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Drug Control: Reauthorization of the Office of National Drug Control Policy

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Summary

The Office of National Drug Control Policy (ONDCP) was scheduled to sunset on September 30, 1997, but Congress approved ONDCP funding under the Treasury, Postal Appropriations Act, FY1998 (P.L. 105-61). Several measures have been introduced in the 105th Congress to reauthorize ONDCP. On October 21, 1997, the House passed H.R. 2610, as amended, the National Narcotics Leadership Act. On November 6, 1997, the Senate Judiciary Committee reported H.R. 2610, replacing the language of the House-passed version with a new version, the Office of National Drug Control Policy Reauthorization Act. On July 29, 1998, the Senate approved an amendment (S. Amdt. 3367/Hatch and Biden) to the Treasury, Postal Appropriations Act, FY1999 (S. 2312/Campbell) that differs from the House-passed version of H.R. 2610.

ONDCP Reauthorization and the 105th Congress

The Office of National Drug Control Policy (ONDCP) was created and authorized through FY1993 by the National Narcotics Leadership Act of 1988 (21 U.S.C. 1506), under Title I of the Anti-Drug Abuse Act of 1988 (P.L. 100-690). The National Narcotics Leadership Act Amendments, under Title IX of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322), reauthorized ONDCP through FY1997. Although ONDCP's authorization technically expired on September 30, 1997, Congress approved ONDCP funding for FY1998 under the Treasury, Postal Service, and General Government Appropriations Act (P.L. 105-61), signed into law on October 10, 1997. The 105th Congress is expected to reauthorize ONDCP in its second session.

The Administration's Draft Bill

Early in 1997, the Clinton Administration submitted draft legislation to Congress to reauthorize ONDCP, though it was not introduced in either chamber. At the May 1, 1997, hearing on the Administration's ONDCP reauthorization proposal, held by the House Government Oversight and Reform Subcommittee on National Security, International

Affairs, and Criminal Justice, ONDCP Director Barry McCaffrey discussed the major provisions of the administration's draft measure:

- (1) reauthorize ONDCP through September 30, 2009, with a 10-year drug control strategy and a five-year budget;
- (2) require the director to assess drug use indicators and set performance measures based on the 1997 National Drug Control Strategy's five goals and 32 objectives;
- (3) explicitly establish ONDCP's responsibility to coordinate efforts to reduce underage use of alcohol and tobacco;
- (4) create a new Office of Intergovernmental Relations that would replace ONDCP's current Bureau of State and Local Affairs (BSLA);
- (5) make the High Intensity Drug Trafficking Area (HIDTA) Program a separate program within ONDCP and give the director the authority, in consultation with HIDTA program agencies, to issue regulations for the management of the program; and
- (6) clarify the current authority of the Counter-Drug Technology Assessment Center (CTAC) to conduct research on demand-reduction activities.

Recent Congressional Initiatives to Reauthorize ONDCP

Several measures introduced in the 105th Congress would reauthorize ONDCP, including A Bill to Amend the National Narcotics Leadership Act of 1988 (S. 2028/Ashcroft); the Office of National Drug Control Policy Reauthorization Act of 1997 (S. 1053/Biden; H.R. 2407/Levin), the Juvenile Offender Control and Prevention Grant Act of 1997 (H.R. 1699/Stupak), and the Omnibus Crime Control Act of 1997 (S. 3/Hatch). The National Narcotics Leadership Act (H.R. 2610/Hastert), which was introduced on October 6, 1997, and referred to the House Committee on Government Reform and Oversight, has emerged as the primary vehicle for ONDCP reauthorization. It passed the House, amended, on October 21, 1997, and was reported (without written report) by the Senate Judiciary Committee, with an amendment in the nature of a substitute, on November 6, 1997. On July 29, 1998, the Senate approved an amendment (S. Amdt. 3367/Hatch and Biden) to the Treasury, Postal Appropriations Act, FY1999 (S. 2312/Campbell) that also differs from the House-passed version of H.R. 2610.

House Consideration of H.R. 2610

As approved by the House, H.R. 2610, the National Narcotics Leadership Act, includes provisions that would:

- (1) reauthorize ONDCP until September 30, 1999;
- (2) create two new deputy directors in the areas of state and local affairs, and intelligence;
- (3) require ONDCP's director to reach hard targets for drug reduction, as established in the proposed bill, by 2001, and hold him responsible for their achievement;

(4) establish specific performance measures within the National Drug Control Strategy, and require the director to submit a four-year plan to Congress to reduce drug use in the United State to 3% of the total population by 2001;

(5) augment the powers of the director to coordinate efforts among all National Drug Control Program Agencies (NDCPAs) and receive information from them;

(6) expand the director's transfer authority, (a) except as limited in an annual appropriations act, (b) with the agreement of the head of the affected agency, and (c) upon advance approval by Congress, to provide for transfer of appropriated funds not to exceed 5% of an NDCPA's account where funds originate or terminate; and

(7) establish a new Drug Policy Council, chaired by the President and composed of the members of the President's Cabinet, which would make decisions regarding national drug policy.

