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War on Drugs: Reauthorization of the Office of National Drug Control Policy

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Summary

Authorization of the Office of National Drug Control Policy (ONDCP) expired on September 30, 2003. Located in the Executive Office of the President, the ONDCP Director, often referred to as the “drug czar,” is responsible for overseeing and coordinating the federal War on Drugs and directly runs certain drug control programs, such as the High Intensity Drug Trafficking Area (HIDTA) Program, the National Youth Anti-Drug Media Campaign, the Drug-Free Communities grant program, and the Counter-Drug Technology Assessment Center. The office was created in 1988 and has been reauthorized twice since then.

The Office of National Drug Control Policy Reauthorization Act of 2005 (H.R. 2829/Souder) was introduced on June 9, 2005. It would reauthorize ONDCP for five years, through FY2010, and authorize funding in specific annual amounts for the HIDTA Program, the media campaign, a Southwest Border violence study, and several anti-methamphetamine initiatives. The bill passed the House, amended, on March 13, 2006. Sent to the Senate, the bill was referred to the Committee on the Judiciary, where it awaits action.

The bill contains extensive amendments to the current law, the Office of National Drug Control Policy Reauthorization Act of 1998 (P.L. 105-277). For example, the bill would require the annual drug control budget proposal compiled by ONDCP to include all federal drug control activities, including demand reduction, supply reduction, and state and local affairs. ONDCP revised its method for compiling the federal drug control budget in 2002, narrowing its scope. H.R. 2829 would force a return to more inclusive budget numbers for the federal drug control agencies.

Other amendments to existing law contained in H.R. 2829 concern, among other things, mycoherbicides, iatrogenic addiction, intelligence sharing, awards for coerced abstinence programs, the position of U.S. Interdiction Coordinator, and the General Counterdrug Intelligence Plan.

The Dawson Family Community Protection Act (H.R. 812/Cummings) is included in the bill. Its original language is mostly unchanged, except that the amount of HIDTA funds to be used in neighborhoods with severe safety and illegal drug distribution problems was increased from \$5 million to \$7 million at markup.

Another bill introduced in the House (H.R. 2565) would extend ONDCP by repealing the sunset provision of the agency’s 1998 reauthorization act and would authorize appropriations through 2010. The main purpose of the bill, however, would be to impose drug-testing regulations on professional sports leagues. The provisions of this bill were added to H.R. 2829 at a committee markup but were later deleted.

This report will be updated as legislative activity occurs.

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War on Drugs: Reauthorization of the Office of National Drug Control Policy

Introduction and Background

Located in the Executive Office of the President, the Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988¹ to coordinate the federal government's War on Drugs.

The principal responsibilities of the Director of ONDCP, who is often referred to as the "drug czar," include

- establishing policies, objectives, and priorities for the National Drug Control program;
- annually promulgating the National Drug Control Strategy and coordinating and overseeing the strategy's implementation by the respective drug control agencies of the federal government;
- making recommendations to the President regarding changes in the organization, management, budgets, and allocation of federal personnel engaged in drug enforcement;
- consulting with and assisting state and local governments with respect to their relations with federal drug control agencies and programs;
- appearing before committees and subcommittees of Congress to represent the drug policies of the executive branch; and
- notifying any federal drug control agency if its policies are not in compliance with the National Drug Control Strategy and transmitting a copy of the notification to the President.

ONDCP's first reauthorizing act, in 1994,² produced limited amendments to the agency's original enacting legislation. It strengthened the Director's powers to influence the allocation of funds and personnel within and between federal drug control departments and agencies. It prohibited presidentially appointed ONDCP officials from participating in federal election campaign activities, except for making contributions to individual candidates. It required the Director to include, in every National Drug Control Strategy, an evaluation of the effectiveness of federal drug control efforts during the preceding year, and it mandated specific measures of

¹ P.L. 100-690, Title I, Subtitle A, National Narcotics Leadership Act of 1988, Nov. 18, 1988, 102 Stat. 4181.

² P.L. 103-322, Violent Crime Control and Law Enforcement Act of 1994, Title IX, Subtitle B, National Narcotics Leadership Act Amendments, Sept. 13, 1994, 108 Stat. 1990.

effectiveness that the evaluation would include. It required the Director to assess periodically the accuracy of drug use statistics and the factors that restrict the availability of treatment services, and to propose corrective remedies.

ONDCP was reauthorized again in 1998 when Congress rewrote the agency's statutory mandate (referred to in this report as "existing law" or "current law").³ This time, Congress took advantage of the opportunity, through staff studies and several hearings, to assess the progress of the antidrug 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 again required of ONDCP.

In the 108th Congress, an ONDCP reauthorization measure (H.R. 2086/Souder) passed the House but was not acted on in the Senate. The Senate's own reauthorization bill (S. 1860/Hatch) also saw no action beyond introduction and committee referral. These bills, many provisions of which reappear in the current House reauthorization bill, are discussed briefly in the final section of this report. Both bills died at the close of the 108th Congress, leaving the matter of extending ONDCP to the 109th Congress.

H.R. 2829 in the 109th Congress

Introduction of H.R. 2829

The Office of National Drug Control Policy Reauthorization Act of 2005 (H.R. 2829) was introduced by Representative Souder on June 9, 2005. The language of H.R. 2829 is based largely on the House and Senate reauthorization bills from the preceding Congress (discussed above), making H.R. 2829 a blend of those two bills from the 108th, with certain new provisions added at drafting and by subsequent amendments, as detailed below.

Actions Taken on H.R. 2829

The House reauthorization bill was referred to the Committee on Government Reform and to the Committees on the Judiciary, Energy and Commerce, and Intelligence (Permanent Select) for consideration of provisions that fall within the jurisdiction of the committee concerned.

The Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources held a hearing on June 15, 2005, to consider H.R. 2829.⁴ ONDCP

³ P.L. 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Division C, Title VII, Office of National Drug Control Policy Reauthorization Act of 1998, Oct. 21, 1998, 112 Stat. 2681-670, 21 U.S.C. § 1701 *et seq.*

⁴ U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, *H.R. 2829, The Office of National Drug Control Policy* (continued...)

Director John Walters testified at this hearing, along with officials from the National HIDTA Directors Association and the Partnership for a Drug-Free America.

The following day, at markup, the full Government Reform Committee approved an amendment in the nature of a substitute, offered by Representative Souder, that incorporated the provisions of the Clean Sports Act of 2005 (H.R. 2565, discussed below), which had been approved earlier by the committee. H.R. 2829 was ordered to be reported favorably, as amended, with a recommendation that it pass.⁵ (The committee also approved at markup a report that critically analyzes the National Drug Control Strategy for 2005 and the proposed federal drug control budget for FY2006.⁶)

The House Energy and Commerce Committee marked up H.R. 2829 on February 16, 2006. The committee removed the Clean Sports Act from the bill on the grounds that it — not Government Reform Committee — has jurisdiction over the issue of steroid use in professional sports and that it had already approved its own bill on the subject (H.R. 3084/Stearns). The Energy and Commerce Committee reported the bill, as amended, without recommendation.⁷

The House Judiciary Committee considered H.R. 2829 on March 2, 2006.⁸ Five amendments were adopted, including one by Chairman Sensenbrenner to remove the Clean Sports Act provisions from the bill. (The other amendments are identified in the following analysis of the bill's provisions.) The committee reported the measure favorably, as amended, with a recommendation that it pass.

The House Judiciary Committee's version of the bill was considered by the House on March 9, 2006.⁹ The rule governing floor consideration (H.Res. 713) made 15 amendments in order, of which 14 were approved, as noted in the following

⁴ (...continued)

Control Policy Reauthorization Act of 2005, hearing on H.R. 2829, 109th Cong., 1st sess., June 15, 2005 (Washington: GPO, 2005).

⁵ U.S. Congress, House Committee on Government Reform, *Office of National Drug Control Policy Reauthorization Act of 2005*, report to accompany H.R. 2829, 109th Cong., 1st sess., H.Rept. 109-315, part I (Washington: GPO, 2005). Hereinafter referred to as House Government Reform Committee Report.

⁶ U.S. Congress, House Committee on Government Reform, *The National Drug Control Strategy for 2005 and the National Drug Control Budget for Fiscal Year 2006*, 109th Cong., 1st sess., H.Rept. 109-172 (Washington: GPO, 2005). A follow-up report on the 2006 strategy and the FY2007 proposed budget is now available on the committee website at [<http://reform.house.gov/CJDPHR/>].

⁷ U.S. Congress, House Committee on Energy and Commerce, *Office of National Drug Control Policy Reauthorization Act of 2005*, report to accompany H.R. 2829, 109th Cong., 2nd sess., H.Rept. 109-315, part II (Washington: GPO, 2006).

⁸ U.S. Congress, House Committee on the Judiciary, *Office of National Drug Control Policy Reauthorization Act of 2005*, report to accompany H.R. 2829, 109th Cong., 2nd sess., H.Rept. 109-315, part III (Washington: GPO, 2006).

⁹ *Congressional Record*, daily edition, vol. 152 (Mar. 9, 2006), pp. H795-H847.

analysis of the bill. Four of the adopted amendments deal specifically with the control of methamphetamine.¹⁰ The bill passed the House, as amended, by a vote of 399 to 5. On March 13, 2006, the bill was received in the Senate and referred to the Committee on the Judiciary.

Analysis of the Provisions of H.R. 2829

The discussion that follows describes and analyzes the provisions of H.R. 2829, as approved in the House and sent to the Senate. The discussion deals primarily with amendments or changes that would be made by H.R. 2829 to existing law — the Office of National Drug Control Policy Reauthorization Act of 1998. Provisions of current law that would remain unchanged are mentioned only where necessary to provide context for understanding the revisions that would be made by the proposed bill.

Short Title and Law Being Amended (Secs. 1 & 2)

The law's short title would be the Office of National Drug Control Policy Reauthorization Act of 2005. The current law that the provisions of H.R. 2829 would amend or repeal is the Office of National Drug Control Policy Reauthorization Act of 1998 (P.L. 105-277) (21 U.S.C. 1701 et seq.).

Repeal of the Sunset Provision (Sec. 3)

The House reauthorization bill would repeal the sunset provision contained in current law (sec. 715) (21 U.S.C. § 1712), which technically terminated ONDCP on September 30, 2003. Despite the sunset provision in current law, Congress has continued to fund the agency through annual appropriations. The House bill contains no new termination provision, thereby authorizing ONDCP indefinitely. All three of the previous ONDCP authorizing acts contained five-year sunset provisions. During floor consideration of H.R. 2829 in the House, Representative Paul offered an amendment to add a five-year sunset provision to H.R. 2829, but the amendment was defeated 85-322.

