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War On Drugs: Legislation in the 108th Congress and Related Developments

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CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Introduction

- Identifying the Problem
 - Costs to Society of Illegal Drug Use
 - Deaths from Drugs
 - Drugs and Crime
- Framing the Issue

Actions of the 107th Congress

Policy Questions and Concerns of the 108th Congress

- Drug Control Appropriations
 - FY2003 Appropriations
 - FY2004 Appropriations
 - FY2005 Appropriations
- ONDCP Reauthorization
- Media Campaign Reauthorization
- The Hinchey-Rohrabacher Amendment
- DEA Administrator Nomination
- Impact of Homeland Security on Drug Control Agencies
- Control of Ecstasy
- Souder Amendment to the Higher Education Act

Executive Branch Actions

- The National Drug Control Strategy
 - Stopping Drug Use Before it Starts
 - Healing America's Drug Users
 - Disrupting the Drug Market
- The National Drug Control Budget
- Monitoring the Future's 2003 Study
- DEA's Proposed Rule on Industrial Hemp
- DEA Raids on Medical Cannabis

Related Developments

- Ballot Initiatives and Budgetary Shortfalls in the States

LEGISLATION

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

War on Drugs: Legislation in the 108th Congress and Related Developments

SUMMARY

Prohibiting the nonmedical 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. More than 1.6 million people are estimated to have been arrested in the United States in 2003 for drug abuse violations.

The U.S. government remains committed to a policy of zero tolerance when it comes to the use of controlled substances. A different approach has recently emerged in Europe and elsewhere as governments experiment with less restrictive policies, such as decriminalization and “harm reduction” measures.

Among the early actions of the 108th 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 Ecstasy.

The House passed H.R. 2086, to reauthorize ONDCP (the office of the “Drug Czar”) and related programs, on September 30, 2003. A Senate bill to extend ONDCP (S. 1860) was introduced on November 14, 2003, but the Senate took no action on it or on the House bill.

Other drug control issues taken up in the first session included drug control budget appropriations for FY2004 and confirmation by the Senate of a new head of the Drug Enforcement Administration (DEA).

In its second session, the 108th Congress acted on the President’s budget request for FY2005. The Hinchey-Rohrabacher Amendment to protect medical cannabis users from federal prosecution in the 10 states that have approved its use was debated and defeated on the floor of the House on July 7, 2004.

The compromise intelligence reform act, which became P.L. 108-458 on December 17, 2004, created within the Department of Homeland Security (DHS) an Office of Counternarcotics Enforcement with broad powers to coordinate federal policy and operations to stop the entry of illegal drugs into the United States.

Executive Branch actions concerning the war on drugs that were of relevance to the 108th Congress included the President’s drug control strategy for FY2004, the surveys of drug use conducted by the Department of Health and Human Services, and actions taken by DEA against industrial hemp products and medical marijuana providers.

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



MOST RECENT DEVELOPMENTS

The Intelligence Reform and Terrorism Prevention Act (P.L. 108-458, Sec. 7407), signed on December 17, created within the Department of Homeland Security (DHS) an Office of Counternarcotics Enforcement, headed by a director to be appointed by the President, with the advice and consent of the Senate. The Director of Counternarcotics Enforcement could also serve as the United States Interdiction Coordination, the only DHS official who could do so. The responsibilities of the new office to coordinate federal policy and operations in drug interdiction efforts are broader than those of the DHS counternarcotics office that it replaces, which was created by the Homeland Security Act of 2002 (P.L. 107-296, Sec. 878).

BACKGROUND AND ANALYSIS

Introduction

The control of certain mind-altering substances 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 has come to be known, encompasses a wide array of public policies and programs designed to curb the use of illegal drugs by residents of the United States and its outlying areas.

It 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 49th 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 108th Congress was 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 developments of likely interest to the congressional audience that follows this issue.

