

# CRS Issue Brief for Congress

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## **War On Drugs: Legislation in the 108<sup>th</sup> Congress and Related Developments**

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## War on Drugs: Legislation in the 108<sup>th</sup> Congress and Current National Developments

### SUMMARY

Prohibiting the non-medical use of certain mind-altering substances has been a public policy goal of the federal government for more than a century.

Drug abuse is a problem in the United States due to its economic cost, estimated to have been over \$160 billion in 2000. This sum includes lost productivity, health care costs, and criminal justice expenditures. An estimated 1.6 million people were arrested in the United States in 2001 for drug abuse violations.

The federal Office of National Drug Control Policy (ONDCP), which coordinates the war on drugs, frames the issue as one of reducing drug-related crime and drug-caused health problems by reducing drug use. Other organizations frame the issue differently. Some groups, for example, frame their position on the drug war in terms of civil rights, religious freedom, or cognitive liberty.

In recent years, Congress has taken an increasingly punitive stance toward drug addicts and casual users alike. A different approach has been taken by certain countries in Europe and elsewhere that are experimenting with less restrictive policies such as decriminalization and “harm reduction” measures. The 108<sup>th</sup> Congress will receive strong encouragement from the Executive Branch to continue the all-out war on drugs.

Among the early actions of the 108<sup>th</sup> Congress were passage of the remaining appropriations for FY2003, including those for the many federal drug control agencies and programs, and passage of the Illicit Drug Anti-

Proliferation Act of 2003, designed to control the use of “club drugs” such as MDMA (Ecstasy). The House Government Reform Committee has marked up and reported, amended, H.R. 2086 to reauthorize ONDCP (the office of the “Drug Czar”) and the National Youth Anti-Drug Media Campaign.

Other drug control issues being taken up in the first session include the drug control budget for FY2004 and confirmation by the Senate of a new head of the Drug Enforcement Administration (DEA) due to the move of the previous DEA administrator to the position of Under Secretary for Border and Transportation Security in the new Department of Homeland Security.

Additional issues that could be considered by the 108<sup>th</sup> Congress include state ballot initiatives regarding medical marijuana and drug treatment in lieu of incarceration, the effects of state budget deficits on the states’ drug control efforts, and the impact of the anti-terrorism effort on the drug war.

Current developments concerning the war on drugs that are of relevance to the 108<sup>th</sup> Congress include the President’s drug-control strategy for FY2004, the success of the drug war as measured by national surveys of drug use, and actions taken by DEA against industrial hemp products and medical marijuana providers.

For the latest on *international* drug control legislation and issues see CRS Issue Brief IB88093, *Drug Control: International Policy and Approaches*.



## **MOST RECENT DEVELOPMENTS**

The President's nomination of Associate Deputy Attorney General Karen P. Tandy to be the next DEA Administrator was reported out of the Senate Judiciary Committee on July 10. The nomination now awaits a vote by the full Senate.

The House Committee on Government Reform marked up H.R. 2086, the Office of National Drug Control Policy Reauthorization Act of 2003, on June 5, and ordered the bill reported, as amended, to the floor of the House. The bill was introduced by Representative Souder on May 14, 2003, after a series of hearings on the issue were held by the Subcommittee on Criminal Justice, Drug Policy, and Human Resources, which he chairs. The subcommittee marked up the bill and ordered it reported, as amended, to the full committee on May 15. The full committee held a hearing on the bill on May 22, but the markup scheduled to follow the hearing was postponed due to disagreements between the majority and minority over certain of the bill's provisions. Those disagreements were resolved at the rescheduled markup on June 5, when the full committee approved an amendment in the nature of a substitute offered by Representative Souder.

## **BACKGROUND AND ANALYSIS**

### **Introduction**

The control of certain mind-altering drugs has been a public policy goal of the federal government and the focus of congressional legislative efforts for more than a century. This "war on drugs," as it came to be known, can be said to have begun in November 1880 when an "absolute prohibition" on the shipment of opium between the United States and China was agreed to in treaty negotiations between the two countries. The 49<sup>th</sup> Congress enacted implementing legislation on February 23, 1887, providing a misdemeanor fine of between \$50 and \$500 for any U.S. or Chinese citizen found guilty of violating this ban.

The drug war escalated, in fits and starts, until 1971 when President Nixon declared the modern war on drugs. He announced "a new, all-out offensive" against drug abuse, "America's public enemy number one," and created a new office directly under him in the White House to coordinate the major federal drug abuse programs. Drug control legislation has been actively considered by every Congress since then, and the 108<sup>th</sup> Congress is no exception.

The term "drug," in this context, means a substance that is illegally taken into the body to affect mood or behavior. Examples include marijuana, cocaine, methamphetamine, and heroin. A legal pharmaceutical, when obtained by illegal means or used for nonmedical purposes, becomes an illegal drug under this definition. The term "controlled substance" means a drug or other substance that is included in schedule I, II, III, IV, or V of the Controlled Substances Act, as amended (21 U.S.C. 812).

This Issue Brief covers significant legislative and oversight activities of the 108th Congress that concern domestic law enforcement aspects of federal anti-drug policy. Also included will be significant executive branch actions and other current events of likely interest to the congressional audience that follows this issue. The most-recent-developments section, above, will be updated regularly as events occur, and the entire Issue Brief will be revised monthly, early in every month, to include the previous month's developments in its factual and analytical content.

