fields and sewage systems.

It is critical that regulations to monitor and control precursor chemicals be adopted and implemented. The National District Attorneys Association believes that measures such as the listing and rapid updating of existing precursor chemicals; the registration of individuals and entities handling precursor chemicals; the positive identification of those individuals that purchase precursor chemicals in large quantities; the prompt identification to law enforcement agencies of the purchasers before the delivery of the substances; and the maintenance of sales records for these substances by the regulated sellers will provide some measure of control on the clandestine manufacture of illegal drugs without substantially interfering with legitimate commerce.¹¹³ In addition, it is equally important that restrictions be placed on both the quantity of sales and purchases of precursor chemicals at the retail level. Specifically, effective control of an addict's access to products containing the precursor chemical pseudoephedrine will have the same beneficial effect to that of controlling an addict's access to methamphetamine itself in so much as it will limit the supply of the drug. In April 2004, the state of Oklahoma implemented a statute which not only schedules pseudoephedrine as a Schedule V controlled substance but also requires that pseudoephedrine products be sold only from behind the counters of pharmacies, under the supervision of a registered pharmacist, in limited quantities, to properly identified buyers who must sign a register. Following implementation of this legislation, the number of meth labs seized in Oklahoma dropped by as much as eighty percent (80%) and the sales of precursor pseudoephedrine products dropped by an estimated forty percent (40%). Given these

¹¹³ See "Official Policy Position, Regulation of Precursor Chemicals and Glassware," Adopted by the National District Attorneys Association Board of Directors, February 1990, No. 90-02 & "Position on Domestic Control of Precursor and Essential Chemicals," Approved by the National District Attorneys Association Board of Directors, November 1991, No. 91-12.

results, the National District Attorneys Association supports the designation of those precursor chemicals used in the manufacture of illicit drugs as scheduled controlled substances at both the federal and state levels.

Cooperation, communication, and coordination among international, federal, state, and local law enforcement, health, and commerce agencies is extremely important in addressing this issue. While federal legislation has provided for a federal control scheme for chemicals¹¹⁴, the states' involvement by enacting chemical regulatory laws can supplement the federal scheme and provide a more comprehensive means of dealing with precursor chemicals particularly in those states impacted by the physical and financial effects of clandestine drug labs.¹¹⁵ The National District Attorneys Association believes that the complementary system comprised of both federal and state laws and regulations governing the manufacture, distribution, and retail sale of precursor chemicals is the most effective means for reducing the abuse and diversion of precursor chemicals. The enactment of federal law which preempts existing state laws that are more restrictive or prohibits the enactment of more restrictive state laws will most definitely interfere with the individualization of restrictions on precursor chemicals necessary for the states' specific needs. In those states without legislation, prosecutors, where possible, should encourage the adoption of such legislation. Furthermore, with a large number of legal prescription drugs being diverted from their intended purpose to the illegal drug market, states should also be encouraged to develop prescription drug monitoring programs to reduce the number of prescription drugs being used for illicit purposes.¹¹⁶

Partnerships between prosecutors and the private sector are also important. Cooperation between prosecutors and retailers and pharmaceutical companies is necessary to achieve the preventive effects of regulation and control. Prosecutors should educate retailers, prescription companies and their employees about the types of chemicals used as precursors in the manufacture of illicit drugs and how to identify suspicious purchases. As part of the education process retailers and pharmaceutical companies should be urged to voluntarily adopt regulations and restrictions on the sale and purchase of precursor chemicals, in addition to reporting such purchases to local law enforcement. Pharmaceutical companies should also be urged to reformulate those pharmaceuticals being diverted to the illegal drug market. Rendering certain products ineffective or inert when used for purposes other than those originally intended will certainly assist in the area of demand reduction.¹¹⁷

¹¹⁴"Chemical Diversion and Trafficking Act of 1988," Title VI, Subtitle A of Pub. L. 100-690; "Chemical Control Act of 1990," Title XXIII (Sec. 2301) of Pub. L. 101-647; "Domestic Chemical Diversion and Control Act of 1993," Pub. L. 103-200; "Comprehensive Methamphetamine Control Act of 1996," Pub. L. 104-237; "Methamphetamine Anti-Proliferation Act (MAPA), Title XXXVI, Div. B, Pub. L. 106-310.