Identifying the Problem

Costs to Society of Illegal Drug Use. The Office of National Drug Control Policy estimates the economic cost of illegal drug use in the United States to have been \$160.7 billion in 2000, when some 25 million Americans used an illegal drug at least once during the year. This cost equals slightly more than 1.6% of that year's gross domestic product of \$9,817.0 billion. Losses in productivity accounted for 69% of the estimated cost of drug use. (Incarceration was the leading cause of lost productivity, followed by crime careers, drug abuse related illness, and premature death.) Health care costs were estimated at 9% of the total cost of illegal drug use. Other costs — including drug-related expenses for police, courts, prisons, and social welfare — made up the remaining 22% of the cost of illicit drug use. This breakdown reveals that a large part of the price society pays for drug use arises not from the effects of the drugs themselves, but from the costs of enforcing the laws that prohibit them.

Deaths from Drugs. The number of deaths due to drug overdoses provides another, frequently cited measure of the cost of drug use. At congressional hearings, witnesses often cite the number of drug-induced deaths reported annually by the Centers for Disease Control and Prevention (CDC) to justify the drug war. Actually, the CDC's category "drug-induced causes" also includes deaths from *legal* drugs, such as suicides and accidental deaths from medically prescribed drugs. The most recent CDC report ("Deaths: Final Data for 2002," *National Vital Statistics Reports*, October 12, 2004, p. 11) says that 26,018 persons died of "drug-induced causes" in the United States in 2002. 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 19,928 deaths due to "alcohol-induced causes" in 2002. The number of Americans who die annually from overdoses of illegal drugs, such as heroin and cocaine, is simply not known, but the CDC data do indicate that it is fewer than is usually claimed and that no single controlled substance causes as many deaths as does alcohol.

Drugs and Crime. The Federal Bureau of Investigation (FBI) reports that in 2003, of the 9,517 homicides in which the circumstances were known, 717 murders (7.6%) were narcotics-related. In 1997, according to the Department of Justice's Bureau of Justice Statistics, 19% of state prisoners and 16% of federal prisoners committed their current offense to obtain money for drugs. The FBI estimates that more than 1.6 million people were arrested in the United States in 2003 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% was serving time for drug offenses. The United States now has the highest incarceration rate of all industrialized countries, due in no small measure to the legal penalties associated with the war on drugs.

Framing the Issue

The U.S. government frames the issue as an essential effort to reduce the costs to society of illegal drug use through vigorous enforcement of the laws that prohibit such behavior. The government's attempts early in the last century to control the non-medical use of the opiates, cocaine, and marijuana led to 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.

After World War II, the federal government gradually took on a more central role in the American criminal justice system. This federalization of crime resulted in the enactment by Congress of four major crime control measures that, as amended, guide today's drug war:

- The Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513);
- 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." Although that ambitious and, some would say, unrealistic goal remains unmet, the official policy remains one of zero tolerance. Responsible drug use, unlike responsible alcohol use, is considered an oxymoron. To *use* a prohibited substance is defined as *abuse*, no matter how often the drug is taken, regardless of dosage, whether or not the user is addicted. Studies show that most drug users are not addicts,¹ yet all users of illegal drugs are subject to severe penalties and are frequently forced into treatment, if not prison.

Under U.S. leadership, and backed by the United Nations, the drug war is global, with the participation of every country in the world. Recently, however, that united front has begun to fracture. 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 has legalized marijuana for medical uses and is in the process of decriminalizing the possession of small amounts of marijuana for personal use. The chief of the Mexican federal police has announced his support of worldwide drug legalization 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. Even within the United States, voters in some states have approved ballot initiatives to lessen the penalties for using certain drugs.

