

# A PUBLIC POLICY FRAMEWORK FOR MINIMIZING PROBLEM GAMBLING- RELATED HARM: THE PETERRR MODEL

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## I. INTRODUCTION

Gambling regularly occurs in societies worldwide.<sup>1</sup> In fact, a majority of adult Americans have gambled at some point in their lives.<sup>2</sup> These numbers vary, and range from more irregular gamblers (with 75% of Americans reporting that they gamble at least once per year), to those who gamble more frequently (15% reported gambling at least once per week).<sup>3</sup> Of these gamblers, approximately 2%, or five million, meet the criteria for problem

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<sup>1</sup> See *Sample Pages—Overview of Gaming Worldwide*, CASINO CITY PRESS, [http://www.casinocitypress.com/common/gga\\_worldoverview.pdf](http://www.casinocitypress.com/common/gga_worldoverview.pdf) (last visited Jan. 27, 2016). See generally Per Binde, *Gambling Across Cultures: Mapping Worldwide Occurrence and Learning from Ethnographic Comparison*, 5 INT'L GAMBLING STUD. 1 (2005), <http://www.tandfonline.com/doi/pdf/10.1080/14459790500097913>.

<sup>2</sup> *Gambling Problems: An Introduction for Behavioral Health Service Providers*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. ADVISORY, Summer 2014, at 1 [hereinafter *Gambling Problems*]; *Internet Gaming: Is There a Safe Bet?*, *Hearing Before the Subcomm. On Commerce, Mfg. & Trade of the H. Comm. on Energy & Commerce*, 112th Cong. 63 (2011) (statement of Keith S. Whyte, Exec. Dir., Nat'l Council on Problem Gambling), <https://www.gpo.gov/fdsys/pkg/CHRG-112hhrg74869/html/CHRG-112hhrg74869.htm> [hereinafter *Whyte Congressional Testimony*].

<sup>3</sup> *Id.*

gambling.<sup>4</sup> “Problem gambling” is a broad term that refers to a range of negative consequences—from mild to severe—resulting from excessive gambling behaviors.<sup>5</sup> As a response to this concern, this article describes a proposed “PETERRR Model,” the first national framework for minimizing problem gambling-related harm in the United States and beyond.

## II. AN OVERVIEW OF PROBLEM GAMBLING

As discussed above, problem gambling is a broad, developing term that encompasses a substantial range of behaviors and consequences.<sup>6</sup> In recent years, public recognition of problem gambling as a legitimate affliction and public concern has increased.<sup>7</sup> While pathological gambling was first included in the American Psychiatric Association’s (hereinafter “APA”) Third Edition of the Diagnostic and Statistical Manual of Mental Disorders (hereinafter “DSM”) in 1980, each edition has revised and improved the diagnostic criteria and categorization.<sup>8</sup> In 2013, the Fifth Edition classified gambling addiction as an addictive disorder for the first time.<sup>9</sup> This development served to further legitimize gambling addiction as an individual public concern as well as a public health concern.<sup>10</sup>

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<sup>4</sup> See *id.* at 2 (stating that roughly 1.5 million Americans experience pathological gambling and that two to four times as many Americans experience problem gambling).

<sup>5</sup> “Problem gambling,” “problem gaming,” “gambling problem,” “gambling addiction,” and a number of other terms are often used interchangeably to refer to this issue. This article will use the term “problem gambling,” but acknowledges that a broad range of terminology applies to a penumbra of issues, as well as to varying degrees of severity. See *What is Problem or Pathological Gambling*, NAT’L CENTER FOR RESPONSIBLE GAMING, <http://www.ncrg.org/press-room/media-kit/faq/what-problem-or-pathological-gambling> (discussing how “various terms reflect . . . the different levels of severity observed among people with gambling problems”).

<sup>6</sup> See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 312.31 (5th ed. 2013) [hereinafter DSM-5] (listing behaviors used in diagnosing a “Gambling Disorder”); *Gambling Problems*, *supra* note 2, at 2 (distinguishing between the uses of “pathological gambling” and “problem gambling”).

<sup>7</sup> See Institute Staff, *New Study Reveals Public Perceptions of Gambling Disorders and Recovery*, NAT’L CTR. FOR RESPONSIBLE GAMING (Feb. 25, 2011), <http://blog.ncrg.org/blog/2011/02/new-study-reveals-public-perceptions-gambling-disorders-and-recovery-0>.

<sup>8</sup> See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3rd ed. 1981) [hereinafter DSM-III] (including “pathological gambling” as a disorder for the first time in the history of the DSM); Christine Reilly & Nathan Smith, *The Evolving Definition of Pathological Gambling in the DSM-5*, NAT’L CTR. FOR RESPONSIBLE GAMING 2–4 (2013), [http://www.ncrg.org/sites/default/files/uploads/docs/white\\_papers/ncrg\\_wpdsm5\\_may2013.pdf](http://www.ncrg.org/sites/default/files/uploads/docs/white_papers/ncrg_wpdsm5_may2013.pdf).

<sup>9</sup> See DSM-5, *supra* note 6.

<sup>10</sup> See *id.* (acknowledging through its diagnostic criteria exclusively individual

### A. *Individual Consequences of Problem Gambling*

The DSM-5 criteria enumerate the behaviors associated with problem gambling for the purposes of diagnosis.<sup>11</sup> Generally, problem gambling is characterized by an individual's "increase[ed] preoccupation with gambling, . . . need to bet more money more frequently, restlessness or irritability when attempting to stop, "chasing" losses,<sup>12</sup> and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences."<sup>13</sup> These consequences to an individual can range from minor to severe financial, legal, psychological and even physical problems.<sup>14</sup>

Problem gambling is significantly correlated with other risky behavior in adults and adolescents, including substance use [and abuse as well as] mental health issues. Adult problem gamblers are five times more likely to have co-occurring alcohol dependence, four times more likely to abuse drugs, three times more likely to be depressed, eight times more likely to have bipolar disorder, three times more likely to experience an anxiety disorder [and are at greater risk for suicide].<sup>15</sup>

### B. *Public Health Consequences of Problem Gambling*

In addition to those experiences particular to the gambler, gambling problems are associated with a range of negative consequences for families, businesses and communities. Financial difficulties are common, with many problem gamblers eventually being forced to file for bankruptcy as a result of their addiction.<sup>16</sup> A significant minority of problem gamblers also commits

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symptomology, including restlessness and irritability, as well as behaviors that affect others, including destruction of relationships and reliance on others to maintain gambling habits).

<sup>11</sup> *Id.*

<sup>12</sup> Chasing losses refers to the psychology behind the false belief that a gambler is bound to win eventually, so spending increasingly more money and time gambling appears justifiable to recoup one's consistent losses. *Stop the Chase*, RESPONSIBLE GAMBLING COUNCIL, <http://stopthechase.ca/chase/> (last visited Feb. 14, 2016) (describing a community understanding of "chasing losses" as "when you keep gambling to win back money you've already lost").

<sup>13</sup> KEITH WHYTE, NAT'L COUNCIL ON PROBLEM GAMBLING, *ADVANCING PUBLIC HEALTH THROUGH SYSTEM REFORM-PROBLEM GAMBLING 1* (2009), <http://www.ncpgambling.org/wp-content/uploads/2014/08/SAMHSA-Advancing-Health-Through-System-Reform-Problem-Gambling.pdf>.

<sup>14</sup> Timothy W. Fong, *The Biopsychosocial Consequences of Pathological Gambling*, *PSYCHIATRY*, Mar. 2005, at 22, 25.

<sup>15</sup> WHYTE, *supra* note 13, at 1–2.

<sup>16</sup> See Mark N. Potenza et al., *Illegal behaviors in Problem Gambling: Analysis of Data from a Gambling Helpline*, 28 *J. AM. ACAD. PSYCHIATRY & L.* 389, 391, 396 (2000) (discussing the role of governments, regulators, and operators in implementing public policy to address problem gambling); Christine Reilly, *The Prevalence of Gambling Disorders in the United States: Three Decades of*

crimes to finance their gambling.<sup>17</sup> Stakeholders—including government, regulators, gaming operators, counselors, advocates and recovering gamblers—have largely accepted that gambling addiction is a community concern as well as an individual one.<sup>18</sup>

Unfortunately, there is little consensus on the proper means to address these challenges, and far too little attention is given to the development of comprehensive gambling and problem gambling policy. As an example, though legalized gambling has been available since the birth of the nation<sup>19</sup> and the National Council on Problem Gambling (the “NCPG”) estimates problem gambling-related social costs at \$7 billion per year,<sup>20</sup> this is the first proposed national policy on problem gambling known to the authors.

Most states do not have a statewide, strategic plan to address gambling addiction.<sup>21</sup> There are many possible explanations for this lack of policy on problem gambling. Perhaps this failing is because problem gambling is still stigmatized, simply seen as an individual problem, or not understood as the serious addictive disorder it is.<sup>22</sup> One hypothesized reason is that many people see gambling addiction as primarily a personal or moral weakness, and are thus reluctant to support use of government funds to address it.<sup>23</sup> Another possible explanation is that, although governments embrace the expansion of gambling as the means of solving budget deficits and providing added revenue, they may

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*Evidence, in 3 INCREASING THE ODDS: GAMBLING AND THE PUBLIC HEALTH, PART 1* (National Center for Responsible Gaming 2009) (acknowledging a “growing public awareness of gambling as a public health concern”).

