



State Drug Control Status Report

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An Office of National Drug Control Policy
White Paper
November 1990

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Introduction

No strategy to combat illegal drug use can succeed without recognizing the crucial role played by the States. Americans depend on their State governments and local municipalities to perform a wide variety of functions that are central to reducing the supply and use of illegal drugs. State and local governments arrest, prosecute, and punish more than 85 percent of the Nation's drug offenders. They help provide treatment for drug users, and they establish drug education programs for our youth.

No State can hope to deter drug use, punish drug traffickers, or implement effective treatment programs without having adequate laws on its books. Well-crafted, effectively enforced State laws are important elements of the President's National Drug Control Strategy. Therefore, I urge each State to scrutinize closely its laws and, if necessary, pass additional legislation to speed the progress and ensure the success of America's anti-drug efforts.

The everyday law enforcement efforts of State and local governments are critical to reducing illegal drug use. Most Federal drug enforcement is focused on apprehending and prosecuting large-scale traffickers and disrupting international drug distribution. But as the President's National Drug Control Strategy makes clear, effective law enforcement involves much more than reducing the supply of drugs. Effective law enforcement must make it as difficult as possible to engage in any aspect of the drug trade, at any level, whether as a dealer or as a user.

Federal law enforcement, though crucially important, has never been responsible for arresting, trying, and punishing the thousands of street dealers and drug users who fuel our national epidemic. Nor can Federal efforts alone curtail the many hundreds of lower and mid-level traffickers who operate principally in a single geographic region. For these reasons, Federal laws cannot displace State drug legislation. All drug use, whatever its scale, must face the risk of criminal sanction. To make that risk credible, States must have up-to-date drug laws on their books that are as difficult as possible to evade. These laws must address the drug problem in all its current dimensions, including the sophisticated nature of the drug trade, which increasingly relies on interstate and regional distribution schemes and novel methods for marketing drugs and drug paraphernalia.

States also play a critical role in drug treatment and prevention. Overall Federal funding to support drug treatment has almost doubled in the last three years. Approximately one-half of these funds are provided by the Alcohol, Drug Abuse and Mental Health block grant — Federal money that is provided to each State to support its own treatment programs. Federal funding for drug prevention has nearly doubled, as well. If these large increases in funding are to be effectively deployed, State legislatures must channel the funds to appropriate local treatment and educational agencies. And, more important, State legislatures must devise workable measures of accountability to ensure that funds go to those programs that have achieved demonstrable results.

Leadership by State legislatures is crucial if States are to fulfill their critical role in reducing illegal drug use. State legislatures have the authority to raise revenue and appropriate funds for specific programs. They — not the courts or the prosecutors — have the authority to define criminal offenses and to set corresponding punishments. State legislatures can provide law enforcement officials with needed tools to cope with ever more sophisticated drug traffickers. They have the power to allocate treatment resources to those programs that have been proven to be effective. In short, State legislatures have a formidable array of resources to apply to the task of combatting drug abuse.

This State Drug Control Status Report describes selected laws and policies that are necessary if States are to discharge their critical responsibility in curbing the illegal use of drugs. Of course, the laws and policies discussed in this report do not themselves constitute a comprehensive anti-drug strategy. While a State legislature can pass laws to combat drug-related activity, only vigorous enforcement and implementation of these laws by State Governors will make them effective. Many other factors, which cannot easily be summarized in chart or booklet form — factors such as the presence of energetic and professional law enforcement officials, and a humane, yet accountable treatment system — are also necessary. But the laws and policies discussed here are a necessary foundation for a comprehensive State effort.

Moreover, this report should not be taken to suggest that the laws and policies discussed here are the only ones that States should consider implementing. Every serious effort to enhance laws against illegal drug use and distribution should be welcomed. Our Federal system is designed to encourage innovation by the States, and many States have passed anti-drug legislation which is too new and untested to be recommended as a model at this time. Therefore, States should consider legislation not covered by this report, such as precursor chemical laws, enhanced conspiracy statutes, money laundering statutes, and wiretap statutes.

Some of the laws and policies described in this report are also relatively new, but all have been proven effective. As the fold-out State Drug Control Status Summary at the end of this booklet makes clear, each law or policy discussed has been adopted by at least several States, and most have been adopted by many States. These laws and policies are explained in everyday language so that a knowledgeable layperson can intelligently discuss their merits. It is hoped that these indicators may help ordinary citizens, as well as State and local governmental officials, assess what their governments have done or have not done, and set goals to improve their State's performance in fighting drugs. The Status Summary and this report should be read with one final caveat, however; the fact that a State has not passed an appropriate law on a subject does not necessarily mean that it has been inattentive to the drug problem. In some cases, a State may have implemented an alternative policy that achieves the same objective.

Our Status Summary also includes several quantitative indicators of overall State drug control action — per capita treatment expenditures

and per capita corrections funding, for example. These indices are not intended to rank the States. Indeed, there are no magic numbers by which to judge whether State action is sufficient, and we make no claim about what level of treatment or law enforcement funding is appropriate in a given State. Obviously, the level of funding necessary for treatment and law enforcement depends upon many variables, including the current severity of the drug problem in a State as well as past efforts to increase treatment and law enforcement capacity. These numbers are intended to help indicate relative effort among States that may be experiencing similar levels of illegal drug activity, and also to give some means by which citizens of a given State may compare increases in State effort from year to year.

Each State can and should be expected to adopt the laws and policies addressed in this report, tailoring them to fit its particular circumstances. No State can afford to ignore these legislative and policy proposals. Drug traffickers are extremely shrewd, exploiting weaknesses and loopholes in State drug laws. Broad, ambiguous drug laws drafted twenty years ago are no longer a sufficient deterrent to traffickers. New legislative weapons are needed to match the changed face of the enemy.