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 are mainly concerned with:

- the priority and level of resources assigned to the drug war compared to other pressing federal priorities (e.g., drug interdiction vs. counterterrorism);

¹ According to the U.S. Department of Health and Human Services, for example, of the 35 million Americans who used an illicit drug in 2003, 7.3 million or 21% needed treatment for an illicit drug problem. The number needing treatment is also a minority (37%) of the 19.5 million *current* drug users, defined as those who used an illicit drug at least once in the past month. (Many experts believe the government overstates the number needing treatment but, even so, these numbers prove the point.) See Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *Results from the 2003 National Survey on Drug Use and Health: National Findings*, NSDUH Series H-25, DHHS Publication No. SMA 04-3964, Sept. 2004, pp. 68 and 188.

- the relative emphasis given to each of the components of the war on drugs (e.g., enforcement vs. treatment); and
- the effectiveness of various drug control programs (e.g., the youth anti-drug media campaign).

Actions of the 107th Congress

Fewer drug control bills were enacted by the 107th Congress than by other recent Congresses. The 107th Congress did reauthorize the Drug-Free Communities Support Program for another five 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 107th Congress approved FY2002 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 108th Congress

Drug Control Appropriations

FY2003 Appropriations. 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 107th 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 (HIDTA) 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.

FY2004 Appropriations. The House Commerce, Justice, State (CJS) FY2004 appropriations bill (H.R. 2799) cleared the House and was sent to the Senate on July 23, 2003. The Senate bill (S. 1585) was reported by the Senate Appropriations Committee on September 5 and was awaiting floor action when time ran out and the CJS bill was included in H.R. 2673, the Consolidated Appropriations Act, 2004. The agreed-upon FY2004 amounts of selected drug enforcement appropriations are shown in **Table 1**. (Further details on all appropriations measures can be found on the appropriations page of the CRS website.)

Table 1. CJS: Selected Drug Enforcement Appropriations
(dollars in millions)

Agency or Program	FY2003 Enacted ^a	FY2004 Request	FY2004 Enacted ^b	FY2005 Request	FY2005 Enacted ^c
DEA Salaries & Expenses	\$ 1,550.8	\$ 1,558.7	\$ 1,584.5	\$ 1,661.5	\$ 1,653.3
OCDETF	\$ 367.7	\$ 541.8	\$ 550.6	\$ 580.6	\$ 561.0
Weed & Seed	\$ 58.5	—	\$ 57.9	\$ 51.2	\$ 62.0
Drug Courts	\$ 44.7	\$ 68.0	\$ 38.1	\$ 67.5	\$ 40.0

a. Amounts shown for FY2003 include a 0.65% rescission.

b. Amounts shown for FY2004 include rescissions of 0.59% government-wide and 0.465% applied to DOJ.

c. Rescissions for FY2005 are not included in amounts shown.

ONDCP is included in the Transportation and Treasury appropriations bill. The House passed its bill (H.R. 2989) on September 9, 2003. The Senate passed its version of H.R. 2989, amended, on October 23, 2003. The FY2004 consolidated appropriations act funded ONDCP and its programs at levels close to those of the previous year. It rejected the Administration's request for a \$20 million increase for the media campaign. (The House appropriations report (H.Rept. 108-243, p. 172) had said that any increase in funding for the media campaign "cannot be justified at this time.") It also rejected the request for a \$20 million cut in the HIDTA program.

Table 2. Appropriations for ONDCP Expenses and Programs
(dollars in millions)

Account or Program	FY2003 Enacted ^a	FY2004 Request	FY2004 Enacted ^b	FY2005 Request	FY2005 Enacted ^c
ONDCP Salaries & Expenses	\$ 26.3	\$ 27.3	\$ 28.0	\$ 27.6	\$ 27.0
CTAC	\$ 47.7	\$ 40.0	\$ 42.0	\$ 40.0	\$ 42.0
HIDTA	\$ 224.9	\$ 206.4	\$ 226.4	\$ 208.4	\$ 228.4
Media Campaign	\$ 149.0	\$ 170.0	\$ 145.0	\$ 145.0	\$ 120.0
Drug-Free Communities	\$ 59.6	\$ 70.0	\$ 70.0	\$ 80.0	\$ 80.0
Other Programs	\$ 12.9	\$ 10.0	\$ 14.0	\$ 10.0	\$ 13.7
Total	\$ 520.6	\$ 523.7	\$ 525.3	\$ 511.0	\$ 511.0