<sup>17</sup> ROBERT J. WILLIAMS ET AL., PREVENTION OF PROBLEM GAMBLING: A COMPREHENSIVE REVIEW OF THE EVIDENCE, AND IDENTIFIED BEST PRACTICES 5 (2012); see also ROBERT J. WILLIAMS ET AL., THE SOCIAL AND ECONOMIC IMPACTS OF GAMBLING, 6-7 (2011).

<sup>18</sup> See Frank Catania & Gary Ehrlich, *Addressing Problem Gambling, in REGULATING LAND-BASED CASINOS: POLICIES, PROCEDURES, AND ECONOMICS* 255, 258–59 (Anthony Cabot & Ngai Pindell eds. 2014).

<sup>19</sup> I. NELSON ROSE, GAMBLING AND THE LAW 1 (1986).

<sup>20</sup> Whyte *Congressional Testimony*, *supra* note 2.

<sup>21</sup> California and Oregon have statewide policies for addressing problem gambling addiction, but the authors are unaware of other jurisdictions with similar plans at the time of this writing. See, e.g., Cal. Dep’t of Pub. Health, *Office of Problem Gambling*, CA.GOV, <http://problemgambling.ca.gov/ccpgwebsite/default.aspx> (last visited Apr. 12, 2016).

<sup>22</sup> See Phil Satre, *Introduction Public Health Research on Gambling, in 3 INCREASING THE ODDS: GAMBLING AND THE PUBLIC HEALTH, PART 1* (National Center for Responsible Gaming 2009) (A public health approach “encourages a shift from a narrow focus on just individual gamblers to a broader consideration of the social setting”).

<sup>23</sup> See Keith Whyte & Tim Christensen, *State of the States: Problem Gambling Services in the United States: Report to the 24<sup>th</sup> National Conference on Problem Gambling*, ASS’N OF PROBLEM GAMBLING ADMINS. (June 2010), <http://apgsa.org/wp-content/uploads/2015/06/State-of-the-States-2010-final.pdf>.

be reluctant to address gambling's inherent downsides.<sup>24</sup>

Perhaps this failure to appreciate the significance of the issue is due to inconsistent approaches to gambling regulation—in many states, each form of gambling is regulated by a different agency.<sup>25</sup> There is little to no cooperation or coordination among these various gambling regulators, and the result is both intrastate and interstate inconsistencies in gambling regulation.<sup>26</sup> A notable disparity, and a prime example of varying gambling policy, is that some states do not have a consistent minimum age for different forms of gambling.<sup>27</sup>

### III. THE PETERRR MODEL

The PETERRR (Prevention, Education, Treatment, Enforcement, Research, Responsible Gaming & Recovery) Model seeks to provide an easy-to-understand framework for stakeholders in policy and community settings. PETERRR builds upon aspects of the Reno Model, a public health-based responsible gaming strategic framework, and operationalizes it for American stakeholders.<sup>28</sup>

PETERRR is not dependent upon the particular variety of gaming that is legalized in a given jurisdiction, or even whether the jurisdiction has legalized gambling at all. Effectuating progress, however, is challenging because the efforts of many different stakeholders are necessary to implement effective services for problem gamblers. This is equally true of the various prongs of the PETERRR Model. Better outcomes can be achieved with the development of a jurisdiction-wide strategy bolstered by the coordinated efforts of all stakeholders, rather than the efforts of individual stakeholders alone.

As gambling expands and evolves, PETERRR programs must evolve with them. In 2013, legal gambling revenues alone topped \$66 billion but only \$61 million was spent on problem gambling services in the United States.<sup>29</sup> The

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<sup>24</sup> Lucy Dadayan & Robert B. Ward, *Back in the Black: States' Gambling Revenues Rose in 2010*, THE NELSON A. ROCKEFELLER INST. OF GOV'T 2 (Jun. 23, 2011), [http://www.rockinst.org/pdf/government\\_finance/2011-06-23-Back\\_in\\_the\\_Black.pdf](http://www.rockinst.org/pdf/government_finance/2011-06-23-Back_in_the_Black.pdf).

<sup>25</sup> See ROSE, *supra* note 19, at 27.

<sup>26</sup> See *id.*

<sup>27</sup> AM. GAMING ASS'N, RESPONSIBLE GAMING STATUTES AND REGULATIONS 118 (3rd ed. 2008), [https://www.americangaming.org/sites/default/files/research\\_files/statutes\\_and\\_regs\\_final\\_091709.pdf](https://www.americangaming.org/sites/default/files/research_files/statutes_and_regs_final_091709.pdf).

<sup>28</sup> See Howard J. Shaffer et al., *Extending the RENO Model: Clinical and Ethical Applications*, AM. J. ORTHOPSYCHIATRY 1, 2 (2015); see generally Alex Blaszczynski et al., *A Science-Based Framework for Responsible Gambling: The Reno Model*, 20 J. OF GAMBLING STUD. 301 (2004).

<sup>29</sup> J. Marotta et al., *2013 National Survey of Problem Gambling Services*, NAT'L COUNCIL ON PROBLEM GAMBLING, ix (2014), <http://www.ncpgambling.org/wp-content/uploads/2014/08/2013NationalSurveyofProblemGamblingServices-FINAL.pdf>; *Commercial & Tribal Gaming Stats '14*, RUBINBROWN 1 [http://www.rubinbrown.com/RubinBrown\\_2014\\_Gaming\\_Stats.pdf](http://www.rubinbrown.com/RubinBrown_2014_Gaming_Stats.pdf) (last visited

result, an approximate investment of a mere 20 cents per capita, is far from adequate. The funding requirements for PETERRR programs vary based on necessity or problem gambling severity, and should accordingly be determined by jurisdiction-specific, need-based assessments. While the required amount will undoubtedly vary by jurisdiction, the equivalent of one percent of overall gambling revenue has long been considered a baseline.<sup>30</sup>

PETERRR programs address seven specific and equally important focus areas. The seven PETERRR areas are diagramed below in Figure 1:

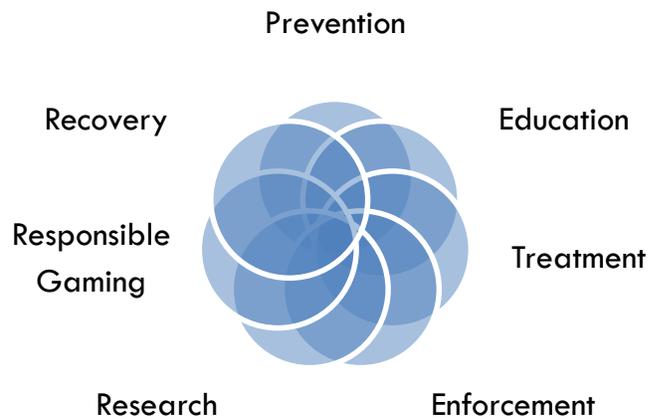
Figure 1: Diagram of the PETERRR Model<sup>31</sup>

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Feb. 16, 2016) (stating that the gaming industry generated \$66.3 billion in gaming revenue in 2013).

<sup>30</sup> See *NCPG Statement to New York State Gambling Commission*, NAT'L COUNCIL ON PROBLEM GAMBLING 8 (April 9, 2014), <http://www.ncpgambling.org/wp-content/uploads/2014/08/NCPG-Statement-to-NYSGC-April-9-2014.pdf>.

<sup>31</sup> The PETERRR Model Diagram is not intended to indicate the discrete relationships between each of the policy prongs; instead, the image is meant to indicate the extent to which these individual facets of the PETERRR Model are interrelated and inter-reliant to form a cohesive problem gambling framework. It follows that any broad-stroke discussion on effectuating policy on a national scale cannot be summarily reduced to a small image. Though these prongs are commonly recognized in gaming law literature as important considerations in developing problem gambling policy, it is important to note that the specific meaning and scope of the topics varies significantly depending on the stakeholder who is discussing them. See Catania & Ehrlich, *supra* note 18, at 267–76 (discussing the topics of “prevention,” “treatment,” “enforcement,” and others as “significant means currently or potentially available to address problem gambling.”). Proposing a unified policy like PETERRR is intended to eliminate ambiguities by clearly delineating the distinct prongs and acknowledging the many connections between them.



The essential prongs of the PETERRR Model, as well as their interrelation and general implementation, are described in greater detail *infra*. It is important to note that the PETERRR Model is still, at its core, a strategic framework. The actual programs enacted in a given jurisdiction depend on a number of factors, and will understandably vary. As an example, while many states provide problem gambling treatment through their substance abuse systems, some instead utilize mental health providers and facilities.<sup>32</sup>

Furthermore, these programs must address gender, racial, ethnic, cultural and socio-economic diversity in order to best address the particular community they seek to serve.<sup>33</sup> The programs must be further supported by empirical data and statistical evidence to best gauge their impacts. Stakeholders are encouraged to rigorously and continually evaluate these programs to account for these social concerns and changes.

In addition to being variable and subject to continuous evaluation and modification, many PETERRR program prongs will overlap. This is because the seven prongs not only blend together, but also are inherently interrelated. For example, efforts to prevent problem gambling among adolescents may include enforcement measures to prevent access by youth to gambling opportunities. One measure adopted in a number of states to abate underage gambling is to lock Instant Ticket Vending Machines (hereinafter “ITVM”) until the user’s age is verified by swiping a driver’s license through the

<sup>32</sup> See generally J. Marotta et al., *supra* note 29, at 61.