Continued legislative inaction by a State will, over time, only make that State more attractive to drug traffickers. States that do not adopt legislative deterrents, while neighboring jurisdictions adopt bold legislation of the sort recommended here, will become "safe havens" for drug activity. No State can afford that risk or that reputation. But if all the States implement the model legislation described below, then we will have succeeded in making the drug trade a far more difficult business.

It is our hope that this report will enable and encourage States to compare the laws on their books with those of neighboring States and with Federal law, to determine where modifications or amendments are necessary. And it is our hope that this report will identify States whose laws have been found to work, and which can serve as models for action by other States.

Finally, I must acknowledge the invaluable and indispensable assistance of the American Prosecutors Research Institute, the American Legislative Exchange Council, and the National Governors Association. This report could not have been completed without the expertise of the staffs of these organizations in the workings of State legislation and the State criminal justice systems. Nevertheless, this report is a product of the Office of National Drug Control Policy, which is solely responsible for its recommendations and conclusions.

William J. Bennett
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Control Policy*

State Drug Control Indicators

Criminal Laws

Laws Prohibiting the Attempt, Offer, or Solicitation to Buy and Sell Controlled Substances

Every State has laws on its books that enable law enforcement officials to prosecute those who sell drugs. These statutes correctly assume that a primary target of law enforcement officials should be drug traffickers.

But it is also important to penalize those who use or possess drugs. One of the most effective police techniques for attacking the demand side of the drug problem is the so-called "reverse buy-bust." Under this technique, undercover police officers pose as drug dealers in order to arrest drug purchasers. By making it a crime to attempt, offer or solicit to buy or sell drugs, it is not necessary for police to use actual drugs in a reverse buy-bust. Nor is it necessary for the sale to be fully consummated. Instead, the police need only document a knowing or deliberate solicitation or attempt to purchase drugs.

Although primarily targeted against those who purchase drugs, reverse buy-busts have also been successful in removing mid-level drug traffickers. By posing as an even *bigger* trafficker, an undercover police officer can foil many of the trafficker's usual efforts to prevent police infiltration, which try to "insulate" the trafficker behind multiple organizational layers. This reverse buy-bust technique has been used effectively by a number of police departments, including the Miami, Florida police.

For these techniques to be effective, judges must have the power to impose a penalty for an attempt, offer, or solicitation up to the maximum penalty provided for the completed crime. Nineteen States have penalties in their drug statutes for attempts to commit a State drug offense, which are potentially as severe as the penalties for the completed crime.

Laws Against Drug Paraphernalia

Where illicit drugs are found in large amounts so, too, is drug paraphernalia. In the 1960's and 1970's, when drug use in the United States expanded dramatically, a large domestic drug paraphernalia industry also came into existence, growing to an estimated 15,000 to 30,000 businesses with annual sales ranging up to \$3 billion.¹ Drug paraphernalia is necessary for all facets of illegal drug activity, from the cultivation and manufacture of illegal drugs, to their eventual consumption by drug users. It can include anything from glass vials in which crack cocaine is sold, to elaborate water pipes designed exclusively for smoking marijuana or hashish, as well as a host of other items.

Drug paraphernalia is used to further the sale and consumption of illegal drugs. To the extent that State laws can sharply restrict, if not ban outright, the availability of such paraphernalia, all drug-related activity becomes more difficult. Many States have enacted statutes that

¹United States International Trade Commission, Importation of Certain Drug Paraphernalia into the United States: Report to the Committee on Finance, United States Senate, on Investigation No. 332-277 Under Section 332 of the Tariff Act of 1930, at v (1989).

are patterned on the Model Drug Paraphernalia Act, which was originally drafted by the Drug Enforcement Administration in 1979. The Model Drug Paraphernalia Act lists a number of common types of paraphernalia and describes several factors that courts can take into account in determining whether additional items should be treated as paraphernalia. The Act prohibits four separate offenses: possession of drug paraphernalia, manufacture or delivery of drug paraphernalia, delivery of drug paraphernalia to a minor, and advertising drug paraphernalia. The Act specifies that in order to be found guilty, the defendant had to know, or had to have reason to know, that the paraphernalia was intended to be used in connection with illegal drugs.

In this area, even more than others described in this report, it is vital that all of the States join together to pass the necessary legislation, so that paraphernalia suppliers cannot use inconsistencies in State laws to run mail-order paraphernalia businesses. Further, it is important that States pass laws that include the definition of paraphernalia contained in the Model Drug Paraphernalia Act, so that law-abiding businesses that operate in several States are put on clear notice as to what products are and are not prohibited. And sale of drug paraphernalia and other paraphernalia offenses must be punishable with criminal penalties. Otherwise, paraphernalia retailers will merely treat civil fines as a cost of doing business and pass them on to their customers.

Although the Model Drug Paraphernalia Act does not specify what the criminal penalties should be, at least for distributors of paraphernalia, penalties should include some period of incarceration. The drug paraphernalia statute in Alabama is a good example of just such a statute: use or possession of drug paraphernalia in Alabama is punishable by imprisonment for a substantial period of time and a fine.

Criminal Penalties

Enhanced Penalties In Drug-Free School Zones

According to the U.S. Department of Education, 57 percent of callers to a cocaine hotline had bought their drugs in school. A 1989 survey indicated that one-quarter of high school seniors who had used marijuana in the previous year, had smoked the drug in school.² Because such a high percentage of children get or use their drugs in school, attacking the sale and use of drugs at school is a high priority of the President's National Drug Control Strategy.