Note: Amounts in some columns do not add to total due to rounding.

a. Amounts shown for FY2003 include a 0.65% rescission. (The pre-rescission total was \$524.0 million.)

b. Amounts shown for FY2004 do not include a 0.59% rescission.

c. Rescissions for FY2005 are not included in amounts shown.

FY2005 Appropriations. The President's FY2005 budget request was submitted to Congress on February 2, 2004. Requested and appropriated amounts for selected drug control agencies and programs are shown in **Tables 1** and **2**. The CJS and Transportation/Treasury appropriations bills were included in the Consolidated Appropriations Act, 2005 (H.R. 4818), which became P.L. 108-447 on December 8, 2004. DEA received a 4% increase, and OCDETF, Weed and Seed, and drug courts also saw increases. The overall ONDCP budget was held to the same level as the previous year, with the HIDTA program seeing an increase and the media campaign a compensating decrease in funding. With the additional number of DEA agents now funded, the total number of DEA and FBI agents working on drug cases will exceed the pre-September 11, 2001, level by 202 positions.

ONDCP Reauthorization

Created in 1988 (P.L. 100-690), reauthorized in 1994 and again in 1998 (P.L. 105-277), authorization for the Office of National Drug Control Policy expired on September 30, 2003. A House reauthorization bill (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 forwarded it 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. The House passed the measure, by voice vote under suspension of the rules, on September 30, 2003.

H.R. 2086, as approved in the House, would authorize to be appropriated such sums as necessary to conduct ONDCP's programs for an additional five years, FY2004 through FY2008. 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 reaffirmed the authority of the ONDCP Director to oversee and coordinate the federal war on drugs. It attempted 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 contained new funding allocation requirements for the High Intensity Drug Trafficking Areas (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.

The Senate's reauthorization bill (S. 1860) was introduced on November 14, 2003, by Senators Hatch, Biden, and Grassley. Like the House bill, S. 1860 would authorize such sums as necessary to conduct ONDCP's programs through FY2008 and contained specific appropriations for the HIDTA program and the media campaign. The Senate bill would enhance ONDCP's authority to coordinate the anti-drug programs of other federal agencies, require ONDCP to develop specific goals and measurements for evaluating agency performance, refocus the HIDTA program, and strengthen the technology transfer program of ONDCP's Counterdrug Technology Assessment Center. Unlike the House bill, the Senate

proposal would authorize several drug prevention and treatment provisions taken from an unenacted measure introduced in the 107th Congress, S. 304. It also incorporated the provisions of two bills introduced earlier in the 108th, the Anabolic Steroid Control Act of 2003 (S. 1780)² and a bill to authorize five National Guard counterdrug schools (S. 1785). For more information and analysis, see CRS Report RL32352, *War on Drugs: Reauthorization of the Office of National Drug Control Policy*.

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 was included in H.R. 2086 and S. 1860, bills to reauthorize ONDCP (see preceding section). H.R. 2086 would continue the National Youth Anti-Drug Media Campaign for an additional five years, through FY2008. H.R. 2086 would authorize appropriations of \$195 million for each FY2004 and FY2005 and \$210 million for each FY2006 through FY2008. S. 1860 would hold the authorization at \$195 million annually for all five years. The media campaign was funded in amounts between \$180 and \$195 million per fiscal year between 1998 and 2002. Its FY2003 funding, however, was reduced to \$150 million, and it was further reduced to \$145 million for FY2004 (before both years' rescissions).