Amendments to Definitions (Sec. 4)

The House reauthorization bill would change certain terms as they are defined in current law (sec. 702) (21 U.S.C. §1701). Perhaps the most important changes are in the definitions of “state and local affairs” and “supply reduction.” Domestic law enforcement directed against drug users would be dropped from the definition of “supply reduction” and placed under the definition of “state and local affairs.” This change would serve to statutorily move responsibility for handling domestic law enforcement matters from ONDCP's Office of Supply Reduction to its Office of

¹⁰ On the same day, Pres. Bush signed into law the USA PATRIOT Improvement and Reauthorization Act of 2005 (P.L. 109-177), which contains extensive provisions to control methamphetamine and its precursor chemicals.

State and Local Affairs. These changes are intended to make the statute reflect what ONDCP is already doing, in practice, and would make it clear that domestic law enforcement activities serve a wider purpose than supply reduction.

Designation and Duties of ONDCP Officers (Sec. 5)

Responsibilities. Current law (sec. 703(a)) (21 U.S.C. § 1702(a)) requires that ONDCP evaluate the effectiveness of the national drug control policy and agency programs. H.R. 2829 would add language requiring that the evaluation be done “by developing and applying specific goals and performance measurements.”

Rank of Director. Current law (sec. 703(b)) (21 U.S.C. § 1702(b)) would be amended to give the ONDCP Director the same “rank and status” as the heads of the executive departments. (Current law already assigns the Director to the same pay scale as the executive department heads.)

U.S. Interdiction Coordinator. Section 5 would also give the Deputy Director for Supply Reduction the additional position of United States Interdiction Coordinator (USIC) and would require that the person occupying the position have substantial experience in actual drug interdiction *operations* instead of just interdiction *policy*. USIC existed previously within ONDCP (but without statutory authority) but was then legislatively created in 2002 within the Department of Homeland Security.¹¹ H.R. 2829 would return USIC to ONDCP.

Duties of Director and Deputy Director (Sec. 6)

The House bill would retain the current structure of ONDCP and make limited changes to strengthen the authority of the Director. In addition to the Director’s responsibilities contained in current law (sec. 704(b)) (21 U.S.C. § 1703(b)), the bill would add the following:

- supporting the substance abuse information clearinghouse administered by the Substance Abuse and Mental Health Services Administration;
- coordinating with the private sector to promote private research and development of medications to treat addiction;¹²
- seeking the support and commitment of state and local officials in the formulation and implementation of the National Drug Control Strategy;
- monitoring and evaluating the allocation of resources among federal law enforcement agencies in response to significant local and regional drug trafficking and production threats;

¹¹ Homeland Security Act of 2002, sec. 878, P.L. 107-296, Nov. 25, 2002, 116 Stat. 2245, 6 U.S.C. § 458.

¹² This and the following three provisions were taken from S. 1860 (sec. 103(b)(6)) in the 108th Congress.

- submitting an annual report to Congress detailing how ONDCP has consulted with and assisted state and local governments with respect to the formulation and implementation of the National Drug Control Strategy and other relevant issues; and
- reporting to Congress, one year after enactment of the bill, on the impact of each federal drug reduction strategy upon the availability, addiction rate, use rate, and other harms of illegal drugs.¹³

Submission of Drug Control Budget Requests. Under current law (sec. 704(c)(1)) (21 U.S.C. §1703(c)(1)), the head of each National Drug Control Program agency is required to submit annually to the ONDCP Director a copy of the agency's proposed drug control budget request before it is submitted to the Office of Management and Budget. The House bill (sec. 6(c)) would add language to current law as to what kinds of activities should be included in federal agencies' drug control budget requests and would require that agencies provide documented calculations showing how they estimated the proportion of their budgets related to drug control activities.

National Drug Control Budget Proposal. The ONDCP Director develops a consolidated National Drug Control Program budget based on the budget request proposals received from the National Drug Control Program agencies. In addition to consulting with the head of each drug control agency, as required by current law (sec. 704(c)(2)) (21 U.S.C. §1703(c)(2)), the House bill (sec. 6(d)) would require that the Director also consult with "the head of each major national organization that represents law enforcement officers, agencies, or associations."¹⁴ The same section of the House bill would also require that the consolidated budget include "the total amount proposed to be spent on all supply reduction, demand reduction, State and local affairs, including any drug law enforcement, and other drug control activities of the Federal Government...."

ONDCP revised its method for compiling the national drug control budget summary in 2002. As a result, the FY2003 drug budget request was revised downward from \$19.2 billion to \$11.4 billion. Under the new method, activities were included only if they were deemed to have a "primary" drug control purpose and if they had a separate line item account in the President's annual budget request. This change resulted in lower budget numbers for many drug control agencies and the elimination of some agencies from the drug control budget altogether. ONDCP said the new drug budget would better serve Congress and the public and bring greater accountability to federal drug control efforts. Others, however, including some Members of Congress, said the new drug budget distorted the true costs of the War on Drugs by, among other things, excluding the costs of incarcerating drug offenders and other law enforcement activities, and by exaggerating the proportion of the budget slated for drug treatment expenditures, thereby making the budget appear more evenly balanced between enforcement and prevention than in previous years, even though little if any change had actually taken place.

¹³ This last report responsibility was added to the bill by an amendment offered by Rep. Robert Scott at the House Judiciary markup.

¹⁴ This provision was added by a floor amendment offered by Rep. Terry.

By requiring that any drug budget request made by an agency include all the drug control activities of that agency, the House reauthorization bill would force ONDCP to return to something like its older, more inclusive method of calculating the federal drug control budget.

Certification of the National Drug Control Budget. The responsibility of the Director to review and certify the budget requests of national drug control program agencies is considered a vital tool of the Director in planning and implementing an effective national antidrug strategy. The House bill (sec. 6(e)) would prevent the Director from approving any agency's proposed budget that requests funding for

- federal law enforcement activities that do not adequately compensate for transfers of drug enforcement resources and personnel to unrelated activities such as counterterrorism;
- law enforcement activities along U.S. borders that do not adequately direct resources to drug interdiction and enforcement;
- drug treatment activities that do not provide adequate result and accountability measures;
- any activities of the Safe and Drug Free Schools Program that do not include a clear antidrug message or purpose intended to reduce drug use;
- drug treatment activities that do not adequately support and enhance federal drug treatment programs and capacity;¹⁵
- activities of the Department of Education for FY2007, unless the request is accompanied by a report setting forth a plan for providing expedited consideration of student loan applications for all individuals whose applications were denied because of a conviction for a drug-related offense that occurred when the individual was not receiving federal assistance; and
- the operations and management of the Department of Homeland Security that does not include a specific request for funds for the Office of Counternarcotics Enforcement.

Reprogramming and Transfer Requests. Current law (sec. 704(c)(4)(A)) (21 U.S.C. § 1703(c)(4)(A)) provides that no national drug control agency shall submit to Congress a request to reprogram or transfer any amount of appropriated funds over \$5 million that is included in the federal drug control budget unless the request has been approved by the Director. The House bill (sec. 6(f)) would reduce that amount to \$1 million.

Country Certification. The House bill (sec. 6(g)(4)) would add to the powers of the Director a requirement that the Director submit to the President, no later than

¹⁵ This language, inspired by two amendments proposed by Rep. Cummings and adopted by voice vote at the House Government Reform subcommittee markup of H.R. 2565 in the 108th Congress, is intended to apply to the Substance Abuse Prevention and Treatment block grant program and the Targeted Capacity Expansion grant program of the Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

August 1 of each year, a report that (1) identifies countries that are major drug transit countries or major drug producing countries; (2) assesses those countries' efforts to reduce the supply of illicit drugs to the United States; and (3) assesses whether application of the procedures set forth in the Foreign Assistance Act of 1961, as amended (21 U.S.C. § 2291j-1), should be applied against those countries that "have not cooperated fully" with the United States. The standard by which the Secretary of State evaluates the cooperation of foreign nations in drug control efforts was reduced in 2003 from "not fully cooperating" to "failed demonstrably." The House Government Reform Committee wants the President to receive an independent assessment by the ONDCP Director that would be conducted under the older, more rigorous standard.¹⁶

Fund Control Notices. Under existing law (sec. 704(d)(9)) (21 U.S.C. § 1703(d)(9)), the Director has the power to issue to the head of a National Drug Control Program agency a fund control notice to ensure that agency's compliance with the National Drug Control Strategy. A fund control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by specific periods of time (monthly, quarterly, etc.) and by specific activities, functions, projects, or object classes. National Drug Control Program agencies are not permitted to expend funds contrary to a fund control notice issued by the ONDCP Director. H.R. 2829 (sec. 6(h)) would amend the fund control notice provisions of current law (sec. 704(f)) (21 U.S.C. §1703(f)) to require that a copy of each fund control notice be transmitted to the appropriate congressional committees.¹⁷ It would also restrict the Director from issuing a fund control notice to direct that all or part of an amount appropriated to a National Drug Control Program agency account be obligated, modified, or altered in any manner contrary, in whole or in part, to a specific appropriation or statute.

South American Heroin Strategy. The House bill (sec. 6(j)) would require the Director to submit to Congress, not more than 90 days after the date of the bill's enactment, a comprehensive strategy that addresses the increased threat from South American heroin, especially Colombian heroin and the emerging threat from opium poppy cultivation in Peru. The bill requires that the strategy include efforts to eliminate the problem at the source. It also requires interdiction and precursor chemical controls, demand reduction and treatment, alternative development programs, efforts to inform and involve local citizens, provisions to maintain coca eradication efforts in Colombia at current levels, and assessment of the specific level of funding and resources necessary to simultaneously address the threats from South American heroin and from Colombian and Peruvian coca. Classified or sensitive information would be presented to Congress separately from the rest of the strategy.¹⁸

¹⁶ House Government Reform Committee Report, p. 45.

¹⁷ H.R. 2829 (sec. 4(a)(7)) defines "appropriate congressional committees" to mean, in the Senate, the Committee on the Judiciary, the Committee on Appropriations, and the Caucus on International Narcotics Control and, in the House, the Committee on Government Reform, the Committee on the Judiciary, and the Committee on Appropriations.

¹⁸ This provision originated as an amendment proposed by Rep. Mica to H.R. 2086, the House reauthorization bill in the 108th Congress.

Afghan Heroin Strategy. H.R. 2829 (sec. 6(k)) would require the Director to submit to Congress, within 90 days of enactment, a comprehensive strategy that addresses the increased threat from Afghan heroin. The strategy must include opium crop eradication efforts; the destruction of heroin and raw opium stockpiles and of heroin production and storage facilities; interdiction and precursor chemical controls; demand reduction and treatment; alternative development programs; measures to improve cooperation and coordination between relevant federal, foreign, and international agencies; and an assessment of the amount of funding and resources necessary to reduce the production and trafficking of heroin. Like the South American heroin strategy, classified or sensitive information would be presented to Congress separately from the rest of the strategy.