Curbing drug use in or near schools is important for three reasons. First, preventing the sale of drugs in or near schools will cut off a common source of drugs for many young people. Second, pervasive drug use in or near schools undermines the credibility and effectiveness of even the most well-conceived drug education and prevention program. Third, the entire learning process is seriously undermined where drug use flourishes.

Many States have enacted statutes that enhance the penalties for drug crimes occurring within one thousand feet of a school, a playground, a video arcade, a public swimming pool, or other places where young people are likely to congregate. The purpose of such laws is to provide a heightened deterrent for those drug traffickers and dealers who would otherwise take advantage of the ready market provided by schools.

Ideally, such laws provide enhanced penalties for the sale of drugs to *any* person within the drug-free school zone. Some drug-free school zone statutes provide enhanced penalties only for sales by adults to minors. First, this limitation incorrectly assumes that it is acceptable to sell drugs to *adults* within a school zone, or to sell drugs when children are not present. In reality, a dealer who sells drugs near a school to adults probably also sells drugs to children. Second, a statute that exempts from its coverage sales of drugs from one minor to another effectively creates an incentive for drug trafficking organizations to use minors to sell drugs to other minors, at least within drug-free school zones.

In addition to drug-free school zone statutes, States have created other types of enhanced penalties for drug sales to minors. Pennsylvania, for example, permits parents to sue drug dealers who sell drugs to their children. Such a law permits the families of those most directly injured by a drug dealer's activities to recover damages directly from the dealer.

Enhanced Penalties for Drug Transactions Involving Minors

Trafficking organizations often exploit juveniles. Some traffickers recruit children as young as six or seven years old to be "steerers" — kids who stand on street corners and point customers to the dealer's place of business. Other children are used to stand in front of a "crack

²National Institute for Drug Abuse, Monitoring the Future Project, Johnston et al., University of Michigan, 1989.

house," take the customers' money, and let them into the house. By fifteen, some adolescents are involved in actually running a crack house themselves.

Children are preferred to adults for these tasks because a trafficker knows that, traditionally, children are less likely to be imprisoned for participating in drug trafficking activities. Hence, children provide an easy way for a trafficker to protect his organization, and to perform the riskiest trafficking tasks.

Many States have responded to this problem by subjecting those who employ juveniles in the drug business to enhanced penalties. Enhanced sentences not only cover the use of juveniles for transporting or carrying a controlled substance, but also for employing or using them in any aspect of a drug operation including the production and sale of drugs. In light of the seriousness of the offense and the importance of protecting our children from the scourge of drugs, these enhanced penalties may include mandatory minimum prison sentences.

Ideally, enhanced penalties should apply even to minors who are being prosecuted as adults. (The enhanced penalties cannot legally apply to minors who are being prosecuted in the juvenile justice system.) Otherwise, traffickers have an incentive to use minors to recruit other minors. It is important that enhanced penalties apply to anyone who involves any minor in any aspect of the drug trade, including other minors.

Suspension of Driver's Licenses and Occupational Licenses of Drug Offenders

An effective way to hold people accountable for their involvement in illegal drug transactions is to suspend their driver's licenses for a specified period of time. Twenty-seven States use the threat of the loss of driving privileges to deter drug use. It is a simple way to broaden the array of sanctions and in some cases, the threatened loss of a license is enough to induce heavy drug users to seek and complete a drug treatment program. Some States, such as New Jersey, Maine, and Massachusetts, also defer the initial granting of a driver's license for any juvenile convicted of a drug offense.

Another method to hold users accountable is to give sentencing judges the authority to temporarily suspend the State professional licenses of those convicted of a drug offense. The right to practice law or medicine, teach, or practice a trade such as plumbing or carpentry, or work as a licensed stock broker, real estate agent, or work in any other occupation requiring a State license or permit should be temporarily limited or suspended, if an individual is found in violation of State drug laws.

The license of a first-time drug user should be reinstated only on the condition that he or she enroll in, and successfully complete, a drug treatment program that includes periodic drug testing. A confirmed positive result on one of the tests should terminate the reinstatement. And the professional or occupational license of someone who continues

to violate the drug laws of a State should be revoked, either by the relevant State licensing authority or by operation of law.

Laws allowing the suspension and/or revocation of State occupational and professional licenses make clear that no one may use drugs with impunity. Only a few State legislatures have begun to pass laws that revoke professional and occupational licenses, so it is too soon to assess their results. However, one good example of a law authorizing the suspension and revocation of occupational and professional licenses recently took effect in Georgia. The Georgia legislation allows the appropriate occupational licensing authority to suspend the license of a person convicted of a first offense involving a controlled substance for a period of up to three months; the three-month suspension period is mandatory where the conviction is for a felony. Upon conviction of a second or subsequent offense, the offender's license is automatically revoked.

Procedures for Eviction From Public Housing Projects

One of the top priorities of the President's National Drug Control Strategy is to ensure safe, drug-free public housing and publicly assisted housing by removing those tenants who use such housing as a place to deal drugs. As noted on the State Drug Control Status Summary at the end of this booklet, seven States have addressed this situation by mandating eviction from public housing communities of those convicted of drug offenses on the premises. Public housing communities in Omaha, Nebraska; Des Moines, Iowa; and Charleston, South Carolina, have successfully rid themselves of drug-dealing tenants through eviction.

Other States have adopted due process procedures for eviction of tenants from public housing. Any State that implements these procedures may apply to the Department of Housing and Urban Development (HUD) for an exemption from Federal due process hearing requirements. To date, HUD has granted waivers to 40 States that require State due process hearings.