## Identifying the Problem

The term “war on drugs” encompasses a wide array of public policies and programs designed to address the problem of illegal drug use, drug abuse, and drug dependency by residents of the United States and its outlying areas. While drug addiction used to be considered a personal failure, its redefinition as a *public* problem began to take hold in the United States around the beginning of the 20th century, coincident with the peak of a cocaine epidemic that revealed to society the harmfulness of drug addiction.

**Costs of drug abuse.** The Office of National Drug Control Policy (ONDCP), the agency within the Executive Office of the President that coordinates the war on drugs, estimates the economic cost of illegal drug use in the United States to have been over \$160 billion in 2000. Losses in productivity accounted for 69% of this estimated amount. Incarceration was the leading cause of lost productivity, followed by crime careers, drug abuse related illness, and premature death. Health care costs of drug abuse were estimated at 9% of the total cost of drug abuse. Other costs — including drug-related expenses of the criminal justice system, the cost of attempts to reduce the supply of drugs, and drug-related social welfare expenditures — made up the remaining 22% of the estimated cost of drug abuse in 2000.

For purposes of comparison, the estimated \$160.7 billion in drug abuse costs equaled roughly one-eleventh of total FY2000 federal budget outlays of \$1,789 billion, or 1.6% of the estimated gross domestic product of \$9,872.9 billion for 2000. This is the cost society pays for the actions of the estimated 25 million Americans who illegally used any drug at least once during 2000. Each drug user cost society nearly \$6,500, on average, in 2000. In reality, of course, the costs of drug use are not evenly distributed among all drug users. Instead, most of the costs are incurred by a minority of drug users, the chronically addicted and the career criminals. According to the National Household Survey on Drug Abuse, there were an estimated 4.7 million Americans aged 12 or older, in 2000, who needed treatment for an illicit drug abuse problem. They accounted for 2.1% of the national population. If the estimated costs of drug abuse were shared equally by these problem drug users, the per-person cost in 2000 would have been about \$34,200.

**Deaths from drugs.** In addition to these economic costs, the number of deaths due to drug overdoses provides another, frequently cited measure of the cost of drug use. At congressional hearings, witnesses often use the number of drug-induced deaths reported annually by the Centers for Disease Control and Prevention (CDC) as the number of overdoses from illegal drugs. Actually, the CDC's category “drug-induced causes” includes deaths from both illegal and legal drugs, such as poisonings from medically prescribed drugs. The most recent CDC report reveals that 19,698 persons died of drug-induced causes in the

United States in 2000. CDC is unable to provide a further breakdown of this number by substance involved, nor are reliable data available elsewhere. The only substance-related death toll that CDC reports separately is alcohol: there were 19,358 alcohol-induced deaths in 2000, slightly fewer than from all other drugs — legal and illegal — combined.

**Drugs and crime.** The Federal Bureau of Investigation estimates that 1.6 million people were arrested in the United States in 2001 for drug abuse violations. Nearly one in four persons held in U.S. jails and prisons in 2000 was imprisoned for a drug offense. Of the total *federal* prison population in 2000, 57% were serving time for drug offenses. The United States now has the highest incarceration rate by far of all industrialized countries, due in no small measure to the legal penalties associated with the war on drugs.

## Framing the Issue

Different federal drug control agencies frame the issue of drug abuse in different ways. ONDCP, the office of the “drug czar,” frames the issue as one of reducing drug-related crime and drug-caused health problems by reducing illicit drug use. The Drug Enforcement Administration frames the issue in terms of enforcing the country’s drug laws. The U.S. Customs Service frames the issue as one of interdicting and seizing narcotics and illegal drugs. The National Institute on Drug Abuse sees the issue as one of bringing the power of science to bear on the problems of drug abuse and addiction. The Substance Abuse and Mental Health Services Administration sees the issue as one of reducing the cost to society of drug abuse by improving prevention, treatment, and rehabilitative services. Other federal agencies active in drug control efforts have their own ways of framing the issue.

Non-governmental organizations exhibit an even wider range of issue definitions. The Partnership for a Drug-Free America frames the issue as one of helping children and teens reject substance abuse by influencing attitudes through persuasive information. The National Center on Addiction and Substance Abuse at Columbia University defines the issue as one of employing research and education to encourage individuals and institutions to take responsibility to combat substance abuse and addiction in American society. The Federation of American Scientists frames the issue as one of reducing the suffering caused by drug abuse, drug trafficking, and drug control measures by using careful analysis, open dialogue, and civil discourse to develop better policies. The Drug Policy Alliance frames the issue as one of promoting new drug policies based on common sense, science, public health, and human rights. The Council for Spiritual Practices, focusing on the experiences that can be elicited by certain controlled substances such as the psychedelics and MDMA (Ecstasy), frames the issue as one of making direct experience of the sacred more available to more people. The Center for Cognitive Liberty and Ethics, believing in the individual’s right to think independently and autonomously, frames the issue as one of freedom of thought. The Vaults of Erowid, a drug-information website, believes that accurate, responsible information about drugs will promote their healthy integration into our culture’s political and social structures.

Many European countries that have been our long-term allies in the drug war are today beginning to frame the issue of drug abuse less as one of law enforcement and more as one of public health. Portugal, in 2001, decriminalized all drug use and adopted a policy of harm reduction. Spain no longer prosecutes illegal drug use done privately. Belgium permits the

use of medical marijuana. Closer to home, Canada is widely expected to decriminalize marijuana possession sometime in 2003, as recommended last year by the Special Committee on Illegal Drugs of the Canadian Senate. In 2001, the chief of the Mexican federal police announced his support of drug legalization throughout the world as the only way to destroy the global drug economy, and high-level officials in the government of Mexican President Vicente Fox reportedly favor drug legalization as the solution to the violence and corruption caused by narco-traffickers. These trends abroad and especially on our borders have encountered vehement U.S. opposition.