General Counterdrug Intelligence Plan. Not later than 120 days after enactment and every two years thereafter, H.R. 2829 (sec. 6(l)) would require the Director, with the concurrence of the Director of National Intelligence, to submit to the appropriate congressional committees¹⁹ a General Counterdrug Intelligence Plan to improve coordination and eliminate unnecessary duplication among the federal counterdrug intelligence centers, activities, and agencies. The report must articulate clear and specific mission statements for each counterdrug intelligence center, system, and activity; specify each federal, state, and local entity that participates in each counterdrug center, system, and activity; specify the means by which proper oversight of such centers, systems, and activities will be assured; specify the means by which counterdrug intelligence and information will be forwarded effectively to all levels of officials responsible for U.S. counterdrug policy; and specify mechanisms to ensure that state and local law enforcement agencies are apprised of counterdrug intelligence and information acquired by federal law enforcement agencies. Classified or sensitive information would be presented to Congress separately from the rest of the strategy. The last counterdrug intelligence plan was prepared in 2000 and is considered outdated.

Southwest Border Counternarcotics Strategy. Within 120 days of enactment and every two years thereafter, the Director would be required (sec. 6(m)) to submit to Congress²⁰ a Southwest Border Counternarcotics Strategy. This report would set forth the government's strategy for preventing the illegal trafficking of drugs across the international border between the United States and Mexico, state the specific roles and responsibilities of the relevant National Drug Control Program

¹⁹ For the purposes of this strategy, the committees are, in the Senate, the Committee on Appropriations, the Committee on Foreign Relations, the Committee on the Judiciary, the Committee on Homeland Security and Governmental Affairs, the Caucus on International Narcotics Control, and the Select Committee on Intelligence and, in the House, the Committee on Appropriations, the Committee on International Relations, the Committee on the Judiciary, the Committee on Government Reform, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence.

²⁰ This strategy would be submitted, in the Senate, to the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Homeland Security, and the Caucus on International Narcotics Control and, in the House, to the Committee on Government Reform, the Committee on the Judiciary, and the Committee on Appropriations.

agencies for implementing the strategy, identify the specific resources required to enable the relevant drug control agencies to implement the strategy, and include a strategy to end the construction of tunnels under the border.²¹ Classified or sensitive information would be submitted to Congress separately from the rest of the strategy.

Mycoherbicide Study. Within 90 days of enactment, the bill (sec. 6(n)) would require the Director to submit to Congress a report that includes a plan to conduct, on an expedited basis, a scientific study of the use of mycoherbicides as a means of illicit drug crop elimination. The report would be done by an appropriate government scientific research entity, including a complete and thorough scientific peer review. The study would include an evaluation of the likely health and environmental impacts of such use.²² The report would also include a plan to conduct controlled scientific testing in a major drug-producing nation of a mycoherbicide naturally existing in the producing nation.

Southwest Border Violence Study.²³ H.R. 2829 (sec. 6(o)) would require the Director to submit to Congress, within 180 days of enactment and annually thereafter, a study of persons kidnapped, killed, and missing along the border between the United States and Mexico. The study would report on the specific impact on U.S. citizens of border violence related to drug-trafficking and include recommendations on methods to solve the offenses and reduce their occurrence. To conduct this study, the bill would authorize an appropriation of \$1 million for each fiscal year from 2007 through 2011.

Assessment of Youth Drug Use.²⁴ Not later than one year after enactment, H.R. 2829 (sec. 6(p)) would require the Director to complete an assessment of report materials, studies, and statistics to determine the extent to which children aged 12 to 17 experiment with and regularly use alcohol, cigarettes, prescription drugs without a prescription, marijuana, and other illicit drugs; and the extent to which they have access to intervention services or programs, including drug testing, counseling, rehabilitation, legal representation, and other services or programs associated with prevention, treatment, and punishment of substance abuse. The period studied would be the five-year period before enactment. The assessment would include information on

- services and programs that have been effective in preventing such children from experimenting with and beginning the regular use of illicit drugs and alcohol;

²¹ The provision on tunnels was added by a floor amendment offered by Rep. Filner. It also would require the Director to recommend criminal penalties for persons who construct or use such tunnels.

²² The requirement that the report look at the effects of mycoherbicides on human health and the environment was added to the bill by the adoption of an amendment offered by Rep. Cummings at the Government Reform Committee markup on June 16, 2005. The overall provision was originally proposed by Rep. Burton.

²³ This provision was added by a floor amendment offered by Rep. Cuellar.

²⁴ This provision was added by a floor amendment offered by Rep. Jackson-Lee.

- the extent to which chronic drug and alcohol use occurs in such children;
- the extent to which schools and other public institutions provide intervention for such children who are chronic users of illicit drugs and alcohol, the specific roles such schools and institutions play, and the extent to which such interventions are successful;
- additional resources, including funding, needed by schools and other public institutions to provide successful intervention to such children;
- the role of federal agencies in providing intervention to such children who are chronic users of illicit drugs and alcohol, and the extent to which federal agency intervention is successful;
- additional resources, including funding, needed by federal agencies to provide successful intervention to such children; and
- the role of federal, state, and local criminal justice systems in providing intervention to such children who are chronic users of illicit drugs and alcohol, and the extent to which criminal justice interventions are successful.

Model State Drug Laws.²⁵ H.R. 2829 (sec. 6(q)) would authorize an appropriation of \$1.5 million for each fiscal year from 2007 through 2011 to provide for a 501(c)(3) corporation to advise states on establishing laws and policies to address alcohol and other drug issues, based on the model state drug laws developed by the President’s Commission on Model State Drug Laws in 1993, and to revise such model state drug laws and draft supplementary model state laws to take into consideration changes in the alcohol and drug abuse problems in the state involved.

Synthetic Drugs Strategy. The House bill (sec. 6(r)) would require the Director to submit to Congress, not later than 120 days after the date of enactment, the National Synthetic Drugs Action Strategy outlined in the National Synthetic Drugs Action Plan submitted by the Director in October 2004.

State Precursor Chemical Control Law Study. Not later than six months after the date of enactment, the Director would be required (sec. 6(s)) to conduct a study of state laws with respect to precursor chemical controls. The study would include a comparison of the state laws studied, the effectiveness of each such law, and a list of best practices observed with respect to such laws.

Study of Drug-Endangered Children Programs. The bill defines “drug endangered children” as those whose physical, mental, or emotional health are at risk because of the production, use, or effects of methamphetamine by another person. The bill (sec. 6(t)) would require the Director to submit to Congress, no later than six months after the date of enactment, a study of state drug-endangered children programs. The study would include an analysis of the best practices of the activities studied and recommendations for establishing a national policy to address drug-endangered children.

²⁵ This provision was added by a floor amendment offered by Rep. Lungren.

Methamphetamine Strategy.²⁶ No later than 90 days after the date of the enactment, the Director would be required (sec. 6(u)) to submit to Congress a comprehensive strategy that addresses the increased threat from methamphetamine. The strategy would include interdiction and precursor chemical controls, demand reduction and treatment, alternative development programs, efforts to prevent the diversion of precursor chemicals on an international level, and an assessment of the level of funding and resources necessary to reduce significantly the production and trafficking of methamphetamine. Classified or sensitive information would be presented to Congress separately from the rest of the strategy.

Coordination With Other Agencies (Sec. 7)

The House bill would amend current law (sec. 705(a)(3)) (21 U.S.C. § 1704(a)(3)) to mandate that the Secretaries of the Interior, Agriculture, Homeland Security, and Defense prepare annual reports for the Director and specified committees of Congress detailing specific aspects of their departments' drug control activities. The House bill would also require a report from the Attorney General on drug violation arrests and prosecutions and drug seizures. These new reporting requirements are designed to help the agencies allocate resources and to aid the committees in their oversight function, especially as it relates to assessing the impact of diverting drug control assets to unrelated missions.

Annual National Drug Control Strategies (Sec. 8)

Under the House bill, the preparation, submission, implementation, and assessment of the National Drug Control Strategy would remain one of the most important and visible responsibilities of ONDCP. The emphasis in current law (sec. 706(a)) (21 U.S.C. § 1705(a)) on a five-year strategy supplemented by annual updates, however, would be shifted to the preparation of annual strategies. The annual strategies would continue to be due from the President to Congress no later than February 1 of each year.

Strategy Contents. The House bill would augment the elements in current law that must be included in the National Drug Control Strategy, including

- a review of demand reduction activities by private sector entities, including faith-based organizations, to determine their effectiveness and level of cooperation and coordination with federal, state, and local government agencies;
- an assessment of current illicit drug use and availability, impact of illicit drug use, and treatment availability as measured by national, state, and local surveys, and to include lost workplace productivity and drug use by arresters, probationers, and parolees;
- an assessment of the effect of illegal drug use on the children of drug users;
- a summary of federal efforts to coordinate with private sector entities to develop and promote medications to treat addiction.

²⁶ This provision was added by a floor amendment offered by Rep. Hooley.

H.R. 2829 would drop the specific numerical targets for reducing drug use contained in current law (sec. 706(a)(4)) (21 U.S.C. § 1705(a)(4)). These targets covered the period 1999 to 2003 and were largely unmet.

The House bill contains a new requirement that the strategy include data on current drug use trends that could be compared with previously compiled data to permit long-term assessment of the effectiveness of the National Drug Control Strategy and of drug treatment programs in the United States. The bill would continue to require comprehensive, long-range, and quantifiable goals for reducing drug abuse and its consequences, backed by annual objectives and targets that are designed to move the country toward the strategy's goals and objectives.

Consultation. The House bill would require the Director, in developing and effectively implementing the National Drug Control Strategy, to consult with

- the heads of the National Drug Control Program agencies;
- Congress;
- state and local officials;
- private citizens and organizations, including community and faith-based groups, with expertise in demand reduction;
- private citizens and organizations with experience and expertise in supply reduction and law enforcement; and
- appropriate representatives of foreign governments.

The National Drug Control Strategy would be required to include the names of all persons and entities from the above list that were consulted.

The Director would be required to ensure, to the maximum extent possible, that state and local officials and relevant private organizations that are consulted make a commitment to support and take steps to achieve the goals and objectives of the National Drug Control Strategy.

With the concurrence of the Attorney General, the Director would require the El Paso Intelligence Center to undertake specific tasks and projects to implement the National Drug Control Strategy. With the concurrence of the Director of National Intelligence and the Attorney General, the Director could request that the National Drug Intelligence Center undertake specific tasks or projects to implement the National Drug Control Strategy. The Director could also make recommendations to the Secretary of Health and Human Services (HHS) concerning research by the National Institute on Drug Abuse or other HHS agencies that would support or advance the National Drug Control Strategy.

Performance Measurement System. Current law (sec. 706(c)) requires that a performance measurement system be designed in consultation with affected National Drug Control Program agencies and be submitted to Congress no later than February 1, 1999, with modifications to be included in subsequent annual strategy reports. H.R. 2829 would retain this requirement with certain changes. The performance measurement system would be submitted annually as part of the National Drug Control Strategy and would contain two- and five-year performance

measures and targets for each National Drug Control Strategy goal and objective established for reducing drug use, drug availability, and the consequences of drug use. It would describe the sources of information and data to be used for each performance measure. It would also include an assessment of the adequacy of existing national treatment outcome monitoring systems to measure the effectiveness of drug abuse treatment in reducing illicit drug use and criminal behavior.

