

# **Report and Recommendations Governor's Drug Policy Advisory Group**

## **Executive Summary**

The Governor's Drug Policy Advisory Group recommends that the Governor support the following strategies and policies in New Mexico:

### **Develop and Implement a Comprehensive Drug, Crime, and Health Policy**

- Creation of a comprehensive drug policy at the state level, including coordination of all drug-related funding (prevention, treatment, law enforcement, courts, and corrections), allowing more effective planning and prioritizing and full implementation of performance-based budgeting for drug policies.
- Recommendation that federal law enforcement funding be administered as block grants to be used by states according to their own law enforcement priorities, rather than being earmarked for federal drug law enforcement.
- Recommendation that the United States Congress hold hearings on the issue of how resources to combat substance abuse are allocated, including review of the effectiveness and cost-effectiveness of demand-reduction (education, prevention, and treatment) versus supply-reduction (interdiction and incarceration).

### **Implement Effective Prevention and Drug Education**

- Expansion of state budgetary allocations for science-based drug education and prevention programs.
- Implementation of science-based, safety-focused drug education and prevention programs in schools by the Department of Education.
- Interaction and coordination of efforts between the Department of Health, Children Youth and Families Department, Department of Education, local school systems, and other involved agencies to increase the availability of mental health and substance abuse treatment services for children and teenagers.
- Implementation of lifelong prevention and substance abuse treatment programming within the Department of Health, including training for Department of Health personnel and other medical and mental health care providers on science-based, safety-focused drug education and effective treatment programs.

### **Make Effective Treatment Available on Request**

- Expansion of state budgetary allocations for voluntary substance abuse treatment services.
- Renegotiation of Medicaid contracting to allow for coverage of effective substance abuse and mental health treatment, including but not limited to pharmacological substance abuse treatments such as methadone maintenance therapy, LAAM, and buprenorphine when available.

- Amendment of state licensing laws to allow persons convicted of drug offenses who have successfully completed their sentences and treatment to serve as substance abuse counselors, allowing for peer-to-peer substance abuse counseling.
- Reallocation of resources between and within state agencies to allow for increased availability of substance abuse treatment, with a goal of making voluntary substance abuse treatment available to anyone who requests it.
- Continued exploration of and application for federal funding available for substance abuse treatment and prevention.
- Continued exploration of and support of research on the area of substance abuse and effective substance abuse treatment.

### **Implement Harm Reduction Policies and Programs**

- Expansion of state budgetary allocations for harm reduction programming, including strategies to reduce the transmission of HIV, hepatitis viral infections, and tuberculosis among injection drug users.
- Amendment of existing controlled substance laws to allow for the sale of sterile syringes in pharmacies without restriction.
- Enactment of a statute limiting liability for those prescribing, distributing, and using anti-opioid agents used to treat life-threatening heroin overdose and overdose with other opioid drugs.
- Reform of the Lynn Pierson Act to allow for patient access to medical marijuana for people with serious medical conditions for which it has been shown to decrease pain and suffering.
- Implementation of increased substance abuse treatment programs within correctional and detention settings, including pharmacological substance abuse treatments such as methadone maintenance therapy.

### **Implement Criminal Justice Sentencing Reform**

- Amendment of existing criminal statutes to reduce first and second drug possession offenses to misdemeanors and to require automatic probation and substance abuse treatment rather than jail time for those offenses.
- Amendment of existing criminal statutes to remove the criminal penalty for personal possession of marijuana and to allow for civil penalties, rather than criminal penalties, for use of marijuana in public places.
- Amendment of existing criminal statutes to remove the use of drug-related offenses to increase prison sentences under the habitual offender law and to remove mandatory minimum sentences for drug-related offenses, instead allowing sentencing in each case to be based on the particular case before the court.

### **Protect Fundamental Constitutional Rights of New Mexico Citizens**

- Investigation by the legislature of the impact of current federal and state drug war policies on basic constitutional rights of the citizens of New Mexico.

## Defining the Problem

Over the past several decades, the citizens of New Mexico have suffered increasingly from the negative effects of the abuse of alcohol and other drugs. The policies and systems that we have put in place in an attempt to deal with these negative effects have in many cases not only failed to solve the problems they were intended to address, but have also had unintended consequences that created additional problems. These policies, usually focusing primarily on reducing the supply of illegal drugs through law enforcement and the criminal justice system, have resulted in the expenditures of great amounts of money, not to mention time and energy; yet it seems that the problems only get bigger.

