



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

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October 8, 2013

Michael Botticelli
Deputy Director
Office of National Drug Control Policy
Washington, DC 20503

Dear Deputy Director Botticelli:

The National Conference of State Legislatures (NCSL) appreciates the opportunity to provide input on the Office of National Drug Control Policy's proposed 2014 National Drug Control Strategy. State legislatures are committed to cooperating with other states and with the federal government to prevent drug use and its consequences. NCSL represents the legislatures of the nation's 50 states and territories. The following comments reflect a diverse set of experiences and needs coming directly from the states and serve to form the basis of NCSL's policy position on the control of illicit drugs in our country. Some of the suggestions provide examples of effective state programs which may not only serve as models for other states, but also as models for federal initiatives. Other comments highlight the need for increased federal/state partnerships in areas that are difficult for states to address alone. NCSL believes it is important that the 2014 National Drug Control Strategy is informed by the experiences of the states.

2014 Goal – Prevention of Illicit Drug Use in Our Communities

NCSL Calls for Increased Information Sharing on the Regulation of Pill Mills

State legislators have emphasized that the proliferation of pill mills excessively prescribing pain medication is a growing area of state concern. NCSL believes that pill mills are becoming a source of excessive distribution of legal drugs and are a serious problem in many

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states. States are springing into action to combat this trend. For example, Georgia passed a law regulating pain management clinics in their 2011 legislative session under which all dispensers were required to electronically report specific information for each prescribed Schedule II, III, IV, and V controlled substances beginning May 15, 2013 on at least a weekly basis. (See <http://www.legis.ga.gov/Legislation/20112012/116656.pdf>).

Tennessee also acted to regulate pain management clinics this year as a part of more comprehensive legislation addressing all aspects of prescription drug monitoring. This is expected to be a growing area of state action and NCSL requests that ONDCP keep in close contact with the states on this issue, highlight the good work of the states, and consult with state policy experts to assist with identifying good strategies that can be used as national policy directives when drafting the 2014 National Drug Control Strategy.

States are Working to Prevent Painkiller Over-Prescription

The issue of painkiller over-prescription is of great concern in the states. Tennessee's recently enacted "Addison Sharp Prescription Regulatory Act of 2013," (<http://www.capitol.tn.gov/Bills/108/Bill/SB0676.pdf>), provides a comprehensive model of how to prevent prescription drug abuse by targeting doctor shopping and pill mills. This legislation may be a useful example of what states are doing to achieve the goals of the National Drug Control Strategy. As the 2013 Strategy noted, 11 of the top 100 oxycodone prescribers in the nation were in Tennessee at that time. Since then, Tennessee has passed a comprehensive bill which:

- Requires the Tennessee Commissioner of Health to develop treatment and prescription guidelines for opioids, benzodiazepines, barbiturates, and carisoprodol by January 1, 2014;
- Requires physicians to attend training in the treatment and prescription guidelines;
- Limits the amount of opioids or benzodiazepines that may be dispensed at one time to no greater than a 30 day supply;

- Requires patients to present a current and valid government issued identification or current health insurance card when receiving prescriptions; and
- Regulates the over 320 pain management clinics in the state.

NCSL calls upon ONDCP to provide additional leadership and support to states that are working to combat the problem of painkiller over-prescription. NCSL believes that states and the federal government should work together to find practical and meaningful solutions to this problem.

2014 Goal - Intervene Early in the Health Care System

States are Establishing Comprehensive Prescription Drug Monitoring Programs

The Office of National Drug Control policy should continue to support the development of Prescription Drug Monitoring Programs (PDMPs)—state administered databases containing information used by pharmacists and prescribers to identify patients who may be doctor shopping—and help facilitate the state-to-state sharing of the information in these databases. Legislators expressed great confidence in, and hope for, these programs. NCSL maintains that when these programs are appropriately executed, they may be effective in reducing substantial numbers of drug overdose deaths.

As the 2013 National Drug Control Strategy noted, only 20 states had PDMPs in 2006, while 49 states authorized PDMPs by 2013. Most recently, Georgia implemented its PDMP in the summer of 2013 using funds from a Bureau of Justice Assistance grant. Tennessee’s 2012 “Prescription Safety Act” provides another innovative and successful example of such a program. Tennessee requires all pharmacies to report any Schedule II, III, IV, or V prescriptions filled to the Controlled Substance Monitoring Database, or CSMD. A physician is also required to check the CSMD prior to prescribing one of the controlled substances and annually when the prescribed substance remains part of the treatment. A recent survey of Tennessee prescribers by the Tennessee Department of Health found that almost 80 percent said that they think the CSMD is useful for decreasing the incidence of doctor shopping. Over 70 percent said they have changed a proposed treatment plan for a given patient after viewing the information found in the CSMD.