Dropped would be the provision in current law that requires the drug control performance measurement system's performance objectives, measures, and targets to be revised to conform with National Drug Control Program agency budgets. Other aspects of the drug control performance measurement system would remain largely unchanged.

High Intensity Drug Trafficking Areas Program (Sec. 9)

Program Purpose. Current law (sec. 707) (21 U.S.C. § 1706) does not explicitly state the purpose of the High Intensity Drug Trafficking Areas (HIDTA) Program. In the 108th Congress, the House bill (H.R. 2086) and the Senate bill (S. 1860) attempted to correct this omission, albeit with differing results. In their statements of purpose, both bills emphasized the importance of facilitating cooperation, intelligence sharing, and coordination of strategies and drug enforcement activities between federal, state, and local law enforcement agencies in the 28 groupings of U.S. counties designated as HIDTAs. It has never been clear, however, whether HIDTAs exist to deal with local or regional problems or if their activities must address drug problems of national scope. The Senate bill (sec. 301(2)) stated that these efforts were “to reduce the supply of illegal drugs in HIDTA designated areas.” The House bill (sec. 6(a)), along with the Government Reform Committee's report,²⁷ stressed that the purpose of HIDTAs is to deal with “drug trafficking problems that harmfully impact other parts of the Nation.”

The House reauthorization bill in the current Congress, H.R. 2829, adopts the language from the previous Senate bill verbatim, except that it modifies the phrase “to reduce the supply of illegal drugs in HIDTA designated areas” to read “to reduce the supply of illegal drugs in designated areas *and* in the United States as a whole”[emphasis added].

Petitions for Designation. At the present time, there are no formal rules or regulations as to how HIDTAs are designated. H.R. 2829 would require the Director to establish regulations under which a coalition of interested law enforcement agencies from an area may petition for designation as a HIDTA. These regulations would provide for a regular review by the Director of the petition, including a recommendation regarding the merit of the petition to the Director by a panel of qualified, independent experts.

²⁷ U.S. Congress, House Committee on Government Reform, *Office of National Drug Control Policy Reauthorization Act of 2003*, report to accompany H.R. 2086, 108th Cong., 1st sess., H.Rept. 108-167, part 1, June 19, 2003 (Washington: GPO, 2003), pp. 21-25.

Organization of HIDTAs. Current law does not address how HIDTAs should be organized and operated. H.R. 2829 contains considerable detail on this subject and would bring the law into alignment with current practice. Each HIDTA, as is now the case, would be governed by an Executive Board. The Executive Board, composed of an equal number of votes between representatives of federal agencies and state and local agencies,²⁸ would be responsible for

- providing direction and oversight in establishing and achieving the goals of the HIDTA,
- managing the HIDTA's funds,
- reviewing and approving all funding proposals consistent with the overall objective of the HIDTA, and
- reviewing and approving all reports to the Director on HIDTA activities.

Treatment Prohibition. H.R. 2829 would retain the provision in current law (sec. 707(d)) (21 U.S.C. § 1706(d)) that no HIDTA funds shall be used to establish or expand drug treatment programs.²⁹ It would add the requirement that not more than 5% of federal funds appropriated for the program would be expended to establish drug *prevention* programs.³⁰ (The treatment prohibition provision caused consternation among some Members of the House Judiciary Committee during its markup of H.R. 2086 in the 108th Congress.³¹ It is helpful to remember that the HIDTA Program is a law enforcement program and that treatment funds are found elsewhere in the federal drug control budget.)

Counterterrorism Activities. The Director would be allowed to authorize the use of available HIDTA resources to assist federal, state, and local law enforcement agencies in investigations and activities related to terrorism and terrorism prevention, especially when such investigations and activities are also related to drug trafficking. The Director would be required to ensure, however, that assistance provided for counterterrorism remains incidental to the HIDTA Program's purpose of reducing drug availability and carrying out drug-related law enforcement activities, and that significant program resources are not redirected to activities

²⁸ This balance is mandated, in part, to help ensure that the HIDTAs maintain their focus on drug investigations of national importance.

²⁹ The House ONDCP reauthorization bill in the 108th Congress (H.R. 2086, sec. 6(a)) would have created an exception for the Baltimore/Washington HIDTA, which has historically and uniquely been a combined drug treatment and law enforcement program. No such exception exists in H.R. 2829. Although treatment programs could not be established or expanded, *existing* HIDTA-funded treatment programs could be continued.

³⁰ This 5% provision was added to the bill at House Judiciary markup by adoption of an amendment proposed by Rep. Linda Sánchez. The underlying bill would have prevented *any* HIDTA funds from being used for prevention.

³¹ U.S. Congress, House Committee on the Judiciary, *Office of National Drug Control Policy Reauthorization Act of 2003*, report to accompany H.R. 2086, 108th Cong., 1st sess., H.Rept. 108-167, part 2, July 14, 2003 (Washington: GPO, 2003), pp. 114-119, 152-156, and *passim*.

exclusively related to terrorism, except on a temporary basis under extraordinary circumstances, as determined by the Director.

Role of the Drug Enforcement Administration. The Director, in consultation with the Attorney General, would be required to ensure that a representative of the Drug Enforcement Administration is included in the Intelligence Support Center of each HIDTA.

Annual HIDTA Program Budget Submissions. At present, the amount of funding received by each HIDTA is determined by the Director after the annual appropriations bill is enacted, thereby bypassing congressional scrutiny. H.R. 2829 would require the Director to include in ONDCP's annual budget justification to Congress a breakdown showing the amount being requested for each HIDTA, with a supporting narrative describing the rationale for each request. The narrative would include a detailed justification for each funding request that would explain the reasons for the requested funding level, how the funding level was determined based on current assessments of the drug trafficking threat in each HIDTA, how such funding will ensure that the goals and objectives of each HIDTA will be achieved, and how the requested funding supports the National Drug Control Strategy.

HIDTA Funding Formula. The House reauthorization bill in the 108th Congress (sec. 6(a)) would have codified a funding formula for the allocation of HIDTA funds. It would have required that 30% of program funds be expended in the seven HIDTAs determined to have the greatest impact on reducing overall drug trafficking in the country, 25% to the nine next most significant HIDTAs, and 10% to the remaining HIDTAs. No less than 20% of program funds would have gone to the Southwest Border HIDTA. The remaining 15% would have been expended by the Director on a discretionary basis. Instead of limiting the Director's discretion, this allocation formula was intended to reverse provisions in appropriations acts that have mandated that no HIDTA may be funded at a level below the previous year, thereby allowing the Director discretion to allocate only program increases in any given year. The funding formula proved controversial, however, and it did not reappear in H.R. 2829.

Removal of Areas. Current law says nothing about removing an area from designation as a HIDTA, and no HIDTAs or parts of HIDTAs have ever been removed from the program. The House reauthorization bill in the 108th Congress would have amended current law to authorize the Director to remove all or part of a HIDTA from the program if it no longer met the required criteria — or, presumably, if it had accomplished its mission. No such provision exists in H.R. 2829. The Director could, however, achieve the same effect by requesting no funding for an area under the new, more detailed HIDTA budget submission process set forth in H.R. 2829, as described above.

Review of Current Areas. Likewise, the House reauthorization bill in the 108th Congress would have required the Director to conduct a review of each HIDTA, within one year of the bill's date of enactment, to determine if the area still warranted designation as a HIDTA. Any area or portion of an area that no longer warranted designation would have been removed from the program. No such provision exists in H.R. 2829.

Emerging Threat Response Fund. Subject to the availability of appropriations, the Director would be permitted to expend up to 10% of appropriated HIDTA funds to respond to any emerging drug trafficking threat in an existing HIDTA, establish a new HIDTA, or expand an existing HIDTA. In doing so, the Director would have to consider the impact of the funded activities on reducing overall drug traffic in the United States or on minimizing the probability that an emerging drug trafficking threat would spread to other areas of the United States.

Evaluation of HIDTA Performance. Within 90 days of enactment and after consulting with each of the HIDTA Executive Boards, the Director would be required to submit to Congress a preliminary report that describes, for every HIDTA,

- the specific purposes of the HIDTA;
- the specific long- and short-term goals and objectives for the HIDTA; and
- the measurements that will be used, and the reporting requirements needed, to evaluate the performance of the HIDTA in achieving its long- and short-term goals.

After the preliminary report, the Director would be required to submit, as part of the annual National Drug Control Strategy report, a report on the HIDTA Program that describes the specific purposes and long- and short-term goals and objectives of each HIDTA, and that includes an evaluation of the performance of each HIDTA in accomplishing its specific goals and objectives.

This provision responds to the Office of Management and Budget's (OMB's) finding, under its Program Assessment Rating Tool (PART) review of the HIDTA Program, that the program failed to demonstrate results. The Government Reform Committee believes that ONDCP did not provide OMB with sufficient data on HIDTA accomplishments and that this annual report will do so.³²

Assessment of Drug Enforcement Task Forces.³³ Not later than 180 days after enactment, and as part of each subsequent annual National Drug Control Strategy report, the Director would be required to submit to Congress a report that assesses the number and operation of all federally funded drug enforcement task forces within each HIDTA. The report would describe

- each federal, state, and local drug enforcement task force operating in the HIDTA;
- how the task forces coordinate with each other, with any HIDTA task force, and with investigations funded by the Organized Crime and Drug Enforcement Task Force Program (OCDETF);
- what steps, if any, each task force takes to share information regarding drug trafficking and drug production with other federally funded drug enforcement task forces in the HIDTA;

³² House Government Reform Committee Report, p. 58.

³³ This provision was added to H.R. 2829 as the result of an amendment offered by Chairman Sensenbrenner at the House Judiciary markup.

- the HIDTA's role in coordinating the sharing of such information among task forces;
- the nature and extent of cooperation by each federal, state, and local participant in ensuring that such information is shared among law enforcement agencies and with the HIDTA;
- the nature and extent to which information sharing and enforcement activities are coordinated with joint terrorism task forces in the HIDTA; and
- any recommendations for ways to ensure that task force resources are used efficiently and effectively to reduce the availability of illegal drugs in the HIDTA.

Assessment of Intelligence Sharing in HIDTAs. Within 180 days of enactment and as part of each subsequent annual National Drug Control Strategy report, the director would be required, in consultation with the Director of National Intelligence, to submit to Congress a report that evaluates existing and planned intelligence systems that are supported by each HIDTA or used by task forces receiving any funding under the program, including the extent to which such systems ensure access and availability of intelligence to federal, state, and local law enforcement agencies within and outside the HIDTA. The report would also describe the extent to which federal, state, and local law enforcement agencies participating in each HIDTA are sharing intelligence information to assess current drug trafficking threats and design appropriate enforcement strategies, and the measures needed to improve effective sharing of information and intelligence regarding drug trafficking and drug production among federal, state, and local law enforcement that are participating in the HIDTA and between such agencies and similar agencies outside the HIDTA.

