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

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Mark Eddy
Specialist in Social Legislation
Domestic Social Policy Division

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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, and the Counter-Drug Technology Assessment Center. The office was created in 1988 and reauthorized twice since then.

A bill has been introduced in the House (H.R. 2565) that would extend ONDCP by repealing the sunset provision of the agency’s 1998 reauthorization act and authorize appropriations through 2010. The main purpose of the bill, however, is to impose drug-testing regulations on professional sports leagues.

More extensive ONDCP reauthorization bills are reportedly being drafted by the House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources and the Senate Judiciary Subcommittee on Crime and Drugs. These bills will likely resemble the reauthorization bills introduced in the 108th Congress, H.R. 2086 and S. 1860. This report’s comparison and analysis of the provisions of these bills from the 108th Congress are therefore of continuing relevance to the 109th Congress as it prepares to consider reauthorization of the office of the drug czar.

This report will be updated as legislative activity occurs.

Contents

Introduction and Background	1
ONDCP Reauthorization in the 109 th Congress	2
Reauthorization Bills in the 108 th Congress	3
The House Bill, H.R. 2086	3
House Government Reform Subcommittee Hearings	3
Introduction of H.R. 2086 and Subcommittee Markup	4
Major Provisions of H.R. 2086	5
Full Committee Hearing	5
The Souder Substitute	6
Controversial Provisions	6
Full Committee Markup	7
House Judiciary Committee Actions	7
H.R. 2086 Passes the House	7
The Senate Bill, S. 1860	8
Structure and Major Provisions of S. 1860	8
Provisions Unrelated to ONDCP	8
Comparison and Analysis of the Bills' Provisions	9
Amendments to Definitions	9
Organization of ONDCP and Duties of the Director	9
Coordination with Other Agencies	11
National Drug Control Strategy	11
High Intensity Drug Trafficking Areas Program	12
Report on Intelligence Sharing	14
Counter-Drug Technology Assessment Center (CTAC)	15
National Youth Anti-Drug Media Campaign	15
Latin American Heroin Strategy	19
Workplace Conditions	19
Repeals	19

List of Tables

Table 1. Proposed Authorizations for the HIDTA Program	13
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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, commonly known 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 enforcement agencies;
- 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 strategy and transmitting a copy of the notification to the President.

ONDCP's 1994 reauthorization² 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 other 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 effectiveness that the evaluation would include. It required the Director to

¹ P.L. 100-690, Title I, Subtitle A, National Narcotics Leadership Act of 1988.

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

periodically assess 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.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.⁴

The agency's 1998 authorization expired on September 30, 2003,⁵ putting its reauthorization on the agenda of the 108th Congress. Bills were introduced in both the House of Representatives and the Senate to extend ONDCP for another five years, as described below, but the bills were not enacted and died at the close of the 108th Congress. Similar bills are expected to be introduced in the 109th Congress, making this report's discussion and analysis of the previous Congress's actions on ONDCP's status of continuing relevance.

ONDCP Reauthorization in the 109th Congress

ONDCP reauthorization bills are expected to be introduced in both Houses of Congress in the 109th Congress, as they were in the 108th (see following section). In the meantime, a bipartisan bill, H.R. 2565, was introduced in the House that would extend ONDCP by simply repealing the sunset provision of the agency's 1998 reauthorization act.⁶ The bill would also authorize to be appropriated 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, is 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. Overseeing the implementation of these standards would be a major addition to the current list of responsibilities of the ONDCP Director.

Introduced on May 24, 2005, by Representative Davis, H.R. 2565 was considered by the House Committee on Government Reform on May 26 and approved by voice vote. (The Clean Sports Act was also introduced in the Senate

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

⁴ A side-by-side table comparing the original 1988 authorizing law with the language of the 1998 reauthorizing statute is available to congressional requesters from the author of this report.

⁵ Since the expiration of its authorization, activities of ONDCP have been carried out under authority provided by appropriations.

⁶ P.L. 105-277, sec. 715, 21 U.S.C. 1712.

(S. 1114/McCain), but the Senate bill would not amend ONDCP's 1998 reauthorization act, nor would it reauthorize ONDCP.)⁷

The House and Senate committees of jurisdiction over ONDCP are reportedly working on broader ONDCP reauthorization bills. These committees are the House Committee on Government Reform (and its Subcommittee on Criminal Justice, Drug Policy and Human Resources) and the Senate Committee on the Judiciary (and its Subcommittee on Crime and Drugs). These bills, when introduced, will likely resemble those introduced in the 108th Congress, H.R. 2086 and S. 1860, the provisions of which are set forth, compared, and analyzed in the remainder of this report.