The effects of the past thirty years of the federally driven “war on drugs” in New Mexico are far-reaching. These policies have resulted in more dangerous and more addictive drugs; more New Mexico children using these drugs at earlier ages; more disease and death associated with these drugs; increasing gang violence because of the black market dealing of these drugs; extraordinarily long prison sentences for non-violent offenders, many of whom are single parents; and a waste of taxpayers money on ineffective policies, leaving fewer tax dollars for other priorities such as combating violent crime and supporting schools, education, and health care.

## The Future of New Mexico

In preparing our *Report and Recommendations*, the Advisory Group identified a variety of areas in which improvement was needed. We determined that over the upcoming months and years, New Mexico should prioritize health- and safety-focused laws and policies over strictly law-enforcement-focused laws and policies through sentencing reform, protection of fundamental constitutional rights, implementation of harm reduction policies, increased availability of effective drug and alcohol treatment on request, and effective prevention and drug education. As a result of this reprioritization, New Mexico will reduce the demand for drugs including alcohol and tobacco, reduce overdose deaths, reduce the spread of infectious diseases, increase community safety, and cut crime and violence, thereby making available resources for education, healthcare services, and general quality of life.

- **Implement Effective Prevention and Drug Education**

The implementation of effective prevention and drug education programs is the first step in reducing the harms caused by drug, alcohol, and tobacco abuse and drug prohibition.

We recommend that the following steps be taken in order to decrease the abuse of drugs and alcohol by New Mexicans of all ages:

1. Effective, science-based, outcome-tested drug and alcohol education should be provided at the elementary, junior high, and high school level. Drug education programs that do not meet these criteria should be eliminated.

2. Medical and mental health services should be available to children and teenagers in New Mexico schools. Particular attention should be paid to the needs of children and teenagers suffering from mental illnesses who are self-medicating with alcohol and other drugs, including training for teachers, counselors, administrators, and health care providers about the prevalence of such dual diagnoses and about the possibility of preventing alcohol and drug use by effectively treating mental illnesses.
3. Parents with young children and infants should be supported in their parenting roles. Voluntary home visitation and early childhood programs should be available to families, especially focusing on first time and teen parents. Special focus should be placed on families with substance abusing parents.
4. Accurate and safety-based information about the effects of drugs and alcohol and about ways to minimize their potential negative effects should continue throughout an individual's life. Prevention and educational efforts should not end after high school. Some educational efforts can be targeted to groups at risk (such as people who use injection drugs, who are involved in the criminal justice system, who are in drug or alcohol treatment programs, and the children of individuals in these at-risk groups), while other educational efforts should be more widespread and comprehensive (such as training/continuing education for families, faith communities, medical personnel, law enforcement, and teachers, providing these groups with information that they are in a position to use in their own lives and work and to pass along to others).

- **Make Effective Treatment Available on Request**

The availability of effective alcohol and drug treatment programs for all New Mexicans who request them is a critical piece of responding to the problems of drug and alcohol abuse in a humane and economically responsible way. We recommend the following steps be taken in order to increase the availability of and access to the broadest possible array of treatment services for the citizens of New Mexico:

1. Substance abuse treatment should be more broadly available to all New Mexicans who wish to undertake such treatment. Alcohol and drug treatment can have many positive effects for both the participant and his or her family and community. For example, effective substance abuse treatment leads to improved health and quality of life, both short-term and long-term, for the person who enters treatment and his or her family; improved capability to function successfully in society (i.e., succeed in educational setting, succeed in job, contribute to family and community life, etc.); and decreased criminal activity in cases where criminal activity provided support for an addiction or where the substance abuse (most commonly alcohol abuse) caused the person to act violently or to put self and others in danger through reckless behavior.

Currently, the treatment programs in the state – from outpatient counseling to inpatient residential treatment – are insufficient to meet the level of need. This problem arises both from the relatively small number of programs (i.e., not enough

treatment spaces) and the inability of many New Mexicans to afford the costs of treatment. As a result, many people who recognize that their alcohol and/or drug use is problematic and that they need assistance in dealing with it are unable to enter treatment to do so.