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 the cumulative media campaign budget now exceeded \$1 billion since the program's inception, the FY2003 appropriations conference report stated (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 Government Accountability Office has also criticized aspects of the campaign.³ 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, not the drug users, 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*.)

² A related bill, the Anabolic Steroid Control Act of 2004 (S. 2195), became P.L.108-358 on Oct. 22, 2004.

³ See, for example: U.S. Government Accountability Office, *Anti-Drug Media Campaign: Aspects of Advertising Contract Mismanaged by the Government; Contractor Improperly Charged Some Costs*, GAO-01-623, June 2001.

The Hinchey-Rohrabacher Amendment

In response to DEA raids on medical cannabis users and providers in California and other states that have approved the medical use of marijuana under a doctor's supervision (see below), Representatives Hinchey and Rohrabacher introduced an amendment to H.R. 2799, the Commerce, Justice, State appropriations bill for FY2004. The amendment would have prevented the Justice Department from using appropriated funds to interfere with the implementation of medical cannabis laws in the nine states that had approved such use. The amendment was debated on the floor of the House on July 22, 2003. When brought to a vote on the following day, it was defeated 152 to 273 (66 votes short of passage). This was the first congressional vote on the issue of medical cannabis.

The amendment was offered again in the second session of the 108th Congress. It was debated on the House floor on July 7, 2004, during consideration of H.R. 4754, the Commerce, Justice, State appropriations bill for FY2005. This time, it would have applied to 10 states, with the recent addition of Vermont to the list of states that have approved the use of medical cannabis. It was again defeated by a similar margin, 148 to 268. The amendment is expected to be offered again as a measure of support in the House for marijuana law reform.

DEA Administrator Nomination

On July 31, 2003, Karen P. Tandy was confirmed by unanimous consent in the U.S. Senate as Administrator of the Drug Enforcement Administration. Tandy was serving 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 position fell vacant on January 23, 2003, when Asa Hutchinson, DEA's previous head, was confirmed as Under Secretary for Border and Transportation Security in the Department of Homeland Security.

Impact of Homeland Security on Drug Control Agencies

After the terrorist attacks of September 11, 2001, federal law enforcement agencies had to move resources from some of their usual activities to the new mission of homeland security. The FBI, for example, shifted agents from drug investigations to counterterrorism and counterintelligence activities. The U.S. Customs Service, Coast Guard, and other agencies with drug-control missions were similarly affected. The Drug Enforcement Administration was asked to take up the resultant slack in drug-law enforcement.

Congress has provided DEA with increased funding to compensate for the FBI's and other agencies' changing priorities. With the additional DEA agents funded by the FY2005 consolidated appropriations act, according to the conference report (H.Rept. 108-792, p. 732), there will be 202 more DEA and FBI agents working on drug cases than there were prior to September 11, 2001.

The creation of the Department of Homeland Security (DHS) will likely influence the future conduct of the war on drugs. Customs, Coast Guard, and the U.S. Border Patrol, among other agencies, have been 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 created 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.

The Intelligence Reform and Terrorism Prevention Act (P.L. 108-458, Sec. 7407), signed into law on December 17, 2004, amended Section 878 to create a new Office of Counternarcotics Enforcement, headed by a director to be appointed by the President, with the advice and consent of the Senate. The Director of Counternarcotics Enforcement could also serve as the United States Interdiction Coordination, the only DHS official who could do so. The responsibilities of the new director to coordinate federal policy and operations in drug interdiction efforts are broader than those of the officer that is being replaced.

Control of Ecstasy

The Illicit Drug Anti-Proliferation Act of 2003 (S. 226/H.R. 718) was included in conference as a miscellaneous provision (Section 608) of S. 151, the PROTECT Act (also known as the Amber Alert Act). It 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 Ecstasy (MDMA) 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 in the original 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 U.S. 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 additional 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 107th 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. These actions resumed when the bills were reintroduced in the 108th Congress and continue against the new law and the way it is being implemented. (For more information

and analysis, see CRS Report RS21108, *Ecstasy: Legislative Proposals in the 107th Congress to Control MDMA.*)

Souder Amendment to the Higher Education Act

In 1998, the 105th 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. 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 movement, led by Students for Sensible Drug Policy, has arisen in opposition to it.