¹¹⁵ See (DRAFT) *National Synthetic Drugs Action Plan, The Federal Government Response to Production, Trafficking and Abuse of Synthetic Drugs and Diverted Pharmaceutical Products*, Office of National Drug Control Policy.

¹¹⁶ See *President's Commission on Model State Drug Laws, The White House, Executive Summary*, December 1993, available at, <http://www.natlalliance.org/pdfs/Executive%20Summary.pdf>

¹¹⁷ See (DRAFT) *National Synthetic Drugs Action Plan, The Federal Government Response to Production, Trafficking and Abuse of Synthetic Drugs and Diverted Pharmaceutical Products*, Office of National Drug Control Policy.

VIII. NEXUS BETWEEN DRUGS AND OTHER CRIMES

The NDAA recognizes that there is a growing link between drug use, abuse, manufacturing, sales, and distribution to numerous other crimes. While a discussion of all crimes connected to illegal drug activity is outside the scope of this document, a discussion of the nexus between drugs and terrorism and drugs and abuse is illustrative of the overall problem facing society.

A. TERRORISM

Policy Statement

42. The National District Attorneys Association supports the concept that the battle against terrorism must also include an analysis of how the illegal manufacture, sale, and distribution of drugs are increasingly being used to fund terrorists. The eradication of illicit drugs will provide for the safety of our citizens and eliminate a major source of revenue for terrorists.

The State Department has defined terrorism as “premeditated; politically motivated violence, aimed at noncombatant targets [i.e. civilians], by sub national groups or clandestine agents.”¹¹⁸ Many terrorists turn to drug trafficking because they need money for arms, equipment, training, computers and information systems, transportation, bribes, safe houses, forged passports, documents and payroll. Drugs are an easy way to raise funds quickly.¹¹⁹

Federal authorities have discovered evidence that an illegal drug operation in the United States was funneling proceeds to Middle East terrorist groups. DEA officials have said that individuals, in the Midwest, who were smuggling large quantities of the chemical pseudoephedrine from Canada into the Midwest, had connections to Jordan, Yemen, Lebanon and other Middle East countries.¹²⁰

In California, a connection has been established between the California “methamphetamine super labs” and Middle East terrorist groups. In one case, profits from the sale of illegal drugs were used to finance the purchase of Stinger (shoulder-fire) missiles for the al Qaida terror network; terrorists have tried to bring down an Israeli jet airliner with a shoulder-fire missile. Funds from the sale of illegal drugs are being funneled to the Middle East through a Middle Eastern inter-communal process that bypasses traditional governmental methods of recording and tracking the funds. These

¹¹⁸ Council on Foreign Relations, *Terrorism: Questions & Answers/Terrorism: An Introduction*, (2003), available at, <http://www.terrorismanswers.com/terrorism/introduction.html>.

¹¹⁹ Council on Foreign Relations, *Terrorism: Questions & Answers/Narcoterrorism*, (2003), available at, <http://www.terrorismanswers.com/terrorism/narcoterrorism.html>.

¹²⁰ Sunspot.net, *America at War, DEA: Drug money funds terror group*, 9/1/02, reviewed at, <http://www.sunspot.net/news/custom/attack/bal-drugs01.story?=&bal%2Dhome%2Dheadline>

funds are going to Yemen, Israel, Brazil and Jordan, countries that have been infiltrated by terrorist organizations.¹²¹

Drug trafficking has a two-fold purpose, not only does it help terrorists obtain operational funds; they also believe that terrorists can weaken their enemy by flooding their societies with addictive drugs.¹²² While some might think that terrorist religious affiliations would prohibit the use of profits from illicit drugs to fund their terrorist activities, experts say that terrorists rarely let ideology get in the way of funding their activities. Some Islamic groups have decreed that Islam prohibits the use of drugs, but permits the production and sale of them.¹²³

While the battle against terrorism has taken resources away from drug prosecutions and law enforcement-the Edward Byrne Grant is a good example, NDAA believes that the terrorism and drug nexus must be analyzed to determine how one is funding and assisting the other. In doing so, we would be saving the lives of our children and turning off a major source of terrorist revenue.

