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Ecstasy: Legislative Proposals in the 107th Congress to Control MDMA

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Summary

Legislation was proposed in the 107th Congress to combat the use and abuse of Ecstasy (MDMA) and other “club drugs.” The RAVE Act (S. 2633/H.R. 5519) would have intensified federal efforts to control Ecstasy by amending the “crack house statute” to more directly target rave promoters. The Senate bill was reported by the Judiciary Committee and placed on the Senate Legislative Calendar but died at the end of the 107th Congress. Another bill, the Ecstasy Prevention Act of 2001 (S. 1208/H.R. 2582) would have encouraged local communities to crack down on raves and would have authorized additional funds to be used in High Intensity Drug Trafficking Areas for anti-Ecstasy law enforcement activities. The Senate attached a version of S. 1208 to the Department of Justice authorization act (H.R. 2215), but it was deleted in conference. H.R. 3138 and H.R. 3782 would also have opposed Ecstasy and other club drugs but did not see action. This report will no longer be updated.

Background¹

Ecstasy is the street name for MDMA or *3,4-methylenedioxymethamphetamine*. As its full, scientific name indicates, MDMA is in the amphetamine family of drugs, although its effects are unlike other amphetamine compounds. Discovered and patented by Merck Pharmaceuticals in Germany before World War I, MDMA was first tested on animals in the 1950s by the U.S. Army in its Cold-War search for a brain-washing drug. Civilian researchers became interested in it in the 1970s and were the first to study its unique psychological effects in human subjects. It seemed to reduce fears and barriers to intimacy, while enhancing communication and empathy, and showed promise as an adjunct to psychotherapy in the treatment of such problems as drug addiction, phobias,

¹ The early history of MDMA is documented in a variety of sources. The facts here, which are recounted elsewhere, are drawn from Grob, Charles S., M.D. Deconstructing Ecstasy: The Politics of MDMA Research. *Addiction Research*, v. 8, no. 6, 2000. p. 549-588.

post-traumatic stress, depression, suicide, and the difficulties of dealing with terminal illness.

For several years, a small group of health professionals – mostly pharmacologists and psychotherapists – was enthusiastic about the promise of MDMA and used it with patients. An estimated half-a-million doses of the drug were quietly distributed and used for personal growth by Americans in professional settings during the 1970s. The therapists and their patients attempted, with some success, to keep MDMA a secret and out of the hands of recreational drug users in order to keep it legal.

Inevitably, however, word spread, partly through widespread media accounts after the Drug Enforcement Agency (DEA) began the process, in mid-1984, to schedule the substance under the Controlled Substances Act (CSA). DEA's placement of MDMA in Schedule I, the CSA's most restrictive schedule, applied criminal penalties for the manufacture, possession, and use of the drug effective July 1, 1985. This abruptly ended the use of MDMA by medical researchers and therapists, but not its use by youthful drug experimenters on certain college campuses and in bars, especially in Texas and California. It soon became better known for its popularity as a street drug of abuse than for its promise as a therapeutic agent.

MDMA had been given the name Ecstasy by an enterprising drug dealer, and Ecstasy, or "X," was promoted as a safe alternative to cocaine, which had caused recent celebrity deaths and was subject to increasingly severe criminal penalties. Its use slowly expanded to the present day. According to the 2001 *Monitoring the Future Study*, funded by the National Institute on Drug Abuse (NIDA), 5% of 8th graders, 8% of 10th graders, and 12% of 12th graders reported that they had taken the drug at least once. Use had roughly doubled among American teenagers since 1998, but increased little between 2000 and 2001.²

Alarmed by rising levels of use, especially by young people at large, all-night dance parties known as "raves," and concerned about Ecstasy's possible neurotoxic effects, among other health and safety concerns, the 106th Congress passed the Ecstasy Anti-Proliferation Act of 2000 (P.L. 106-310). Among other provisions, this law directed the U.S. Sentencing Commission to increase criminal penalties for Ecstasy. On March 20, 2001, the Commission voted for a penalty structure for MDMA offenses that is more severe by weight than for powder cocaine, but less severe by weight than for heroin, effective May 1.³ The 107th Congress considered further legislation to control the use of Ecstasy.