The 108th Congress considered changes to this provision during its reauthorization of the HEA. and a House bill, first introduced in the 107th Congress to repeal it, was reintroduced in the 108th Congress as H.R. 685 (Frank). Another House bill in the last Congress, with Representative 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 was reintroduced in the 108th Congress as H.R. 696 (Meeks). The ONDCP reauthorization bills (H.R. 2086 and S. 1860), as well, each contained 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, as discussed above. None of these bills was enacted by the 108th Congress, and reauthorization of the HEA itself was postponed to the 109th Congress. (For more information and analysis, see CRS Report RS21824, *Student Eligibility: Drug Convictions and Federal Financial Aid.*)

Executive Branch Actions

The National Drug Control Strategy

In March 2004, President Bush transmitted to Congress the 2004 National Drug Control Strategy. Its proposed \$12.6 billion budget for FY2005 is dedicated to the 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 and on drug testing of students. The 2002 strategy set forth the goals of reducing past-month drug use by youth and adults in America by 10% in two years and 25% in five years from the baseline established by the 2000 National Household Survey on Drug Abuse. The 2004 strategy announces that the two-year goal has been exceeded, with an 11% drop in past-month use of illicit drugs by high school students between 2001 and 2003, as measured by the most recent Monitoring the Future survey. (The baseline was changed from the National Household Survey because changes in its methodology created a discontinuity between the 2002 survey and previous years' data. ONDCP now measures progress by *youth* toward the goals by using the Monitoring the Future (MTF) survey, with the 2000-2001 school year as the baseline. Since

this survey does not measure *adult* drug usage, the revised National Household Survey — renamed the National Survey on Drug Use and Health (NSDUH) — will be used to measure progress toward the goals by adults, with the baseline being the survey's 2002 data. Both MTF and NSDUH are conducted under the auspices of the U.S. Department of Health and Human Services.)

Healing America's Drug Users. The 2004 strategy estimates that, of the 20 million Americans who use drugs on a monthly basis, roughly 7 million meet the clinical criteria for needing drug treatment. The strategy proposes \$2.3 billion for drug treatment, a 6% increase over FY2004. The strategy also announces a new focus on reducing the nonmedical use of prescription drugs. Survey data reveal that abuse of legal medicines, especially pain relievers, is the second leading category of illegal drug use in the United States, after marijuana. The development of state-level prescription monitoring programs (PMPs) in the many states that do not yet have them is one tactic promoted by the 2004 strategy to deal with this problem.

Disrupting the Drug Market. The strategy proposes \$2.6 billion in FY2005 for drug interdiction, an increase of 4.5% from FY2004. 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. Overall, 55% of the drug control budget is allocated for law enforcement, international programs, drug-related intelligence spending, and interdiction activities.

The National Drug Control Budget

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 ONDCP compiles annually and releases with the National Drug Control Strategy. 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.

ONDCP's national drug control budget summary for FY2004 was submitted to Congress on February 3, 2003. Prepared using the new methodology, the proposed budget contained \$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).

The FY2004 budget request called 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 is expected by the Bush Administration to result in a better use of federal resources leading, in 2004, to a 5% reduction in the availability of drugs on the streets of America.

ONDCP's composite budget summary for FY2005 was released in March 2004. It shows total proposed federal drug-control expenditures of \$12.649 billion, an 8.3% increase over the Administration's FY2004 request, and 4.7% more than Congress actually appropriated for FY2004. Divided among 10 federal departments and agencies, 71% of the total budget would again go to the departments of Health and Human Services (\$3.7 billion), Justice (\$2.7 billion), and Homeland Security (\$2.5 billion). The budget shows 45% going to treatment and prevention and the rest to law enforcement and interdiction.