For its part, Congress has taken an increasingly strong enforcement stance against the problem of drug use, abuse, and addiction. Federal lawmakers' early attempts to control the non-medical use of the opiates, cocaine, and marijuana resulted in the passage of such laws as the Harrison Narcotics Act in 1914 and the Marihuana Tax Act of 1937, which indirectly sought to control drug usage through the taxation and regulatory powers of the federal government. These early attempts at control gave way to stronger enforcement measures, leading to the enactment of four major anti-drug laws: the Comprehensive Crime Control Act of 1984 (P.L. 98-473), the Anti-Drug Abuse Act of 1986 (P.L. 99-570), the Anti-Drug Abuse Act of 1988 (P.L. 100-690), and the Crime Control Act of 1990 (P.L. 101-647).

The 1988 law stated: "It is the declared policy of the United States Government to create a Drug-Free America by 1995." Drug abuse is no longer framed as a problem to be controlled but a menace to be eradicated. The war on drugs is now a national effort to reduce to zero the demand for illegal drugs in the United States. Responsible drug use, unlike responsible alcohol use, is considered an oxymoron. To *use* a prohibited substance is defined as *abuse*, whether or not the user is addicted. Studies show that most drug users are not addicts, yet all users of illegal drugs are subject to the same severe penalties and are frequently forced into treatment, if not prison.

Although the wisdom of drug prohibition has come into question as certain other countries liberalize their drug control policies and as voters in various U.S. states approve state ballot initiatives to lessen drug penalties, the federal government strongly opposes such changes. The established policy of prohibition is not expected to come under critical scrutiny at the federal level anytime soon. Accordingly, today's policy questions in Congress concern the priority and level of resources assigned to the drug war compared to other pressing federal priorities (e.g., drug interdiction vs. counterterrorism), the relative emphasis given to each of the components of the war on drugs (e.g., enforcement vs. treatment), and the effectiveness of various programs (e.g., the youth anti-drug media campaign).

## **Actions of the 107<sup>th</sup> Congress**

Fewer drug control bills were enacted by the 107<sup>th</sup> Congress than by other recent Congresses. The 107<sup>th</sup> Congress did reauthorize the Drug-Free Communities Support Program for another 5 years (H.R. 2291/P.L. 107-82). It also included some of the provisions of S. 304, a large drug treatment and prevention bill, in the Department of Justice Reauthorization act (H.R. 2215/P.L. 107-273). The 107<sup>th</sup> Congress approved FY 2002 funding for the war on drugs in the amount of \$18.8 billion, according to the national drug control budget summary compiled by ONDCP. It failed, however, to pass the domestic

appropriations bills for FY2003, leaving the drug control agencies (except for the Department of Defense) operating under a continuing resolution.

## Policy Questions and Concerns of the 108<sup>th</sup> Congress

### ONDCP Reauthorization

The Office of National Drug Control Policy Reauthorization Act of 2003 (**H.R. 2086/Souder**) was introduced on May 14, 2003, after a series of hearings on the issue were held by House Government Reform's Subcommittee on Criminal Justice, Drug Policy, and Human Resources. The subcommittee marked up the bill and ordered it reported, as amended, to the full committee on May 15, 2003. The full committee held a hearing and scheduled a markup for May 22, but the markup was postponed due to disagreements between the majority and minority over certain of the bill's provisions. These disagreements were resolved at a rescheduled markup on June 5 when the full committee approved an amendment in the nature of a substitute offered by Mr. Souder and ordered the bill reported, as amended, to the floor of the House.

H.R. 2086, as reported, would authorize to be appropriated such sums as necessary to conduct ONDCP's programs for an additional 5 years, fiscal years 2004 through 2008. It would also authorize specific amounts to be appropriated for the National Youth Anti-Drug Media Campaign for the same period of time (see following section). The bill reaffirms the authority of the ONDCP Director to oversee and coordinate the federal war on drugs. It attempts to increase accountability for the achievement of drug policy objectives by instituting an annual evaluation of the effectiveness of the previous year's Drug Control Strategy, including a review of the activities of the many federal departments and agencies involved in drug control efforts. The bill contains new funding allocation requirements for the High Intensity Drug Trafficking Area (HIDTA) program. Dropped from the bill as reported to the full committee were provisions that would have allowed ONDCP to use HIDTA funds to prosecute medical marijuana users and providers under certain circumstances and that would seem to permit the "drug czar" to use media campaign funds to oppose state initiatives to liberalize drug laws. (A side-by-side comparison of the provisions of H.R. 2086 with current law is available to congressional requesters from the author of this Issue Brief.)

Created in 1988 (P.L. 100-690), reauthorized in 1994 (P.L. 103-322) and again in 1998 (P.L. 105-277), authorization for the Office of National Drug Control Policy will expire on September 30, 2003. The last reauthorization process gave Congress an opportunity, through staff studies and several hearings, to assess the progress of the anti-drug effort and to develop specific, measurable goals for reducing drug consumption and drug-related crime in the United States. Annual reports to Congress containing specified measures of progress in implementing the National Drug Control Strategy were required.