Reauthorization Bills in the 108th Congress

The House Bill, H.R. 2086

House Government Reform Subcommittee Hearings. In anticipation of its consideration of the House's ONDCP reauthorization proposal, House Government Reform's 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. He indicated that the administration would soon be submitting to Congress proposed reauthorizing language for ONDCP.⁸

The subcommittee's second hearing, held on March 27, 2003, focused on the National Youth Anti-Drug Media Campaign.⁹ The media campaign was originally created and authorized separately from ONDCP's reauthorizing statute by the Drug-Free Media Campaign Act of 1998.¹⁰ Its authorization expired at the end of FY2002, but it has continued to be funded through ONDCP's appropriations measures. At the hearing it was indicated that the media campaign, with its extension overdue, would

⁷ For more information on bills in Congress to establish drug testing standards for professional sports leagues, see CRS Report RS22156, *Drug Testing in Sports: Proposed Legislation*, by Nathan Brooks.

⁸ 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), p. 26.

⁹ 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). (Hereafter cited as "House Government Reform Media Campaign Hearing.")

¹⁰ P.L. 105-277, Division D, Title I, Sect. 102, Oct. 21, 1998; 112 Stat. 2681-752; 21 U.S.C. 1801, *et seq.*

be included, as had been expected, in the forthcoming House bill to reauthorize ONDCP.¹¹

The subcommittee received testimony from ONDCP Chief of Staff Chris Marston, Steve Pasierb, president of the Partnership for a Drug-Free America, David McConaughy of Ogilvy & Mather, and Peggy Conlon, president of the Advertising Council. The lead-off witness was Representative Portman, who formerly sat on the Government Affairs Committee and who established a similar youth antidrug coalition campaign in his home district in Ohio.

Testifying on behalf of the Director, Mr. Marston requested that the reauthorization bill include two changes in the media campaign. He asked that ONDCP be allowed, under certain circumstances, to pay the creative costs of developing campaign ads. He also sought the reversal of a November 2002 ruling of the Federal Communications Commission (FCC).¹² This ruling ordered that all ads that are run to satisfy a media outlet's matching requirement must state that the time has been furnished by ONDCP, even if the ads were produced by groups that do not want their messages tagged with ONDCP sponsorship or tagged that the time was provided by ONDCP. This identification of sponsorship is required by Section 317 of the Federal Communications Act of 1934.¹³

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, Drug Enforcement Administration Chief of Operations Roger Guevara, along with several state and local law enforcement officials, testified at this hearing.¹⁴

Introduction of H.R. 2086 and Subcommittee Markup. Then, on May 14, 2003, Representative Souder introduced H.R. 2086, the Office of National Drug Control Policy Reauthorization Act of 2003. Subcommittee markup was scheduled for the following day.

At markup, the subcommittee adopted by voice vote three amendments offered by Representative Cummings, the ranking member, and ordered the bill reported, as amended, to the full Government Reform Committee.

¹¹ 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.

¹² Federal Communications Commission, Order FCC 02-268, released Nov. 7, 2002.

¹³ 47 U.S.C. 317

¹⁴ U.S. Congress, House Committee on Government Reform, Subcommittee on Criminal 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).

One of the amendments would have granted eligibility for student loans to students who had been denied them due to prior drug offenses and would have provided for expedited consideration of loan applications for those students so denied. This would have been achieved by providing that the Director has the authority to prohibit the certification of any budget request that is used to enforce the “Drug Free Student Loan” provision of the Higher Education Act (P.L. 105-244) with respect to convictions that did not occur when a student was actually receiving federal student aid.

The other two amendments would have prevented the ONDCP Director from certifying budget requests for two drug prevention programs that were not higher than the previous year’s appropriated amounts.¹⁵

Major Provisions of H.R. 2086. The bill would have primarily affected two separate acts contained in P.L. 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. It would have amended the Office of National Drug Control Policy Reauthorization Act of 1998, which appears as Sections 701 through 715 of Title VII of Division C of the Omnibus Act. Also, it would have repealed and replaced the Drug-Free Media Campaign Act of 1998, which is Sections 101 through 105 of Title I of Division D of the Omnibus Act. The media campaign law created the National Youth Anti-Drug Media Campaign and authorized it through FY2002.

The bill would have reaffirmed the authority of the ONDCP Director to oversee and coordinate the federal government’s efforts to reduce the availability and use of illegal drugs in the United States. It would have attempted to increase accountability for the achievement of drug policy objectives by instituting an annual evaluation of the effectiveness of the previous year’s Drug Control Strategy, including a review of the activities of the many federal departments and agencies involved in drug control efforts. The bill contained new funding allocation requirements for the High Intensity Drug Trafficking Area program and new criteria for designating HIDTAs. It would have authorized to be appropriated such sums as necessary to conduct ONDCP’s programs for an additional five years, FY2004 through FY2008 and contained specific annual authorizations for the HIDTA program and the youth media campaign. (The provisions of H.R. 2086 are discussed more fully below, where they are compared with those of the Senate reauthorization proposal.)

