

Issue Brief for Congress

Received through the CRS Web

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

Updated February 6, 2003

Mark Eddy
Domestic Social Policy Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Introduction

Identifying the Problem

Framing the Issue

Actions of the 107th Congress

Policy Questions and Concerns of the 108th Congress

The Drug Control Budget

ONDCP Reauthorization

Media Campaign Reauthorization

DEA Administrator Nomination

Ballot Initiatives and Budgetary Shortfalls in the States

Impact of Homeland Security on Drug Control Agencies

Control of MDMA (Ecstasy)

Other Possible Issues

Executive Branch Actions

The National Drug Control Strategy and Budget

Monitoring the Future's 2002 Study

New DEA Rules on Industrial Hemp

DEA's Reaction to Medical Marijuana

Drugs in Federal Prisons

Other Developments of Relevance to Congress

State Budget Crisis

Gateway Effect of Marijuana

Proposition 36 in Los Angeles County

LEGISLATION

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

FOR ADDITIONAL READING

War on Drugs: Legislation in the 108th 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 freedom of thought.

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 programs. The 108th Congress will receive strong encouragement from the Executive Branch to continue on its current path.

Drug control issues likely to be taken up in the first session of the 108th Congress

include: (1) the drug control budgets for both FY2003 and FY2004, which involve most of the appropriations bills; (2) reauthorization of ONDCP, the office of the “drug czar,” which is set to expire on September 30, 2003; (3) reauthorization of the National Youth Anti-Drug Media Campaign, run by ONDCP; (4) nomination of a new administrator of the Drug Enforcement Administration (DEA) due to the confirmation of the current administrator as Under-Secretary in the new Department of Homeland Security; and (5) further measures to control the use of MDMA (Ecstasy) and other so-called “club drugs.”

Other issues could also be the subject of congressional studies, investigations, and oversight hearings, if not legislation. These 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. Other current developments concerning the war on drugs, both in the Executive Branch and elsewhere, are of likely interest to the 108th Congress. These include the President’s drug-control budget request for FY-2004, 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 Reducing Americans' Vulnerability to Ecstasy Act of 2002, or RAVE Act, which was reported by a committee but saw no floor action in the 107th Congress, has been reintroduced in the 108th Congress both as a stand-alone bill (**S. 226/Biden**) and as part of **S. 22 (Daschle)**, an omnibus domestic security bill. The proposal would intensify federal efforts to control MDMA (Ecstasy) by amending a provision of the Controlled Substances Act, known as the "crack house statute," to more directly target persons who maintain drug-involved premises such as "raves," which are all-night dance parties where MDMA and other drugs might be used by attendees. (S. 22 would also authorize grants for various drug treatment, testing, and education programs.)

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 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 is not expected to be an 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 current Congress as they relate to 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 turn of the 20th century, coincident with the peak of a cocaine epidemic that revealed the harmfulness to society 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 criminally-minded. 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, it would come to about \$34,200 per person in 2000.

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 keeping prohibited substances from entering the country. 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. Many other federal agencies active in drug control efforts frame the issue in other ways.

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 Center 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 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 problem 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 the user is addicted or not. Studies show that most drug users are not addicts, yet all users of illegal drugs are subject to the same legal proscriptions and possible penalties and are not infrequently 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 remains skeptical about the desirability of such changes. Federal officials argue that usage leads to addiction and that liberalization, once initiated, could expand and accelerate out of control. The established policy of prohibition is not expected to come under critical scrutiny at the federal level anytime soon. 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 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 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 107th 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 108th Congress

Several policy questions relating to the war on drugs are expected to receive active legislative consideration in the first session of the 108th Congress. These include the following subjects, which will undoubtedly change as the session unfolds.

The Drug Control Budget

As estimated by ONDCP, the federal drug control budget amounted to nearly \$18.1 billion for FY2001 and more than \$18.8 billion for FY2002. The President's FY2003 budget request contained almost \$19.2 billion for the war on drugs, according to ONDCP's drug control budget summary. Nearly two-thirds of the total would go to just two federal departments, Justice and Health and Human Services. The remaining funds are scattered among the appropriations for many other departments and agencies. The current status of the FY2003 appropriations bills is that only two of them have become law. Passing the remaining appropriations bills will be among the first orders of business of the new Congress. (At least 10 of the 13 appropriations bills normally contain drug control monies.)

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 and related research programs. "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, the possible conflict with Iraq, and the projected federal budget deficit.

ONDCP Reauthorization

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. The 108th Congress may again choose to review the performance and results of ONDCP and revise its mandate, or approve a simple reauthorizing measure as it did in 1994. The 108th Congress may also choose not to reauthorize the agency but to continue funding it through the appropriations process. It is unlikely that the 108th Congress will choose to terminate the office of the drug czar.

Media Campaign Reauthorization

The National Youth Anti-Drug 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.

Authorized through FY2002 by the Drug-Free Media Campaign Act of 1998 (P.L. 105-277), the media campaign has been funded in amounts between \$180 and \$195 million per fiscal year since 1998.

Conducted by the ONDCP, the media campaign has been criticized on grounds of its implementation and effectiveness. 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. Hearings on reauthorizing the media campaign will likely investigate these and other issues surrounding this effort to prevent drug use before it starts among the country's youth. With its reauthorization overdue, the media campaign might be combined with ONDCP's reauthorization in a single bill.