<sup>33</sup> See generally Ont. Res. Grp. on Gambling, Ethnicity and Culture, *A Guide for Counselors Working with Problem Gambling Clients from Ethno-Cultural Communities*, PROBLEM GAMBLING INST. OF ONT. (Mar. 2010), [https://www.problemgambling.ca/EN/Documents/GuideforCounselorsWorkingWithProblemGamblingClientsfromEthno\\_culturalCommunities.pdf](https://www.problemgambling.ca/EN/Documents/GuideforCounselorsWorkingWithProblemGamblingClientsfromEthno_culturalCommunities.pdf) [hereinafter *Ontario Study*].

installed bar code reader.<sup>34</sup> The ITVM may also display a responsible gaming message as well as a problem gambling helpline number that provides referrals to treatment services.<sup>35</sup>

#### A. Prevention

The “Prevention” prong of the PETERRR Model refers to “a proactive process that promotes the well-being of people and empowers an individual, group, or community to create and reinforce healthy lifestyles and behaviors to meet the challenges, events and transitions of life.”<sup>36</sup> Prevention, for the purposes of the PETERRR Model, is premised on the understanding that preventing problem gambling from occurring in the first place is preferable to addressing the addiction after it has already developed and caused harm.<sup>37</sup>

While some existing problem gambling prevention initiatives are aimed at adults, many programs are targeted at youth.<sup>38</sup> Survey research shows that approximately 68% of adolescents 14 to 21 years of age have gambled at least once in the past year.<sup>39</sup> Therefore, many programs preempt future gambling problems by focusing on preventing underage, and thus illegal, participation in gambling.<sup>40</sup>

“Stacked Deck” is an example of a school-based universal prevention program for high school students (9<sup>th</sup> through 12<sup>th</sup> grade) “that provides information about the myths and realities of gambling [while providing] guidance on making good choices, with the objective of modifying [youth] attitudes, beliefs, and ultimate gambling behavior.”<sup>41</sup> Although few problem

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<sup>34</sup> See Sweta Maheshwari & Keith Whyte, *Steps to Reducing Underage Access to Lottery Products: Synar Compliance and Suggestions*, 19 GAMING L. REV. & ECON. 523, 523 (2015).

<sup>35</sup> See, e.g., *Responsible Play Initiatives*, THE ST. OF N.J., <http://www.state.nj.us/lottery/about/gambling-initiatives.htm> (last visited Feb. 16, 2016).

<sup>36</sup> *Prevention of Gambling Disorders: A Common Understanding*, NAT’L COUNCIL ON PROBLEM GAMBLING PREVENTION COMMITTEE I (Sept. 2015), [http://ncpgprevention.groupsite.com/file\\_cabinet/files/775702/download/NCPG-Common-Understanding-of-Prevention-APPROVED-0915.pdf?m=1442340277](http://ncpgprevention.groupsite.com/file_cabinet/files/775702/download/NCPG-Common-Understanding-of-Prevention-APPROVED-0915.pdf?m=1442340277) (emphasis omitted).

<sup>37</sup> See generally Neil Hinvest, *Prevention is Better than Cure. Vulnerability Markers for Problem Gambling*, in *PSYCHOLOGY OF GAMBLING: NEW RESEARCH* 23, 23–42 (Andrea Eugenio Cavanna, ed. 2012) (explaining certain markers that can be used to detect problem gambling for preventative purposes).

<sup>38</sup> See *Ontario Study*, 5-6, 8 (2010) (noting that, in numerous communities around the world, youths are more likely to engage in gambling, are more vulnerable and at greater risk of developing problem gambling problems, and are more aware of services available to problem gamblers than their older counterparts).

<sup>39</sup> John W. Welte et al., *The Prevalence of Problem Gambling Among U.S. Adolescents and Young Adults: Results from a National Survey*, 24 J. GAMBLING STUD. 119, 125 (2008).

<sup>40</sup> See WILLIAMS ET AL., *supra* note 17, at 22.

<sup>41</sup> *Stacked Deck: A Program to Prevent Problem Gambling*, NAT’L REGISTRY OF

gambling-specific prevention programs have been adequately evaluated to date, initial results are promising, and successful models from other addictive disorders may be adapted to use for problem gambling.<sup>42</sup>

An additional imperative for prevention programs is the fact that the age of onset for gambling appears to precede other risky behaviors such as smoking and drinking.<sup>43</sup> Problem gambling may, therefore, serve as a “gateway” to other addictive and behavioral problems amongst youth.<sup>44</sup> Prevention has important benefits to the overall health and welfare of youth by assisting them in reaching adulthood without developing, or exacerbating, debilitating gambling problems and other related problematic behavior.<sup>45</sup> In effect, prevention models that focus upon the onset of problem gambling behaviors in youth serve to address individual consequences and, therefore, curb future public health concerns associated with problem gambling.

### B. Education

The “Education” prong of the PETERRR Model lies on the continuum between the Prevention and Treatment prongs. Often considered collateral or improperly labeled as either “prevention” or “public awareness,” education—like advertising—ought to be tailored with specific messages for the purpose of achieving specific desired outcomes. The expectation for properly educating gamblers is that better and more comprehensive information will lead to better-informed and less injurious gambling decisions.<sup>46</sup> Because the vast majority of the U.S. population will gamble at some point in their lives,<sup>47</sup> such educational campaigns are essential.

If individuals choose to gamble, they should do so with an accurate understanding of the rules of the games, as well as a balanced assessment of the odds they are facing. Additionally, gamblers should receive education on the potential consequences of gambling, including negative impacts on finances and health.<sup>48</sup> Finally, information about warning signs of a gambling problem

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EVIDENCE-BASED PROGRAMS & PRACTICES, <https://web.archive.org/web/20150227230425/http://www.nrepp.samhsa.gov/ViewIntervention.aspx?id=235> (last visited Mar. 22, 2015).

<sup>42</sup> See WILLIAMS ET AL., *supra* note 17, at 23.

<sup>43</sup> See JEFFREY L. DEREVENSKY, TEEN GAMBLING: UNDERSTANDING A GROWING EPIDEMIC 39 (2012).

<sup>44</sup> See *id.* at 40.

<sup>45</sup> See WILLIAMS ET AL., *supra* note 17, at 5, 44.

<sup>46</sup> RESPONSIBLE GAMBLING COUNCIL: CENTRE FOR THE ADVANCEMENT OF BEST PRACTICES, INSIGHT 2010: INFORMED DECISION MAKING 4 (2010).

<sup>47</sup> See *Gambling Problems*, *supra* note 2.

<sup>48</sup> Some jurisdictions around the world have incorporated education about gambling and the consequences of addiction at many levels. For example, British Columbia’s Responsible and Problem Gambling Program provides educational resources for students at all levels, as well as support staff, teachers, and

and where to seek help must be made available.<sup>49</sup> This form of education, as discussed above, has an understandable overlap with the prevention prong. As an example, the American Gaming Association has developed a series of brochures that cover understanding the odds,<sup>50</sup> how slot machines work,<sup>51</sup> and tips for low-risk gambling.<sup>52</sup> The education prong seeks to ensure that gamblers, as well as the population at large, are knowledgeable of both the game and its potential consequences.

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administrators. *See Prevention & Education*, B.C. RESPONSIBLE & PROBLEM GAMBLING PROGRAM, <https://www.bcreponsiblegambling.ca/prevention-education> (last visited Apr. 21, 2016). Because research indicates that the average age at which British Columbia residents begin gambling is 13, the Canadian province is proactive about educating its citizenry on how to identify gambling opportunities and to appreciate possible consequences of gambling behavior. *See Parents & Kids, Teens*, B.C. RESPONSIBLE & PROBLEM GAMBLING PROGRAM, <https://www.bcreponsiblegambling.ca/prevention-education/parents-kids-teens> (last visited Apr. 25, 2016). Similarly, SAMHSA's "Stacked Deck" program, discussed *supra* note 41, is implemented in varying degrees throughout the United States to teach high school students "the facts about gambling and related risks," to "encourage responsible decision making," and to "prevent young people from becoming problem gamblers." *See* ROBERT WILLIAMS & ROBERT WOOD, STACKED DECK: A PROGRAM TO PREVENT PROBLEM GAMBLING, GRADES 9-12 – FACILITATOR'S GUIDE 3 (2010). Programs like these indicate how problem gambling education can begin before a prospective gambler encounters his or her first game. *See, e.g., id.; Prevention & Education, supra; Parents & Kids, supra.* Further, programs like "Stacked Deck" evidence how educational initiatives can serve preventative goals by empowering individuals with the information they need to make informed gambling decisions. *See supra* Part III.A. The PETERRR Model proposes an educational scheme that begins well before, and continues up to, and individual's decision to gamble.

<sup>49</sup> *See, e.g., Public Awareness Brochures*, NEV. COUNCIL ON PROBLEM GAMBLING, <http://www.nevadacouncil.org/responsible-gaming/public-awareness-brochures/> (last visited Apr. 11, 2016) (discussing the Nevada Council on Problem Gambling's brochure "When the Fun Stops," which "defines problem gambling, identifies warning signs and encourages individuals to seek help through the 24 hr. Problem Gamblers HelpLine").

<sup>50</sup> *Get to Know Responsible Gaming: Understand the Odds*, AM. GAMING ASS'N, [https://web.archive.org/web/20150925163928/http://www.americangaming.org/sites/default/files/aga\\_gtkrg\\_understandodds\\_brochure\\_final.pdf](https://web.archive.org/web/20150925163928/http://www.americangaming.org/sites/default/files/aga_gtkrg_understandodds_brochure_final.pdf) (last visited Feb. 16, 2016).