B. ABUSE

1. CHILD ABUSE AND DRUGS

The number of children being abused and neglected, due to drug and alcohol abuse, is continuing to increase in record numbers.

Policy Statement

43. The National District Attorneys Association believes that no single system can effectively deal with the scope or severity of caretaker substance abuse on its own. Medical treatment, social services and law enforcement agencies must combine forces to develop creative and comprehensive responses. Prosecutors must take an active role in developing programs that address not only addiction, but also its long- term effects on children and families.

A study from Columbia University found that the number of abused and neglected children in the United States has doubled over the past 10 years, fueled by drug and alcohol abuse. The children's drug-related physical, behavioral and learning difficulties, along with a chaotic and violent home life, often accompanying addiction, combine to place them in continuing danger of abuse and neglect.

¹²¹R. Charles, *California, Drugs and the Mideast Terror*, The Washington Times, December 27, 2002.

¹²²*Narco-Terrorism: International Drug Trafficking and Terrorism--A Dangerous Mix*, Testimony of Deborah McCarthy, Deputy Assistant Secretary for International Narcotics and Law Enforcement Affairs, before the U.S. Senate Judiciary Committee, May 20, 2003 available at the United States Department of State website <http://www.state.gov/g/inl/rls/rm/21129.htm>.

¹²³ Council on Foreign Relations, *Terrorism: Questions & Answers/Narcoterrorism*, (2003), available at, <http://www.terrorismanswers.com/terrorism/narcoterrorism.html>.

Parental substance abuse represents a significant public health problem and is reflected in epidemic levels of pediatric AIDS cases, infant syphilis, homeless and abandoned children, foster care demands and child fatalities. Child protection agencies throughout the country report crisis conditions in the handling of drug-related maltreatment cases and a complete breakdown of services, in many jurisdictions. The Columbia Report states that, “children who survive abuse and neglect are angry, antisocial, physically aggressive and violent”. It concludes, “there is no safe haven for these abused and neglected children of drug... abusing parents. They are the most vulnerable and endangered individuals in America.”

No single system can effectively deal with the scope or severity of caretaker substance abuse on its own. Medical treatment, social services and law enforcement agencies must combine forces to develop creative and comprehensive responses. As community leaders, prosecutors have a crucial role to play in developing and implementing approaches to drug-related child abuse and neglect.

Prosecutorial involvement may consist of any or all of the following approaches:

- Prosecutors can support educational efforts and focus advocacy strategies on developing adequate resources for comprehensive drug treatment and health care along with improved access to such care within their communities, apart from any formal involvement of the criminal justice system. This can include participation in multidisciplinary task forces to support coordinated services and public awareness campaigns, as well as encouragement of consistent testing protocols within public and private medical facilities to identify all parents and children at risk from substance abuse, regardless of race and socioeconomic status. It can also include improved coordination with the Juvenile or Family Court, which has special responsibilities for responding to dependent children and providing resources and incentives aimed at combating substance abuse within families.
- Prosecutors can focus efforts on adults already in the criminal justice system who are parents or caretakers of children. Drug and alcohol treatment and parental care can be required as conditions of probation. Better medical care and expanded substance abuse treatment can be provided for incarcerated adults. Diversion programs, deferred prosecution and conditional grants of amnesty can be considered for pregnant substance abusers who successfully complete drug treatment. Law enforcement, correction, probation and parole officers can be encouraged to develop protocols requiring identification, reporting and sharing of information with child protection agencies about children at risk of abuse or neglect because of parental/caretaker substance abuse.
- Prosecutors can advocate for enhanced penalties to be applied to those who supply drugs to pregnant women or commit drug offenses in the presence of children, including the removal of children from homes where methamphetamine has been manufactured.