We recommend that New Mexico seek to expand treatment services so that any individual who wants and needs substance abuse treatment can access it. In planning such services, special attention should be paid to program effectiveness: substance abuse treatment programs should be required to demonstrate success based on meaningful criteria, such as clients' ability to hold jobs and participate in their family and community life in a productive rather than destructive way. In order to meet the needs of the most people and to be cost-effective, treatment services should include a broad spectrum of options, from outpatient counseling with linkage to other necessary social services (job training, educational programs, employment services, etc.) to residential treatment facilities. The spectrum of services should include pharmacological treatment, such as methadone maintenance and other opiate-replacement therapies, to be available whenever medically appropriate. Furthermore, the interrelationship between substance abuse and mental illness, often occurring as individuals attempt to self-medicate mental health problems, must be addressed and appropriate services made available for those suffering from such dual diagnoses.

We are aware that no one treatment program works for everyone, and that in many cases individuals relapse and must begin treatment many times before successfully conquering their substance abuse. For this reason, we recommend that New Mexicans have access to the widest possible spectrum of treatment services, and that those treatment services continue to be available for those who need to re-enter them or to enter a new program. Relapse is a part of recovery from substance abuse, and should be considered an expected part of the process rather than a failure resulting in punishment or exclusion from services.

It is important to recognize that substance abuse treatment on request, made available within communities to those who are ready to take advantage of such treatment services, is the preferred form of delivering services to addicted individuals in need. The increased availability of services within the community should be the first priority for New Mexico, as this method is in most cases more effective and less expensive than coerced substance abuse treatment, and can often prevent an individual's involvement in the criminal justice system. We are concerned about the increased involvement of the criminal justice system in the lives of New Mexicans who suffer from drug or alcohol addiction and/or mental illness; nevertheless, we recognize that treatment programs within the criminal justice system should be a part of a comprehensive spectrum of substance abuse treatment and prevention services. For this reason, we recommend that diversion programs, such as drug courts, be employed when appropriate and that substance abuse treatment programs such as therapeutic communities, methadone maintenance treatment, and other programs be available within the jails and prisons of New Mexico. (See also Sentencing Reform, below)

2. The New Mexico Medicaid system does not currently cover alcohol and other substance abuse treatment adequately. It can in some cases cover substance abuse

treatment services for children and pregnant women; however, this is not a priority focus for the system as it presently exists. The Medicaid criteria should be changed so that the program covers substance abuse treatment of all kinds more comprehensively. Such a change would have a significant impact on the lives of New Mexicans currently living in poverty who suffer from substance addiction, and would make it possible for people to access services without having to enter the criminal justice system.

- **Implement Harm Reduction Policies and Programs**

The implementation of harm reduction strategies plays an important part along the spectrum of interventions and tools that New Mexico should use to improve the health and safety of its communities.

We recommend the following steps be taken to reduce the harms of drug and alcohol abuse and drug prohibition:

1. The existing New Mexico Harm Reduction Act, passed in 1997, should be financially supported and expanded. The Harm Reduction Act establishes a system for distributing clean syringes to drug users and for retrieving used syringes for safe disposal. Syringe exchange programs such as these have been demonstrated the most effective method of preventing the spread of blood-borne diseases such as HIV/AIDS and hepatitis B and C. Additionally, they provide an opportunity for medical intervention – and ultimately possible decreased use or use cessation – with the drug-using population, a group often unwilling or unable to access healthcare or treatment services in any other way. Approximately twenty syringe exchange programs already exist throughout the state under the Act. We recommend that funding be made available to expand these programs and to add to them.

Because of the importance of successful syringe exchange programs to the health and welfare of individual drug users and communities, we recommend that existing laws and regulations that impact on the successfulness of these programs be updated to ensure their maximum use and the maximum availability of clean syringes within the community. These changes are important both because they encourage drug users to access and use clean syringes, but also because they encourage the safe disposal of syringes (instead of throwing them on the ground or into unsafe containers) in order to prevent risk of injury and infection to law enforcement officers and to the community. These include changes in the pharmacy laws to ensure that pharmacists can sell clean syringes without facing liability; changes in the Controlled Substances Act to remove syringes from the list of drug paraphernalia that can result in arrest; and changes in the Harm Reduction Act and its regulations to allow legal transport of syringes at any time (not just on the way back and forth to exchange sites).