<sup>51</sup> *Get to Know Responsible Gaming: Get to Know Slot Machines*, AM. GAMING ASS'N, [https://web.archive.org/web/20150925125306/http://www.americangaming.org/sites/default/files/aga\\_gtkrg\\_slotmachines\\_brochure\\_final.pdf](https://web.archive.org/web/20150925125306/http://www.americangaming.org/sites/default/files/aga_gtkrg_slotmachines_brochure_final.pdf) (last visited Feb. 16, 2016).

<sup>52</sup> *See Get to Know Responsible Gaming: Responsible Player Guidelines & Characteristics*, AM. GAMING ASS'N, [https://web.archive.org/web/20140912110927/http://www.americangaming.org/sites/default/files/aga\\_gtkrg\\_characteristics\\_brochure\\_final.pdf](https://web.archive.org/web/20140912110927/http://www.americangaming.org/sites/default/files/aga_gtkrg_characteristics_brochure_final.pdf) (last visited Feb. 16, 2016).

*C. Treatment*

The next prong in the PETERRR Model is “Treatment.” There are more than 5 million problem gamblers who are in need of treatment in the United States, not including their family members, dependents, and other individuals impacted by problem gambling.<sup>53</sup> As discussed above, addiction exacts an enormous cost on these individuals, families, businesses, and communities every year, including treatment expenses.<sup>54</sup> Without help, these adults will suffer from poor health, unstable family relations, devastating financial problems, and a plethora of other negative consequences associated with this disorder.<sup>55</sup> Left unchecked, these individual consequences exacerbate and contribute to the greater public health impacts of problem gambling.<sup>56</sup>

Gambling disorders are diagnosed through screening and assessment of clients.<sup>57</sup> A number of tools have been found to provide accurate assessments and diagnoses.<sup>58</sup> The DSM-5 provides for diagnostic criteria for problem gamblers, enumerating nine specific behaviors that problem gamblers exhibit.<sup>59</sup> Individuals who exhibit at least four out of nine of the APA’s designated behaviors within a twelve-month period are considered to have a gambling disorder and to be in need of treatment.<sup>60</sup> For example, if within a twelve-month period, an individual 1) gambles while feeling distressed, 2) lies to conceal the extent of his gambling, 3) is often preoccupied with gambling, and 4) has made unsuccessful attempts to control their gambling behavior, they likely would be diagnosed with a gambling disorder under the APA’s criteria, and would be a candidate for treatment.<sup>61</sup>

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<sup>53</sup> See *Help and Treatment: FAQ*, NAT’L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/help-treatment/faq/> (last visited Feb. 15, 2016); see also *Advancing Health Through System Reform-Problem Gambling*, NAT’L COUNCIL ON PROBLEM GAMBLING (May 22, 2009), <http://www.ncpgambling.org/wp-content/uploads/2014/08/SAMHSA-Advancing-Health-Through-System-Reform-Problem-Gambling.pdf>.

<sup>54</sup> See generally J. Marotta et al., *supra* note 29, at 12-19.

<sup>55</sup> See WHYTE, *supra* note 13, at 2.

<sup>56</sup> See Frank Catania, Sr., et al., *Responsible Gaming*, in *REGULATING INTERNET GAMING: CHALLENGED AND OPPORTUNITIES* 273, 276 (Anthony Cabot & Ngai Pindell eds. 2013) (discussing the responsibility of government, regulators, and private industry in “addressing the social consequences of gaming”).

<sup>57</sup> See DSM-5, *supra* note 6 (listing the criteria for diagnosing a gambling disorder).

<sup>58</sup> See Randy Stinchfield, *A Review of Problem Gambling Assessment Instruments and Brief Screens*, in *THE WILEY-BLACKWELL HANDBOOK OF DISORDERED GAMBLING* 165 (David C. S. Richard, Alex Blaszczynski & Lia Nower eds., 2014).

<sup>59</sup> DSM-5, *supra* note 6.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

### 1. *Varieties of Treatment*

There are many types of treatment available to problem gamblers. These treatment levels vary in both their severity and the amount of guidance they provide for problem gamblers.<sup>62</sup> Treatment options include self-help groups like Gamblers Anonymous, brief interventions, group support, individual counseling and residential and inpatient treatment.<sup>63</sup> Substance abuse and mental health clinicians, social workers, marriage and family therapists, psychologists and psychiatrists all may provide treatment to problem gamblers, though the requirements to practice vary by state and by discipline.<sup>64</sup>

In the United States, many gambling treatment services are provided in an outpatient setting by a counselor with a gambling certification.<sup>65</sup> Gambling-specific training and certification for treatment providers is essential, given that gambling addiction is a complex diagnosis with high rates of co-occurring disorders and of suicidal behavior in gamblers with severe problems.<sup>66</sup> Certification is especially important given the fact that problem gambling is distinct from other addictive behaviors in numerous ways. Foremost is the absence of an exogenous substance, such as alcohol or cocaine, which “causes” the onset of addiction.<sup>67</sup> Additional factors include the unique role of money, both as an enabler and an incentive, for problem gamblers.<sup>68</sup> Further still, the

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<sup>62</sup> See, e.g., *What is the ASAM Criteria?*, AM. SOC. ADDICTION MED., <http://www.asam.org/publications/the-asam-criteria/about/> (last visited Feb. 15, 2016) (detailing the American Society of Addiction Medicine’s “set of criteria for providing outcome-oriented and results-based care in the treatment of addiction”).

<sup>63</sup> See *Gambling Problems*, *supra* note 2, at 4–6 (describing some treatment strategies for problem gambling behavioral health services clients); *Inpatient, Residential and Intensive Outpatient Treatment Facility List*, NAT’L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/help-treatment/treatment-facilities/> (last visited Apr. 11, 2016).

<sup>64</sup> See *National Council on Problem Gambling Counselor Symposium: Findings Summary*, NAT’L COUNCIL ON PROBLEM GAMBLING 2 (Sept. 16, 2008), [http://www.ncpgambling.org/files/Gambling\\_Counselor\\_Symposium\\_Summary.pdf](http://www.ncpgambling.org/files/Gambling_Counselor_Symposium_Summary.pdf). See generally *National Gambling Counselor Certification (NCGC) and International Gambling Counselor Certification (ICGC)*, INT’L GAMBLING COUNSELOR CERTIFICATION BOARD (Jan. 6, 2010), <http://www.ncpgambling.org/wp-content/uploads/2014/08/NCGC-Certification-Packet-010610.pdf>.

<sup>65</sup> J. Marotta et al., *supra* note 29, at 34, 37.

<sup>66</sup> See KATHLEEN MOORE ET AL., UNIV. OF FLA.: LOUIS DE LA PARTE FLA. MENTAL HEALTH INST.: DEP’T OF MENTAL HEALTH LAW & POLICY, CO-OCCURRING DISORDERS PROBLEM GAMBLING INTEGRATED TREATMENT WORKBOOK 20 (2002), <http://www.ct.gov/dmhas/lib/dmhas/pgs/Cooccurringworkbook.pdf>; see generally *id.*

<sup>67</sup> See DSM-5, *supra* note 6 (no criteria used in assessing a gambling disorder involves the intake of a particular substance); see also Helen Nieves, *Compulsive Gambling*, PSYCHCENTRAL, <http://blogs.psychcentral.com/mental-health-awareness/2015/02/compulsive-gambling/> (last visited Feb. 25, 2016).

<sup>68</sup> See NAT’L ENDOWMENT FOR FIN. EDUC. & NAT’L COUNCIL ON PROBLEM GAMBLING, PROBLEM GAMBLERS AND THEIR FINANCES: A GUIDE FOR TREATMENT

lack of a biological marker that can be independently tested, such as nicotine levels in blood or saliva, to verify abstinence makes monitoring treatment compliance both difficult and distinct from other types of addiction.<sup>69</sup>

Helplines are an invaluable resource for problem gamblers seeking to access treatment.<sup>70</sup> Helplines provide important information and referral services and intersect with other PETERRR services such as prevention, education and responsible gaming.<sup>71</sup> Notably, the National Council on Problem Gambling's National Problem Gambling Helpline Network ("NCPG Helpline") is available across the entire country, and provides a single point of access for a dense network of state and regional call centers.<sup>72</sup> Since 2000, the NCPG Helpline "has received more than 3 million calls," though most are not crisis calls.<sup>73</sup> The expansive helpline coverage is critical because gamblers, like gambling advertising, are not bound by state borders.<sup>74</sup> Just because the legality of gambling is limited to specific jurisdictions does not mean that problem gambling, as a serious affliction, is anything less than a nationwide concern. The Helpline receives calls, chats, and texts from every state.<sup>75</sup>

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PROFESSIONALS 10 (2000).

<sup>69</sup> See Randy Stinchfield, *Screening and Assessment of Problem and Pathological Gambling*, in 7 INCREASING THE ODDS: WHAT CLINICIANS NEED TO KNOW ABOUT GAMBLING DISORDERS 26 (National Center for Responsible Gaming 2012) (informally describing problem gambling as a "hidden addiction" due to a lack of obvious indicators, such as smelling the alcohol on an alcoholic's breath); See generally Helen Nieves, *Compulsive Gambling*, MENTAL HEALTH AWARENESS, <http://blogs.psychcentral.com/mental-health-awareness/2015/02/compulsive-gambling/> (last visited Feb. 25, 2016). As discussed *supra*, however, the DSM-5 diagnostic criteria and other identifiers allow counselors and healthcare providers to discern the existence and nuances of problem gambling through screening and assessment. See *supra* Part III.C.