Some States have developed additional strategies to clean up drug-infested neighborhoods. California law, for example, provides that buildings or property used for drug-related activities may be declared a "nuisance" and may be enjoined. San Francisco officials are closing down privately owned "crack houses" by targeting them for coordinated enforcement of city building, fire, health, and planning codes. The threat of large civil fines against the owners has prompted them to evict drug-dealing tenants and clean up their properties.

Taxing Drug Sales

Drug traffickers depend on cash. It is their lifeblood, the means by which drugs are bought and sold. For this reason, one of the most effective ways to discourage drug trafficking is to deprive traffickers of their cash.

A number of States impose a tax on the possession and/or sale of drugs. In theory, drug possessors must purchase tax stamps to affix to their drugs. Such a tax does not mean that drugs are legal. Rather, a tax statute permits a State to collect "back taxes" from those who are caught possessing unstamped drugs. Also, prosecutors can charge such individuals with tax evasion in addition to the controlled substance charge.

Generally the tax averages \$3 to \$5 per gram of marijuana and \$200 to \$300 per gram of other controlled substances. Only Arizona, Florida, Illinois, and Minnesota have collected significant amounts of money from the sale of the tax stamps. Minnesota has made the most from the sale of stamps, collecting almost \$1,500,000 in four years.

The Supreme Courts of Kansas, Minnesota, and Utah have upheld the constitutionality of drug tax statutes. Any drug tax statute must protect the confidentiality of the taxpayer; otherwise, the statute may be found to run afoul of the right against self-incrimination protected by the Fifth Amendment to the United States Constitution, as well as analogous State constitutional protections.

If a State is interested in generating revenue at the expense of those who buy or sell drugs, it may want to consider following the example of the State of New Jersey, which created a special "Drug Enforcement and Demand Reduction" fine. This mandatory cash penalty is levied against anyone convicted of a drug offense. The penalties start at \$500 for simple possession, and range up to \$3000 for more serious drug offenses. The proceeds are specifically earmarked for demand reduction programs. New Jersey has raised an average of \$9 million per year for its prevention, education, and public awareness initiatives by this means.

A tax statute should not be viewed as a substitute for a regular asset forfeiture statute (discussed at pp. 14, 15 and 16), which permits prosecutors to seize all property and proceeds connected with drug transactions, not just the property needed to satisfy the tax owed. However, a tax statute is another way a State can raise needed funds for drug control programs and enhance the arsenal of penalties it may employ against drug violators.

Criminal Justice Policies

Intermediate Sanctions, Including Boot Camps

No strategy to reduce the illegal use of drugs can ignore the crucial role of the State criminal justice system. In many States, an alarming increase in drug cases has swamped the courts and prisons at the same time that States have appropriately increased penalties for drug crimes. As a result, many States need to increase the capacity of their prison systems through the construction of new prisons. In addition, States need to implement intermediate sanctions, so that scarce prison space is reserved for the most serious offenders.

Intermediate sanctions, such as military style boot camps, broaden the ability of the criminal justice system to deter crime. They expand the spectrum of options between incarceration, on the one hand, and unsupervised release, on the other. Although they cannot be a substitute for needed construction of regular prisons, intermediate sanctions complement and enhance the punishment capacity of a State's criminal justice system. Boot camps, in particular, offer rigorous regimes and austere conditions that can bring a sense of order and discipline to the lives of youthful, nonviolent, first-time offenders, and perhaps deter future crimes. Moreover, a number of States are finding that this strict disciplinary regime makes boot camp inmates more open to education and therapeutic counselling.

Boot camps should be viewed with one caution, however: prisoners released from boot camps sometimes do commit further crimes, as do prisoners released from traditional jails. But in general, criminals who serve (shortened) sentences in a boot camp have not been found to pose a greater risk to the community than they would if they served longer sentences — and this results in a considerable savings to the government.

According to the National Institute of Justice, as of July 1990 there were at least 16 States operating boot camps as part of a comprehensive alternative sentencing program. As is reflected in the Status Summary, a number of other States have adopted criminal justice policies that provide for the implementation of such programs. These programs vary widely in terms of their length, the length of rehabilitative programming they offer during the "boot camp" period, and the length of follow-up supervision provided. The Justice Department is sponsoring a study of different boot camp programs and their components, involving State programs in Louisiana, Florida, South Carolina, Georgia, Texas, Oklahoma, and New York, which promises to be highly informative. Preliminary results are expected in the spring of 1991.

While not surveyed on the Status Summary, other intermediate sanctions for drug users are also being imposed, alone or in combination. These sanctions include: halfway houses; special temporary (day/night) detention centers; intermittent confinement; intensive probation supervision; fines; restitution programs; community service; and others. For example, Arizona and Alabama allow first-time offenders to

enter a treatment program in lieu of prosecution. The cost of treatment is paid by the offender according to a sliding scale based on income. Indigent offenders are eligible for free treatment.

In Maricopa County, Arizona, officials have instituted a very successful "Do Drugs, Do Time" program, which requires first-time offenders to choose between a jail term and enrollment in a treatment program. If an offender successfully completes treatment, his conviction is expunged. The "Do Drugs, Do Time" program is part of a fifteen-year-old nationwide program known as "Treatment Alternatives to Street Crime" (TASC), which has produced several effective community-based alternative incarceration programs. Over 125 TASC sites operate in 30 States and Puerto Rico. The TASC consortium is assisted by grants administered by the Department of Justice.

Procedures For Seizing Real Property Assets

Asset forfeiture is one of the most powerful and promising weapons in the war on drugs. It is not enough to convict and imprison an individual drug trafficker if his trafficking organization can continue to function in his absence. By seizing and forfeiting the property and other assets that are integral to the operation of the trafficking organization, as well as its profits and proceeds, authorities can severely impede the continuance of the criminal enterprise, and prevent the individual trafficker from running his business from prison.