House Government Reform's Subcommittee on Criminal Justice, Drug Policy, and Human Resources has held three hearings on ONDCP reauthorization issues. At the first, on March 5, 2003, ONDCP Director John P. Walters testified on his agency's recently released *National Drug Control Strategy* for 2003. He indicated that the Administration



would soon be submitting to Congress proposed reauthorizing language for ONDCP that will include reauthorization of the National Youth Anti-Drug Media Campaign. The second hearing, held on March 27, focused on the media campaign. The third hearing, on the High Intensity Drug Trafficking Areas and Counterdrug Technology Assessment programs, was held on April 8. With regard to the HIDTA program, Subcommittee Chairman Souder has stated that “HIDTA has reached far beyond its intended focus on national drug trafficking. We will need to consider how best to streamline and increase accountability within the HIDTA program.”

## Media Campaign Reauthorization

Originally authorized through FY2002 by the Drug-Free Media Campaign Act of 1998 (P.L. 105-277), reauthorization of the media campaign has been included in H.R. 2086, the bill to reauthorize ONDCP (see preceding section). H.R. 2086 would reauthorize the National Youth Anti-Drug Media Campaign for an additional 5 years, through FY2008. It would authorize appropriations of \$195 million for each of fiscal years 2004 and 2005 and \$210 million for each fiscal year 2006 through 2008. The media campaign was funded in amounts between \$180 and \$195 million per fiscal year between 1998 and 2002. For FY2003, however, its funding was reduced to \$150,000.

Conducted by ONDCP, the media campaign uses all media — from television to the Internet — to discourage drug use by youth, increase the perception of risk and disapproval associated with drugs, and encourage parents and other adults to talk to children about drugs. It has been criticized on grounds of its implementation and effectiveness. Noting that, with the latest appropriation, the total media campaign budget now exceeds \$1 billion since its inception, the FY2003 appropriations conference report states (p. 1345): “The conferees are deeply disturbed by the lack of evidence that the National Youth Anti-Drug Media Campaign has had any appreciable impact on youth drug use.” In May 2002, the ONDCP itself released a report that found little evidence that the youth campaign had had direct, favorable effects between 2000 and 2001 on drug use by young Americans. The General Accounting Office has also criticized aspects of the campaign. Recent ads painting drug users as supporters of terrorism have been criticized in media stories, some of which present the view that it is the drug prohibition laws that create the underground drug markets, some of the profits of which might find their way into the hands of terrorists.

A hearing on reauthorizing the media campaign was held by House Government Reform’s Subcommittee on Criminal Justice, Drug Policy and Human Resources on March 27, 2003. A provision in H.R. 2086 that appeared to allow the ONDCP Director to use media campaign funds to campaign against the passage of state medical marijuana initiatives was included in the bill as reported by the subcommittee, but was deleted from the bill during markup by the full committee. (For more information and analysis, see CRS Report RS21490, *War on Drugs: The National Youth Anti-Drug Media Campaign*.)

## The Drug Control Budget

Among the first orders of business of the new Congress was passage of the 11 remaining FY2003 appropriations bills that were left over from the 107<sup>th</sup> Congress. This was accomplished on February 20, 2003, when the Consolidated Appropriations Resolution, 2003 (H.J.Res. 2) became P.L. 108-7. The Drug Enforcement Administration (DEA) received

\$1.56 billion, 6% less than requested and nearly the same as the previous year's amount. The Office of National Drug Control Policy received \$525 million, slightly more than requested and \$2 million over the previous year. The conferees expressed continuing concern in the conference report about ONDCP's lack of progress in developing performance measures of effectiveness for the High Intensity Drug Trafficking Areas program. They also directed ONDCP to provide the appropriations committees, by June 20, 2003, with a report on problems that exist within the Southwest Border HIDTA.

Many departments and agencies other than ONDCP and DEA are involved in the war on drugs and are included in the national drug control budget summary, which is compiled annually by ONDCP. The FY2004 budget summary, released in February 2003, has an unusual wrinkle. The budget summaries usually compare the current year's *appropriated* amounts with the following year's *requested* amounts. Because of the late passage of the FY2003 budget, however, the appropriated amounts were not yet available when the President's FY2004 budget request was sent to the Hill and when ONDCP compiled the new drug control budget summary. The FY2004 budget summary therefore shows requested, not appropriated, amounts for FY2003 as well as for FY2004.

Additionally, ONDCP has revised its methodology for compiling the drug control budget, as announced in the 2002 strategy, resulting in lower estimates for many drug control agencies and the elimination of some agencies from the drug control budget altogether. By including only programs that are genuinely directed at reducing drug use and excluding agencies that play only a supporting role in the drug war, ONDCP believes the new drug budget structure will better serve Congress and the public and bring greater accountability to federal drug control efforts. Others, however, say the new budget methodology distorts the true costs of the war on drugs by excluding the costs of incarcerating drug offenders and other law enforcement activities, and by exaggerating drug treatment expenditures, thereby making the budget appear to be more evenly balanced between enforcement and prevention than in previous years, even though little change has actually taken place.

ONDCP's drug control budget summary in the 2002 *National Drug Control Strategy*, the last to be prepared using the old, more inclusive methodology, shows nearly \$18.1 billion in final budget authority for FY2001, more than \$18.8 billion appropriated for FY2002, and almost \$19.2 billion requested for FY2003. That strategy also contains a table based on the proposed new budget methodology. It revises the FY2003 budget request downward from \$19.2 billion to \$11.4 billion, a dramatic measure of the extent to which ONDCP thinks previous budgets were overstated. What was actually enacted across all of the appropriations measures and all of the drug control agencies for FY2003 has yet to be tabulated by ONDCP, using either the old or the new methodologies.