<sup>70</sup> See, e.g., *Programs & Resources*, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/programs-resources/> (last visited Feb. 15, 2016).

<sup>71</sup> See *id.*; *Continuing Education and CEUs*, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/training-certification/continuing-education> (last visited Feb. 15, 2016); *Goals & Strategic Plan*, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/about-us/goals-for-2014/> (last visited Feb. 16, 2016).

<sup>72</sup> *National Problem Gambling Helpline*, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/help-treatment/national-helpline-1-800-522-4700/> (last visited Jan. 26, 2016).

<sup>73</sup> Amy Feinberg, *NCPG Launches Text and Chat Access to National Problem Gambling Helpline*, (Mar. 11, 2015), <http://www.ncpgambling.org/ncpg-launches-text-and-chat-access-to-national-problem-gambling-helpline/>; see *Illinois: 2009 Gambling and Problem Gambling Estimates*, NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/files/Help%20By%20State%20Fact%20Sheets/Illinois%20Fact%20Sheet.pdf> (last visited Feb. 17, 2016) ("[A] majority of helpline callers are not in crisis . . .").

<sup>74</sup> See *Greater New Orleans Broadcasting Ass'n v. United States*, 527 U.S. 173, 195 (1999) (overturning an FCC ban on sight or sound of casinos being advertised).

<sup>75</sup> *National Problem Gambling Helpline*, *supra* note 72; Feinberg, *supra* note 73.

## 2. Availability of Treatment

Accessibility and affordability of treatment services are critical issues to address as stakeholders seek to implement the PETERRR Model. Many stakeholders are unaware that, historically, the majority of private insurance providers refused to reimburse for a primary diagnosis of problem gambling.<sup>76</sup> Even today, a number of states with legalized gambling do not provide public funding for treatment services.<sup>77</sup> While recent developments in parity legislation and the Affordable Care Act offer some hope,<sup>78</sup> and more than a dozen states provide free or sliding scale treatment services,<sup>79</sup> it is likely that most problem gamblers and their families or employers will be forced to pay for most or all of their care.<sup>80</sup> Given the significant debt of many gamblers who seek help—in 2014, the average gambling debt reported by Helpline callers in Wisconsin was nearly \$47,000<sup>81</sup>—cost alone creates a major barrier to treatment.

The ultimate goal of treatment is to enable problem gamblers to improve their functioning through sustained recovery. Treatment is both compassionate public policy and a sound investment. Gambling treatment outcome studies in Arizona, Iowa and Oregon show clients greatly reduced their gambling and negative consequences as well as improved in all measures of health and wellness.<sup>82</sup> A meta-analysis of psychological treatments confirms that short and long-term outcomes were favorable.<sup>83</sup> The few studies on the outcomes of Gamblers Anonymous program participation indicate positive results as well, and there is evidence that an approach using both counseling and GA may produce even better results.<sup>84</sup>

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<sup>76</sup> See Raanan Kagan et al., *Problem Gambling in the 21<sup>st</sup> Century Healthcare System: Implications of the DSM-5, ACA, and Parity for Problem Gambling Treatment & Advocacy*, NAT'L COUNCIL ON PROBLEM GAMBLING 5 (July 3, 2014), <http://www.ncpgambling.org/wp-content/uploads/2014/07/ACA-brief-web-layout-publication.pdf>.

<sup>77</sup> See J. Marotta et al., *supra* note 29, at 12.

<sup>78</sup> See Kagan et al., *supra* note 76, at 3, 5.

<sup>79</sup> See J. Marotta et al., *supra* note 29, at 50 (“In over 30% of states with publicly funded treatment programs, providers were not allowed to collect co-pays or any money from their clients for state-funded treatment.”).

<sup>80</sup> See Kagan et al., *supra* note 76, at 5.

<sup>81</sup> *A Record Year for Wisconsin's Problem Gambling Helpline*, WEAU.COM RIGHT NOW (Jan. 9, 2015, 9:33 AM), <http://www.weau.com/home/headlines/A-record-year-for-Wisconsin-Problem-Gambling-Helpline—288049751.html>.

<sup>82</sup> See *Cost/Benefit of Problem Gambling Services*, CAL. COUNCIL ON PROBLEM GAMBLING, <http://www.calpg.org/wp-content/uploads/2012/06/Cost-Benefit-of-Problem-Gambling-Services.pdf> (last visited Feb. 17, 2016) (citing information compiled by the National Council on Problem Gambling).

<sup>83</sup> Ståle Pallesen et al., *Outcome of Psychological Treatments of Pathological Gambling: A Review and Meta-Analysis*, 100 ADDICTION 1412, 1421 (2005).

<sup>84</sup> See, e.g., Nancy M. Petry, *Gamblers Anonymous and Cognitive-Behavioral Therapies for Pathological Gamblers*, 21 J. GAMBLING STUDS. 27, 29 (2005).

One of the most important elements of the treatment framework is that services should be developed to provide a continuum of care that increases in intensity to match severity of problems. Stakeholders need to make every effort to ensure treatment services are accessible and affordable, and that the proper variety and strength of treatment exists to assist with a problem gambler's needs.

#### D. Enforcement

The "Enforcement" prong of the PETERRR Model refers to legal and regulatory enforcement of the gambling industry. The enforcement of existing gambling-related laws is an important, albeit often overlooked, means of combatting illegal gambling and underage gambling, both of which contribute to and exacerbate problem gambling.<sup>85</sup> The industry and government must reduce the number of opportunities for youth to gamble illegally, and should actively search out and close loopholes in state and local laws that allow minors to gamble.<sup>86</sup> Exemptions allowing minors to gamble are unique and without parallel in the regulation of other potentially addictive products, such as alcohol and tobacco.<sup>87</sup>

##### 1. "Gray Market" Gambling and Regulatory Loopholes

A comprehensive approach to enforcement includes closing loopholes and updating definitions to ensure that widespread unregulated, illegal or simulated gambling operations do not flourish.<sup>88</sup> Such "gray market" gaming is unlikely

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<sup>85</sup> See Anthony Cabot, *Public Policy and Policy Goals*, in REGULATING LAND-BASED CASINOS: POLICIES, PROCEDURES, AND ECONOMICS 21, 28–29 (Anthony Cabot & Ngai Pindell eds. 2014) (discussing the lack of enforcement of sports wagering laws in the United States); see also *id.* at 38 ("Without appropriate integration, control and supervision, the gaming industry will prevail in the entire society and cause various social pathologies such as gaming addiction . . .").

<sup>86</sup> Some states allow, either deliberately or inadvertently, minors to gamble. For example, Iowa regulations regarding lottery play provide that a player must be 21 years of age or older to purchase lottery tickets, but minors may play provided that a parent or guardian sign off on their ticket or claim form. *Buying Tickets FAQs*, IOWA LOTTERY, <http://www.ialottery.com/FAQs/FAQ-BuyingTickets.asp> (lasted visited Feb. 2, 2016). Similarly, minors are allowed to play charitable bingo in Maine as young as the age of 16 so long as the minor is accompanied by a parent or guardian, a sharp contrast from higher legal gambling ages in other jurisdictions. ME. REV. STAT. ANN. tit. 17, § 319 (2015).

<sup>87</sup> Though not a direct parable, restrictions on minor consumption of intoxicants, like the 23 U.S. Code § 158 establishment of a national minimum drinking age of 21, impose blanket regulations without exception. See 23 U.S.C. § 158(a)(1)(A) (2014).

<sup>88</sup> See JAY S. ALBANESE, ILLEGAL GAMBLING & ORGANIZED CRIME: AN ANALYSIS OF FEDERAL CONVICTIONS IN 2014 7 (2015), [http://eldiario.deljuego.com.ar/images/stories/Notas/00\\_2015/Albanese\\_Illegal\\_Gambling.pdf](http://eldiario.deljuego.com.ar/images/stories/Notas/00_2015/Albanese_Illegal_Gambling.pdf) (discussing how the current state of online gambling regulation "permits illegal operators to skirt

to offer consumer protections and may well exacerbate gambling addiction without providing any recourse or resources to the problem gambler.<sup>89</sup> The issue here is that addictive behavior and problem gambling consequences can result from unregulated activities,<sup>90</sup> and that broad regulatory enforcement may only truly be effective if it encompasses all of the causes of problem gambling.

Similar issues concerning the comprehensiveness of gambling regulation arise with regard to gaming on social networks.<sup>91</sup> Social games with gambling themes have exploded in popularity, with millions of monthly users generating an anticipated \$2.5 billion in 2015.<sup>92</sup> Even the social casino games operated by gambling companies have little, if any, consumer protections yet it remains likely that some players are at risk for gambling addiction.<sup>93</sup>

Fantasy sports websites provide another gambling “gray area.”<sup>94</sup> Generally, fantasy sports allow players to draft and compete with a team of real-world athletes who then score fantasy points according to set scoring rules.<sup>95</sup> While traditional contests lasted the entire season, the timeframe has increasingly diminished and now many contests last just one day.<sup>96</sup> These fantasy leagues can offer much more substantial prizes than the more traditional season-long contests, and create leeway for players to create numerous teams and compete in a plethora of ways concurrently.<sup>97</sup>

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U.S. law without a great deal of effort”).