Full Committee Hearing. 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.¹⁶ The markup that was scheduled to follow the Director’s testimony was postponed, however, due to disagreements

¹⁵ The two programs are 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.

¹⁶ 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).

between the committee's majority and minority members over certain provisions in the bill.

The Souder Substitute. These disagreements were resolved at a rescheduled markup on June 5 when the full committee approved an amendment in the nature of a substitute offered by Mr. Souder that resolved the major disagreements over the version of the bill that had been reported to the full committee.

Controversial Provisions. One area of disagreement concerned a provision in the bill as reported by the subcommittee that would have permitted the ONDCP Director to reallocate up to 5% of funds available for a fiscal year for the High Intensity Drug Trafficking Areas program and to use those reallocated funds to enforce the Controlled Substances Act in states that permit the use of medical marijuana. This provision was deleted in the Souder substitute.

Another 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 version of H.R. 2086 reported by the full House Government Reform Committee 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 the media campaign's original 1998 authorizing statute, contained in current law,¹⁷ that simply prohibits use of media campaign funds "for partisan political purposes."

Also dropped was the provision discussed above that would have reversed a November 2002 ruling of the Federal Communications Commission and exempted media campaign ads from Section 317 of the Communications Act of 1934, which requires that all ads that are run to satisfy a media outlet's matching requirement must state that the time has been furnished by ONDCP. (This provision reappeared in the Senate bill, as discussed below.)

The requirement that 80% of funding for the media campaign be expended for advertising time and space was reduced to 77%, at the urging of the ONDCP Director and others who sought to preserve the non-advertising elements of the campaign. The substitute also dropped a provision limiting non-advertising related media campaign expenditures, such as partnerships with community and professional groups, entertainment and news media outreach, and corporate sponsorships, to 3% of the campaign's budget.

There were other differences between the bill as reported to the full committee and the substitute bill adopted by the full committee. Repeal of the provision in current law creating the Parents Advisory Council on Youth Drug Abuse was

¹⁷ The phrase "current law" as used in this report refers to the authorizing statutes of ONDCP and the media campaign, respectively, even though both laws have technically expired.

reversed. Congressional findings with regard to the harmfulness of marijuana were inserted. These findings precede a new provision in the bill stating that “the Director may emphasize prevention of youth marijuana use” in the media campaign.

Full Committee Markup. At the rescheduled markup on June 5, 2003, Representative Waxman, the committee’s ranking member, offered an amendment to eliminate the requirement in current law (Section 704(b)(12)) that the ONDCP 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 ONDCP Director speaking out against any efforts that would violate federal law, notwithstanding that it was efforts to *change* federal law, not *break* federal law, that were at issue. The amendment was rejected by voice vote.

At the conclusion of the markup, Chairman Davis ordered the bill reported, as amended, which was done on June 19, 2003. A detailed section-by-section analysis of the bill can be found in the committee report.¹⁸

House Judiciary Committee Actions. The House Judiciary Committee, to which H.R. 2086 was also referred, considered the bill on July 9, 2003, in a session that lasted into the evening. Representative Coble, chairman of the Crime, Terrorism, and Homeland Security Subcommittee, offered an amendment to delete from the bill an allocation formula for distributing funds to the High Intensity Drug Trafficking Areas. Director Walters had argued against this provision at the Government Reform Committee hearing on May 22, 2003. The amendment was adopted. Several amendments were offered by the minority and rejected, including one that would have killed the bill by striking its entire text. The bill, as amended, was finally approved by voice vote. It was reported by the Judiciary Committee on July 14, 2003.¹⁹

H.R. 2086 Passes the House. The House passed the measure, without amendment, by voice vote under suspension of the rules, on September 30, 2003.²⁰ 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.

¹⁸ 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. 34-40. (Hereafter cited as Government Reform Committee report on H.R. 2086.)

¹⁹ *Ibid.*, House Committee on the Judiciary, part 2, July 14, 2003. (Hereinafter cited as: House Judiciary Committee report on H.R. 2086.)

²⁰ “Office of National Drug Control Policy Reauthorization Act of 2003,” *Congressional Record*, daily edition, vol. 149 (Sept. 30, 2003), pp. H8962-H8972.

The Senate Bill, S. 1860

The Senate's reauthorization bill was introduced on November 14, 2003, by Senators Hatch, Biden, and Grassley and was referred to the Judiciary Committee.²¹

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, as discussed below. Like the House bill, S. 1860 would have amended ONDCP's reauthorization act of 1998. Unlike the House bill, however, it would also have amended the Drug-Free Media Campaign Act of 1998 and left it as a separate statute. The House bill, on the other hand, would have included the media campaign in the ONDCP reauthorizing act and would have repealed the 1998 act that originally created the campaign.