Monitoring the Future's 2003 Study

The Administration has released drug use statistics to show it is moving toward intended goals. At an upbeat Washington press conference in December 2003, Administration officials released the results of the 2003 Monitoring the Future survey of drug use by 8th, 10th, and 12th grade students in U.S. schools. Based on a representative sample of nearly 50,000 students in 392 secondary schools across the country, the results showed the largest reduction in past month use of an illicit drug by youth in more than a decade. Between 2001 and 2003, the survey recorded an 11 % decline, from 19.4% to 17.3%. The proportions of 8th, 10th, and 12th graders reporting that they used an illegal drug in the previous year now stand at 16%, 32%, and 39%, respectively. The proportions saying they have used an illegal drug at least once in their lives stand at 23%, 41%, and 51%.

DEA's Proposed 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 interpretive rules in the *Federal Register* (66 FR 51530-51544) that would have made 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 (HIA) contested the rules 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 would have banned 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, 2003. On February 6, 2004, HIA and the other plaintiffs won their lawsuit against DEA when a three-judge Ninth-Circuit panel ruled unanimously that DEA cannot regulate non-psychoactive hemp products and permanently blocked enforcement of the final rule. The opinion in *Hemp Industries Association v. DEA*, Case No. 03-71366, can be found at [<http://www.ce9.uscourts.gov>]. For more discussion and analysis, see CRS Report RL32725, *Hemp as an Agricultural Commodity*.

DEA Raids on Medical Cannabis

Ten states — beginning with California in 1996 — have decriminalized some form of medical marijuana use.⁴ According to a 2002 study published in the *Journal of Cannabis Therapeutics*, 30,000 California patients and another 5,000 patients in eight other states were estimated to possess physician's recommendations to use cannabis medically.⁵ 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 San Francisco and Santa Cruz. 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 seven medical marijuana patients, filed a lawsuit in San Jose federal district court in response to DEA's September 2002 raid on the Wo/Men's Alliance for Medical Marijuana (WAMM). The suit was reportedly the first court challenge to be brought by a local governmental entity against the federal war on drugs. In the most recent development in this matter, the court ruled on April 21, 2004, that the plaintiffs had demonstrated irreparable harm and a likelihood of success in their argument that the Controlled Substances Act, as applied to the cultivation of marijuana plants for personal medicinal use in compliance with California's medicinal marijuana statute, is an unconstitutional exercise of Congress's Commerce Clause power. The court granted the plaintiffs' motion for a preliminary injunction, thereby allowing WAMM, for now, to resume growing and producing marijuana medications for its approximately 250 member-patients with serious illnesses, pending the final outcome of the

⁴ The other states are Alaska, Colorado, Hawaii, Maine, Maryland, Nevada, Oregon, Vermont, and Washington.

⁵ Dale Gieringer, "The Acceptance of Medical Marijuana in the U.S." *Journal of Cannabis Therapeutics*, vol. 3, no. 1 (2003), pp. 53-67. The author now estimates that there are more than 100,000 medical marijuana patients in California alone (personal communication dated Apr. 30, 2004). Oregon's Department of Human Services reported 8,975 registered medical marijuana patients as of Apr. 1, 2004, see [<http://www.dhs.state.or.us/publichealth/mm/data.cfm>].

case. This most recent court order, along with other documents in the ongoing matter of *Santa Cruz v. Ashcroft*, can be found at [<http://www.drugpolicy.org/homepage.cfm>].