<sup>89</sup> DAVID O. STEWART, INTERNET SWEEPSTAKES CAFES: UNREGULATED STOREFRONT GAMBLING IN THE NEIGHBORHOOD 5 (2014), [https://www.american-gaming.org/sites/default/files/research\\_files/wpaper\\_sweepstakes2014\\_10202.pdf](https://www.american-gaming.org/sites/default/files/research_files/wpaper_sweepstakes2014_10202.pdf).

<sup>90</sup> Not all activities that elicit the consequences of problem gambling will be governed by any regulation whatsoever, regardless of the effectiveness of a given jurisdiction’s enforcement of their regulatory scheme. Examples of “gray market gaming,” depending upon jurisdiction, include fantasy sport betting, and social gaming, as discussed *infra*.

<sup>91</sup> See Michael S. Alires, *Introduction to Social Gaming — Gambling in Substance, but Not Form*, 5 UNLV GAMING L.J. 225, 227 (2014).

<sup>92</sup> See *id.* at 226.

<sup>93</sup> Sally M. Gainsbury et al., *An Investigation of Social Casino Gaming Among Land-Based and Internet Gamblers: A Comparison of Socio-Demographic Characteristics, Gambling and Co-Morbidities*, 33 COMPUTERS HUM. BEHAV., 126, 128, 134 (2014).

<sup>94</sup> See generally Michael Trippiedi, *Daily Fantasy Sports Leagues: Do You Have the Skill to Win at these Games of Chance?*, 5 UNLV GAMING L.J. 201, 219 (2014).

<sup>95</sup> See *id.* at 207, 209.

<sup>96</sup> Resolution of the NCPG Board of Directors Regarding Fantasy Sports, (Oct. 8, 2015), <http://www.ncpgambling.org/wp-content/uploads/2015/10/NCPG-Fantasy-Sports-Resolution-Oct-2015.pdf> [hereinafter NCPG Resolution].

<sup>97</sup> See *National Council on Problem Gambling: Fantasy Sports Consumer Protection Guidelines*, NAT’L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/wp-content/uploads/2014/04/Fantasy-Sports-Consumer-Protection-Guidelines-Final-December-4-2015.pdf> (last visited Feb. 17, 2015) (recommending that “[o]perators should not allow scripting which is the automatic entry to the maximum financial limit of unique line-ups in a contest”).

An exacerbating issue is that fantasy sports are conducted through a number of channels, including formal websites, bars, casinos, and other informal, off-book means.<sup>98</sup> As it stands, the vast majority of fantasy sports leagues do not fall within the regulatory penumbras for legalized gambling.<sup>99</sup> This is not to say that all fantasy sports betting constitutes illegal gambling; rather, the fact that fantasy sports betting has been relegated to a gambling “gray market” allows operators to avoid the punitive and deterrent effects of regulatory enforcement.<sup>100</sup>

Regardless of the legality of these particular games and the betting that occurs within them, it is likely that some users are currently experiencing, or are at least at-risk for, gambling addiction and therefore would benefit from consumer protection measures.<sup>101</sup> The characteristics of fantasy sports participants indicate they are at higher risk for gambling addiction. Fantasy sports participants tend to be young, male, interested in sports and betting, and perceive the outcome of fantasy sports contests to be based on skill, some of which are known risk factors associated with problem gambling.<sup>102</sup> In addition,

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<sup>98</sup> See Walker Oresntein, *Washington Lawmakers Aim to Address Illegal Fantasy Sports*, SEATTLE TIMES (JAN. 17, 2016, 9:07 AM), <http://www.seattletimes.com/seattle-news/politics/washington-lawmakers-aim-to-address-illegal-fantasy-sports/> (discussing legislation around fantasy sports and the difficulty of regulation of office pools and “water cooler fantasy-football”). See also, e.g., *Fanduel*, FANDUEL, <https://www.fanduel.com/> (last visited Apr. 17, 2016) (providing daily fantasy sports contests online).

<sup>99</sup> See NCPG Resolution, *supra* note 96. Just last year, Nevada regulators joined other states, ruling “that playing daily fantasy sports should be considered gambling, not a game of skill, and ordered websites like DraftKings and FanDuel to stop operating immediately in the state until the companies and their employees receive state gambling licenses.” Joe Drape, *Nevada Says It Will Treat Daily Fantasy Sports Sites as Gambling*, N.Y. TIMES (Oct. 15, 2015), [http://www.nytimes.com/2015/10/16/sports/gambling-regulators-block-daily-fantasy-sites-in-nevada.html?\\_r=0](http://www.nytimes.com/2015/10/16/sports/gambling-regulators-block-daily-fantasy-sites-in-nevada.html?_r=0). Less than a month following that decision, the Attorney General of the State of New York issued a cease-and-desist letter advising those same fantasy sports betting companies to refrain from accepting future bets within that jurisdiction. Walt Bogdanich et al., *Attorney General Tells DraftKings and FanDuel to Stop Taking Entries in New York*, N.Y. TIMES (Nov. 10, 2015), <http://www.nytimes.com/2015/11/11/sports/football/draftkings-fanduel-new-york-attorney-general-tells-fantasy-sites-to-stop-taking-bets-in-new-york.html>.

<sup>100</sup> See Michael Hiltzik, *Are Daily Fantasy Sports Contests Gambling or Games of Skill?*, L.A. TIMES (Nov. 20, 2015 9:26 PM), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20151122-column.html>.

<sup>101</sup> See Gainsbury et al., *supra* note 93, at 134.

<sup>102</sup> See Walt Bogdanich & Jacqueline Williams, *For Addicts, Fantasy Sites Can Lead to Ruinous Path*, N.Y. TIMES (Nov. 22, 2015), <http://www.nytimes.com/2015/11/23/sports/fantasy-sports-addiction-gambling-draftkings-fanduel.html?r=0>; Jeffrey Derevensky, *A Gambling Expert Weighs in: What Makes Daily Fantasy Sports so Alluring – and Dangerous – for Young Men?*, THE CONVERSATION (Oct. 22, 2015, 5:51 AM), <http://theconversation.com/a-gambling-expert-weighs-in-what-makes-daily-fantasy-sports-so-alluring-and-dangerous-for-young-men->

daily fantasy contests offer a high event frequency as well as potentially large and frequent payouts, all of which are structural characteristics of gaming that are associated with gambling addiction.<sup>103</sup> These enforcement-free “gray market” forms of gambling may serve to provide destructive outlets for problem gamblers while providing them no regulatory protections or resources for their disorder.

Gambling laws and regulations must be sufficiently broad to address the many, varied causes of problem gambling, but enforcement must be tailored to ensure licensee compliance. Licensed and regulated gaming operators must be required to adhere to laws and regulations of their jurisdictions, particularly those designed to address problem gambling, by threat of licensure revocation, fines, and other legal penalties.<sup>104</sup> Operator compliance must be ensured at every level; enforcement must require adequate employee training and oversight.<sup>105</sup> The goal is for problem gambling policy and problem gamblers themselves, to be served by proper leveraging of legal and regulatory penalties with diligent enforcement.

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49275; Jacob Gershman, *Daily Fantasy Sports: Games of Luck or Skill?*, WALL ST. J.: L. BLOG (Nov. 20, 2015, 6:04PM), <http://blogs.wsj.com/law/2015/11/20/daily-fantasy-sports-games-of-luck-of-skill/>; *Youth and Gambling: Risk Factors*, PROBLEM GAMBLING INST. OF ONT., <https://www.problemgambling.ca/EN/ResourcesForProfessionals/Pages/YouthAndGamblingRiskFactors.aspx> (last visited Apr. 11, 2016).

<sup>103</sup> Letter from Nat’l Council on Problem Gambling to Maura Healey, Attorney Gen., Mass. (Jan. 12, 2016), <http://www.ncpgambling.org/wp-content/uploads/2016/01/NCPG-Comments-on-Massachusetts-Daily-Fantasy-Sports-Contest-Operators-Regulations-Final.pdf>.

<sup>104</sup> For example, Nevada laws provide for disciplinary actions against licensees for violations of applicable Nevada gaming statutes and regulations. *See* NEV. REV. STAT. §§ 463.310 – .380 (2015); Nev. Gaming Comm’n Reg. 5.030 (2015). Disciplinary proceedings can result in gaming establishment licensure or individual licensure being revoked for both restricted and non-restricted licensees. *See* NEV. REV. STAT. § 463.1405 (2015) (“The Board has full and absolute power and authority to recommend . . . the suspension or revocation of any license . . . upon any person licensed, registered, found suitable or approved for any caused deemed reasonable by the Board.”) Nevada’s regulatory scheme applies this punitive framework to problem gambling by tying disciplinary proceedings to credit extension, and employee training requirements, as well as self-exclusion with respect to online gambling (which is known as Interactive Gambling under Nevada regulations). *See* Nev. Gaming Comm’n Reg. 5.170 (2015); Nev. Gaming Comm’n Reg. 5A.130 (2015).

<sup>105</sup> *See, e.g.*, Reg. 5.170(2) (“Each licensee shall implement procedures and training for all employees who directly interact with gaming patrons in gaming areas. That training shall, at a minimum, consist of information concerning the nature and symptoms of problem gambling behavior and assisting patrons in obtaining information about problem gambling programs.”).