Like the House bill, S. 1860 would have authorized such sums as necessary to conduct ONDCP's programs through FY2008 and contained specific appropriations for the HIDTA program and the media campaign.

The Senate bill would have expanded ONDCP's role and authority in overseeing and coordinating federal drug control programs and would have required ONDCP to develop specific goals and measurements to assess program performance. It would have required ONDCP to develop a new performance measurement system to include annual and five-year objectives for assessing the National Drug Control Strategy. It would have increased funding and created a new emerging threat fund for the High Intensity Drug Trafficking Areas program. It would have provided increased funding for counter-drug technologies under the Counter-Drug Technology Transfer program. It would have reauthorized and reformed the National Youth Anti-Drug Media Campaign to improve its financial management. (The provisions of S. 1860 are discussed more fully below, where they are compared with those of the House bill.)

Provisions Unrelated to ONDCP. The Senate bill, in Titles VI through IX, contained additional drug-control measures that are unrelated to ONDCP and that were not found in H.R. 2086. These titles are therefore beyond the scope of this report:

- Title VI. Designation of United States Anti-Doping Agency, to prevent use of performance-enhancing drugs in amateur athletic competitions recognized by the United States Olympic Committee and authorizing appropriations;
- Title VII. Drug Education, Prevention, and Treatment, to authorize several drug prevention and treatment grant programs taken from an unenacted measure introduced in the 107th Congress, S. 304;
- Title VIII. Anabolic Steroid Control Act of 2003, to enact provisions to further prohibit, punish, prevent, and measure the use

²¹ Sen. Hatch, et al., introductory remarks, *Congressional Record*, daily edition, vol. 149 (Nov. 14, 2003), pp. S14811-S14815.

- of anabolic steroids in the United States (also introduced as S. 2195, which was enacted separately and became P.L. 108-358); and
- Title IX. National Guard Counter-Drug Schools, to authorize appropriations for the operation of five National Guard counterdrug schools (S. 1785).

Comparison and Analysis of the Bills' Provisions

This section compares the provisions of H.R. 2086, as approved in the House and sent to the Senate, with the reauthorization provisions of S. 1860, as introduced in the Senate. The discussion that follows deals primarily with amendments or changes to existing law. Provisions of current law that would have remained unchanged are mentioned only where necessary to provide context for understanding the changes that would have been made by the proposed bills.²²

Amendments to Definitions. Both the House bill (Section 2) and the Senate bill (Section 101) contained similar changes to certain terms as they are defined in current law. Perhaps the most important changes were in the definitions of “state and local affairs” and “supply reduction.” Domestic law enforcement directed against drug users would have been dropped from the definition of supply reduction and placed under the definition of state and local affairs. This would have served to statutorily move responsibility for handling domestic law enforcement matters from ONDCP’s Office of Supply Reduction to its Office of State and Local Affairs. These changes were intended to make the statute reflect what ONDCP is already doing, in practice, and would have made it clear that domestic law enforcement activities serve a wider purpose than supply reduction.

Organization of ONDCP and Duties of the Director. Both bills would have retained the current structure of ONDCP and would have made only limited changes to strengthen the authority of the Director. The responsibility of the Director to review and certify the budgets 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 (Section 3(c)) would have added general criteria to be used by the Director in certifying agency budget requests. For example, the criteria would have prevented the Director from certifying any budget request that does not adequately compensate for transfers of drug enforcement resources and personnel to unrelated activities such as counterterrorism. Likewise, the Director would not have been able to approve budget requests for law enforcement activities on U.S. borders that did not provide adequate resources for drug interdiction and enforcement. Budget requests, to be certified as adequate, would also have had to

- provide adequate result and accountability measures for drug treatment programs;

²² S. 1860 contained many provisions that are unrelated to ONDCP reauthorization, as mentioned above. They are beyond the scope of this paper and are not included in the following comparison.

- include clear antidrug messages in any activities of the Safe and Drug Free Schools program;
- ensure that funding for drug treatment activities adequately supported and enhanced federal drug treatment programs and capacity;²³ and
- not provide funding to enforce the drug free student loan provision of the Higher Education Act with respect to convictions for drug offenses that did not occur while the student was receiving federal aid.²⁴

The Senate bill (Section 103(b)(6)) would have added the following duties to those of the Director:

- coordinate with the private sector to promote private research and development of medications to treat addiction;
- seek the support and commitment of state and local officials in the formulation and implementation of the National Drug Control Strategy;
- monitor and evaluate the allocation of resources among federal law enforcement agencies in response to significant local and regional drug trafficking and production threats; and
- submit 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.

Current law (Section 704(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 (Section 3(d)) would have reduced that amount to \$1 million.