2. Methadone and other opiate-replacement therapies should be made more broadly available. Methadone maintenance therapy has consistently proven to reduce, and in many cases eliminate, the use of illegal opiates such as heroin; to reduce criminal activity surrounding illegal drug use; and to improve the quality of life

and health of opiate-addicted people. Currently, federal regulations require that methadone maintenance therapy take place only in a methadone clinic setting, even when an individual has been stable for long periods of time; however, the regulations allow for waivers of this requirement both on a case-by-case basis and on a programmatic basis. Because clinical settings are not always realistic options, especially in rural areas, and because clinical settings are not always in the best interest of particular patients, the Department of Health and other health care providers should work together to expand the availability of methadone and other opiate-replacement therapies in other settings. For example, methadone maintenance treatment could in many cases be successfully conducted in already-existing settings such as a public health office or a physician's office. We recommend that in addition to seeking expanded methadone maintenance availability in methadone clinical settings, other possible options and therapies be explored and implemented as well.

3. Methadone and other opiate-replacement therapies should be an available treatment option in correctional settings and in drug court programs. The availability of methadone maintenance therapy within correctional settings has been demonstrated to reduce drug abuse and drug-related violence within correctional settings and to decrease recidivism rates upon release. When an individual who is on a methadone maintenance program comes into a jail, that person should be permitted to continue receiving his or her medication. Furthermore, when an individual is incarcerated in a prison or jail setting, methadone maintenance treatment should be one of an array of treatment options made available to that person and their health care provider within the correctional setting.
4. The Department of Health should continue to work with local communities to expand the availability of naloxone, a medication used to reverse the effects of opiates and prevent overdose and death by overdose.
5. The Lynn Pierson Act, the existing medicinal marijuana law in New Mexico, should be amended to allow access to medical marijuana for certain illnesses. The Lynn Pierson Act, enacted in 1978, allowed for the use of medicinal marijuana only in research settings. Since that time, however, the medical appropriateness of medicinal marijuana has been established for a variety of diseases and illnesses, and many states have enacted laws allowing for physician prescribing of this medication at the state level. We recommend that the Lynn Pierson Act be amended to allow physicians to recommend and patients to access medical marijuana when medically appropriate, and to allow for a registry of patients who are approved for this treatment and their caregivers. We recommend that this program be modeled after the existing Oregon and Hawaii systems.

- **Implement Criminal Justice Sentencing Reform**

The costs associated with placing non-violent drug offenders in prison in New Mexico are huge. Not only are there direct costs associated with the functioning of the criminal justice, court, and correctional systems, there are many indirect financial costs of

incarcerating drug offenders. These costs include, for example, the lost productivity and tax contributions of the person incarcerated; the lowered incomes of families left behind, often resulting in increased dependence on government financial assistance; and, in cases where a custodial parent is incarcerated and other family members are not available to care for children, the costs of foster care or other placements.

In addition to the financial costs, there are large societal costs to such high incarceration rates. The effects of losing a family member to jail or prison can be extremely traumatic for children, parents, brothers, and sisters. Many children without parental involvement have problems in our educational system, which can lead to truancy, dropping out of school, increased involvement with law enforcement, and unpreparedness to enter our workforce. Furthermore, the increasing impact of our drug laws on women exacerbates these problems even more. While women remain fewer in number in our criminal justice system, the incarceration rates of women have risen at an even higher rate than those of men over the past ten years – largely due to drug laws that punish women who may be only minimally involved in drug trafficking or are involved only because of their own addiction. Women are significantly more likely to be the primary caretakers of children, leading to more placements of children into foster care and other temporary placements and to the above-mentioned negative effects of losing contact with a parent. Studies have shown that keeping women and their children together, even while the mother is receiving drug abuse treatment, leads to better outcomes for the children and to increased likelihood of success in treatment for the mother. Criminal justice policies that accomplish the opposite, separating children from their mothers, do not achieve the positive outcomes for either child or parent.

Perhaps most importantly, directing large amounts of law enforcement, courts, and correctional resources at drug offenders means that fewer of those resources are available to direct at violent criminal activity. When law enforcement officers are given the impossible task of stopping all drug use and all drug buying and selling, they are less able to enforce laws intended to protect communities from crimes such as assault, rape, and murder. A reallocation of resources that prioritizes prevention, investigation, and enforcement of these violent crimes over drug crimes would better serve and protect the citizens of New Mexico, would improve morale within the ranks of law enforcement, and would increase public support and respect for the hard work that law enforcement, courts, and correctional officers do everyday.