*E. Research*

The “Research” prong is the key to continually improving our understanding of gambling and problem gambling, as well as evaluating the effectiveness of every other aspect of PETERRR efforts. In addition to program evaluations, it is important to provide public access to identified, legally-disclosable data collected by the gambling industry.<sup>106</sup> Large datasets of actual player behavior obtained by gambling operators and other stakeholders have the potential to provide vital information to complement the more accessible survey and self-reported data.<sup>107</sup> Social impact studies to measure the effect of current and expanded gambling on general and special populations are also vital because stakeholders are unable to efficiently prioritize funding or provide services without such information.<sup>108</sup>

As an example of program evaluation in action, the Massachusetts Expanded Gaming Act (hereinafter “MEGA”) requires that the Commission establish “an annual research agenda in order to understand the soci[ological] and economic effects of expand[ed] gaming in the commonwealth.”<sup>109</sup> The Commission engaged a university research team to oversee, evaluate and perform a comprehensive research project that lasted multiple years, incorporated diverse methodology and disciplines, and was completed in a series of phases.<sup>110</sup> The project includes a gambling “monitoring system” that

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<sup>106</sup> See PA Casino Gaming Industry: *Its Current State & Potential for Growth in an Increasing Competitive Atmosphere and Potential Impact of New Revenue Sources (i.e., iGaming/Online Gaming), Nongaming Amenities & Regulatory Landscape: Hearing Before the S. Cmty., Econ. & Recreational Dev. Comm.*, 2014 Leg. Reg. Sess. (Pa. 2014) (statement of Keith S. Whyte, Exec. Dir., Nat’l Council on Problem Gambling), <http://www.ncpgambling.org/wp-content/uploads/2014/04/NCPG-Statement-PA-Senate-CERD-Internet-Gaming-June-2014.pdf>.

<sup>107</sup> See, e.g., The Cambridge Health All.: Div. on Addiction, *The Transparency Project: A Data Repository for Privately-Funded Research*, THE TRANSPARENCY PROJECT, <http://www.thetransparencyproject.org/index.html> (last visited Feb. 2, 2015).

<sup>108</sup> See R.J. WILLIAMS ET AL., THE POPULATION PREVALENCE OF PROBLEM GAMBLING: METHODOLOGICAL INFLUENCES, STANDARDIZED RATES, JURISDICTIONAL DIFFERENCES, AND WORLDWIDE TRENDS 8 (2012), <https://www.uleth.ca/dspace/bitstream/handle/10133/3068/2012-PREVALENCE-OPGRC%20%282%29.pdf?sequence=3> (“[Population prevalence studies] establish the current prevalence of gambling, the prevalence of each form of gambling, personal expenditures on each form of gambling, and the prevalence of problem gambling. This information, in turn, is very useful in understanding . . . the number of problem gamblers that would benefit from treatment, the proportion of gambling revenue derived from problem gamblers, and the types of gambling most strongly associated with problem gambling. . . .”).

<sup>109</sup> MASS. GEN. LAWS ch. 23K, § 71 (2016); see also *Research Agenda: What You Need to Know*, MASS. GAMING COMM’N, <http://massgaming.com/about/research-agenda/> (last visited Feb. 2, 2015) [hereinafter *Mass. Research*].

<sup>110</sup> See *Mass. Research*, *supra* note 109; see generally Univ. of Mass. Sch. of Pub. Health & Health Scis., *SEIGMA: Social and Economic Impacts of Gambling in*

will provide stakeholders with a neutral database “for strategic analysis and decision-making,” and will generate early warning signs “of changes in social and economic impacts and [p]romote responsible gambling and mitigate problem gambling” through refinement of services.<sup>111</sup> The goal is to understand the social and economic effects of expanded gambling through a baseline study of problem gambling and existing prevention and treatment programs and to facilitate independent studies to obtain scientific information relevant to enhancing responsible gambling and minimizing its harmful effects.<sup>112</sup>

No United States jurisdiction had ever conducted such a study on gambling before the implementation of the Massachusetts Expanded Gaming Act, and the potential uses for such data in policy implementation are numerous.<sup>113</sup> The “Research” prong is the key to implementing problem gambling policy in such a way that it provides adequate data to revise and refine programs to the benefit of problem gamblers.<sup>114</sup>

#### F. Responsible Gaming

The “Responsible Gaming” prong of the PETERRR Model refers to steps taken by gaming operators to minimize gambling-related harm to players. The concept of “informed player choice” is one of the most widely utilized responsible gaming strategies.<sup>115</sup> This may include developing corporate responsible gaming policy, ensuring staff are trained to understand and fulfill such a policy, enabling players to set limits on the time and money spent gambling, setting advertising standards, assisting players in crisis and facilitating self-exclusion upon request.<sup>116</sup> Safeguards also must be developed to ensure underage players are unable to access games.

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Massachusetts, UMASSAMHERST, <http://www.umass.edu/seigma/news> (last visited Mar. 6, 2016) (the webpage for the study undertaken on behalf of the Massachusetts Gaming Commission).

<sup>111</sup> *Mass. Research*, *supra* note 109.

<sup>112</sup> *See supra* note 109.

<sup>113</sup> *See Mass. Research*, *supra* note 109 (referring to the study as a “first-of-its-kind research project”).

<sup>114</sup> *See* Howard J. Shaffer et al., *Toward a Paradigm Shift in Internet Gambling Research: From Opinion and Self-Report to Actual Behavior*, 18 ADDICTION RES. & THEORY 270, 271 (2010) (“Because scientific research is not guiding the development of public policies that surround Internet gambling, there is an ongoing need for new empirical research about Internet gambling that can inform public policy.”).

<sup>115</sup> *See* Gaming Policy & Enforcement Branch: Ministry of Finance, B.C., *Responsible Gambling Standards for the BC Gambling Industry*, BRITISH COLUMBIA 2 (2010), <https://www.gaming.gov.bc.ca/responsible-gambling/docs/stds-responsible-gambling.pdf> (listing gaming services in British Columbia and how they “ensure players can make informed choices” about the gaming product).

<sup>116</sup> *Id.*; *High-Stakes Gaming Machines: Gamblers to Set Limits*, BBC (Feb. 28, 2014), <http://www.bbc.com/news/uk-26378026>.

Each major sector of the gaming industry has developed a responsible gaming code of conduct.<sup>117</sup> For example, the World Lottery Association Responsible Gaming Framework seeks to develop relationships with external stakeholders and provide for the certification of responsible gaming programs through an independent audit.<sup>118</sup>

The NCPG recently reviewed current responsible gaming codes and regulations for internet gambling from around the world to develop best practice Internet Responsible Gambling Standards,<sup>119</sup> and the related GRADE Consumer Protection Guidelines.<sup>120</sup> As a result, several jurisdictions have incorporated many of these recommendations into their Internet gambling policies.<sup>121</sup> For example, the New Jersey Division of Gaming Enforcement specifically cited NCPG's guidance in their decision to adopt additional

regulations address[ing] areas such as [disseminating] additional information regarding how to reach out for problem gambling assistance and practical tips for staying within safe [play] limits. They also require operators to implement problem gaming training for all of their employees. All Internet gaming platform providers have to implement the requirements in order to be approved to operate in New Jersey.<sup>122</sup>

Regulators have an important role to play in implementing and enforcing minimum responsible gaming standards. The Pennsylvania Gaming Control Board has developed a good template for such standards.<sup>123</sup> In particular, section 501 of the Pennsylvania Code require slot machine licensees to provide

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<sup>117</sup> See, e.g., *Code of Conduct*, AM. GAMING ASS'N, <https://www.american-gaming.org/about/code-of-conduct> (last visited Apr. 17, 2016); *ABB Responsible Gambling Code*, ABB: ASS'N OF BRIT. BOOKMAKERS LTD, <https://www.abb.uk.com/responsible-gambling/code-of-conduct/> (last visited Apr. 17, 2016).

<sup>118</sup> See WORLD LOTTERY ASS'N, RESPONSIBLE GAMING FRAMEWORK SUBMISSION GUIDE 1 (2014-2015 ed. 2014).

<sup>119</sup> *Internet Responsible Gambling Standards*, NAT'L COUNCIL ON PROBLEM GAMBLING 1 (Apr. 23, 2012), <http://www.ncpgambling.org/files/faq/Internet%20Responsible%20Gambling%20Standards%20April%2023%202012.pdf>.

<sup>120</sup> See *GRADE: Social Games Consumer Protection Guidelines*, NAT'L COUNCIL ON PROBLEM GAMBLING (Oct. 21, 2013), [http://www.ncpgambling.org/wp-content/uploads/2014/08/GRADE\\_v3.pdf](http://www.ncpgambling.org/wp-content/uploads/2014/08/GRADE_v3.pdf); see also Keith Whyte, Exec. Dir., Nat'l Council on Problem Gambling, Internet, Social & Responsible Gambling: Slide Presentation at the MGC Internet Gaming Forum (Mar. 11, 2014), <http://massgaming.com/wp-content/uploads/Internet-Social-and-Responsible-Gaming.pdf>.

<sup>121</sup> See GAMBLING COMPLIANCE INC., U.S. ONLINE RESPONSIBLE GAMING REGULATIONS: DELAWARE, NEVADA AND NEW JERSEY 2, 22 (2014).

<sup>122</sup> Memorandum from David Rebeck, Dir., Div. of Gaming Enf't, Dep't of Law & Pub. Safety, Office of the Attorney Gen., State of N.J., regarding New Jersey Internet Gaming One Year Anniversary – Achievements to Date and Goals for the Future (Jan. 2, 2015), <http://www.nj.gov/oag/ge/2015news/Internet-gamingletter.pdf>.