DEA Administrator Nomination

During his 3rd term in Congress, Representative Asa Hutchinson was appointed by President Bush as Director of the Drug Enforcement Administration (DEA) on August 8, 2001. As DEA Director, according to DEA's Website, he inaugurated the Integrated Drug Enforcement Assistance (IDEA) Program to combine law enforcement action with community efforts to keep neighborhoods safe and drug-free, served the first-ever indictments of known terrorists for drug trafficking, and launched a nationwide campaign against methamphetamine.

On November 26, 2002, the day after he signed into law the legislation to create the new Department of Homeland Security (H.R. 5005, P.L. 107-296), President Bush announced his intention to appoint Hutchinson to serve as Under Secretary for Border and Transportation Security in the new homeland security agency. Hutchinson was confirmed as Under Secretary on January 23, 2003. This means that President Bush will nominate a new DEA Administrator, and the Senate will hold a confirmation hearing on the President's choice. The Senate might take oversight advantage of this opportunity and examine the role of the DEA in relationship to the new Department of Homeland Security and to the overall war on terror, as well as other concerns regarding DEA.

Ballot Initiatives and Budgetary Shortfalls in the States

Recent developments at the state level could attract the attention of the 108th 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.

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 war on drugs as an enormous unfunded federal mandate and would welcome increased federal assistance. Increased federal budget deficits may, however, constrain new federal spending.

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, counterterrorism efforts at the border are targeted on keeping "bad people and bad things" out of the country and can result in higher drug interdiction rates.

The creation of the new Department of Homeland Security (DHS) is also likely to 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 DHS. Section 101(b) of the Homeland Security Act of 2002 (P.L. 107-296), which created the new department, establishes 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."

In light of this significant reallocation of equipment and personnel, the 108th 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)

A provision of **S. 22**, a bill to enhance domestic security, would amend the "crack house statute" to more directly target the producers of dance events at which drugs are used. This is based on S. 2633/H.R. 5519, bills introduced in the 107th Congress with the title Reducing Americans' Vulnerability to Ecstasy Act, or RAVE Act. Although S. 2633 was reported out of committee and placed on the Senate Legislative Calendar, it failed to be passed by either chamber in the 107th Congress. It was the target of demonstrations and letter-writing campaigns by several drug reform and dance culture organizations. Two key members of the Senate Judiciary Committee subsequently withdrew their sponsorship of the measure.

The Ecstasy Prevention Act of 2001 (S. 1208/H.R. 2582 in the 107th), to encourage local communities to crack down on raves and authorize additional funds to be used in High Intensity Drug Trafficking Areas for anti-MDMA activities, might also come up again. The Senate added S. 1208 to its version of the DOJ reauthorization act, but it was deleted in conference late in the 107th Congress. (See CRS Report RS21108, *Ecstasy: Legislative Proposals in the 107th Congress to Control MDMA.*)

Other Possible Issues

Crack/powder sentencing disparity. Several bills were introduced in the 107th 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 108th, 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 108th, are likely to face rigorous review.

Law enforcement grant consolidation. The Bush Administration has proposed the consolidation of many law enforcement grant 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 107th Congress, and could see further action in the 108th 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, 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, some 43,000 students lost their student loans, according to the Department of Education. Known as the Souder amendment, critics contend that this provision of law has a greater impact on minorities due to an alleged racially disproportionate enforcement of drug laws. A national organization, Students for Sensible Drug Policy, has arisen in opposition to it, and a House bill was introduced in the 107th Congress to repeal it. 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. Changes to this provision may be considered as part of the potential reauthorization of the HEA during the 108th Congress.

Executive Branch Actions

The National Drug Control Strategy and Budget

In February 2002, President Bush transmitted to Congress the 2002 National Drug Control Strategy. The strategy sets forth the goals of reducing past-month drug use 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*. Outlining a federal drug control budget request for FY2003 of nearly \$19.2 billion, the strategy admits that the budget numbers contained in the annual strategies may have overstated the drug-control efforts of federal agencies. The strategy promises that ONDCP will develop, in consultation with OMB, an improved methodology for identifying actual drug control spending in the federal budget. A table in the 2002 strategy, based on the proposed new budget methodology, revises the FY2003 budget request downward from \$19.2 billion to \$11.4 billion. By focusing on programs 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.

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 8th, 10th, and 12th 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 8th, 10th, and 12th 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 Rules 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. Constituents have written to their Members of Congress in opposition to these rules, the Hemp Industries Association is contesting them in court, and the U.S. Ninth Circuit Court of Appeals has temporarily blocked their implementation. Regulations are now under review at the Office of Management and Budget.

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.

Drugs in Federal Prisons

According to a report released by the Department of Justice (DOJ) 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

State Budget Crisis. 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."

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

S. 22 (Daschle)

A bill to enhance domestic security, and for other purposes. The part entitled “Crack House Statute Amendments” would amend 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 would also: direct 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; authorize \$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 authorize such sums as necessary to DEA for drug education efforts directed at youth, their parents, and others about “club drugs.” Other parts of S. 22 would authorize grants for various drug treatment, testing, and education programs. Introduced January 7, 2003; referred to the Committee on the Judiciary.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

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

FOR ADDITIONAL READING

Belenko, Steven R. *Drugs and Drug Policy in America: A Documentary History*. Westport, CT, Greenwood Press [2000] 380 pp.

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 2002] 118 pp. Available at [<http://www.whitehousedrugpolicy.gov/policy/ndcs.html>]

——— *National Drug Control Strategy. FY 2003 Budget Summary*. 204 pp. Available at [<http://www.whitehousedrugpolicy.gov/policy/budget.html>]