Coordination of Intelligence Sharing With OCDETF. The Director, in consultation with the Attorney General, would be required to ensure that any drug enforcement intelligence obtained by a HIDTA Intelligence Support Center is shared, on a timely basis, with the new OCDETF drug intelligence fusion center.

Use of Funds to Combat Methamphetamine Trafficking.³⁴ The Director would be required to ensure that, of the amounts appropriated for a fiscal year for the HIDTA Program, at least \$15 million is allocated to combat the trafficking of methamphetamine in HIDTA areas. In meeting this requirement, the Director would transfer funds to appropriate federal, state, and local government agencies for employing additional law enforcement personnel, including agents, investigators, prosecutors, laboratory technicians, chemists, investigative assistants, and drug prevention specialists. The Director would apportion funds among HIDTAs based on the following factors:

- the number of methamphetamine manufacturing facilities discovered in the HIDTA during the previous fiscal year;

³⁴ This provision was added at the House Judiciary markup by adoption of an amendment offered by Chairman Sensenbrenner.

- the number of methamphetamine arrests and prosecutions in the HIDTA during the previous fiscal year;
- the amounts of methamphetamine or listed chemicals seized in the HIDTA during the previous fiscal year; and
- intelligence and predictive data from the Drug Enforcement Administration showing patterns and trends in abuse, trafficking, and transportation in methamphetamine and listed chemicals.

Before apportioning any funds to a HIDTA for purposes of combating methamphetamine, the Director would be required to certify that the law enforcement entities responsible for clandestine methamphetamine laboratory seizures in that HIDTA are providing laboratory seizure data to the national clandestine laboratory database at the El Paso Intelligence Center.

Authorization of Appropriations. To fund the HIDTA Program, H.R. 2829 would authorize appropriations to ONDCP in the amounts of \$280 million for FY2007, \$290 million each for fiscal years 2008 and 2009, and \$300 million each for fiscal years 2010 and 2011. (In FY2006, the HIDTA Program received an appropriation of \$227 million, down from \$228.4 million in FY2005.)

Funding for Certain HIDTAs (Sec. 10)

The Dawson Family Community Protection Act. The House bill incorporates the text of the Dawson Family Community Protection Act (H.R. 812/Cummings). It would require the Director to use at least \$7 million of HIDTA funds each fiscal year in HIDTAs with severe neighborhood safety and illegal drug distribution problems. (This amount represents a \$2 million increase over the \$5 million amount originally specified in H.R. 812.)³⁵ The funds would be used to ensure the safety of neighborhoods and the protection of communities, including the prevention of witness intimidation in drug cases, and to combat illegal drug trafficking through methods such as establishing and operating toll-free telephone hotlines for the public to provide information about illegal drug-related activities.³⁶

Counter-Drug Technology Assessment Center (Sec. 11)

Under current law (sec. 708(b)) (21 U.S.C. § 1707(b)), the head of the Counter-Drug Technology Assessment Center (CTAC) is called the “Director of Technology.” H.R. 2829 would change this title to “Chief Scientist.”

³⁵ The increase came about as the result of an amendment offered by Chairman Sensenbrenner at the House Judiciary markup of H.R. 2829.

³⁶ The Dawson Family Community Protection Act was first introduced in the 108th Congress (H.R. 1599) by Rep. Cummings on Apr. 3, 2003, in response to the October 2002 firebombing of the Baltimore home of the Dawson family, in which the Dawsons and their five children all died. This crime, called in the bill’s findings “a stark example of domestic narco-terrorism,” was committed in apparent retaliation for Mrs. Dawson’s efforts to help the police end persistent drug dealing in her neighborhood. H.R. 1599 would have required that at least \$1 million be used in HIDTAs for the purposes of the bill.

Additional Responsibilities of the Director. Current law (sec. 708(c)) (21 U.S.C. § 1707(c)) lists responsibilities relating to the development of counterdrug technology that the ONDCP Director, acting through the head of CTAC, shall perform. To this list, the House bill would add

- overseeing and coordinating, with the advice and counsel of experts from state and local law enforcement agencies, a technology transfer program for the transfer of technology to state and local law enforcement agencies;³⁷
- basing priorities in transferring technology on the needs of potential recipients for such technology, the effectiveness of the technology to enhance the current counterdrug activities of potential recipients, and the ability and willingness of potential recipients to evaluate transferred technology; and
- giving priority in distributing law enforcement assistance developed under the program to state, local, and tribal law enforcement agencies in southwest and northern border areas that experience significant trafficking in illegal drugs.

Reporting Requirement. Before July 1 of each year, the Director would be required to submit to the appropriate congressional committees a report that would contain

- the number of technology transfer requests received during the previous 12 months, including the identity of each requesting agency and the type of technology requested;
- the number of requests fulfilled during the previous 12 months, including the identity of each requesting agency and the type of technology transferred;
- a summary of the criteria used to determine which requests were funded and which were not;
- a general assessment of the future needs of the program, based on expected changes in threats, expected technologies, and the likely needs of potential recipients; and
- an assessment of the effectiveness of the technologies transferred, based in part on the evaluations provided by the recipients, with a recommendation of whether the technology should continue to be offered through the program.

National Youth Anti-Drug Media Campaign (Sec. 12)

The Drug-Free Media Campaign Act of 1998, less than two pages in length, is the current law that governs the media campaign.³⁸ It instructs the ONDCP Director

³⁷ This provision would for the first time provide statutory authority for CTAC's technology transfer program.

³⁸ P.L. 105-277, Division D, Title I, sec. 102, Oct. 21, 1998, 112 Stat. 2681-752, 21 U.S.C. (continued...)

to “conduct a national media campaign ... for the purpose of reducing and preventing drug abuse among young people in the United States.” It specifies authorized and prohibited uses of campaign funds, establishes the matching requirement, and requires the Director to report annually to Congress on the campaign’s activities.

The House bill would expand the language of current law and add new program requirements. The bill would add the media campaign provisions to the 1998 ONDCP reauthorization act, making it section 709 of current law, and repeal the separate 1998 media campaign law. It would also, in effect, repeal section 709 of existing law (21 U.S.C. § 1708) authorizing the President’s Council on Counter-Narcotics, which was never established.

Purpose of Campaign. The House bill would restate somewhat the campaign’s purpose — from “reducing and preventing drug abuse among young people” to “preventing drug abuse among young people.” Dropping the goal of *reducing* youth drug abuse would seem to emphasize the preventive nature of the media campaign — “stopping drug use before it starts” as the National Drug Control Strategy puts it. The House bill would add the two additional purposes of “increasing awareness of adults of the impact of drug abuse on young people” and “encouraging parents and other interested adults to discuss with young people the dangers of illegal drug use.” The addition of adults as a key target audience of the campaign would bring the statute into conformance with ONDCP’s practice of directing up to 60% of campaign advertising to adults who influence youth, such as parents, teachers, clergy, and mentors.

In the 108th Congress, the House reauthorization bill (sec. 10(a)) would have restated somewhat the campaign’s purpose from “preventing *drug abuse* among young people” to “preventing *illicit drug use* among young people” [emphasis added]. In fact, the House bill would have consistently changed the term “drug abuse,” wherever it appeared in existing law, to the term “illicit drug use,” in an apparent attempt to emphasize the illegal aspects of drug taking as opposed to the health harms of drug addiction. The Senate bill did not do this; instead, it retained the term “drug abuse.” H.R. 2829, following the lead of the earlier Senate bill, would not change the term “drug abuse” to “illicit drug use.”

Requirements for the Use of Media Funds. The House reauthorization bill would add to existing law specific requirements regarding the purchase of creative services, evaluating the effectiveness of the campaign, and the purchase of advertising time and space. The House bill would require that not more than \$1.5 million could be spent on creative services per fiscal year. This limit could be increased to \$2 million to meet urgent campaign needs with advance approval of the House and Senate Appropriations Committees. Most creative services would be donated to the media campaign, as at present.

³⁸ (...continued)
§ 1801, *et seq.*

Testing and Evaluation of Advertising. H.R. 2829 would require that all ads be tested for effectiveness before they are aired. This requirement could be waived under certain circumstances. The bill would require that the effectiveness of the campaign be evaluated annually by an independent entity. The evaluation would be based on specified survey research measures of drug use and other relevant studies to be determined by the Director.

Purchase of Advertising Time and Space. The House bill would require that at least 77% of appropriated campaign funds be used to purchase advertising time and space. In any fiscal year for which less than \$125 million is appropriated for the campaign, at least 82% would have to be spent on advertising time and space. Some advocates of the media campaign argue that setting the requirement at 80% or more would undermine the important nonadvertising elements of the campaign, such as partnerships with community and professional groups, outreach to entertainment and news media, and corporate sponsorships. Others believe that the campaign, to be most effective, should restrict its limited resources solely to ads in broadcast and print media. (In the 108th Congress, the Senate bill (sec. 404(4)) would have set the floor for ad purchases at 85% of appropriated funds.)

Division of Responsibilities and Functions. The House reauthorization bill would add to current law a description of the separate duties of the Director, the Partnership for a Drug-Free America (PDFA), and the media buying contractor as follows:

Responsibilities of the Director. The Director would be responsible for implementing a media campaign that focuses on the purposes set forth in the act and would approve (1) the overall campaign strategy, (2) all advertising and promotional material used in the campaign, and (3) the plan for the purchase of advertising time and space for the campaign.

Responsibilities of the Partnership for a Drug-Free America. The Partnership for a Drug-Free America (PDFA) would develop and recommend strategies to achieve the goals of the campaign, including addressing national, regional, and local drug threats, such as methamphetamine and ecstasy. The PDFA would also create all advertising to be used in the campaign, except advertisements that are

- provided by other nonprofit entities under the matching requirement;
- intended to respond to high-priority or emergent campaign needs that cannot timely be obtained at no cost (not including production costs and talent reuse payments), provided that any such advertising material is reviewed by the PDFA;
- intended to reach a minority, ethnic, or other special audience that cannot be obtained at no cost (not including production costs and talent reuse payments), provided that any such advertising material is reviewed by the PDFA; or
- any other advertisements that the Director determines that the PDFA is unable to provide.

Responsibilities of the Media Buying Contractor. The Director would contract with a media buying contractor to plan and purchase advertising time and space for the campaign. The contractor would not provide any service or material, or conduct any function or activity, that could be provided by the PDFFA.

Prohibition of Ads for Partisan Political Purposes. Current law (21 U.S.C. § 1802(b)) prohibits the expenditure of campaign funds “for partisan political purposes.” The House reauthorization bill would expand this language to read: “For partisan political purposes, or express advocacy in support of or to defeat any clearly identified candidate, clearly identified ballot initiative, or clearly identified legislative or regulatory proposal.” This provision is significant because the Director has been accused by some of using media campaign ads to oppose medical marijuana and other drug reform voter initiatives at the state and local levels.