<sup>123</sup> See generally 58 PA. CODE §§ 501a, 503a (2015).

an annual problem gambling mitigation plan with measurable performance targets.<sup>124</sup> However, one limitation of the Pennsylvania policy is that the plan is not publically available, nor is it necessarily reviewed by stakeholders with the requisite experience in problem gambling and responsible gaming.<sup>125</sup> As part of a PETERRR public policy model, such a plan should be available to the public, and individuals with experience in responsible gaming and problem gambling issues should independently evaluate the program's performance.

The "Responsible Gaming" prong of the PETERRR Model most directly connects the enforcement and recovery prongs, where regulatory policy impacts the problem gambler directly to abate further injurious behavior. In effect, responsible gaming serves to minimize the harm to players for whom the previous facets of the policy, namely prevention and education, have not deterred from a gambling disorder. Responsible gaming also depends on other elements of PETERRR. If properly employed, responsible gaming measures also serve to reduce both the social and individual consequences of problem gambling, and will require that fewer players require the assets afforded by the following prong, "Recovery."

#### G. Recovery

The "Recovery" prong of the PETERRR Model refers to the support provided to help individuals with gambling problems both enter into and sustain their recovery. Recovery is the transition from gambling problems to health.<sup>126</sup> In fact, as described in Figure 1, treatment programs are on a continuum with recovery whereby aftercare or relapse prevention services are provided once the client leaves treatment.

Other programs that fall under the Recovery prong including prevention efforts to reduce risk factors for relapse, education to improve public understanding of gambling addiction, enforcement of self-exclusion requests, research into barriers to recovery, and responsible gaming programs to accommodate gaming employees in recovery. Mutual-help groups, which land outside traditional treatment or therapy, can be extremely important resources for recovery.<sup>127</sup>

One such group, Gamblers Anonymous, is "a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from a gambling

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<sup>124</sup> See *id.* § 501a.4.

<sup>125</sup> See *id.* §501a.4(a) (specifying that reports should be submitted to the Director of the Office of Compulsive and Problem Gambling).

<sup>126</sup> See Christine Reilly & Howard J. Shaffer, *Introduction*, in 2 INCREASING THE ODDS: ROADS TO RECOVERY FROM GAMBLING ADDICTION 15 (National Center for Responsible Gaming 2009), [http://www.ncrg.org/sites/default/files/uploads/docs/monographs/monograph2\\_final\\_for\\_web.pdf](http://www.ncrg.org/sites/default/files/uploads/docs/monographs/monograph2_final_for_web.pdf).

<sup>127</sup> *Gambling Problems*, *supra* note 2, at 5.

problem.”<sup>128</sup> Gam-Anon is a similar self-help fellowship for those “who have been affected by the gambling problem of a loved one.”<sup>129</sup> Both groups provide significant information and assistance particularly in helping members maintain a healthy way of living free from gambling problems.<sup>130</sup>

Treatment programs have been shown to be most effective when clients also attend Gamblers Anonymous meetings, with rates of successful recovery improved by additional professional therapy options.<sup>131</sup> While rates of relapse are high, studies show that approximately one-third of people identified as problem gamblers will recover without the assistance of treatment, while the remaining two thirds will continue to have issues related to problem gambling.<sup>132</sup> The benefits of recovery include dramatically reduced rates of gambling, improved health and financial outcomes and decreased social costs.<sup>133</sup> Therefore, there are millions of recovering problem gamblers whose families and communities could benefit from their engagement in extensive and comprehensive recovery programs.<sup>134</sup> The active involvement of individuals in recovery in all aspects of the PETERRR model is essential to ensure that services are recovery oriented.

#### IV. THE PETERRR MODEL IN PRACTICE: PREDICTIONS AND GOALS

The PETERRR Model is a national approach to addressing a public health concern that acknowledges state and tribal governments remain the principal actors in overseeing gaming due to the vast majority of gambling regulation being delegated to the states.<sup>135</sup> To fully implement the PETERRR Model, the

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<sup>128</sup> *About Us*, GAMBLERS ANONYMOUS, <http://www.gamblersanonymous.org/ga/node/1> (last visited Dec. 20, 2015).

<sup>129</sup> *About Gam-Anon*, GAM-ANON, <http://www.gam-anon.org/about-gam-anon> (last visited Dec. 20, 2015).

<sup>130</sup> *See id.*; *About Us*, *supra* note 128.

<sup>131</sup> *See* Nancy M. Petry, *Testing Three Paths to Improvement: Cognitive-Behavioral Therapy, Self-Directed Workbook and Gamblers Anonymous*, in 2 INCREASING THE ODDS: ROADS TO RECOVERY FROM GAMBLING ADDICTION 14, 15 (National Center for Responsible Gaming 2009); *see also* Nancy M. Petry, *Patterns and Correlates of Gamblers Anonymous Attendance in Pathological Gamblers Seeking Professional Treatment*, 28 ADDICTIVE BEHAVIORS 1049, 1059 (2003); Petry, *supra* note 84, at 30.

<sup>132</sup> David C. Hodgins, *Relapse Among Disordered Gamblers*, in 2 INCREASING THE ODDS: ROADS TO RECOVERY FROM GAMBLING ADDICTION 10, 10 (National Center for Responsible Gaming 2009); *Problem Gambling*, PATIENT, <http://patient.info/health/problem-gambling> (last visited Jun. 15, 2015).

<sup>133</sup> Nat'l Council on Problem Gambling, *Cost/Benefit of Problem Gambling Services*, CAL. COUNCIL ON PROBLEM GAMBLING (March 2010), <http://www.calpg.org/wp-content/uploads/2012/06/Cost-Benefit-of-Problem-Gambling-Services.pdf>.

<sup>134</sup> *See supra* note 56.

<sup>135</sup> *See* WALTER T. CHAMPION, JR., & I. NELSON ROSE, *GAMING LAW IN A NUTSHELL* 41-42 (2012). The vast majority of gambling regulation is delegated to the states. *See id.* at 41.

Federal Government should support these efforts by dedicating a portion of the withholding tax revenue on gambling winnings towards problem gambling issues.<sup>136</sup> These winnings ought to be used to create a dedicated problem gambling fund at United States Department of Health and Human Services that both supports national level research through National Institute of Health and services programs through the Substance Abuse and Mental Health Services Administration. Additionally a portion of these funds should be earmarked to provide substantial state grants through these and other agencies. State agencies should be given the flexibility to use block grant funding for problem gambling programs.<sup>137</sup>

All stakeholders should contribute to PETERRR programs. In particular, a portion of gaming revenue must be dedicated for PETERRR programs as both a practical measure and an added degree of investment by gaming operators. The “NCPG recommends that [the equivalent] of 1% of total gaming revenue be dedicated to minimize harm.” At current revenue levels that would be at least \$110 million annually.<sup>138</sup> Further, NCPG continues to champion legislation to establish permanent Federal funding.<sup>139</sup> In addition, the NCPG’s strategic plan incorporates the PETERRR elements and articulates a set of principles based on them.<sup>140</sup>

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<sup>136</sup> See generally JOINT COMM. ON TAXATION, JCX-28-10, OVERVIEW ON FEDERAL TAX LAWS AND REPORTING REQUIREMENTS RELATING TO GAMBLING IN THE UNITED STATES 1–36 (May. 17, 2010) (providing an overview of Federal taxation on gambling activities, including withholding requirements for gambling winnings).

<sup>137</sup> See Tim Christensen, *The Association of Problem Gambling Service Administrators*, 15 J. OF GAMBLING ISSUES (2005), <http://jgi.camh.net/doi/full/10.4309/jgi.2005.15.5>.

<sup>138</sup> See Nat’l Council on Problem Gambling, Statement to the New York Gaming Commission (Apr. 9, 2014), <http://www.ncpgambling.org/wp-content/uploads/2014/08/NCPG-Statement-to-NYSGC-April-9-2014.pdf>. At this level for example, this would amount to \$110 million annual in New York State. *Id.*

<sup>139</sup> See, e.g., Comprehensive Problem Gambling Act of 2010, S. 3418, 111th Cong. (2010).

<sup>140</sup> See *National Council on Problem Gambling: Strategic Plan 2015-2020*, NAT’L COUNCIL ON PROBLEM GAMBLING 4, <http://www.ncpgambling.org/about-us/goals-for-2014/> (last visited Mar. 13, 2016) (follow download hyperlink titled “NCPG 2015-2020 STRATEGIC PLAN”) (“This Strategic Plan focuses on comprehensive prevention, education, treatment, enforcement, research, responsible gaming and recovery efforts as the means to reduce the harm form problem gambling.”).

## V. CONCLUSION

Every jurisdiction with legalized gambling, regardless of its form, should facilitate the development of a strategic plan based on the PETERRR paradigm to minimize gambling addiction. This plan ought to include a problem gambling steering committee consisting of all key stakeholders that should oversee the program's planning and implementation. Implementation should address all seven of the PETERRR prongs, and in doing so acknowledge their overlap and the necessity to revise and update programs as industry and community needs evolve.

This paper provides a brief guide for stakeholders to recognize and take the steps necessary to address the diverse challenges associated with both maximizing the benefits of gambling and minimizing the myriad consequences of resultant gambling addiction. The ultimate goal is to improve public health by reducing the personal, social, and economic costs of problem gambling with proactive, comprehensive policy.