Since Revolutionary times, States have provided for the forfeiture of property used to commit or derived from crimes. Nearly every State has an asset forfeiture statute on its books. However, many of these statutes have not kept up with the increased sophistication of drug traffickers. For example, outdated laws may allow drug traffickers to retain vast amounts of real estate, even after they have been sentenced and incarcerated for drug crimes. This real estate is often used by traffickers to cultivate, manufacture, store and sell illegal drugs, and as a repository for trafficking profits. State asset forfeiture laws need to be broad enough to seize real estate that is used for drug trafficking activities, as well as any other property that is derived from or used in the distribution of illegal drugs.

State laws should also reflect a common-sense approach to dealing with drug traffickers who have unexplained wealth. A prima facie case for the forfeiture of property should be recognized if: (i) the defendant engaged in drug-related conduct; (ii) the property was acquired during the period of time he engaged in such conduct; and (iii) there was no other likely source of income to account for acquisition of the property.

Ideally, States should permit the use of both civil and criminal proceedings for the prompt seizure and forfeiture of crime-related assets. (The Status Summary does not differentiate between whether a State has both types of proceedings, or whether it has only one). Civil forfeitures often proceed faster than criminal forfeitures, and may offer the State other tactical advantages as well. The length of time required to complete forfeiture is important, because seized property, including

vacant real estate, must be maintained by the State for an indefinite period of time, often at great expense, and while declining in value. Further, civil forfeiture is subject to a lower standard of proof than criminal forfeiture; and it is the only means of forfeiture available when the owner of the property eludes apprehension by fleeing outside the United States and continues to operate his drug trafficking network through intermediaries.

Procedures for Seizing Personal and Out-of-State Assets

Since drug traffickers often keep assets out-of-State, where they are not subject to most State asset forfeiture statutes, prosecutors need forfeiture authority that will allow them to proceed against the drug trafficker himself (legally termed "in personam jurisdiction") so that they can seize *all* drug-related property, whether it is located in or out-of-State. In many States, courts do not presently have such in personam jurisdiction.

A closely related problem arises in cases where drug traffickers use leased or mortgaged property. This property cannot be seized easily by the State because interests in such property are held by innocent third parties such as banks, mortgage companies, and other lenders. To remedy this, States need to strengthen their forfeiture statutes, by amending them to permit prosecutors to substitute assets not connected with the illegal drug activity that are equal in value to the drug-related property. In this way, prosecutors can protect the legitimate interests of innocent third parties while still seizing assets of an equivalent value from the defendant.

If non-drug-related assets cannot be substituted, the interests of innocent third party owners can be protected in other ways. Asset forfeiture laws need to include specific provisions to preserve the market value of the seized assets pending the outcome of the forfeiture proceedings. That way, the interests of innocent third parties can be protected and the ultimate value of the seized property can be maintained. To make sure that they have asset seizure laws that are both effective and fair, States can adopt the following asset management techniques:

- Permit substitute custodianship of assets — the power to let assets remain in the physical custody of the innocent third party owner or of a contractor for proper maintenance;
- Authorize stipulated or interlocutory sales of seized property pending forfeiture;
- Allow owners to substitute a bond for their property in order to minimize storage charges, as well as to permit an innocent owner to make legitimate use of his property;
- Permit expedient return of the seized property, thereby allowing lenders to foreclose immediately if the owner defaults;
- Permit expedient return of the seized property, thereby allowing lenders to foreclose immediately if the owner defaults;

- Provide specific authority for the State to make certain stipulations to the holder of an exempt interest in seized property, such as a bank;
- Specify time limits within which a State must initiate forfeiture, and require that the State give notice of any pending forfeiture, thereby protecting potential purchasers of seized property; and
- Provide the right to a speedy judicial determination of probable cause, so as to minimize the economic damage to innocent third party owners.

Devoting Asset Forfeiture Proceeds to Law Enforcement

Investigations into the assets held by even moderately sophisticated criminal organizations often require enormous commitments of resources, involving years of work by teams of agents as they seek to unravel the labyrinthine ownership structures created in order to conceal those assets from forfeiture. Such efforts should be recognized in the disposition of forfeited properties, or law enforcement agencies cannot afford to continue aggressive seizure and forfeiture programs. States should ensure that the proceeds of asset forfeitures can be spent on future law enforcement efforts. Forfeiture proceeds can be used for more officers, more training, better equipment, and more cars and radios, all of which make law enforcement agencies more effective. Unfortunately, some States have structured their asset forfeiture statutes so that the forfeiture proceeds must be deposited in the general revenue fund, or devoted to another State purpose, such as education or drug prevention. While these are worthwhile goals, States that divert forfeiture proceeds away from law enforcement are depriving law enforcement agencies of a ready source of funds for conducting further asset forfeiture programs. Accordingly, it is important that an asset forfeiture statute explicitly provide that the majority of forfeiture funds be earmarked for further law enforcement efforts.

Some States have recognized that other types of special funding are better suited for education and drug treatment. For example, funding for these non-law enforcement activities can be provided through a special drug offender fine, rather than by diverting asset forfeiture funds. Experience has shown that such a fine provides a more reliable funding base for prevention and treatment for two reasons. First, every jurisdiction has access to the funds generated by a drug offender's fine because every jurisdiction convicts drug offenders. Not every jurisdiction can depend on regular and substantial asset forfeiture proceeds to fund needed programs in education and treatment. Second, asset forfeiture funds vary considerably from year to year, whereas drug offenders' fines generate a more consistent source of funds. As already discussed at page 12, New Jersey now counts on its "Drug Enforcement and Demand Reduction" penalty, to raise about \$9 million annually for drug education and prevention programs.