The President's FY2004 budget request was submitted to Congress on February 3, 2003. According to ONDCP's national drug control budget summary that was prepared using the new methodology, the President's proposed budget contains \$11.679 billion for drug control funding, with 70% of this amount designated for three federal departments, Health and Human Services (\$3.6 billion), Justice (\$2.6 billion), and Homeland Security (\$2.0 billion). This includes \$1.677 billion requested for DEA, a \$116 million increase over what was appropriated for FY2003, and \$523.6 million for ONDCP, slightly less than what was actually appropriated for FY2003.

The FY2004 budget calls for strengthening the Organized Crime and Drug Enforcement Task Force (OCDETF) program by combining the Treasury, Transportation, and Justice OCDETF programs within the Justice Department and increasing the combined funding level by 15% over FY2003 levels. The increases would include \$22 million to expand the Foreign Terrorist Tracking Task Force (FTTTF) to include drug investigation information gathered by OCDETF agencies, \$26 million to expand drug investigations linked to the Attorney General's Consolidated Priority Organization Target (CPOT) list, and \$10 million to expand drug-related financial and money laundering investigations. This new approach, centralized in Justice and coordinated with DEA and ONDCP, is expected by the Bush Administration to result in a more efficient and effective use of federal resources leading, in 2004, to a 5% reduction in the availability of drugs on the streets of America.

The appropriations subcommittees are now considering the administration's request for FY2004. Appropriations hearings provide an opportunity for congressional oversight of the federal antidrug effort. One subject almost certain to come up is the proper balance between demand reduction and supply reduction efforts. "Demand reduction" includes treatment, education, testing, and other prevention-related programs and research efforts. "Supply reduction" involves investigation and prosecution of drug manufacturers and traffickers, drug interdiction overseas, along U.S. borders, and at ports of entry, and the development of international accords to restrict supply. The size of the drug war budget in the near future could be limited by budgetary constraints imposed by the war against terror, including military expenditures in Afghanistan and Iraq, and the growing federal budget deficit.

## **DEA Administrator Nomination**

On March 21, 2003, President Bush announced his intention to nominate Karen P. Tandy to be the Drug Enforcement Administration's new administrator. Tandy currently serves in the Department of Justice (DOJ) as Associate Deputy Attorney General and Director of the Organized Crime Drug Enforcement Task Force. She previously served in DOJ as Chief of Litigation in the Asset Forfeiture Office and as Deputy Chief for Narcotics and Dangerous Drugs. Earlier, she prosecuted drug, money laundering, and forfeiture cases as an Assistant United States Attorney in the Eastern District of Virginia and in the Western District of Washington.

The Senate Judiciary Committee held a confirmation hearing on the President's choice on July 10, 2003. The nomination now awaits a vote by the full Senate. The position fell vacant when Asa Hutchinson, DEA's previous head, was confirmed as DHS Under Secretary for Border and Transportation Security on January 23, 2003.

## **Impact of Homeland Security on Drug Control Agencies**

Since the terrorist attacks of September 11, 2001, federal law enforcement agencies have had to move resources from some of their usual activities to the new mission of homeland security. The FBI reorganization, for example, has shifted 518 field agents from such activities as drug investigations, white-collar crimes, and violent crimes to counterterrorism. The FBI has revealed plans to reduce by about 29% the number of special agents involved in drug investigations. The U.S. Customs Service, Coast Guard, and other agencies are similarly affected. The Drug Enforcement Administration is being asked to take up the resultant slack in drug law enforcement. Some contend that the efforts are

complementary to some extent. For example, strengthened counterterrorism efforts on the borders can also result in higher drug interdiction rates.

The creation of DHS will also likely influence the future conduct of the war on drugs. Customs, Coast Guard, and the U.S. Border Patrol, among other agencies, are being incorporated into the new department. Section 101(b) of the Homeland Security Act of 2002 (P.L. 107-296), which established the department, states that the primary mission of DHS is, in part, to “monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.” Section 878 of the act creates within DHS the position of Counternarcotics Officer, who will also serve as United States Interdiction Coordinator, a position previously appointed by the ONDCP director. The appointment of Roger Mackin, a long-time drug warrior, to this position was announced on March 25, 2003.

In light of this significant reallocation of equipment and personnel, the 108<sup>th</sup> Congress might choose to consider — possibly through oversight hearings, investigations, and legislative proposals — how the war on drugs will be affected by the new emphasis on homeland security, how mission priorities of federal agencies will change, how the creation of the Department of Homeland Security will affect the war on drugs, how to improve information sharing between law enforcement agencies, and similar questions that have arisen due to the heightened terrorist threat.

## **Control of MDMA (Ecstasy)**

The Illicit Drug Anti-Proliferation Act of 2003 (originally introduced as **S. 226/H.R. 718**) was included in conference as a miscellaneous provision (Section 608) of **S. 151**, the PROTECT Act, a children’s protection act also known as the Amber Alert Act. S. 151 was signed into law on May 1, 2003 (**P.L. 108-21**). The Illicit Drug Anti-Proliferation Act amends Section 416 of the Controlled Substances Act, known as the “crack house statute,” to more directly target the producers of dance events, or “raves,” at which drugs such as MDMA (Ecstasy) are often used. It shifts the statute’s emphasis from punishing those who establish places where drugs are made and consumed, such as crack houses, to those who knowingly maintain “drug-involved premises,” including outdoor events such as rock concerts. In addition to the criminal penalties that already exist in the crack house statute, the amended statute adds a civil penalty, thereby lowering the standard of proof from beyond a reasonable doubt to a preponderance of evidence.

The new law also directs the Sentencing Commission to review and consider stiffening the federal sentencing guidelines with respect to offenses involving gamma hydroxybutyric (GHB), the so-called date rape drug; authorizes \$5.9 million to be appropriated to DEA for the hiring of special agents to serve as Demand Reduction Coordinators at the state level; and authorizes such sums as necessary to DEA for drug education efforts directed at youth, their parents, and others about Ecstasy and other so-called “club drugs.”