The House reauthorization bill would also add a prohibition against funding any advertising containing a primary message intended to promote support for the media campaign or to solicit private sector contributions to the campaign. All campaign ads must consist of direct drug prevention messages.

No-Cost Matching Requirement. H.R. 2829 would continue the matching requirement that exists in current law (21 U.S.C. § 1804(c)). Media companies paid by the campaign to run antidrug ads are required to donate an equal amount of advertising time or space or other in-kind contributions to the antidrug effort.

The House bill would require that at least 70% of such no-cost match advertising directly relates to the substance abuse prevention message of the media campaign. The required percentage would increase to 85% in any fiscal year in which less than \$125 million is appropriated to the campaign.³⁹ The remaining ads would still have to include a clear antidrug message, although it would not have to be the primary message of the match advertising.

Financial and Performance Accountability. The House reauthorization bill would require the Director to implement audits and reviews of the costs incurred by campaign contractors and subcontractors pursuant to sec. 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 254d). An audit would also be conducted to determine whether these campaign costs are allowable under sec. 306 of the same act. Employees of Ogilvy & Mather, the firm that previously held the contract for purchasing advertising time and space for the media campaign, were charged with over-billing the government for its services.⁴⁰ This audit requirement would attempt to prevent overcharges in the future.

³⁹ The campaign was appropriated less than \$125 million in both FY2005 (\$119 million) and FY2006 (\$100 million). For a table showing detailed funding information since the campaign’s inception in 1998, see CRS Report RS21490, *War on Drugs: The National Youth Anti-Drug Media Campaign*, by Mark Eddy.

⁴⁰ U.S. General Accounting Office, *Anti-Drug Media Campaign: Aspects of Advertising Contract Mismanaged by the Government; Contractor Improperly Charged Some Costs*, GAO-01-623, June 2001.

Report to Congress. The bill would require the Director to submit annually a report to Congress that describes

- the strategy of the national media campaign and whether specific objectives of the media campaign were accomplished;
- steps taken to ensure that the media campaign operates in an effective and efficient manner consistent with its overall strategy and focus;
- plans to purchase advertising time and space;
- policies and practices implemented to ensure that federal funds are used responsibly to purchase advertising time and space and eliminate the potential for waste, fraud, and abuse; and
- all contracts entered into with a corporation, partnership, or individual working on behalf of the national media campaign.

Prevention of Marijuana Use. The House reauthorization bill contains congressional findings on the harmfulness of marijuana. Based on these findings, the bill would authorize the Director to emphasize the prevention of youth marijuana use in the media campaign's advertisements and other activities. This provision would bring the media campaign's statutory language in line with what the campaign is currently doing.

Prevention of Methamphetamine Abuse.⁴¹ The bill would require the Director to expend not less than 10% of funds appropriated for the campaign in a fiscal year on advertisements and grants specifically intended to reduce the use of methamphetamine. The Director would be given authority to award grants to private entities to fund media projects that have as their goal the significant reduction of the prevalence of first-time methamphetamine use among young people. These projects would focus solely on the prevention of methamphetamine use through, at a minimum, public service messages based on research showing what is effective in substantially reducing such use among young people. These public service messages could appear in both print and electronic media and on websites.

After FY2007, if the Director certifies in writing to Congress that domestic methamphetamine laboratory seizures (as reported to DEA's El Paso Intelligence Center) have decreased by at least 75% from the 2006 level, the Director could apply the anti-methamphetamine funds to advertisements specifically intended to reduce the use of other drugs, as the Director considers appropriate.

Authorization of Appropriations. H.R. 2829 would authorize appropriations for the media campaign in the amounts of \$195 million each for fiscal years 2007 and 2008 and \$210 million each for fiscal years 2009 through 2011.

⁴¹ This provision was added by a floor amendment offered by Reps. Rehberg, Boozman, Steve King, Capito, Souder, and Graves.

Drug Interdiction (Sec. 13)

U.S. Interdiction Coordinator. The House reauthorization bill would amend current law (sec. 711) (21 U.S.C. § 1710) to make the ONDCP Deputy Director for Supply Reduction serve as the United States Interdiction Coordinator (USIC).⁴² The position existed previously, without statutory authority, within ONDCP, until it was statutorily created in 2002 within the Department of Homeland Security (6 U.S.C. § 458).⁴³ The USIC would be responsible to the Director for

- coordinating the interdiction activities of the National Drug Control Program agencies to ensure consistency with the National Drug Control Strategy;
- developing and issuing, on or before March 1 of each year, a National Interdiction Command and Control Plan to ensure the coordination of efforts to interdict illicit drugs from entering the United States and to ensure that those efforts are consistent with the National Drug Control Strategy;
- assessing the sufficiency of assets committed to illicit drug interdiction by the relevant National Drug Control Program agencies; and
- advising the Director on the efforts of each National Drug Control Program agency to implement the National Interdiction Command and Control Plan.

The Director would assign permanent ONDCP staff, as appropriate, to help the USIC carry out the responsibilities of the position and could also request that appropriate National Drug Control Program agencies detail or assign staff to the Office of Supply Reduction for that purpose.

National Interdiction Command and Control Plan. The National Interdiction Command and Control Plan (NICCP) prepared by the USIC would

- set forth the federal government's strategy for drug interdiction,
- state the specific roles and responsibilities of the relevant National Drug Control Program agencies for implementing that strategy,
- identify the specific resources required to enable the relevant National Drug Control Program agencies to implement that strategy, and
- issue the NICCP in consultation with the other members of the Interdiction Committee.

⁴² This would in effect repeal the provisions in current law (sec. 711) that contain outdated reporting and budget planning requirements relating to interdiction.

⁴³ H.R. 2829 would amend sec. 878 of the Homeland Security Act of 2002, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, sec. 7407) (6 U.S.C. § 458), to make it clear that the Director of the Office of Counternarcotics Enforcement in the Department of Homeland Security would no longer be eligible to serve as the USIC.

The NICCP would not change existing agency authorities or the laws governing interagency relationships, but it could include recommendations about making such changes.

Report to Congress. On or before March 1 of each year, the USIC would provide a report to Congress,⁴⁴ on behalf of the Director, that would include

- a copy of that year's National Interdiction Command and Control Plan;
- information for the previous 10 years regarding the number and type of seizures of drugs by each National Drug Control Program agency conducting drug interdiction activities, as well as statistical information on the geographic areas of such seizures; and
- information for the previous 10 years regarding the number of air and maritime patrol hours undertaken by each National Drug Control Program agency conducting drug interdiction activities, as well as statistical information on the geographic areas in which such patrol hours took place.

Any classified or sensitive information would be presented to Congress separately from the rest of the report.

Interdiction Committee. The Interdiction Committee (TIC) has existed for many years, but this provision of the House reauthorization bill would create it statutorily for the first time. The purpose of the TIC would be to

- discuss and resolve issues related to the coordination, oversight, and integration of international, border, and domestic drug interdiction efforts in support of the National Drug Control Strategy;
- review the annual National Interdiction Command and Control Plan and provide advice to the Director and the United States Interdiction Coordinator concerning that plan; and
- provide other advice to the Director concerning drug interdiction strategy and policies, as deemed appropriate by the committee.

Membership of the Interdiction Committee. The membership of the TIC would consist of the following, one of whom would be designated Chairman by the Director:

- the Commissioner of the bureau of Customs and Border Protection at the Department of Homeland Security (DHS);

⁴⁴ This report would be provided, in the Senate, to the Committee on the Judiciary, the Committee on Appropriations, the Caucus on International Narcotics Control, the Committee on Homeland Security and Governmental Affairs, and the Committee on Armed Services and, in the House, to the Committee on Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security.

- the Assistant Secretary of the bureau of Immigration and Customs Enforcement at the DHS;
- the Commandant of the United States Coast Guard;
- the Director of the Office of Counternarcotics Enforcement at the DHS;
- the Administrator of the Drug Enforcement Administration;
- the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs;
- the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict;
- the Deputy Director for Supply Reduction of the Office of National Drug Control Policy, acting in his role as the United States Interdiction Coordinator;
- the director of the Crime and Narcotics Center of the Central Intelligence Agency;
- the Deputy Director for State and Local Affairs of the Office of National Drug Control Policy;
- the Chief of the National Guard Bureau's Counterdrug Program; and
- additional persons, as determined by the Director.

Meetings of the Interdiction Committee. The members of the TIC would meet, in person and not through any delegate or representative, at least once per calendar year, prior to March 1. At the call of either the Director or the current chairman, the TIC could hold additional meetings, which would be attended by the members either in person or through their chosen delegates or representatives.

Report of the Interdiction Committee. Not later than September 30 of each year, the TIC chairman would submit a report to the Director and to the appropriate congressional committees describing the results of the meetings and any significant findings of the TIC during the previous 12 months. Any classified or sensitive information would be presented to Congress separately from the rest of the report.

Awards for Shutting Down Illicit Drug Markets (Sec. 14)⁴⁵

This section of the House reauthorization bill would require the Director to make competitive awards to fund demonstration programs by eligible local partnerships for the purpose of shutting down local illicit drug market hot-spots and reducing drug-related crime through evidence-based, strategic, problem-solving interventions that deter drug dealers or alter the dynamic of drug sales.

Use of Award Amounts. The amounts awarded to eligible partnerships would be used to

⁴⁵ This section was added to H.R. 2829 at the House Judiciary Committee markup by adoption of an amendment offered by Rep. Schiff.

- support the efforts of the agencies, organizations, and researchers included in the eligible partnership;
- develop and field a directed and credible deterrent threat; and
- strengthen rehabilitation efforts through job training, drug treatment, or other services.

Definition of Eligible Partnership. The term “eligible partnership” would mean a working group whose application to the Director

- identifies the roles played, and certifies the involvement of, three or more agencies or organizations, which could include state or local agencies (such as those carrying out police, probation, prosecution, courts, corrections, parole, or treatment functions), federal agencies (such as the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and United States Attorney offices), and community-based organizations;
- includes a qualified researcher;
- includes a plan for identifying the impact of players in, and assessing the nature and dynamic of, the local drug market and its related crime through information gathering and analysis;
- includes a plan for developing an evidence-based strategic intervention aimed at quickly and sustainably eradicating the local drug market by deterring drug dealers or altering the dynamic of drug sales; and
- includes a plan that describes the methodology and outcome measures proposed for evaluating the impact of that strategic intervention on drug sales, neighborhood disorder, and crime.

Reports to Congress. Not later than June 1, 2009, the Director would submit to Congress an interim report identifying the best practices in drug market eradication, including the best practices identified through the activities funded under this section. Not later than June 1, 2010, the Director would submit to Congress a final report on the best practices in drug market eradication as identified by the demonstration programs.

Authorization of Appropriations. H.R. 2829 would authorize appropriations for this awards program in the amount of \$10 million each for fiscal years 2007 through 2009.