The House bill (Section 3(e)(4)) would have added to the powers of the Director a requirement that the Director submit to the President, no later than 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, 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

²³ This language, inspired by two amendments proposed by Rep. Cummings that were adopted by voice vote at the House Government Reform subcommittee markup, was 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.

²⁴ Sec. 484(r)(l) of the Higher Education Act of 1965 (20 U.S.C. 1091(r)(1)). The Senate bill (Sec. 1002) would have directly amended the Higher Education Act of 1965 to achieve the same result.

foreign nations in drug control efforts was changed in 2003 from “not fully cooperating” to “failed demonstrably.” The House Government Reform Committee wanted the President to receive an additional, independent assessment from the ONDCP Director conducted under the older, more rigorous standard.

U.S. Interdiction Coordinator. Both the House bill (Section 3(f)) and the Senate bill (Section 103(f)) would have created the position of United States Interdiction Coordinator, who would have been appointed by the Director to coordinate federal drug interdiction operations. This position had previously existed within ONDCP, but without statutory authority, until it was statutorily created in 2002 within the Department of Homeland Security (DHS). The Senate bill would have specifically amended the Homeland Security Act of 2002 to remove the position from DHS and restore it to ONDCP. The House bill, on the other hand, would have permitted the Director to appoint his own interdiction coordinator, who may or may not be the DHS interdiction coordinator.

Coordination with Other Agencies. Both the House bill (Section 4(2)) and the Senate bill (Section 104(2)) would have mandated that the Secretaries of the Interior, Agriculture, Homeland Security, and Defense prepare annual reports for the Director and the authorizing committees of Congress detailing specific aspects of their departments’ drug control activities. The House bill would also have required a report from the Attorney General on drug violation arrests and prosecutions and drug seizures. These new reporting requirements were designed to assist the agencies in resource allocation and to aid the committees in their oversight function, especially when it comes to assessing the impact of diverting drug control assets to unrelated missions.

National Drug Control Strategy. Under both the House bill (Section 5) and the Senate bill (Section 201), the preparation, submission, implementation, and assessment of a National Drug Control Strategy would have remained one of the most important and visible responsibilities of ONDCP. The emphasis in current law (Section 706(a)(2)(A)(iii)) upon a five-year strategy supplemented by annual updates, however, would have been shifted to the preparation of annual strategies. Five-year projections for changes in program and budget priorities would still have been required. The annual strategies would have continued to be due from the President to Congress no later than February 1 of each year.

The House bill sought to revise and streamline the requirements for developing and issuing the strategies by dropping many of the required elements of the strategy required by current law (e.g., Section 706(b)) and by simplifying the requirements of the performance measurement system (Section 706(c)). Both bills, however, would have continued to require comprehensive, long-range, and quantifiable goals for reducing drug abuse and its consequences, backed by annual objectives and targets designed to move the country toward the long-term goals. Both bills would have dropped the specific numerical targets for reducing drug use contained in current law (Section 706(a)(4)). These targets covered the period 1999 to 2003 and were largely unmet.

The House bill (Section 5) contained a new requirement that the strategy include data and information to permit a standardized and uniform assessment of the

effectiveness of drug treatment programs in the United States. The Senate bill (Section 202) contained a new requirement that the strategy include a summary of the efforts made by ONDCP to coordinate with private sector entities to develop medications to treat addiction.

High Intensity Drug Trafficking Areas Program. Current law (Section 707) does not explicitly state the purpose of the HIDTA program. Both the House and the Senate bills 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 HDTAs. The Senate bill (Section 301(2)) stated that these efforts were “to reduce the supply of illegal drugs in HIDTA designated areas.” The House bill (Section 6(a)), along with the Government Reform Committee’s report,²⁵ stressed that the purpose of HDTAs is to deal with “drug trafficking problems that harmfully impact other parts of the Nation.” The House bill would also have amended the factors the Director shall consider in designating HDTAs to emphasize the program’s focus on drug-related activities that have “a significant harmful impact in other areas of the United States” and “the degree to which the area is a center for the activities of national drug trafficking organizations.”

Removal of Areas. Current law says nothing about removing an area from designation as a HIDTA, and no HDTAs or parts of HDTAs have ever been removed from the program. The House bill (Section 6(a)) would have added a new Section 707(f) to current law that would explicitly authorize the Director to remove all or part of a HIDTA from the program if it no longer meets the required criteria — or, presumably, if it has accomplished its mission.

Review of Current Areas. The House bill (Section 6(b)) 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 it still warrants designation as a HIDTA. Any area or portion of an area that no longer warrants designation would be removed from the program.

Treatment Prohibition. Both bills would have retained the provision in current law (Section 707(d)) that no HIDTA funds shall be used for drug prevention or treatment programs. The House bill (Section 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. (This provision of current law caused consternation among some Members of the House Judiciary Committee during its markup of H.R. 2086.²⁶ It needs to be remembered that the HIDTA program is a law enforcement program and that treatment funds are found elsewhere in the federal drug control budget.)