The RAVE act was originally introduced in the 107<sup>th</sup> Congress (S. 2633/H.R. 5519). S. 2633 was reported out of committee and placed on the Senate Legislative Calendar. It was not called up, however, after being targeted by several civil liberties, drug reform, and dance culture groups that organized demonstrations and letter-writing campaigns against the proposal, actions that resumed against the bills when they were reintroduced in the 108<sup>th</sup>

Congress. For more information and analysis, see CRS Report RS21108, *Ecstasy: Legislative Proposals in the 107<sup>th</sup> Congress to Control MDMA*.

## Ballot Initiatives and Budgetary Shortfalls in the States

Recent developments at the state level could attract the attention of the 108<sup>th</sup> Congress and lead to hearings and possible legislation. Forced into a stance of fiscal restraint by declining revenues, many states are seeking to cut costs by reducing the number of nonviolent drug offenders in their prisons. Drug courts and drug treatment programs are seen as money-saving alternatives to imprisonment. Mandatory minimum sentences for nonviolent crimes such as drug possession and “three strikes” laws are being revisited by some state legislatures. Also, voters in some states have approved initiatives that mandate treatment instead of prison for certain drug offenders. Other state ballot referenda have approved the use of marijuana for medical purposes.

According to a December 19, 2002 article in the *New York Times*, states are reducing their budget deficits by laying off prison guards, closing prisons, giving inmates early releases from prison, repealing mandatory minimum sentences, sending drug offenders to treatment rather than prison, not prosecuting misdemeanor violations, and finding ways around truth-in-sentencing laws and no-parole policies in order to release convicted felons early. “Last week the legislature in Michigan,” the article says, “voted to repeal the state’s strict mandatory minimum sentencing laws for drug crimes which have led to even life sentences for possession of cocaine or heroin.”

Since the states collectively spend more money and resources on the war on drugs than the federal government, these developments could detract from the country’s overall anti-drug effort. Some may argue that it is necessary for the federal government to pick up more of the tab through grant programs or other forms of aid to the states if it expects the states to continue the “get-tough” policies of recent years. Indeed, some state officials view the wars on drugs *and* terrorism as enormous, unfunded federal mandates and would welcome increased federal assistance. Large federal budget deficits may, however, constrain new federal spending.

## Other Possible Issues

**Crack/powder sentencing disparity.** Several bills were introduced in the 107<sup>th</sup> Congress to reduce the penalty disparity between crack and powder cocaine offenses, but they saw no action. Similar proposals are expected to be introduced in the 108<sup>th</sup>, such as the introduction of **H.R. 345** (Bartlett) on January 27, 2003.

**Mandatory minimums.** Mandatory minimum sentences with regard to drug offenses have become increasingly controversial in recent years, both at the grass-roots level and among some senior federal judges. While the intent of mandatory sentencing was to punish high-level drug offenders, critics contend that the laws have instead jailed low-level drug offenders for unusually long periods of time. These critics point out that the average sentence for first-time, nonviolent drug offenses is longer than the average sentences for rape, child molestation, bank robbery, or manslaughter. Proponents of mandatory minimums argue that they constitute an effective way to keep dangerous criminals off the streets. Bills have been introduced in Congress since at least 1993 to modify or drop mandatory

minimums. Reform bills, while expected to be reintroduced in the 108<sup>th</sup>, are likely to face rigorous review.

**Law enforcement grant consolidation.** The Bush Administration has proposed the consolidation of many law enforcement assistance programs that are administered by DOJ's Office of Justice Programs into a single "Justice Assistance" account. This proposal was under active study by committees of jurisdiction in the 107<sup>th</sup> Congress, and could see further action in the 108<sup>th</sup> Congress. Of special interest to some in Congress is how implementation of this proposal would affect grant programs related to the war on drugs.

**Souder Amendment to the Higher Education Act.** In 1998, the 105<sup>th</sup> Congress included in its reauthorization of the Higher Education Act (HEA) an amendment (20 U.S.C. 1091(r)(1)) that denies federal financial aid to any student convicted of a drug offense. During the 2001-2002 academic year, according to the Department of Education, some 43,000 students were denied student loans because of this provision of law, known as the Souder amendment. Changes to this provision may be considered as part of the potential reauthorization of the HEA during the 108<sup>th</sup> Congress. Critics contend that the amendment has a greater impact on minorities due to an alleged racially disproportionate enforcement of drug laws and because minorities are likely to be more in need of student aid. A national organization, Students for Sensible Drug Policy, has arisen in opposition to it, and a House bill, first introduced in the 107<sup>th</sup> Congress to repeal it, has been reintroduced in the 108<sup>th</sup> Congress as **H.R. 685** (Frank). Another House bill in the last Congress, with Rep. Souder as an original co-sponsor, would have changed the amendment to restrict its application to drug offenses that occur only when the student is actually receiving student aid. It has been reintroduced in the 108<sup>th</sup> Congress as **H.R. 696** (Meeks). The ONDCP reauthorization bill (**H.R. 2086/Souder**), as well, contains a provision designed to encourage the Department of Education to deny loans only to students who are convicted of drug offenses while actually receiving financial aid.

## Executive Branch Actions

### The National Drug Control Strategy

In February 2003, President Bush transmitted to Congress the 2003 National Drug Control Strategy. It continues with the previous strategy's three core priorities of stopping drug use before it starts, healing America's drug users, and disrupting the drug market.