Drug Testing Policies

Drug Testing For Private Sector Employees

Contrary to popular belief, over two-thirds of all persons illegally using drugs have jobs. A recent study conducted by a national drug testing laboratory indicated that as many as 13.8 percent of a sample of nearly one million American workers used illegal drugs on the job.³ And we know that compared to their co-workers, employees who use drugs are less productive, miss more work days, and are more likely to injure themselves or someone else.

For these reasons, many employers have adopted clear policies on illegal drug use and Employee Assistance Programs to help employees who are trying to stop their drug use. Many companies have found — with the full support of their employees — that drug testing can be an effective component of workplace prevention programs. A Gallup survey conducted late last year indicated that 97 percent of American workers feel that drug testing at work is appropriate under some circumstances, and 86 percent believe that some form of testing helps deter drug use. A growing number of companies are adopting drug testing programs, with safeguards to guarantee accuracy and confidentiality, to identify applicants and employees who use drugs.

Therefore, it is important that States issue guidelines that allow private employers to develop appropriate drug testing programs to ensure that testing procedures recognize generally acceptable laboratory standards. Such guidelines should remove the threat of costly employee litigation, which deters many companies from implementing even a limited testing program with the most careful procedural safeguards.

State guidelines should also ensure that employers have discretion to determine which employees are subject to testing. Only a handful of States have passed legislation that would explicitly allow companies to implement random testing of all employees. A few States have prohibited such testing, while in many States the issue has been left to the courts to settle.

Some companies have found it appropriate to subject *all* employees to random testing, including upper level managers. For example, Texas Instruments, Inc. recently instituted the largest top-to-bottom corporate drug testing program in the United States. The Dallas-based company plans to randomly test all of its 52,000 U.S. employees over the next two to three years. Motorola, Inc., plans to institute a similar program. Programs like those of Motorola and Texas Instruments are commendable — not because they test all workers universally — but because they were developed with extensive advice from employees, who indicated that they wanted testing to apply to managers in the board room as well as workers on the shop floor. As these two programs show, employees will support company drug-testing programs if they are fair and provide adequate legal safeguards.

³Smith-Kline Beecham Clinical Laboratories Report, July, 1990.

Drug Testing For Public Sector Employees

Public sector employees should be held to no lower standard of conduct than private sector employees. Indeed, public officials who serve as role models in the fight against drugs, law enforcement officers and other State employees who hold safety-sensitive positions should be held to an even higher standard. Many courts have limited the extent to which public employees can be tested. However, within legal constraints, each State government has a responsibility to its citizens to require that State and local government agencies implement drug free workplace programs including, where and when appropriate, drug testing for public sector employees.

State legislatures should ensure that the State executive branch is encouraged, empowered, and, if necessary, required to employ drug testing within the State workplace. Many State executives have already implemented drug-free workplace programs without the need for legislation. But if legislation is needed to implement such testing, States should act promptly to ensure its passage. Kansas, for example, passed a law that requires individuals in safety-sensitive positions, as well as those taking office as Governor, Lieutenant Governor, or Attorney General, to submit to a drug screening test.

Drug Testing as a Condition of Pre-Trial Release, Probation and Parole

State pre-trial release, probation, and parole systems are excellent points at which to hold offenders accountable for staying off drugs. However, in many jurisdictions, these systems are so overcrowded and so loosely managed that they cannot ensure that pre-trial defendants, probationers, and parolees meet the conditions of their release. Thus offenders often remain at liberty to continue using drugs until they are arrested for yet another offense.

Pre-trial release, probation, parole, court-supervised treatment, and work-release programs should be tied to a regular and rigorous program of drug testing in order to compel offenders to abstain from drugs. Such programs identify those offenders who cannot safely be returned to society, and are a cost-efficient way to keep offenders off drugs during the critical period immediately following release from incarceration. Testing of pre-trial defendants is especially important, because it permits early identification of those defendants who may need drug treatment.

Prevention/Treatment Policies

Contractors and Grantees to Have Drug-Free Workplaces

State governments award millions of dollars in contracts and grants. States should follow the lead of the Federal Government in restricting the pool of potential contract and grant recipients to those who agree to implement drug-free workplace policies as a condition of receiving State and local funds. Such legislation ensures that State money is not used to fund a grant or a contract with an employer who does not implement drug-free workplace policies.

Statutes of this sort can provide a powerful incentive for private employers who wish to receive government grants and contracts to adopt drug-free workplace policies. Such statutes or policies should specify that government contractors and grantees must adopt and publish clear standards making it unacceptable for employees to use drugs in the workplace. In addition, drug-free workplace plans should include education, treatment referrals, employee assistance programs, and, where appropriate, drug testing, and the imposition of sanctions for illegal drug use.

Accountability of Treatment Programs

States should require publicly-funded treatment centers to monitor participants in their programs following the conclusion of treatment. Such monitoring allows States to measure the effectiveness of treatment programs and to hold programs accountable for their results. While it is not cost-effective to monitor participants indefinitely, monitoring should be undertaken for a specified period of time after treatment. States must determine which treatment programs are effective in order to provide such programs with funding priority. The Federal government's National Institute on Drug Abuse (NIDA) is presently funding a study on the feasibility of implementing standards to evaluate the effectiveness of treatment programs.