A significant provision of the bill is the proposed establishment by law of hard targets on a nationwide basis that ONDCP must meet by 2001, including not only a drop in drug use to 3% of the population, but also: (a) an 80% reduction in the availability of cocaine, heroin, marijuana, and methamphetamine; (b) a 60% decrease in the average street purity levels of these drugs; (c) a 50% reduction in drug-related crime; and (d) a 50% decline in drug-related emergency room incidents. Also, the measure contains provisions to require ONDCP to ensure that no federal drug control funds are used for any study or contract relating to marijuana legalization (including medical use) or for the expansion of drug treatment programs within the HIDTA program.

The House Debate on the Measure.¹ During the House debate on H.R. 2610, proponents argued several main points. Representative Hastert, the bill's sponsor, argued that the measure is "the most significant anti-drug bill since the original authorization of the drug czar in 1988, with the possible exception of the Drug-Free Communities Act...." He emphasized that the bill is built around one basic goal of attaining "a virtual drug-free America by the year 2001," by empowering the ONDCP director to improve interagency coordination, while adding accountability mechanisms to ensure that "the American taxpayer is getting maximum results" from federal drug control efforts.

Representative Hastert recognized that "there are certain to be differences of opinion about how high or how low the bar should be set in this fundamentally re-engineered approach to our national drug control policy, but the important point about this bill is that for the first time ever Congress is actually setting a standard, a bar, and empowering the drug czar's office to promulgate aggressive performance measures for the agencies which will provide results."

Representative McCollum, chairman of the House Judiciary Crime Subcommittee, argued for the bill: "I think it is a tremendous improvement over current law.... [W]e are not only not winning the war on drugs, we do not even have a war on drugs, not in the sense that most Americans would believe. We have not set up the kind of goals and missions and objectives that the military would fight if they were fighting a war."

¹ House Debate on the National Narcotics Leadership Act Amendments, *Congressional Record*, daily edition, vol. 143, Oct. 21, 1997, pp. H8874-H8882.

Representative Shaw maintained that the measure “sets accountability and responsibility” with General McCaffrey. “But if he cannot do it,” Representative Shaw stated, “then step aside and let somebody in that can do it.”

Representative Gilman stated his support for the measure, in part because it meets his concerns about ONDCP’s authority to reprogram and transfer funds. “The transfer authority,” he noted, “has long created fear that substantial funds from law enforcement or interdiction could not be moved and later be used by this administration for treatment or media campaigns to the detriment of these equally important enforcement efforts.” The bill would provide controls on the ONDCP director's transfer authority by requiring approval for reprogramming from both the authorizing and appropriations committees.

Opponents of the measure argued several points. For example, Representative Barrett held that the measure “would be more appropriately called the Drug Control Failure Act for the Year 2000. I say failure because this bill has never been designed to give the Office of National Drug Control Policy the tools and direction to succeed...” Instead, he pointed out that “the bill establishes unattainable drug control targets, requires the administration to report twice yearly on its failure to meet those targets, and provides for only a 2-year authorization requiring reauthorization during a Presidential campaign.”

Representative Barrett criticized the hard targets in the bill: “there is not a single study or report from any source, government or private sector, that recommends or even directly supports the targets set forth in this bill. ... these targets are arbitrary and flatly unattainable by the year 2001.” He illustrated this point by noting that the target set for a reduction in overall drug use would require ONDCP to reduce drug use to a rate 60% lower than at any time in the last three decades.

Along with Representatives Hoyer, Levin, and Waxman, Representative Barrett found the measure to reflect a partisan effort on the part of its sponsors: “Judging by its major provisions, the bill appears designed to achieve political advantage in the 1998 and 2000 elections, all at a cost to ONDCP and its efforts to fight drugs at the Federal level.” Representative Hoyer opposed the “simplistic choices” proposed by the bill’s proponents, based on “the hypothesis if you are not for this bill, you are not for the drug fight.”

Representative Davis of Illinois argued that the bill does not include “in a real way” three of the basic components of any effective drug policy: treatment, education, and prevention. Regarding treatment, he maintained that “this bill prohibits the use of HIDTA funds for treatment of people who are chemically dependent ... [and] provides no real ideas for treatment strategies.” Similarly, he held that the measure lacks significant education and prevention strategies, “other than the old 'lock them up, throw away the key,' which we already know does not, will not, and cannot work.”