**Stopping drug use before it starts.** The emphasis here is on education and community engagement to reduce drug use by young people. The 2002 strategy set forth the goals of reducing past-month drug use by youth and adults in America by 10% in 2 years and 25% in 5 years from the baseline established by the 2000 *National Household Survey on Drug Abuse*. This strategy reports initial progress toward meeting these goals and cites the Monitoring the Future survey results discussed below to argue that ONDCP is on track for meeting the 2-year objective with regard to young Americans. The baselines have been changed, however, due to changes in the National Household Survey that have created a discontinuity between the 2002 survey and previous years' data. ONDCP will now measure progress by *youth* toward the goals by using the Monitoring the Future survey, with the 2000-

2001 school year as a baseline. Since this survey does not measure *adult* drug usage, the revised National Household Survey will be used to measure progress toward the goals by adults, but the baseline will be the survey's 2002 data. The strategy proposes, in the FY2004 drug control budget, a \$10 million increase in funding for the Drug-Free Communities Support Program, \$5 million for a new Parents Drug Corps, and \$8 million for student drug testing.

**Healing America's Drug Users.** The 2003 strategy estimates that, of the 16 million Americans who use drugs on a monthly basis, roughly 6 million meet the clinical criteria for needing drug treatment. The strategy proposes \$3.6 billion for drug treatment, and increase of 8.2% over FY2003. The strategy also includes the President's treatment initiative announced in the 2003 State of the Union Address of \$600 million over 3 years to provide vouchers for treatment services from a variety of sources including faith-based organizations.

**Disrupting the drug market.** The strategy proposes \$2.1 billion in FY2004 for border drug interdiction, an increase of 7.3% from FY2003, and \$731 million for the Andean Counterdrug Initiative. Internationally, the strategy intends to continue to target the supply of illegal drugs in the source countries, and domestically to promote the use by law enforcement agencies of a single list identifying high-level drug trafficking targets — the Consolidated Priority Organization Targeting (CPOT) list. The 28 High Intensity Drug Trafficking Areas around the country, according to the strategy, are now using the CPOT list to coordinate their activities against organizations at the top of the trafficking pyramid.

## Monitoring the Future's 2002 Study

The Administration has released drug use statistics to show it is moving toward intended goals. At an upbeat Washington press conference in December 2002, administration officials released the results of the 2002 Monitoring the Future survey of drug use by 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> grade students in U.S. schools. Based on a representative sample of more than 43,000 students in 394 schools across the country, the results showed a general downward trend in drug use by high school students from the previous year. For the first time, teen use of Ecstasy decreased. Use of other illegal drugs also showed declines in most student categories for most drugs. The proportions of 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> graders reporting that they used an illegal drug in the previous year now stand at 18%, 35%, and 41%, respectively. The proportions saying they have used an illegal drug at least once in their lives stand at 25%, 45%, and 53%.

## New DEA Rule on Industrial Hemp

The term "industrial hemp" refers to cannabis plants that are grown to produce fiber and oil used in industrial products such as paper, rope, clothing, industrial solvents, and animal feed. Other hemp products include foods such as nutrition bars, salad dressings, and beer, and personal care products such as shampoo, creams, and lotions. In October 2001, DEA published three rules in the *Federal Register* (66 FR 51530-51544) that make illegal any hemp products that could cause THC, a psychoactive ingredient of marijuana, to enter the human body. Manufacturers and distributors of THC-containing hemp products made for human consumption were given 120 days, until February 6, 2002, to dispose of such products. The Hemp Industries Association contested them in court, and the U.S. Ninth Circuit Court of Appeals temporarily blocked their implementation. More than 115,000

public comments against the new rules were submitted to the DEA. The final rule was published in the *Federal Register* on February 21, 2003. It bans the sale of all hemp food products by April 21, 2003. The Hemp Industries Association once again requested a stay, which the Ninth Circuit granted on April 16.

## **DEA's Reaction to Medical Marijuana**

Nine states, beginning with California in 1996, have approved the medical use of marijuana under a doctor's supervision. According to a study to be published in the *Journal of Cannabis Therapeutics*, 30,000 California patients and another 5,000 patients in the other eight states are estimated to possess physician's recommendations to use marijuana medically. In response to this situation, DEA agents have raided and shut down medical marijuana providers in several states, backed by a 2001 U.S. Supreme Court ruling affirming that federal drug laws take precedence over state laws and barring doctors from prescribing illegal drugs.

Opposition in defiance of the DEA tactics has arisen in California cities such as Santa Cruz and San Francisco. In November 2002, nearly 7 out of 10 San Francisco voters approved Proposition S, which encourages the city's Board of Supervisors to enact a law authorizing the cultivation and distribution of medicinal marijuana by the city government. More recently, on April 23, 2003, the city and county of Santa Cruz, along with 13 medical marijuana patients, filed a lawsuit in response to DEA's raid last September on the Wo/Men's Alliance for Medical Marijuana (WAMM). The suit is reportedly the first court challenge to be brought by a local governmental entity against the federal war on drugs.

## **Drugs in Federal Prisons**

According to a report released by the Department of Justice in January 2003, illegal drugs are present in almost all federal prisons, even at the highest-security facilities, as evidenced by prisoner drug tests, prisoner overdoses, prison drug finds, and criminal and administrative cases filed against prisoners, staff, and visitors. Visitors, staff, and the mail are the three primary ways drugs enter the prisons. The report found that DOJ's Bureau of Prisons (BOP) employs several methods to intercept drug smuggling by visitors and through the mail, but it has failed to take adequate measures to prevent drug smuggling by its staff. The report, prepared by DOJ's Office of the Inspector General, found that an insufficient number of BOP inmates receive drug treatment, partly because their treatment needs are underestimated and inadequately tracked. The report contains 15 recommendations to make BOP's drug interdiction and treatment efforts more effective, including greater use of pat searches of visitors, better monitoring of inmate visiting sessions, restrictions on contact visits for some prisoners, and better documentation of prisoners' diagnoses and drug treatment needs.