Awards for Coerced Abstinence Programs (Sec. 15)⁴⁶

The House reauthorization bill would require the Director to make competitive awards to fund demonstration programs by eligible local partnerships to coerce abstinence, through the use of drug testing and sanctions, of chronic hard-drug users living in the community while under the supervision of the criminal justice system.

⁴⁶ This section was added to H.R. 2829 at the House Judiciary Committee markup by adoption of an amendment offered by Rep. Schiff.

Use of Award Amounts. The amounts awarded to eligible partnerships would be used to

- support the efforts of the agencies, organizations, and researchers included in the eligible partnership;
- develop and field a drug testing and graduated sanctions program for chronic hard-drug users living in the community under criminal justice supervision; and
- assist chronic hard-drug users by strengthening rehabilitation efforts through job training, drug treatment, or other services.

Definition of Eligible Partnership. The term “eligible partnership” would mean a working group whose application to the Director

- identifies the roles played, and certifies the involvement of, three or more agencies or organizations, which could include state or local agencies (such as those carrying out police, probation, prosecution, courts, corrections, parole, or treatment functions), federal drug control agencies, and community-based organizations;
- includes a qualified researcher;
- includes a plan to administer drug tests at least twice a week to recovering addicts living in the community while under the supervision of the criminal justice system, and to swiftly and certainly impose a known set of graduated sanctions for noncompliance with community-release provisions relating to drug abstinence (whether imposed as a pretrial, probation, or parole condition or otherwise);
- includes a strategy for responding to a range of substance use and abuse problems and a range of criminal histories;
- includes a plan for integrating data infrastructure among the agencies and organizations included in the eligible partnership to enable seamless, real-time tracking of hard-drug users under criminal justice supervision; and
- includes a plan to monitor and measure the progress toward reducing the percentage of the population of hard-drug users under criminal justice supervision who, upon being summoned for a drug test, either fail to show up or test positive for drugs.

Reports to Congress. Not later than June 1, 2009, the Director would submit to Congress an interim report identifying the best practices in coercing abstinence in chronic hard-drug users, including the best practices identified through the activities funded under this section. Not later than June 1, 2010, the Director would submit to Congress a final report on the best practices in coercing abstinence in hard-drug users as identified by the demonstration programs.

Authorization of Appropriations. H.R. 2829 would authorize an appropriation for this awards program in the amount of \$10 million each for fiscal years 2007 through 2009.

Authorization of Appropriations for ONDCP (Sec. 16)

The House reauthorization bill would amend current law (sec. 714) (21 U.S.C. § 1711) to authorize, except where the bill authorizes specific amounts, the appropriation of such sums as may be necessary for each fiscal year from 2007 through 2011.

Technical Amendments and Repeal (Sec. 17)

H.R. 2829 would make technical amendments to the Public Health Service Act to replace obsolete references. The bill would also repeal sec. 6073 of the Asset Forfeiture Amendments Act of 1988 (21 U.S.C. § 1509), establishing the Treasury Department's Special Forfeiture Fund, which once provided funds to ONDCP but no longer exists.

Sponsorship Identification (Sec. 18)⁴⁷

This section is intended to prevent the release of so-called "video news releases" by ONDCP — a practice that ONDCP says it has stopped⁴⁸ — and would presumably also apply to media campaign ads. It would require that every advertisement or other communication that ONDCP pays for, either directly or through a contract, shall include a prominent notice stating that it was paid for by ONDCP. This requirement would include advertisements disseminated in any form and would include communications by individuals in any form, including speech, print, or any electronic means.

Identification of sponsorship of broadcast matter is required by sec. 317 of the Communications Act of 1934.⁴⁹ The Advertising Council had earlier requested a waiver of this requirement so that advertisements donated to ONDCP's media campaign under the matching requirement would not have to be identified as having been sponsored by ONDCP. The Federal Communications Commission (FCC) denied the request in November 2002.⁵⁰

In the 108th Congress, there was a legislative attempt to nullify the 2002 FCC order. The ONDCP reauthorization bills in both the Senate (sec. 404(3)) and the House (sec. 10(e)(4)) contained provisions to exempt advertisements donated to the campaign under the matching requirement from being identified as sponsored by ONDCP. (The provision in the House bill was dropped at markup by the full

⁴⁷ This section was added to the bill by an amendment offered by Ranking Member Waxman at the Government Reform Committee markup on June 16, 2005.

⁴⁸ House Government Reform Committee Report, p. 69.

⁴⁹ Sec. 317 (47 U.S.C. § 317) states that all matter broadcast by a station in exchange for consideration from any person shall, at the time the matter is broadcast, be announced as paid for or furnished by that person.

⁵⁰ Federal Communications Commission, Order FCC 02-268, released Nov. 7, 2002.

Government Reform Committee.) This provision would have broader applicability, extending beyond the media campaign to all public announcements by ONDCP.

Policy Relating to Syringe Exchange Programs (Sec. 19)⁵¹

This section would amend current law (sec. 703(a)) (21 U.S.C. §1702(A)) by adding at the end the following statement:

When developing the national drug control policy, any policy of the Director relating to syringe exchange programs for intravenous drug users shall be based on the best available medical and scientific evidence regarding their effectiveness in promoting individual health and preventing the spread of infectious disease, and their impact on drug addiction and use. In making any policy relating to syringe exchange programs, the Director shall consult with the National Institutes of Health and the National Academy of Sciences.

While Representative Souder, the bill's sponsor, has often stated that he does not advocate needle exchange programs, he supported this amendment at Government Reform Committee markup because he does believe that policy relating to the issue should be backed by the results of scientific studies. This was reiterated in the Government Reform Committee report on H.R. 2829, which plainly states that "in adopting this amendment the Committee in no way endorses the use of such programs"(p. 70).

International Summit on Methamphetamine Threat (Sec. 20)⁵²

The House bill would require the Director, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the United States Trade Representative, to convene an international summit on the threat of methamphetamine and synthetic drug precursor chemicals. The Director must seek to convene the summit with the participation and involvement of government leaders at the highest level from all countries that are direct sources of precursor chemicals and from all countries that are affected by methamphetamine production, trafficking, and use. The purpose of the summit would be to intensify and coordinate an effective international response to prevent methamphetamine production and precursor diversion.

International Agreements. The Director would be required to encourage the negotiation, drafting, and ratification of multilateral or bilateral agreements that contain information-sharing treaties concerning provisions for precursor importation and exportation and additional provisions for annual assessments of the medical and scientific needs of each signatory country.

⁵¹ This section was added to the bill by an amendment offered by Ranking Member Waxman and modified by the Government Reform Committee at markup on June 16, 2005.

⁵² This provision was added by a floor amendment offered by Reps. Baird, Cardoza, and Hooley.

Matters to Be Addressed by the Summit. The summit could address the following topics:

- The greater involvement of international policing and customs organizations, such as Interpol, the United Nations Office on Drugs and Crime, and the World Customs Organization.
- The expansion of resources and hired persons to track international shipments of ephedrine, pseudoephedrine, and other precursor substances controlled by the International Narcotics Control Board.
- Ways of working with the private sector and federal agencies, as well as the World Health Organization, to support the research and development of substances that can effectively replace primary precursors used in the manufacture of synthetic drugs.

Deadline. The Director must seek to convene the summit no later than 12 months after the date of enactment of this bill and convene follow-up summits in subsequent years as the Director finds necessary.

Authorization of Appropriations. The bill would authorize an appropriation of \$1 million to carry out this section.

Study of Drug Court Hearings at Alternative Sites (Sec. 21)⁵³

The Director would be required to conduct a study on drug court programs that conduct hearings in nontraditional public places, such as schools, so that students see the consequences of drug abuse by nonviolent offenders, thereby serving as a strong deterrent and promoting demand reduction. The Director would submit a report on this study along with the Drug Control Strategy that is due on February 1, 2007. The report must include an evaluation of the results of the study and such recommendations as the President considers appropriate.

Report on HHS Sponsorship of Harm Reduction Conference (Sec. 22)⁵⁴

The Director would be required to submit to Congress, no later than 30 days after enactment, a report explaining the rationale and circumstances leading to the sponsorship by the Department of Health and Human Services (HHS) of, and the participation by HHS employees in, the First National Conference on Methamphetamine, HIV, and Hepatitis Science and Response, conducted by the Harm Reduction Coalition and the Harm Reduction Project in August 2005 in Salt Lake City. The report would have to include a description of ONDCP management and reporting systems that are in place, or that will be put in place, to ensure that the policy of the federal government is consistently supportive of efforts to prevent the use of methamphetamine.

⁵³ This provision was added by a floor amendment offered by Rep. Boozman.

⁵⁴ This provision was added by a floor amendment offered by Rep. Graves.

This provision reflects the position of many Members of Congress that the harm reduction approach to drug use, which has been widely implemented in Europe and elsewhere, is an evil to be stamped out, not an alternative policy worthy of consideration.

Institute of Medicine Study of Iatrogenic Addiction (Sec. 23)⁵⁵

The Director must request the Institute of Medicine of the National Academy of Sciences to conduct a study examining certain aspects of prescription drugs associated with iatrogenic (doctor-induced) addiction, including oxycodone hydrochloride controlled-release tablets (OxyContin). The study must evaluate the rate and impact of iatrogenic addiction associated with the use of drugs prescribed for pain control and the relative addictiveness of these drugs when compared with other opioids and other Schedule I or II substances. A report on the results of the study would be submitted to Congress within one year of enactment.

Report on Tribal Participation in the HIDTA Program (Sec. 24)⁵⁶

Within one year of enactment, the Director would be required to prepare a report for Congress on the representation of tribal governments in the High Intensity Drug Trafficking Areas (HIDTA) Program. The report would include

- a list of tribal governments represented in the program and a description of their participation;
- an explanation of the rationale for the level of representation by such governments; and
- recommendations by the Director on methods for increasing the number of tribal governments represented in the HIDTA Program.

National Methamphetamine Information Clearinghouse (Sec. 25)⁵⁷

This section of the House reauthorization bill would be known as the National Methamphetamine Information Clearinghouse Act of 2005. It would establish, under the supervision of the Director, an information clearinghouse to be known as the National Methamphetamine Information Clearinghouse. It would also establish an advisory council to be known as the National Methamphetamine Advisory Council, which would consist of 10 members appointed by the Director to three-year terms. At least three of the members would represent law enforcement agencies, at least four would represent nongovernmental and nonprofit organizations that provide services

⁵⁵ This provision was added by a floor amendment offered by Rep. Lynch.

⁵⁶ This provision was added by a floor amendment offered by Rep. Renzi.

⁵⁷ This provision was added by a floor amendment offered by Reps. Chabot, Boswell, Calvert, Cannon, and Larsen.

related to methamphetamine, and one would represent the Department of Health and Human Services.