Terrorism Activities. The House bill (Section 6(a)) would have permitted HIDTA funds to be used for counterterrorism activities, especially but not

²⁵ Government Reform Committee report on H.R. 2086, pp. 21-25.

²⁶ House Judiciary Committee report on H.R. 2086, pp. 114-119, 152-156 and *passim*.

exclusively in cases related to drug trafficking, but significant HIDTA resources could not have been redirected to activities exclusively related to terrorism.

Evaluation of HIDTA Performance. The Senate bill (Section 302(c)) would have required the Director, within 90 days of enactment of the act, to submit to Congress a report that describes, for each HIDTA, its specific purposes, its long-term and short-term goals and objectives, and the measurements that will be used, and the reporting requirements needed, to evaluate its performance in achieving those goals and objectives. It would then have required the Director to include with each subsequent annual National Drug Control Strategy an evaluation of each HIDTA's performance in accomplishing its stated goals and objectives.

Board Representation. Both the House bill (Section. 6(a)) and the Senate bill (Section 303) would have required that the Executive Board that governs each HIDTA be made up of an equal number of representatives from federal law enforcement and from state and local law enforcement. This balance would be mandated to ensure that the HDTAs maintain their focus on drug investigations of national importance.

Role of Drug Enforcement Administration. The House bill (Section 6(a)) would have required that a representative of the Drug Enforcement Administration be included in the Intelligence Support Center of each HIDTA.

HIDTA Funding. Both the House bill (Section 6(a)) and the Senate bill (Section 304) would have authorized specific amounts to fund the HIDTA program. The Senate bill was more generous than the House proposal, as shown in **Table 1**. The House drafters sought better management of HIDTA resources in lieu of significant funding increases. (In FY2004, the HIDTA program received an appropriation of \$226.4 million and in FY2005 it received \$228.4 million.)

Table 1. Proposed Authorizations for the HIDTA Program
(dollars in millions)

Bill	FY2004*	FY2005	FY2006	FY2007	FY2008
H.R. 2086	\$230	\$240	\$240	\$250	\$250
S. 1860	\$280	\$290	\$290	\$300	\$300

At present, the amount received by each HIDTA is determined by the Director after the appropriations bill is enacted, bypassing congressional scrutiny. The Senate bill (Section 304) would have required the Director to include in ONDCP's annual budget justification to Congress a breakdown showing the amount that is being requested for each HIDTA and a detailed rationale for each amount, including how such funding will ensure the achievement of each HIDTA's goals and objectives. It would also have authorized the Director to set aside an amount equal to not more than 10% above the total requested HIDTA funding for discretionary grants to meet emerging threats in existing HDTAs or to establish a new HIDTA.

The House bill (Section 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 tying the Director's hands, 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.²⁷

Assessment of Task Forces in HIDTA Areas. The Senate bill (Section 305) would have required the Director to submit to Congress, within 180 days of enactment of the bill, a report assessing the number and operation of all federal, state, or local task forces within each HIDTA. The bill called for the report to cover specific topics, with an emphasis on information sharing and coordination among task forces.

The Dawson Family Community Protection Act. Both the House bill (Section 7) and the Senate bill (Section 306) incorporated the text of H.R. 1599, the Dawson Family Community Protection Act. It would have required the Director to use at least \$1 million of HIDTA funds each fiscal year in HIDTAs with severe neighborhood safety and illegal drug distribution problems. The funds would have been 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 or operating toll-free telephone hotlines for use by the public to provide information about illegal drug-related activities.²⁸

Report on Intelligence Sharing. The Senate bill (Section 307) would have required the Director to submit to Congress, within 180 days, a report evaluating existing and planned intelligence systems used by federal, state, and local law enforcement agencies responsible for drug trafficking and drug production enforcement. The report would have been required to address

- the current intelligence systems used by federal, state, and local law enforcement agencies;

²⁷ An amendment to drop this allocation formula was approved at markup by the House Judiciary Committee, as described above, but the formula was retained in the version of H.R. 2086 that passed the House and was sent to the Senate.

²⁸ H.R. 1599 was originally introduced by Rep. Cummings on Apr. 3, 2003, in response to the Oct. 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 their neighborhood. (A similar bill with the same title, S. 2081, was introduced in the Senate on Feb. 12, 2004, by Sen. Mikulski.)

- the compatibility of such systems in ensuring access and availability of intelligence to law enforcement agencies at all levels of government;
- the extent to which federal, state and local law enforcement agencies are sharing intelligence information needed to assess current threats and design appropriate enforcement strategies; and
- the measures needed to ensure and promote effective information sharing among intelligence systems operated by drug enforcement agencies at all levels of government.

Counter-Drug Technology Assessment Center (CTAC). The House bill (Section 8(b)) contained a new requirement that the head of CTAC give 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.