## **Other Developments of Relevance to Congress**

**Gateway Effect of Marijuana.** RAND, a nonprofit policy research institution, released a research brief in December 2002 that summarizes the results of a study, conducted by its Drug Policy Research Center, of the theory that those who use marijuana are more



likely to advance to the use of hard drugs because of their marijuana usage. This widely-believed “gateway effect” of marijuana use, the researchers concluded, might not be valid after all. Marijuana use, according to RAND’s model, could precede the use of harder drugs simply because marijuana is available to those with a propensity to use drugs earlier in life than are hard drugs. While not disproving the gateway theory, the researchers argue that it should not be assumed to be true by policymakers who are weighing the harms and benefits of alternative marijuana policies. The research brief states:

Some might argue that as long as the gateway theory remains a possible explanation, policymakers should play it safe and retain current strictures against marijuana use and possession. That attitude might be a sound one if current marijuana policies were free of costs and harms. But prohibition policies are not cost-free, and their harms are significant: The more than 700,000 marijuana arrests per year in the United States burden individuals, families, neighborhoods, and society as a whole.

**Proposition 36 in Los Angeles County.** California’s Proposition 36, enacted in July 2001, requires that first and second offenders convicted of simple drug possession be offered treatment rather than jail. Los Angeles County released a report on November 26, 2002, assessing the county’s experience with implementing the measure during its first year of existence. There were 8,329 people sentenced to treatment, nearly 7,000 fewer than projected. Nearly 20% of those failed to report for treatment. Many more had dropped out of their treatment programs. Nevertheless, the report judges the measure a success for diverting thousands of people from prison, thereby saving taxpayer dollars.

## LEGISLATION

### **Sec. 608 of P.L. 108-21 (S. 226/Biden)**

The Illicit Drug Anti-Proliferation Act of 2003. Amends the crack house statute (Sec. 416 of the Controlled Substances Act) to more directly target the promoters of “raves” at which drugs such as MDMA (Ecstasy) are widely used. It also: directs the Sentencing Commission to review and consider stiffening the federal sentencing guidelines with respect to offenses involving the club drug gamma hydroxybutyric (GHB), the so-called date rape drug; authorizes \$5.9 million to be appropriated to DEA for the hiring of a special agent in each state to serve as a “Demand Reduction Coordinator”; and authorizes such sums as necessary to DEA for drug education efforts directed at youth, their parents, and others about “club drugs.” **S. 226** was introduced on January 28, 2003, and referred to the Committee on the Judiciary. Included in conference as a miscellaneous provision (Sec. 608) of **S. 151**, the PROTECT Act, a child protection act that became **P.L. 108-21** on May 1, 2003.

### **H.R. 345 (Bartlett)**

Powder-Crack Cocaine Penalty Equalization Act of 2003. Amends the Controlled Substances Act and the Controlled Substances Import and Export Act to reduce the amounts of powder cocaine necessary for specified mandatory minimum sentences so that they equal those for crack cocaine. Introduced January 27, 2003, and referred to the Committee on the Judiciary and the Committee on Energy and Commerce.

**H.R. 685 (Frank)**

Amends the Higher Education Act of 1965 to repeal the provisions prohibiting persons convicted of drug offenses from receiving student financial assistance. Introduced February 11, 2003, and referred to the House Committee on Education and the Workforce.

**H.R. 696 (Meeks)**

Amends the Higher Education Act of 1965 to restrict the disqualification of students for drug offenses to those students who committed offenses while actually receiving student financial aid. Introduced February 11, 2003, and referred to the House Committee on Education and the Workforce.

**H.R. 718 (Coble)**

The Reducing Americans' Vulnerability to Ecstasy Act, or RAVE Act. Introduced on February 12, 2003, and referred to the Committee on the Judiciary and the Committee on Energy and Commerce. Except for title, identical to **S. 226/Biden**, which was enacted as a miscellaneous provision of **P.L. 108-21** (see entry above).

**H.R. 2086 (Souder)**

Office of National Drug Control Policy Reauthorization Act of 2003. Introduced on May 14, 2003, and referred to the Committee on Government Reform, and in addition to the Committees on the Judiciary, Energy and Commerce, and Intelligence (Permanent Select). The Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources ordered the bill reported, as amended, to the full committee on May 15, 2003. The full committee marked up the bill on June 5, 2003, and ordered it reported, as amended, to the floor of the House.

**CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS**

U.S. Congress, Senate Committee on Appropriations, *Effectiveness of the National Youth Anti-Drug Media Campaign*, special hearing, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2002 (Washington: GPO, 2002).

**FOR ADDITIONAL READING**

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Kleiman, Mark A.R. *Against Excess: Drug Policy for Results*. New York, Basic Books [1992] 474 pp.

Musto, David F., M.D. *The American Disease: Origins of Narcotic Control*. New York, Oxford University Press [1987] 384 pp.

United States. Office of National Drug Control Policy. *National Drug Control Strategy*. Washington, D.C., Office of National Drug Control Policy, Executive Office of the President [February 2003] 54 pp. Available at [<http://www.whitehousedrugpolicy.gov/policy/ndcs.html> ]

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