² University of Michigan News and Information Services. *Rise in Ecstasy Use Among American Teens Begins to Slow*. Ann Arbor, MI. December 19, 2001. Available at: [<http://www.monitoringthefuture.org>], accessed July 3, 2002.

³ United States Sentencing Commission. *Report to the Congress: MDMA Drug Offenses, Explanation of Recent Guideline Amendments*, May 2001. Federal judges are generally bound by the sentencing range dictated by the Commission's sentencing guidelines.

Proposed Legislation

S. 2633 and H.R. 5519. The Reducing Americans' Vulnerability to Ecstasy Act of 2002, or RAVE Act, was introduced in the Senate on June 18, 2002, by Senators Biden and Grassley,⁴ and was referred to the Judiciary Committee. It was reported by the committee without amendment and without written report 9 days later and placed on the Senate Legislative Calendar. The House version, identical to the Senate bill except for the dropped "findings" section, was introduced on October 1, 2002, by Representative Lamar Smith. The House Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the bill on October 7 and decided not to vote on it. The House bill died in committee.

The RAVE Act would have slightly amended the so-called "crack house statute"⁵ to address rave promoters' actions more specifically, such as using an *outdoor* space *temporarily to profit from* the use of a controlled substance. In addition to the criminal penalties that already exist in the crack house statute, the RAVE Act would have added a civil penalty, thereby lowering the standard of proof from beyond a reasonable doubt to a preponderance of evidence. Any person who violated the statute would be subject to a civil penalty of not more than the greater of \$250,000 or twice the gross receipts, either known or estimated, that were derived from each violation. The heading of this section of the Controlled Substances Act would have been changed from "Establishment of manufacturing operations" to "Maintaining drug-involved premises."⁶ The Act would also have directed 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; authorized \$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 authorized such sums as necessary to DEA for drug education efforts directed at youth, their parents, and others about club drugs.

Enforcement of the amended crack house statute at raves would almost certainly end the harm reduction efforts of DanceSafe and similar groups that set up tables at some raves, with the permission of the promoters (and often with the tacit approval of local law

⁴ For the Senators' introductory remarks on the measure, see *Congressional Record*, daily edition, v. 148, June 18, 2002. p. S5705-5706. Additional remarks by Senator Biden appear at: *Ibid.*, October 9, 2002. p. S10218.

⁵ Sec. 416 of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, as amended by P.L. 99-570, Title I, sec. 1841(a), October 27, 1986); 100 Stat. 3207-52; 21 U.S.C. 856.

⁶ The "unlawful acts" subsection of the crack house statute would be changed as follows (new text in italics):

"Except as authorized by this subchapter, it shall be unlawful to--

(1) knowingly open, *lease, rent, use,* or maintain any place, *whether permanently or temporarily,* for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any [stricken words: building, room, or enclosure,] *place, whether permanently or temporarily,* either as an owner, lessee, agent, employee, *occupant,* or mortgagee, and knowingly and intentionally rent, lease, *profit from,* or make available for use, with or without compensation, the [stricken words: building, room, or enclosure] *place* for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance."

enforcement), to test the drugs being used. The presence of drug testers at an event would signal that the promoters knew that there would be drugs at their event, making them vulnerable to prosecution. Congressional hearing testimony has questioned the wisdom of this approach to the Ecstasy problem: “The use of illegal drugs can ruin lives, but often, the harm arises less from qualities intrinsic to the drug itself than from its legal consequences.... If you want more deaths stemming from the use of club drugs, then increase penalties, initiate more active policing, and drive the club scene further underground.”⁷

For this and other reasons, including First Amendment concerns, the Act gained opposition from the American Civil Liberties Union and music event promoters.⁸ National drug reform and danceculture groups organized write-in campaigns against the measure. An estimated 500 protestors demonstrated against the RAVE Act at the U.S. Capitol Building on September 6, 2002.⁹ Senate Judiciary Chairman Leahy and Senator Durbin, also a member of the committee, original sponsors of the legislation, then withdrew their sponsorship of the RAVE Act, which died at the end of the 107th Congress.