South Dakota, Massachusetts, and other States require monitoring of participants for one year, in some cases on a sample basis. Other States, including Iowa, Minnesota, Oklahoma, and Rhode Island, require monitoring for less than one year. Ideally, States should establish and fund State-operated monitoring programs, in order to ensure the reliability of the monitoring methodology and information.

In addition to monitoring participants, State governments need to take a more active role in general in monitoring treatment programs. For example, States should take the lead in setting up central intake and referral units. Central intake units provide a focal point for entry into treatment and assure that a comprehensive assessment will be provided for each individual. Other benefits of central intake include consolidated data collection and uniform record-keeping. Finally, States should create systems for licensing treatment and prevention professionals, to ensure that substance abusers receive the best quality care during rehabilitation.

Federal funding for treatment has almost doubled in the last three years. The bulk of these funds are provided in the form of block grants, through the Alcohol, Drug Abuse and Mental Health Administration. Increased accountability of the treatment system is necessary to ensure that Federal as well as State treatment funds are used effectively and that those in treatment are well-served. Accountability measures allow individual treatment programs, as well as the States that fund them, to evaluate and compare the relative effectiveness of various treatment methods.

Teacher Training in Substance Abuse Education

Inculcating in our young skills to resist the temptation of drugs is no easy task. It is important, therefore, that our teachers have the best and most up-to-date information about drug education. They must know what works and, just as important, what doesn't.

Many States have mandated at least some training in drug education for their teachers. Training in this area is important because it ensures that teachers will have basic information about the effects and symptoms of drug use. Drug education training also should teach teachers how to recognize the warning signs that may indicate that students have become involved with drugs and need help. It should give teachers practical strategies for getting their students into an appropriate counselling or other therapeutic program, before disciplinary measures must be taken.

Formal training in substance abuse education is a teacher requirement in 16 States. Additional States are considering proposals along these lines, as schools implement drug prevention programs and policies now required by the Federal Government as a condition of receiving Federal funding of any sort.

Quantitative Measures of State Performance

There are a number of measures that, taken together, may be helpful in evaluating State efforts to control the illegal use of drugs and the crime that accompanies it. The Status Summary at the end of this booklet contains five such measures: per capita corrections expenditures, percent of State spending on criminal justice, per capita treatment expenditures, prison overcrowding and the number of intravenous (IV) drug abuse client admissions in State-funded programs. Obviously, there is no single measure of "adequate" State effort in any of the above five areas, because the drug problem differs in character and intensity from State to State. However, these measures provide some means for comparing the relative efforts of States that have comparable levels of drug abuse. Also, increases or decreases in State anti-drug efforts may be measured in the years ahead by tracking these five indices. The five indicators shown here are not the most informative ones possible, but they are the only ones for which reasonably reliable data is available. The Federal government is continuing to work to devise more accurate and more useful quantitative measures of State performance on drugs.

Per Capita Corrections Expenditures

This indicator provides information about the level of per capita dollar expenditures in 1988 for the corrections system in each State. Of course, States may have a higher than average level of spending per capita because of unusually high crime rates, higher construction costs, or higher operating costs. Also, some States, such as Minnesota, have a lower per capita rate because of a heavy emphasis on intermediate sanctions, such as home detention. So higher per capita corrections expenditures do not necessarily indicate a better correctional system. However, this figure provides some indication of the level of effort that each State is making in the area of criminal justice and corrections.

This indicator should be used together with the prison overcrowding indicator to give a general sense of the demands on and resources available to a State's corrections system.

Percent of State Spending on Criminal Justice Expenditures

This indicator shows the percentage of general expenditures in State and local budgets that is dedicated to the criminal justice system.

There is no single percentage of State and local resources that must be devoted to criminal justice in every State. The amount depends on many factors that are specific to each State. However, it is possible to get some idea of the relative importance accorded to law enforcement by comparing relative expenditures in each State.

Increased levels of funding for the criminal justice system enable a more vigorous, consistent, and successful enforcement of drug laws.

This is necessary to get the dealers and users off the streets and away from the neighborhoods they are destroying. In some cases, the criminal justice system directs persons who need treatment to the help that they might not have sought on their own.

Per Capita Treatment Expenditures

This figure measures the per capita level of public expenditures on drug abuse treatment in each State. Obviously, higher per capita drug treatment expenditures do not necessarily mean better programs. States may have a higher than average level of spending per capita because of metropolitan concentrations or other sources of higher drug use rates in the State, or because their treatment programs are relatively less effective. Also, States may have higher expenditures where treatment is more actively sought by drug users. However, the overall level of treatment expenditures can suggest the level of commitment in each State to helping those entrapped by drug use.

Prison Overcrowding

Many State prisons operate far above their designed capacity. Yet effective local drug enforcement is very much dependent on the creation of more prison space. This indicator measures the extent to which actual prison occupancy exceeds the number of prisoners who would be incarcerated if a standard on the amount of space per prisoner were strictly followed. While measures of prison capacity may vary somewhat from State to State, this indicator does provide one measure of the overall burden on the criminal justice and corrections system in each State. The level of overcrowding within the State prison system gives a measure of the requirements for new and renovated facilities and of the overall pressure on the system.

Intravenous Drug User Admissions

Drug addicts face numerous and serious health risks. However, intravenous, or IV, drug users face a special deadly risk: transmission of Acquired Immune Deficiency Syndrome (AIDS). Needle-sharing among drug users is one route of transmission of the AIDS virus, and there is a high rate of AIDS transmission among intravenous drug users. Treatment of these addicts must be a high priority in every State, because of the added risk they pose to the public health. This indicator shows the number of intravenous drug abusers entering State-funded treatment programs in 1989.