Both the House bill (Section 8(b)) and the Senate bill (Section 308) would have reauthorized CTAC and would have provided statutory authority for its technology transfer program. The Senate bill (Section 308(b)(3)) went into the technology transfer program in greater detail than the House bill, stating the purpose of the program and the priority criteria for transfers. It also required an annual report to Congress on specific elements of the program.

National Youth Anti-Drug Media Campaign. The Drug-Free Media Campaign Act of 1998, less than two pages in length, is the current law that governs the media campaign.²⁹ It instructs the Director 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.

Both the House bill (Section 10) and the Senate bill (Title IV) would have expanded the language of current law and would have added new program requirements, as discussed and compared below. The House bill would have added the media campaign provisions to the 1998 ONDCP reauthorization act, making it Section 709 of current law,³⁰ and then would have repealed the separate 1998 media campaign law. The Senate bill, on the other hand, would have amended the 1998 media campaign act and left it standing as a separate law, the Drug-Free Media Campaign Act of 1998, as amended.³¹

²⁹ P.L. 105-277, Division D, Title I, Sec. 102, Oct. 21, 1998; 112 Stat. 2681-752; 21 U.S.C. 1801, *et seq.*

³⁰ Sec. 709 currently establishes the President’s Council on Counter-Narcotics, which was never created. Both the House and Senate bills would have repealed this section of current law.

³¹ 21 U.S.C. 1801 *et seq.*

Purpose of Campaign. The House bill (Section 10(a)) restated somewhat the campaign's purpose from "preventing *drug abuse* among young people" to "preventing *illicit drug use* among young people."³² In fact, the House bill consistently changed the term "drug abuse," wherever it appears in current law, to the term "illicit drug use," in an apparent attempt to emphasize the illegal aspects of drug taking as opposed to the health aspects of drug addiction. The Senate bill did not do this but, rather, retained the term "drug abuse."

The Senate bill (Section 402(2)(a)) would have rewritten the campaign's purpose to include adults as a key target audience of the campaign, in terms of both increasing adult awareness of the impact of drug abuse on youth, and encouraging parents and other interested adults to discuss with young people the dangers of illegal drug use. This would have brought the statute in line with ONDCP's practice of targeting up to 60% of campaign expenditures to adults who influence youth, such as parents, teachers, clergy, and mentors.

Requirements for the Use of Media Funds. The bills would have added specific and differing requirements regarding the purchase of creative services, evaluating the effectiveness of the campaign, and the purchase of advertising time and space. The House bill (Section 10(a)) specified that not more than \$1 million could be spent on creative services per fiscal year. This limit could be increased to \$2 million under certain circumstances. The Senate bill (Section 404) would have limited the purchase of creative services to no more than \$5 million in each fiscal year. Most creative services would have been expected to be donated to the media campaign, as at present.

The House bill (Section 10(a)) required that not less than 77% of appropriated campaign funds would have to be used to purchase advertising time and space, subject to certain exceptions. The Senate bill (Section 404(4)) would have set this floor for ad purchases at 85% of appropriated funds. Some advocates of the media campaign argue that setting the requirement at 80% or more would undermine the important non-advertising 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 devote its limited resources solely to ads in broadcast and print media.

The Senate bill (Section 404(4)) would have prohibited media campaign contracts with bidders who have been convicted of any criminal or civil offense in connection with the media campaign within the past 10 years. This provision could eventually have affected ONDCP's contract with Ogilvy & Mather, the firm that has held the contract for purchasing advertising time and space for the media campaign since the beginning of the campaign in 1998. Employees of the firm have been charged with over-billing the government for its services under the contract.³³

³² Emphases added.

³³ 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.

Division of Duties and Functions. The Senate bill (Section 403) would have added to the media campaign act a description of the separate duties of the Director, the Partnership for a Drug-Free America, and the media buying contractor as follows:

Duties of the Director. The Director would have been responsible for implementing a media campaign that focuses on the purposes set forth in the act and would have been responsible for approving (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.

Duties of the PDFA. The Partnership for a Drug-Free America would have been responsible for developing and recommending strategies to address national, regional, and local drug threats, such as methamphetamine and ecstasy. PDFA would also have been responsible for creating all advertising to be used in the national media campaign, except advertisements that are (1) provided by other nonprofits under the matching requirement, (2) intended to reach a minority, ethnic, or other special audience and that cannot be obtained at no cost, and (3) any other ads that PDFA determines it is unable to provide.

Duties of the Media Buying Contractor. The Director would have been responsible for contracting 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 PDFA.

Evaluations of Campaign Effectiveness. The House bill (Section 10(a)) required that all ads be tested for effectiveness before they are aired. This requirement could be waived under certain circumstances.