Clearinghouse Requirements and Review. The clearinghouse would promote information sharing of successful law enforcement, treatment, environmental, social service, and other programs related to the production, use, or effects of methamphetamine and of grants available for such programs. It would provide a toll-free number and a website for information on the short- and long-term effects of methamphetamine use, methamphetamine treatment programs and programs for drug endangered children, and grants for methamphetamine-related programs. It would allow a qualified entity to submit items to be posted on the website regarding successful public or private programs or other useful information related to the production, use, or effects of methamphetamine. (A “qualified entity” would be a state or local government, school board, or public health, law enforcement, nonprofit, or other nongovernmental organization that provides services related to methamphetamine.) The website would include a restricted section, accessible only by law enforcement organizations, that would contain successful strategies, training techniques, and other information that the advisory council determines helpful to law enforcement agency efforts to combat the production, use, or effects of methamphetamine.

Within 30 days of submission of an item by a qualified entity, the advisory council would review an item submitted for posting on the website to evaluate and determine whether the item meets the requirements for posting and, in consultation with the Director, to determine whether the item should be posted in a restricted section of the website. Within 45 days of submission of an item, the Council would post the item on the website or notify the entity that submitted the item of the reason for not posting it and of any modifications that could be made that would allow it to be posted.

Authorization of Appropriations. A \$1 million appropriation would be authorized for FY2007 to establish the clearinghouse and the advisory council, and the funding necessary for their operation would be authorized for each fiscal year from 2007 through 2011.

Report on School Drug Testing (Sec. 26)

The Director would be required, within 120 days of enactment, to prepare a report on drug testing in schools that would include a list of secondary schools that have initiated drug testing after attending a conference on drug testing sponsored by ONDCP.

Report on the Methamphetamine Epidemic (Sec. 27)

This section of the House reauthorization bill would require the Director to prepare, within 120 days of enactment, a report on methamphetamine usage in the United States. The report would describe the usage by zip code based on information obtained from industrial and school drug testing and on seizures of clandestine laboratories.

Report on ONDCP Performance Bonuses (Sec. 28)

The bill would require the Director, within 120 days of enactment, to prepare a report on performance bonuses awarded at ONDCP. The report would include a list of employees who received performance bonuses, and the amount of such bonuses, for the period beginning on October 1, 2004, and ending on the date of submission of the report.

H.R. 2565 in the 109th Congress

Representative Tom Davis introduced an ONDCP reauthorization bill on May 24, 2005. H.R. 2565 would extend ONDCP indefinitely by repealing the sunset provision of the agency's 1998 reauthorization act.⁵⁸ The bill would also authorize the appropriation of such sums as may be necessary for ONDCP and its programs for fiscal years 2006 through 2010.

The main purpose of H.R. 2565, however, would be to amend ONDCP's 1998 reauthorization act by adding to it the Clean Sports Act of 2005, which would establish minimum drug testing standards for the major professional sports leagues. The Federal Trade Commission would promulgate regulations and levy fines in implementation of these standards.

H.R. 2565 was considered by the House Committee on Government Reform on May 26, 2005, and approved by voice vote. (The Clean Sports Act was also introduced in the Senate (S. 1114/McCain), but the Senate bill would not amend ONDCP's 1998 reauthorization act, nor would it reauthorize ONDCP.)

The provisions of the Clean Sports Act were added to H.R. 2829 at the Government Reform Committee markup on June 16, 2005. The House Energy and Commerce Committee, at its markup of H.R. 2829 on February 16, 2006, however, removed the Clean Sports Act from the ONDCP reauthorization bill on the grounds that it, not the Government Reform Committee, had jurisdiction over the issue and that it had already approved its own bill (H.R. 3084) to mandate drug testing of professional athletes.⁵⁹

⁵⁸ P.L. 105-277, sec. 715, 21 U.S.C. § 1712.

⁵⁹ For more information on bills in Congress to establish drug testing standards for professional sports leagues, see CRS Report RL32999, *Drug Testing in Sports: Proposed Legislation*, by Nathan Brooks.

Reauthorization Bills in the 108th Congress

The agency's authorization expired on September 30, 2003,⁶⁰ putting its reauthorization on the agenda of the 108th Congress. Bills were introduced in both the House of Representatives (H.R. 2086) and the Senate (S. 1860) to extend ONDCP for another five years.

The House Bill, H.R. 2086

House Government Reform Subcommittee Hearings. To prepare for its consideration of the House ONDCP reauthorization bill, the Subcommittee on Criminal Justice, Drug Policy, and Human Resources held a series of three hearings on ONDCP and its programs early in the first session of the 108th Congress. At the first hearing, on March 5, 2003, ONDCP Director John P. Walters testified on his agency's recently released National Drug Control Strategy for 2003.⁶¹

The subcommittee's second hearing, held on March 27, 2003, focused on the National Youth Anti-Drug Media Campaign.⁶² The media campaign was originally created and authorized separately from ONDCP's reauthorizing statute by the Drug-Free Media Campaign Act of 1998.⁶³ The media campaign's authorization expired at the end of FY2002, but it has continued to be funded through appropriations measures.⁶⁴

Two of ONDCP's other programs, the High Intensity Drug Trafficking Areas Program and the Counterdrug Technology Assessment Center, were the subjects of the subcommittee's third and final hearing on April 8, 2003. ONDCP Deputy Director for State and Local Affairs Scott Burns and Drug Enforcement Administration Chief of Operations Roger Guevara, along with several state and local law enforcement officials, testified at this hearing.⁶⁵

⁶⁰ Since the expiration of its authorization, activities of ONDCP have been carried out under authority provided by appropriations.

⁶¹ U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy and Human Resources, *ONDCP Reauthorization and the National Drug Control Strategy for 2003*, hearing, 108th Cong., 1st sess., Mar. 5, 2003 (Washington: GPO, 2003).

⁶² U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy and Human Resources, *ONDCP Reauthorization: The National Youth Anti-Drug Media Campaign*, hearing, 108th Cong., 1st sess., Mar. 27, 2003 (Washington: GPO, 2003).

⁶³ P.L. 105-277, Division D, Title I, Sec. 102, Oct. 21, 1998, 112 Stat. 2681-752, 21 U.S.C. § 1801 *et seq.*

⁶⁴ Further information on the media campaign and analysis of its impact on youth drug use in the United States can be found in CRS Report RS21490, *War on Drugs: The National Youth Anti-Drug Media Campaign*, by Mark Eddy.

⁶⁵ U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal
(continued...)

Introduction of H.R. 2086 and Subcommittee Markup. On May 14, 2003, Subcommittee Chairman Souder introduced H.R. 2086, the Office of National Drug Control Policy Reauthorization Act of 2003. At markup the next day, the bill was ordered reported, as amended, to the full Government Reform Committee.

Committee Hearing and Markup. The full Government Reform Committee held a hearing and scheduled a markup for May 22, 2003. Director Walters testified at the hearing portion of the committee meeting.⁶⁶ The markup scheduled to follow the Director's testimony was postponed, however, due to disagreements between the committee's majority and minority Members over certain provisions in the bill. These disagreements were resolved and a rescheduled markup was held on June 5, 2003, when the full committee approved an amendment in the nature of a substitute offered by Representative Souder.⁶⁷

One point of disagreement concerned a provision that would have allowed the ONDCP Director to use funds appropriated for the National Youth Anti-Drug Media Campaign to oppose efforts in the states, including referenda and legislative proposals, to legalize the use of any controlled substance. Instead, the amended version of H.R. 2086 would have forbidden any media campaign funds from being used for "partisan political purposes or advocacy in support of or to defeat any clearly identified candidate, clearly identified ballot initiative, or clearly identified legislative or regulatory proposal." This was an expansion of the language in current law that simply prohibits use of media campaign funds "for partisan political purposes." This wording was expanded in an attempt to stop the Director and other ONDCP officials from publicly campaigning against medical marijuana ballot initiatives in the states and to curtail ONDCP's alleged use of media campaign ads to persuade voters to oppose such initiatives.

At markup, Representative Waxman, the committee's ranking Member, offered an amendment to eliminate the requirement in current law (sec. 704(b)(12)) that the Director "take such actions as necessary to oppose any attempt to legalize the use of a substance (in any form) that is listed in schedule I ... and has not been approved for use for medical purposes by the Food and Drug Administration." Arguing against the amendment, Representative Souder stated his belief in the importance of the Director speaking out against any efforts that would violate federal law, notwithstanding that the issue under debate involved efforts to *change* federal law, not *break* federal law. The amendment was rejected by voice vote.

⁶⁵ (...continued)

Justice, Drug Policy and Human Resources, *ONDCP Reauthorization: The High Intensity Drug Trafficking Areas Program and CTAC*, hearing, 108th Cong., 1st sess., Apr. 8, 2003 (Washington: GPO, 2003).

⁶⁶ U.S. Congress, House Committee on Government Reform, *H.R. 2086, The Office of National Drug Control Policy Reauthorization Act of 2003*, hearing on H.R. 2086, 108th Cong., 1st sess., May 22, 2003 (Washington: GPO, 2003).

⁶⁷ U.S. Congress, House Committee on Government Reform, Office of National Drug Control Policy Reauthorization Act of 2003, report to accompany H.R. 2086, 108th Cong., 1st sess., H.Rept. 108-167, part 1, June 19, 2003 (Washington: GPO, 2003).

House Judiciary Committee Actions. The House Judiciary Committee, to which H.R. 2086 was also referred, considered the bill on July 9, 2003, and ordered it reported, as amended, on July 14, 2003.

H.R. 2086 Passes the House. The House passed the measure, without amendment, by voice vote under suspension of the rules, on September 30, 2003.⁶⁸ The following day, the measure was received in the Senate and referred to the Committee on the Judiciary. H.R. 2086 received no further consideration and died at the close of the 108th Congress. It laid the groundwork, however, for H.R. 2829, the House reauthorization bill in the 109th Congress, as discussed above.

The Senate Bill, S. 1860

The Senate's ONDCP reauthorization bill was introduced on November 14, 2003, by Senators Hatch, Biden, and Grassley and was referred to the Judiciary Committee.⁶⁹

Structure and Major Provisions of S. 1860. The part of the Senate bill that would have reauthorized ONDCP and the media campaign (Titles I through V) followed the structure of the House proposal, although it differed from H.R. 2086 in many of its details. Like the House bill, S. 1860 would have amended ONDCP's reauthorization act of 1998. It would also have amended the Drug-Free Media Campaign Act of 1998; however, unlike the House bill, it would have left it as a separate statute. The remaining titles of S. 1860 contained additional drug-control measures, including treatment provisions, that were unrelated to ONDCP and that were not found in H.R. 2086. S. 1860 saw no action beyond introduction and committee referral, and the bill died at the close of the 108th Congress. Some of its provisions, however, were incorporated into H.R. 2829, the House reauthorization bill in the 109th Congress.

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⁶⁸ "Office of National Drug Control Policy Reauthorization Act of 2003," *Congressional Record*, daily edition, vol. 149 (Sept. 30, 2003), pp. H8962-H8972.

⁶⁹ Sen. Hatch, et al., introductory remarks, *Congressional Record*, daily edition, vol. 149 (Nov. 14, 2003), pp. S14811-S14815.