This indicator varies considerably from State to State. For example, New York had 14,875 such admissions, Massachusetts had 13,001, West Virginia had 176, and Wisconsin had 5,779. Much of this variation, obviously, is due to variation in the population of each State, as well as varying percentages of IV drug abusers. However, this indicator provides some measure of the effort made by States to get intravenous drug abusers into treatment.

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STATE DRUG CONTROL STATUS SUMMARY

STATE	STATE DRUG CONTROL MEASURES										QUANTITATIVE MEASURES													
	State Law Makes it a Crime to:	State Law Penalizes Drug Offenders by:					State Criminal Justice Policies Allow:	State Drug Testing Policies Include:	State Prevention/ Treatment Policies Require:	Funding	Population Characteristics													
	Attempt and Either Offer or Solicit to Buy/Sell Drugs with Same Punishment as Completed Offense	Use/Possess/Deliver or Advertise Drug Paraphernalia	Enhancing Penalties for Drug Crimes within a Drug-Free School Zone	Enhancing Penalties for Drug Transactions Involving Minors	Permitting or Mandating Suspension of Driver's Licenses	Permitting or Mandating Suspension of Occupational Licenses	Mandating Eviction from Public Housing Projects	Taxing Drug Sales/Requiring the Purchase of Tax Stamps by Dealers	Boot Camps	Procedures for Seizing Real Property Assets Used to Commit or Facilitate Commission of Drug Offenses	Procedures for Substituting and Seizing Non-Drug Related and Out-of-State Assets	At Least 90% of Asset Forfeiture Proceeds to be Used for Law Enforcement Activities	Guidelines for Private Sector That Permit Random Drug Tests for All Employees	Statute Authorizing/Requiring Testing for Specific Public Sector Employees	Statute Requiring Testing as a Condition of Probation or Parole for Drug Offenders	Contractors and Grantees to Have Drug-Free Workplaces	Public Treatment Centers to Monitor Participants for At Least 6 Months After Treatment	Teachers to Have Formal Training in Substance Abuse Education	Per Capita Corrections Expenditures 1988 (\$)	Percent of State Spending for Criminal Justice Expenditures, 1988	Per Capita Drug Treatment Expenditures, FY-1989 (\$)	Overcrowding in State Prisons (Prison Population as a Percent of Highest Capacity), 1989	IV-Drug Abuse Client Admissions in State-Funded Programs, FY-1989	
Alabama	●	●	●	●	●			●	●	●		●			●			●		47	5.2	0.21	111	500
Alaska			●	●								●								177	5.1	1.91	106	584
Arizona		●	●	●				●	●	●	●	●								101	7.7	1.93	100	2,648
Arkansas		●	●	●			●	●	●	●		●								30	4.5	0.41	100	783
California	●	●	●	●	●		●	●	●	●		●						●		128	8.0	1.76	106	35,297
Colorado	●	●	●	●	●	●			●	●		●								68	6.2	0.71	124	2,431
Connecticut	●	●	●	●					●	●		●						●		62	6.0	4.57	107	4,866
Delaware		●	●	●	●					●		●								83	6.7	1.78	107	1,358
District of Columbia		●														●		●		413	11.0	0.36	93	2,804
Florida		●	●	●	●	●		●	●	●		●						●		85	7.7	2.07	88	11,911
Georgia	●	●	●	●		●		●	●	●		●				●		●		72	6.1	1.31	102	5,000
Hawaii	●	●	●	●						●		●				●				65	7.4	0.56	115	593
Idaho		●		●					●	●		●								42	5.3	0.07	94	759
Illinois			●	●	●				●	●		●								52	6.6	1.95	110	5,986
Indiana		●	●	●	●				●	●		●				●		●		43	4.9	1.55	136	2,863
Iowa			●	●						●		●						●		38	4.4	1.50	119	1,389
Kansas	●	●	●	●						●		●						●		45	5.6	0.74	102	1,829

Louisiana																		57	5.8	1.14	97	3,100
Maine																		49	4.7	0.23	132	3,379
Maryland																		100	7.2	2.43	100	7,741
Massachusetts																		69	6.2	1.17	167	13,001
Michigan																		83	6.5	1.38	128	3,100
Minnesota																		53	4.3	0.07	100	1,300
Mississippi																		26	4.0	0.37	83	NA
Missouri																		48	6.6	1.11	92	3,781
Montana																		37	4.1	1.20	104	963
Nebraska																		40	3.9	0.95	146	223
Nevada																		159	9.1	0.86	100	700
New Hampshire																		45	5.9	1.41	110	242
New Jersey																		81	7.4	2.35	118	5,782
New Mexico																		74	6.1	1.26	101	672
New York																		140	7.9	8.00	99	14,875
North Carolina																		71	5.7	0.89	93	2,000
North Dakota																		30	3.3	1.01	81	26
Ohio																		67	5.4	0.99	154	4,000
Oklahoma																		54	5.0	1.84	145	1,900
Oregon																		63	6.3	2.17	120	2,622
Pennsylvania																		52	5.4	0.32	156	9,731
Rhode Island																		53	5.7	3.41	137	2,016
South Carolina																		74	5.8	1.57	104	1,500
South Dakota																		35	4.3	0.06	184	183
Tennessee																		61	5.0	0.46	94	1,688
Texas																		59	6.0	0.87	95	7,858
Utah																		54	5.0	1.19	93	671
Vermont																		39	4.6	1.67	144	700
Virginia																		75	6.9	0.50	118	1,933
Washington																		68	4.8	0.83	106	N/A
West Virginia																		23	3.4	0.26	94	176
Wisconsin																		48	5.5	0.37	101	5,779
Wyoming																		56	4.3	0.91	129	NA

Office of National Drug Control Policy, November 1990