ONDCP Response to the House Version. Prior to House approval of H.R. 2610, ONDCP Director McCaffrey stated his strong support for reauthorization legislation, but noted his opposition to the House version of the measure, arguing that it would:

- (1) establish numerical statutory targets for reducing drug use by the year 2001 that are unrealistic and unattainable in such a short time period;
- (2) reauthorize ONDCP for only two years;

(3) raise constitutional questions, since the bill would authorize the director to transfer funds among National Drug Control Program (NDCP) agencies only with the advance approval of specified congressional committees, even though the committee approval mechanism is a violation of the Supreme Court's *INS v. Chadha* decision;

(4) provide excessively burdensome reporting requirements;

(5) prohibit or create substantial obstacles to federal funding for legitimate scientific research into potential beneficial uses of controlled substances;

(6) raise conflicts between the proposed responsibilities of the director of ONDCP and the directors of other agencies, including the fact that H.R. 2610 creates a new Deputy Director for Intelligence, but neither delineates the responsibilities of this new position nor distinguishes them from those of the Director of Central Intelligence, thus creating the potential for confusion and duplication of effort; and

(7) involve the ONDCP Director in the internal management of other agencies, since H.R. 2610 requires the heads of NDCP agencies to provide the director with unspecified 'information' about any vacancy in National Drug Control Program offices or any vacancy at or above the level of Deputy Assistant Secretary.²

The Senate Judiciary Committee Version of H.R. 2610

On November 6, 1997, the Senate Judiciary Committee reported H.R. 2610, striking the language of the House-passed version, and replacing it with a significantly different version. The "Office of National Drug Control Policy Reauthorization Act" would:

(1) reauthorize ONDCP through September 30, 2001, and authorize appropriations of such sums as may be necessary for FY 1998 through FY2001;

(2) create a Deputy Director for State and Local Affairs who would replace ONDCP's current position for the head of Bureau of State and Local Affairs (BSLA);

(3) set forth and modify ONDCP's responsibilities in the areas of the development of national drug control policy, the coordination and oversight of the implementation of such policy, the assessment and certification of the adequacy of national drug control programs and the budget for those programs, and the evaluation of the effectiveness of such programs;

(4) establish a High Intensity Drug Trafficking Areas Program within ONDCP;

(5) revise provisions regarding the Counter-Drug Technology Assessment Center and provide that its Director of Technology would be empowered to identify demand reduction needs and initiatives regarding basic and applied research;

(6) establish in the Treasury a fund for the receipt of gifts to aid or facilitate the work of the ONDCP;

² For a copy of ONDCP Director McCaffrey's letter of October 21, 1997, to House Democratic Leader Gephardt concerning H.R. 2610, see Statement of Representative Thomas M. Barrett on the National Narcotics Leadership Act Amendments of 1997, *Congressional Record*, daily edition, vol. 143, Oct. 29, 1997, pp. E2122-E2123.

(7) revise provisions regarding the National Drug Control Strategy to require: (a) the President to submit to the Congress by February 1, 1997, a strategy that sets forth a comprehensive plan, covering a period of not more than 10 years, for reducing drug abuse and the consequences of drug abuse in the United States, by limiting the availability of and reducing the demand for illegal drugs; and (b) annual reports on progress in implementing the strategy (permits the President to submit a revised strategy that meets the requirements of this act under specified conditions);

(8) require the director to submit annually to Congress a description of the national drug control performance measurement system, including any modifications made during the preceding year;

(9) require the director to work in conjunction with the Assistant to the President for National Security Affairs;

(10) establish a President's Council on Counter-Narcotics to advise and assist the President;

(11) establish a Parents Advisory Council on Youth Drug Abuse to advise the President and the Cabinet, including the director, on drug prevention, education, and treatment and to issue reports and recommendations; and

(12) express the sense of the Congress that the President should discuss with the democratically elected governments of the western hemisphere the prospect of forming a multilateral alliance to address problems relating to international drug trafficking in the western hemisphere.

Basically, the Senate version shares with the House version many of the reporting requirements and the provision to create a position for a new deputy director of state and local affairs. Unlike the House version, the Senate version does not include the hard targets for drug reduction, nor would it create the new position for a deputy director for intelligence. Also, the Senate version would not prohibit the use of HIDTA funds for the expansion of drug treatment programs.³

On July 29, 1998, the Senate approved a bipartisan amendment (S. Amdt. 3367/Hatch and Biden) to the Treasury, Postal Appropriations Act, FY1999 (S. 2312/Campbell) that would reauthorize ONDCP through September 30, 2002, and expand the responsibilities and powers of its Director. Senator Orrin Hatch, chairman of the Committee on the Judiciary and a cosponsor of the amendment, stated, "This substitute differs principally from the House bill [H.R. 2610] in that it calls for a 4-year period versus a 2-year reauthorization period; and, in that it does not statutorily mandate 'hard targets' that must be achieved by 2001.... it requires that ONDCP establish measurable objectives and long term goals."⁴ Also, the amendment authorizes ONDCP's Performance Measurement System and requires an annual report on the successes and failures of the strategy during the previous year.

³ For additional discussion of the House and Senate versions, see: "Clinton Commits an Additional \$73 Million to Anti-Drug Efforts; ONDCP Reauthorization Unresolved in Congress," *National Criminal Justice Association Bulletin*, vol. 17, Dec. 1997, pp. 14-15.

⁴ Statement of Sen. Orrin Hatch, *Congressional Record*, daily edition, vol. 144, July 29, 1998, p. S9185.