Nearly 72 percent said they are more likely to discuss substance abuse issues/concerns with their patients. These are clearly positive results that ONDCP should study further to provide support and guidance where needed.

As states develop and implement these databases, increased inter-state data sharing can ensure even greater abuse prevention. Only 11 states were able to share their data with other states according to the 2013 Strategy. As more states exchange data, these systems will become increasingly effective. NCSL maintains that federal support of the development, modernization and implementation of these programs at the state level and coordinating the sharing of data between states should be target goals for the 2014 National Drug Control Strategy.

ONDCP should also look at legislation in this area from the state of Kentucky. The Kentucky All Schedule Prescription Electronic Reporting (KASPER) system has been referred to as the “gold standard” of PDMPs by the federal Substance Abuse and Mental Health Services Administration.¹ Although KASPER was one of the first PDMPs, Kentucky continues to update the program. Legislation passed in 2012 made KASPER reports more readily available for physicians and expanded the mandatory use of KASPER reports. From the start of 2012 to July of 2013, the number of pain clinics throughout Kentucky dropped from nearly 50 to seven, and the number of prescriptions for the strongest pain medicine declined by more than 11 percent during the latter half of 2012.² Kentucky was also one of the first states to share data with other states, when it participated in the Prescription Monitoring Information Exchange pilot program with Ohio in 2011. NCSL asks that ONDCP provide meaningful consultation with state policymakers.

¹ *Kentucky Meets the Gold Standard for Prescription Drug Monitoring Programs*, Substance Abuse and Mental Health Services Administration (Apr. 25, 2013), <http://captus.samhsa.gov/access-resources/kentucky-meets-gold-standard-prescription-drug-monitoring-programs>.

² Rep. Greg Stumbo, *A Legislative Perspective*, Floyd County Times, July 17, 2013, available at http://www.floydcountytimes.com/view/full_story/22573710/article-A-legislative-perspective.

2014 Goal -Break the Cycle of Drug Use, Crime, and Incarceration

States are Establishing Drug Courts

The 2014 National Drug Control Strategy should continue the support of Drug Courts outlined in the 2013 Strategy. The number of Drug Courts continues to grow as more states adopt them and other states expand their existing Drug Court programs. South Dakota established drug courts as part of the state's overall criminal justice reform package called the Public Safety Improvement Act in the 2013 legislative session.

(<http://legis.state.sd.us/sessions/2013/Bills/SB70ENR.pdf>). Mississippi has a decade-long experience with drug courts which has been very successful in that state. The 2014 National Strategy should continue to support the progress of state drug court programs and should note that different states are at different stages of implementation and may alternatively need planning, implementation, or development assistance.

States are Looking at Developing Infrastructure to Promote Alternatives to Incarceration When

Appropriate

NCSL supports ONDCP's proposed policy goal of reducing crime and drug use. NCSL also supports looking at reasonable and workable alternatives to incarceration where warranted. NCSL asks that our federal partners look to the states for sound policy ideas in this area. South Dakota's Public Safety Improvement Act is a useful example of how states achieve the National Strategy's goal of responsibly promoting alternatives to incarceration. This legislation made comprehensive reforms to the state's sentencing and correction system aimed at decreasing the level of incarceration while also reducing recidivism. This state recognized the need for comprehensive and different reforms because of the stark reality that in South Dakota, when people are released from prison, they haven't changed the behaviors that put them there in the first place.

South Dakota's Public Safety Improvement Act reduces incarceration rates through a number of sentencing reforms, including: creating a drug court program featuring court supervised alternatives to incarceration, and introducing a tiered controlled-substance statute to differentiate between drug users and drug dealers. This legislation also uses a number of

probation reforms aimed at reducing recidivism and making the alternatives to incarceration more effective, including: introducing new sanctions for probation violations; creating two pilot probation programs featuring frequent drug testing; and allowing for earned discharge from supervision for offenders who comply with the terms of probation and parole.