S. 1208 and H.R. 2582. The Ecstasy Prevention Act of 2001 (S. 1208/H.R. 2582) was introduced in the Senate by Senator Graham on July 19, 2001, and in the House by Representative Mica on the following day. The Senate bill was referred to the Judiciary Committee. The House bill was referred to the Subcommittee on Health of the Energy and Commerce Committee and to the Subcommittee on Crime of the Judiciary Committee. In floor action in the Senate on December 20, 2001, a slightly modified version of S. 1208 was added by amendment to H.R. 2215, the 21st Century Department of Justice Appropriations Authorization Act. The Senate then passed H.R. 2215, as amended, by voice vote, and the House and Senate versions went to conference, where the Ecstasy-control provisions were deleted from the final version of the measure, which became P.L. 107-273 on November 2, 2002.

The version of the Ecstasy Prevention Act added to the Department of Justice (DOJ) authorization act would have amended the Public Health Service Act to require the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA), in awarding grants for ecstasy abuse prevention, to give priority to communities that have taken measures to combat club drug use, including passing ordinances restricting rave clubs, increasing law enforcement on Ecstasy, and seizing lands under nuisance abatement laws to make new restrictions on an establishment’s use. It would have authorized funds for the Director of the Office of National Drug Control Policy (ONDCP) to: combat the trafficking of MDMA in the 26 areas of the United States designated as high intensity drug trafficking areas (HIDTAs); emphasize MDMA and other club drugs in the national youth anti-drug media campaign; develop a drug test

⁷ U.S. Congress. House. Committee on the Judiciary, Subcommittee on Crime. *Threat Posed by the Illegal Importation, Trafficking, and Use of Ecstasy and Other “Club” Drugs*, hearing, 106th Cong., 2nd sess., June 15, 2000. Washington, Govt. Print. Off., 2000. Statement of Phillip Jenkins, Distinguished Professor of History and Religious Studies, Pennsylvania State University, University Park, PA, p. 73, 70.

⁸ Montgomery, David. Ravers Against the Machine. *Washington Post*. July 18, 2002. p. 1, 8.

⁹ Chibbaro, Lou, Jr. RAVE Act Protest Held at U.S. Capitol. *Washington Blade*. September 13, 2002. p. 7.

for MDMA; and create an interagency Task Force on Ecstasy/MDMA and Emerging Club Drugs.

In addition, the Ecstasy Prevention Act would have authorized funds for research, to be conducted by NIDA, that would evaluate the health effects of MDMA, such as:

(A) physiological effects such as changes in ability to regulate one's body temperature, stimulation of the cardiovascular system, muscle tension, teeth clenching, nausea, blurred vision, rapid eye movement, tremors, and other such conditions, some of which can result in heart failure or heat stroke;

(B) psychological effects such as mood and mind altering and panic attacks which may come from altering various neurotransmitter levels such as serotonin in the brain;

(C) short-term effects like confusion, depression, sleep problems, severe anxiety, paranoia, hallucinations, and amnesia; and

(D) long-term effects on the brain with regard to memory and other cognitive functions, and other medical consequences.

Not funded would be research into the reasons why people use MDMA. A final report documenting these research findings and identifying the health consequences of MDMA use would have been submitted to Congress by January 1, 2003, and would have been made available to the public.

H.R. 3782. The Clean, Learn, Educate, Abolish, Neutralize, and Undermine Production (CLEAN-UP) of Methamphetamines Act of 2002, introduced by Representative Ose on February 14, 2002, contained a provision aimed at rave promoters. Section 305 of H.R. 3782 would have amended the Controlled Substances Act by inserting a new section titled "Promoters of Drug Oriented Entertainment." This new provision would have stated in full:

Whoever knowingly promotes any rave, dance, music, or other entertainment event, that takes place under circumstances where the promoter knows or reasonably ought to know that a controlled substance will be used or distributed in violation of Federal law or the law of the place where [sic] the event is held, shall be fined under title 18, United States Code, or imprisoned for not more than 9 years, or both.