- Prosecutors can encourage abstinence and treatment by carefully considering use of the criminal justice system in appropriate individual circumstances. Existing statutes, case law and policy realities in each jurisdiction will determine whether the filing of criminal charges alleging child abuse or neglect or possession/delivery of illegal drugs based on positive drug tests of the mother or child can be pursued.

2. DOMESTIC VIOLENCE AND DRUGS

Domestic violence and drug and alcohol addiction frequently occur together but are separate and distinct problems. One does not cause the other. Domestic violence is a pattern of controlling behavior that is learned and is not the result of alcohol or drug abuse. Addiction is a disease that is characterized by loss of control, poor judgment and increasing tolerance.¹²⁴

a. VICTIMS WHO ARE ALSO SUBSTANCE ABUSERS

Many domestic violence victims respond to the trauma of victimization by using alcohol or other drugs.¹²⁵

Policy Statement

44. *Domestic violence victims with substance abuse problems are subject to increased vulnerability and coercion by the abuser. Keeping in mind that some domestic violence victims abuse drugs as a method of coping with the danger that they experience daily, the NDAA supports drug treatment of victims, at the same time attempting to keep them safe.*

“Women who have been victims of violence have a higher risk of alcohol and drug problems (Kilpatrick, Resnick, Saunders & Best, 1998) and frequently respond to the trauma of victimization by using alcohol or other drugs. (Russell & Wilsnack, 1991; Paone, Chavkin, Willets, Friedman & Des Jarlais, 1992).” Victims report that in addition to medicating the emotional and physical pain of trauma, their chemical use helped them to reduce or eliminate their feelings of fear, and thus became part of their day-to-day safety related strategies. (Jones & Schechter, 1992)¹²⁶

Sometimes victims start using drugs at the behest of the abuser. It can be either the abuser forcibly causes the victim to ingest drugs, or places subtle pressures from the

¹²⁴ EDVP About Domestic Violence: DV and Chemical Dependency, *available at*, http://www.edvp.org/AboutDV/chemical_dependency.htm

¹²⁵ T. Zubretsky, *Promising Directions for helping Chemically-Involved Battered Women Get Safe and Sober*, Handbook of Domestic Violence Intervention Strategies (Albert R. Roberts ed. 2002), *available at*, http://www.serve.com/zone/alcohol/safe_sober.html

¹²⁶ T. Zubretsky, *Promising Directions for helping Chemically-Involved Battered Women Get Safe and Sober*, Handbook of Domestic Violence Intervention Strategies (Albert R. Roberts ed. 2002), *available at*, http://www.serve.com/zone/alcohol/safe_sober.html.

victims to use drugs in social settings, or to enhance sexual satisfaction. In either case, the victim's use of drugs provides the abuser another weapon of coercion. He may use the substance abuse as a reason for violence; threaten exposure to friends and relatives; or be the primary supplier of the drugs to the victim. (Finkelstein, 1996)

Unfortunately, victims with these dual problems have difficulty obtaining services for their dual needs of sobriety and safety.

Prosecutorial involvement may consist of any or all of the following approaches:

- Prosecutors can support educational efforts and focus advocacy strategies on developing adequate resources for comprehensive drug treatment and domestic violence, which go hand in hand.
- Prosecutors can focus efforts on adults already in the criminal justice system who are victims of domestic violence and have a substance abuse problem. Develop drug and alcohol treatment and safety-related strategies. Law enforcement, correction, probation and parole officers can be encouraged to develop protocols requiring identification, reporting and sharing of information with drug treatment and shelter agencies about victims with substance abuse problems.

b. ABUSERS WHO ARE SUBSTANCE ABUSERS

Most existing research supports the conclusion that substance abuse does not cause domestic violence.¹²⁷

Policy Statement

45. The National District Attorneys Association believes that prosecutors need to be aware that victims are at a greater risk of serious harm or injury, if substance abuse counseling and domestic violence counseling are not conducted in conjunction with one another.

When intervening with problems of substance abuse and domestic violence, it is important to remember that there is no casual relationship between the two. Therefore recovery from one, will not assure recovery from the other.¹²⁸ Treatment for addiction should precede treatment for the battering, however in many cases counseling for battering can be initiated concurrently or can be started to assist in confronting the denial of the addiction. In either case, the violence should be addressed immediately, to assure the safety of the victim.