2014 Goal -Disrupt Domestic Drug Production and Trafficking
States Are Working Toward Eliminating Methamphetamine Production

The continued domestic production of methamphetamine is a serious concern for state legislators. Prescription requirements for pseudoephedrine have been effective at the state level, but the ease of trafficking pseudoephedrine into a controlled state demonstrates that federal assistance may be appropriate in this area. NCSL's Criminal Justice Policy encourages federal leadership and resources that assist state governments in activities that address education, prevention, enforcement, and treatment related to illicit drugs.

States also continue to innovate in this area. In Oregon and Mississippi, the procurement of pseudoephedrine now requires a prescription which has caused a decrease in the number of in-state methamphetamine labs. States are also realizing that despite these reforms, pseudoephedrine trafficking across state lines is also a growing problem that needs to be addressed. NCSL would welcome the opportunity to discuss effective strategies to combat this problem with ONDCP. NCSL also calls upon ONDCP to provide leadership and training if needed, to states in addressing this problem.

States are Grappling with Narcotic Scheduling of New Synthetic Drug Compounds

Although states have been quick to react as new synthetic drugs are developed, the continuous proliferation of different chemical compounds poses a regulatory challenge. States act quickly to refine state laws to reflect new chemical compounds; it is a challenge to keep up the pace. As noted in the 2013 strategy, the Synthetic Drug Abuse Prevention Act of 2012 banned several synthetic compounds found in synthetic marijuana ("spice") and other synthetic stimulants ("bath salts") at the national level, but producers continue to alter the chemical composition of drugs to exploit gaps in controls. State legislators have adapted quickly as new

chemical compounds are used in drug production, but the problems posed by inter-state trafficking of synthetic drugs require federal scheduling of such compounds as they are developed. NCSL believes that ONDCP should assist states in combating this epidemic by helping to ensure that regular and prompt communication of analogue drugs flows freely between all levels of government. NCSL requests your continuing leadership in this area to assist states with identifying emerging compounds.

States Call for Improved Border Security

As the 2013 Strategy stated, the “Southwest border is a major arrival zone for drugs, weapons, and money,” and securing the border is necessary to address these threats. While the 2013 Strategy states that the “Administration has been steadfast in its commitment to border security,” some state legislators believe that these efforts have been ineffective or insufficient. Legislators expressed frustration that drug cartels continue to smuggle drugs across U.S. borders and that these same people involved in human trafficking, racketeering, and murder.

South Carolina has noticed a drastic increase in Drug Trafficking Organizations (DTO’s) that transport and distribute bulk quantities of illegal narcotics throughout the state. These DTO’s are increasingly violent and use fear and intimidation to decrease the likelihood of co-conspirators cooperating with law enforcement during investigations. In the absence of meaningful national immigration reform, South Carolina law enforcement is hindered in their ability to positively identify suspects during investigation and properly track subjects because of their limited ties to certain communities. The DTO’s are the number one problem facing South Carolina with respect to the flow of illegal narcotics into the state. NCSL urges ONDCP to promote strong policies for securing our borders in the 2014 National Drug Control Strategy.

Conclusion

The states remain committed to preventing drug use and its consequences and are eager to cooperate and coordinate with other states and the federal government provided there are no unwarranted federal preemptions of existing state laws. Prescription drug abuse remains an area of serious concern for state legislators. ONDCP should encourage the recent trend of regulating pain management clinics and should increase the effectiveness of the Prescription Drug

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Monitoring Programs by encouraging states to share the information in their databases and help to facilitate this information sharing if needed. The states that responded to NCSL's request for input have been very pleased with the success of drug courts in their states, and the federal government should continue to support their implementation and growth. Recent reforms aimed at reducing incarceration and recidivism, like those in South Dakota, are very promising and provide a useful model for federal policy going forward. NCSL encourages ONDCP to continue to reach out to states with new and innovative approaches in drug control and criminal justice reform. Methamphetamine production remains high in some states, and NCSL welcomes the opportunity to partner with ONDCP to find workable solutions to the problem of inter-state trafficking. State legislators continue to face challenges in keeping up with new synthetic drug compounds as criminals adjust them to evade existing laws. NCSL calls upon ONDCP to assist states in this area to help combat synthetic drug use. States continue to believe that the need for border security as the first line of defense against drug trafficking is crucial. NCSL appreciates this opportunity to comment on the proposed 2014 Drug Control Strategy and we look forward to working with this agency to find workable solutions. Please contact NCSL staff Susan Parnas Frederick (susan.frederick@ncsl.org) or Jennifer Arguinzoni (Jennifer.arguinzoni@ncsl.org) .

SIGNATURES OMITTED