Both the House bill (Section 10(a)) and the Senate bill (Section 404(5)) would have required that the effectiveness of the campaign be evaluated annually based on specified survey research measures of drug use and other relevant studies to be determined by the Director. This evaluation would have been included in an annual report to Congress that both bills would have required of the Director, although the bills' lists of areas to be covered in these reports were not identical.

The Senate bill (Section 405) would have required the General Accounting Office (GAO; now named the Government Accountability Office) to prepare a report on the media campaign and submit it to Congress no later than one year after the date of enactment of the reauthorization measure. The GAO report would have been required to include assessments of nine different aspects of the campaign that are specified in the bill.

No-Cost Matching Requirement. Both bills would have continued the matching requirement that exists in current law. Media companies that are 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 (Section 10(a)) would have required that at least 70% of such no-cost match advertising be directly related to the substance abuse prevention message of the media campaign. The required percentage would rise to 85% in any fiscal year in which less than \$125 million is appropriated to the campaign.³⁴ The remaining ads would still have been required to include a clear antidrug message, although it need not be the primary message of the match advertising.

The Senate bill (Section 404(3)) would have required that *all* no cost matches of ad material, time, space, or in-kind contributions directly relate to substance abuse prevention and specifically promote the purposes of reducing and preventing drug abuse among young people in the United States.

Sponsorship Identification. The Senate bill (Section 404(3)) would have exempted ads that are donated to the campaign under the matching requirement from the sponsorship identification provisions contained in Section 317 of the Communications Act of 1934.³⁵ The Advertising Council's request for a waiver of this requirement was denied by the Federal Communications Commission (FCC) in November 2002.³⁶ This provision would have nullified the FCC order.

The House bill, as introduced, had a similar provision (Section 10(e)(4)), but it was dropped at markup by the full Government Reform Committee, as discussed above.

Audits. Both the House bill (Section 10(a)) and the Senate bill (Section 404(5)) would have required the Director to carry out audits of the costs incurred by media campaign contractors and subcontractors.

Prevention of Marijuana Use. The House bill (Section 10(a)) included findings on the harmfulness of marijuana and would have authorized the Director, in conducting the media campaign, to emphasize the prevention of its use by youth. Again, this would have brought the media campaign's statutory language in line with what the campaign is currently doing.

Authorization of Appropriations. Both bills would have authorized specific amounts to be appropriated for the National Youth Anti-Drug Media Campaign for FY2004 through FY2008. The House bill (Section 11) would have authorized media campaign appropriations of \$195 million for FY2004 and FY2005 and \$210 million for FY2006 through FY2008. Slightly less generous than the House bill, the Senate bill (Section 406) would have held the media campaign authorization at \$195 million annually for all five fiscal years. (The media campaign was funded in amounts between \$180 and \$195 million per fiscal year between 1998

³⁴ Until FY2005 the campaign had never been appropriated less than \$145 million. In that year its appropriation fell to \$120 million.

³⁵ Sec. 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. 47 U.S.C. 317

³⁶ Federal Communications Commission, Order FCC 02-268, released Nov. 7, 2002.

and 2002. For FY2003, however, its funding was reduced to \$150 million. In FY2004, its funding was further reduced to \$145 million. In FY2005, the media campaign was appropriated \$120 million.)³⁷

Latin American Heroin Strategy. Both the House bill (Section 3(g)) and the Senate bill (Section 1006) would have required the Director to submit to Congress, not more than 90 days after the date of the bill's enactment, a comprehensive strategy to deal with the growing problem of heroin cultivation in Latin America, especially in Colombia. (The House bill referred not to Latin America but to South America, a narrower geographic term that excludes Mexico and Jamaica, among other drug-producing and drug-transiting countries.)

Workplace Conditions. The Senate bill (Section 1005) would have required, within 90 days of the enactment of the act, a GAO report to Congress on the workplace environment at ONDCP, including an assessment of the employee turnover rate and any sexual harassment or hostile work environment claims.

Repeals. Repeals were found in Section 9 of the House bill and Section 1001 of the Senate bill. Both bills would have repealed Section 709 of current law authorizing the President's Council on Counter-Narcotics, which was never established, and Section 711 on drug interdiction, which contains outdated reporting and budget planning requirements. The Senate bill would also have repealed Section 710 authorizing the Parents Advisory Council on Youth Drug Abuse, which also was never created. (The House bill, as introduced, would have repealed the Parents Advisory Council, as well, but this was changed at markup by the full Government Reform Committee.) The House bill would also have repealed Section 6073 of the Asset Forfeiture Amendments Act of 1988 (21 U.S.C. 1509), establishing the Treasury Department's Special Forfeiture Fund, which used to provide funds to ONDCP but no longer exists.

³⁷ Amounts are pre-rescission; rescissions were 0.65% in FY2003, and 0.59% in FY2004. 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*.