Prosecutors should also be aware that during substance abuse counseling the victim is at greater risk of injury. Victims whose partners are chemically dependent

¹²⁷ R. Mackey, Ph.D., C.A.C., DVS, *FACTS ON: Alcohol, Drugs and Domestic Violence*, 1996, Center for Alcohol Studies, available at, <http://www.rci.rutgers.edu/~cas2/fact9.shtml>

¹²⁸ *Id.*

should be given accurate information about available resources so that they can make informed decisions and set realistic goals about the potential benefits and dangers of the different resources of help.¹²⁹

IX. SPECIALIZED TRAINING AND FUNDING

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46. *As a result of the volume of drug related crime, the complexity of drug trafficking organizations, and the ever evolving nature of drugs, their manufacture and distribution, the National District Attorneys Association recognizes that there must be specialized and continual training and technical assistance for prosecutors on these issues.*

47. *The National District Attorneys Association supports the development and implementation of a National Drug Prosecution Center within the American Prosecutors Research Institute to provide research, training, and technical assistance to local prosecutors.*

48. *The National District Attorneys Association endorses the increased allocation of resources and additional funding for the specialized training of prosecutors in the area of drug related crime.*

COMMENTARY

In order to reduce drug abuse and drug-related crimes, prosecutorial leadership and knowledge in the areas of drug use/abuse prevention, treatment, and prosecution are imperative.

The landscape of the criminal justice system is continuously changing and both the nature of the drug problem and the prosecutor's roles in effective prosecution, prevention, and treatment have changed significantly in recent years. No longer are local prosecutors responsible solely for the traditional control and enforcement of drug crimes and drug related offenses. Prosecutors are now involved in non-traditional activities, such as proactive prevention programs and community education. Many prosecutors have begun to utilize more innovative strategies, such as asset forfeiture, nuisance abatement, evictions, and gang injunctions to deal with the deleterious effects of the drug abuse epidemic and to disrupt the drug market. Lastly, drug courts and other prosecution-lead diversion programs are routinely being used to intervene with and treat drug users and abusers who are non-violent offenders.

¹²⁹ T. Zubretsky & Karla Digirolamo, *The False Connection Between Adult Domestic Violence and Alcohol*, Handbook of Domestic Violence Intervention Strategies (Albert R. Roberts ed. 2002), available at, <http://www.serve.com/zone/alcohol/article.html>.

Because 70 percent of the caseloads of state and local prosecutors is drug related crime¹³⁰, it is essential that they receive state of the art training and technical assistance to address the changing dynamics of drug enforcement and prosecution. Local prosecutors must understand the changes in today's drug markets, the unique characteristics of the drugs that are currently on the market, and drug trafficking and distribution challenges. They must develop the skills necessary to handle complex litigation involving drug trafficking organizations, money laundering, and racketeering. They should be familiar with the appropriate interventions for addicts and users and the relative effectiveness of different prevention and treatment modalities. Prosecutors must be educated on the development and implementation of drug courts and other community-based, interagency initiatives that exist in order to marshal scarce resources toward the shared challenge of drug-related crime.

Currently, there is no single source of expertise on the issue of drug related crime dedicated exclusively to the needs of local prosecutors. Given the breadth of information and skills that are necessary to handle the drug problem, specialized training on a continuing basis, along with adequate resources and funding is critical to the efficacy of the criminal justice system. In addition to existing education programs in the area of drug prosecution and the added need for regional training, The National Advocacy Center offers an opportunity to train prosecutors at a central location while providing much needed trial advocacy skills in combating drug related crimes and successfully prosecuting the drug offender. It is equally important that research be conducted to document the effectiveness of the varying prevention and treatment programs, and the differing prosecution approaches to drug enforcement.

¹³⁰ This figure is based upon an analysis of workload assessment data collected on prosecutors' caseloads. This study, which was done by the American Prosecutors Research Institute, Office of Research and Evaluation, analyzed the caseloads of prosecutors across 6 states.