A California medical marijuana case found its way to the U.S. Supreme court, where oral argument was heard on November 29, 2004, in the case of *Ashcroft v. Raich*. At issue is whether the Controlled Substances Act, when it is applied to the *intrastate* cultivation and possession of marijuana for personal use under state law, exceeds Congress's power under the Commerce Clause. In a December 2003 decision, the Ninth Circuit Court of Appeals prohibited the federal government from arresting medical marijuana patients, acting consistent with the laws of their state, who grow their own medicine or obtain it from others as long as all related activity remains within a state that has legalized medical marijuana and the patients do not obtain their medicine from others through commercial activity. The Bush Administration appealed that decision to the Supreme Court, which will issue its decision by June 2005.

Related Developments

Ballot Initiatives and Budgetary Shortfalls in the States

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 usually 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 drug war 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.

LEGISLATION

Section 608 of P.L. 108-21 (S. 226/Biden)

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 Ecstasy (MDMA) are widely used, as discussed above. S. 226 was introduced 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.

P.L. 108-358 (S. 2195/Biden)

Anabolic Steroid Control Act of 2004. Amends the Anabolic Steroid Control Act of 1990 to modify the definition of anabolic steroids, to direct the U.S. Sentencing commission to review the federal sentencing guidelines with respect to anabolic steroid offenses, to provide grants for education activities relating to steroids, and to ensure that questions on steroids are included in the National Survey on Drug Use and Health. Introduced March 11, 2004, and referred to the Committee on the Judiciary. Signed into law on October 22, 2002.

Section 7407 of P.L. 108-458 (/Collins)

National Intelligence Reform Act of 2004. Amends Sec. 878 of the Homeland Security Act of 2002 (P.L. 107-296) to create in DHS an Office of Counternarcotics Enforcement to coordinate federal efforts to stem the flow of illegal drugs into the United States. Introduced on September 23, 2004, and referred to multiple committees. Signed into law on December 17, 2004.

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 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 Committee on Education and the Workforce. (H.R. 2086 and S. 1860 contain similar provisions.)

H.R. 1717 (Farr)

Truth in Trials Act. Amends the Controlled Substances Act to allow persons being tried for marijuana offenses to use in their defense evidence that the marijuana-related activities in question were in compliance with state law regarding the medical use of marijuana.

Introduced on April 10, 2003, and referred to the Energy and Commerce Committee and the Judiciary Committee.

H.R. 2086 (Souder)

Office of National Drug Control Policy Reauthorization Act of 2003. Introduced 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 May 15, 2003. The full committee marked up the bill June 5, 2003, and ordered it reported, as amended, to the floor of the House. The bill, as amended, passed the House by voice vote September 30 under suspension of the rules.

H.R. 2233 (Frank)

States' Rights to Medical Marijuana Act. Transfers marijuana from Schedule I to Schedule II of the Controlled Substances Act (CSA) and prohibits enforcement of the CSA with regard to medical marijuana in states that permit physicians to prescribe or recommend marijuana for medical use. Introduced on May 22, 2003, and referred to the Committee on Energy and Commerce.

S. 1785 (Grassley)

Formally authorizes and creates a separate budget account for five counterdrug schools now operated by the National Guard to train law enforcement personnel and community antidrug activists. Authorizes \$30 million for the schools for each FY2004 through FY2008. (S. 1860 contains similar provisions.) Introduced and referred to the Armed Services Committee October 24, 2003.

S. 1860 (Hatch)

Office of National Drug Control Policy Reauthorization Act of 2003. Introduced November 14, 2003, and referred to the Committee on the Judiciary. Similar to H.R. 2086.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House Committee on Government Reform. *H.R. 2086, The Office of National Drug Control Policy Reauthorization Act of 2003*. 108th Congress, 1st session, May 22, 2003 (Washington: GPO, 2003).

—*ONDCP Reauthorization: The National Youth Anti-Drug Media Campaign*. 108th Congress, 1st session, March 27, 2003 (Washington: GPO, 2003).

U.S. Congress. Senate Committee on Appropriations. *Effectiveness of the National Youth Anti-Drug Media Campaign*. Special hearing. 107th Congress, 2nd session, June 19, 2002 (Washington: GPO, 2002).