The bill saw no action beyond referral to multiple committees.

H.R. 3138. The Comprehensive Club Drug Abuse Reduction Act was introduced by Representative Graves on October 16, 2001, and was referred to the Subcommittee on Health of the Energy and Commerce Committee. The bill, which saw no further action, would have: (1) established a 14-member interagency Club Drug Task Force that would be responsible for designing, implementing, and evaluating federal education, prevention, and treatment efforts with respect to club drugs; directed the Secretary of Health and Human Services to develop a public health monitoring program to monitor club drugs in the United States; and expanded club drug abuse prevention efforts by amending the Public Health Service Act to authorize the Director of SAMHSA's Office for Substance Abuse Prevention to make grants to, and enter into contracts and cooperative agreements with, public and nonprofit private entities to conduct school- and community-based programs on the dangers of club drugs.

Hearings

The Senate Committee on Governmental Affairs held a hearing on “Ecstasy Use Rises: What More Needs to be Done by the Government to Combat the Problem?” on July 30, 2001. Chaired by Senator Lieberman, the hearing attempted to dispel the perception, said to be common among young people, that Ecstasy is harmless. Witnesses included Dr. Alan Leshner, Director of NIDA, John Varrone, Assistant Commissioner of the U.S. Customs Service, Dr. Donald Vereen, Deputy Director of ONDCP, and Joseph Keefe, DEA Chief of Operations. A 16-year-old former drug user now in a residential treatment program told the Committee: “To anyone who thinks Ecstasy isn’t a serious drug, I give this advice: Stop before you get hurt. ... I was once a normal kid and Ecstasy took me down a deadly, destructive path I could never have imagined. Life is too precious. Ecstasy is not worth it.”¹⁰

On December 4, 2001, the Senate Caucus on International Narcotics Control held an oversight hearing, co-chaired by Senators Biden and Grassley, on “Looking the Other Way: Rave Promoters and Club Drugs.” Asa Hutchinson, DEA Administrator, and Dr. Glen Hanson, Acting Director of NIDA, testified on the first panel. The second panel was composed of law enforcement officials from Miami, New Orleans, and Des Moines, Iowa, and a concerned mother. The focus of the hearing was to explore ways in which federal, state, and local law enforcement agencies have cracked down on raves and rave promoters including: making it a state criminal offense to knowingly maintain a place where controlled substances such as Ecstasy are sold and used; offering “rave training classes” to parents to educate them about the danger of raves and the club drugs associated with them; and using the “crack house statute” or other federal charges to go after rave promoters and prohibit raves. Earlier in the year, on March 21, Senators Grassley and Biden presided over a narcotics caucus hearing on “America at Risk: The Ecstasy Threat.” The Drug Czar, the DEA Administrator, the acting commissioner of the U.S. Customs Service, and the chair of the U.S. Sentencing Commission were among the panelists. These two hearings were the last in a series of hearings held in recent Congresses by the Senate narcotics caucus that resulted in the introduction of the RAVE Act.

In conjunction with its consideration of H.R. 5519, the House Judiciary’s Subcommittee on Criminal Justice, Drug Policy, and Human Resources held a hearing on “Ecstasy: A Growing Threat to the Nation’s Youth” on September 19, 2002. In his opening statement, Chairman Souder criticized the “so-called ‘scientists’ who even today try to perpetuate the myth that Ecstasy is not harmful or even, bizarre as it may seem, has some sort of therapeutic value.” DEA’s Hutchinson and NIDA’s Hanson testified on the first panel. They discussed the drug’s adverse health effects, its patterns of distribution and use, and their agencies’ efforts to educate the public and curb its growing use, especially by young people. Witnesses on the second panel described the damaging effects of Ecstasy on individual users and the challenge of providing drug treatment for Ecstasy abusers.

¹⁰ U.S. Congress. Senate. Committee on Governmental Affairs. *Ecstasy Use Rises: What More Needs to Be Done by the Government to Combat the Problem?*, hearing, 107th Cong., 1st sess., July 30, 2001. Washington, Govt. Print. Off., 2001. p. 6.