We believe that New Mexico should begin immediately to decrease its reliance on supply-reduction strategies for combating drug and alcohol abuse and focus instead on demand-reduction strategies such as prevention and treatment. We recommend the following steps be taken to reduce the unnecessary costs of incarcerating non-violent drug offenders and to increase treatment availability for those for whom it is appropriate:

1. New Mexico should begin immediately to place first priority on enforcement of laws prohibiting violent crimes, followed by enforcement of laws prohibiting property crimes. The citizens of New Mexico will be safer and their confidence in the functioning of the criminal justice system will be greater if these types of crimes are enforced more effectively.

2. New Mexico should follow the example of our neighbors in Arizona and California to require that on first and second offenses, individuals arrested for drug possession offenses be charged only as misdemeanants and automatically receive probation and substance abuse treatment rather than facing the possibility of a jail or prison sentence. This allows individuals who come into contact with the criminal justice system to be immediately routed into treatment services, rather than spending periods of time – often long periods of time – taking up jail space while they wait for disposition of their cases. Furthermore, it decreases costs to the state and local court system; increases the likelihood that an individual’s contact with the criminal justice system will lead to a positive therapeutic outcome; and provides assistance to over-extended probation personnel, allowing them to focus more time and attention on other cases requiring supervision. We recommend that these cases should be handled as misdemeanor cases.
  
3. Currently in New Mexico, the time that an individual convicted of a drug offense spends in prison is affected not only by the particular case before the court, but also by two other statutes: the habitual offender statute, and the mandatory minimum sentencing statute. Because of the cyclical nature of drug abuse and of the economics of the black market for drugs, factors often present in an accused individual’s life, these two statutes can operate to dramatically increase the prison penalty for drug offenses. As a result, it is very common for someone addicted to drugs and/or involved in small-scale drug dealing to receive a prison sentence that is extremely long, often longer than the sentences for those convicted of violent crimes or of much larger-scale drug dealing. Furthermore, the financial cost to the state taxpayers for this lengthy incarceration is huge.

We recommend that laws requiring mandatory minimum sentences for drug-related offenses be repealed, and that habitual offender convictions where the current offense or any of the underlying offenses is a drug-possession or minor drug-trafficking crime be eliminated.

4. The criminal sanction for possession of one ounce or less of marijuana for personal use by a person aged eighteen or over should be eliminated. Use of marijuana should be limited to private spaces; if a person eighteen or over uses marijuana in public, they should be given a reasonable civil penalty. Of course, offenses for operating motor vehicles while under the influence of or impaired by alcohol or any other drug should be maintained.

Having reviewed carefully the information available on marijuana and its effects, and having heard from various representatives of law enforcement, corrections, and the courts, we believe that taking this step will result in greater availability of resources to respond to more serious crimes without any increased risks to public safety. We recognize the inherent conflict between this recommendation and maintaining criminal penalties for distribution of marijuana. We decline to make a recommendation concerning this problem, and instead fully support further policy consideration of possible solutions.

- **Protect Fundamental Constitutional Rights of New Mexico Citizens**

In the name of the “war on drugs,” many of the constitutional rights and freedoms that are guaranteed by the Constitutions of the United States and the state of New Mexico have been undermined. The erosion of Fourth Amendment rights and the disparate impact of drug war policies on racial and ethnic minorities are examples of this breakdown. The well-publicized problems with forfeiture of individuals’ property is currently being addressed nation-wide through federal legislation and through the initiative process in various states. New Mexico’s legislature has previously addressed this issue through Senate Bill 10 in 1996, and the New Mexico Supreme Court has addressed it in the *Nunez* case in December of 1999. We recommend that the New Mexico legislature thoroughly investigate the impact of current federal and state drug war policy on the basic constitutional rights of the citizens of the state.

## **Conclusion**

Throughout our discussions, deliberations, and decisions, we made the health and safety of the citizens, families, and communities of New Mexico our first priority. It is our hope that the work we have done in this area, and the specific policy recommendations that we make in this report, will provide guidance for the Governor’s Office as we move forward in creating more effective drug policy strategies and in reducing the harmful effects of alcohol and drug abuse in our state.