



Federal Domestic Illegal Drug Enforcement Efforts: Are They Working?

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January 27, 2010

Congressional Research Service

7-5700

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R40732

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Summary

Federal domestic drug control policy has evolved over the course of the past century and currently consists of a three-pronged approach to reducing illegal drug use: (1) prevention, (2) substance abuse treatment, and (3) enforcement activities. Congress plays a critical role in the development and implementation of all aspects of national drug control policy, by providing funding for anti-drug initiatives and operations through the annual appropriations process; by conducting oversight on federal agencies with anti-drug missions and drug control programs; by legislating the duties, programs, and policies of federal agencies involved in drug control activities; and by establishing criminal penalties for federal drug offenders.

Congress continues to respond to the illegal drug problem with, among other efforts, federal domestic enforcement measures designed to reduce the availability of illegal drugs. These domestic anti-drug efforts include the enforcement of federal criminal penalties for illegal drug trafficking, distribution, and possession; the interdiction or interception of illegal drugs; eradication operations targeting domestically grown illegal substances, namely marijuana; and other efforts aimed at reducing the availability of illegal drugs through the disruption of illegal drug markets. A long-standing controversy over the most effective federal approach to the illegal drug problem continues to be debated, with some critics arguing that the emphasis on domestic enforcement is not an effective strategy or that, among other things, these efforts may not be optimally balanced with other federal drug control strategies. If Congress considers further modification of federal domestic drug policy, one important factor to weigh may be whether the available evidence supports the continued emphasis on enforcement as a federal anti-drug strategy, or whether greater emphasis should be placed on alternative approaches to the problem. Should Congress choose to modify federal domestic drug policy, however, it might want to first consider emphasizing the collection of data for research on the effectiveness of law enforcement efforts.

Existing federal drug enforcement data include agency-specific administrative, workload data related to processing drug offenders through the federal criminal justice system, as well as data resulting from law enforcement agents investigating or intercepting individuals engaged in the smuggling and domestic distribution of illegal drugs in contravention to the law. While these statistics may reflect the intensity of an agency's drug enforcement activities, questions have been raised about whether such statistics capture information that could help with assessing federal drug control policy. Many factors contribute to shaping domestic drug control strategies. Improvements in domestic enforcement data collection and research could help to inform the future development of effective federal enforcement responses to address the nation's illegal drug problem.

This report examines the federal drug enforcement data reported annually by key agencies charged with enforcing federal drug control laws. As such, this report does not discuss federal prevention and treatment drug control strategies. This report provides (1) background and an overview of current federal drug control efforts; (2) an overview of selected federal drug enforcement outcomes data, such as arrests, convictions, and incarceration statistics; drug interdiction efforts; cannabis eradication; and drug laboratory seizures; and (3) a discussion of selected issues and possible options Congress might consider in assessing the effectiveness of current enforcement strategies and developing future anti-drug policy. This report also includes an **Appendix**, which provides a brief legislative history of selected federal anti-drug laws affecting enforcement activities.

This report will be updated periodically.

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Introduction

The availability and use of illegal drugs is a federal concern. Federal domestic drug control policy has evolved over the course of the past century and currently consists of a three-pronged approach with efforts designed to (1) prevent the initiation of drug use, (2) provide substance abuse treatment to those who are addicted, and (3) disrupt the supply of illegal drugs through domestic enforcement and interdiction, and international efforts.¹ Congress plays a critical role in the development and implementation of all aspects of national drug control policy by providing funding for anti-drug initiatives and operations; conducting oversight on federal agencies with anti-drug missions and drug control programs; legislating the duties, programs, and policies of federal agencies involved in drug control activities; and establishing criminal penalties for federal drug offenders.

This report focuses on federal domestic enforcement measures designed to reduce the availability and use of illegal drugs.² Specifically, the report presents and analyzes data reported annually by those federal agencies with significant roles in enforcing federal domestic drug control laws. This report provides (1) background and an overview of current federal drug control efforts; (2) an overview and analysis of selected federal drug enforcement outcomes data, such as arrests, convictions, and incarceration statistics; drug interdiction efforts; cannabis eradication; and drug laboratory seizures; and (3) a discussion of selected issues and possible options Congress might consider in funding or developing future anti-drug policy. An **Appendix** provides a brief legislative history of major federal anti-drug laws from 1914 to the present.

This report focuses on federal domestic activities and is not intended to cover international supply-reduction efforts designed to limit the cultivation, production, and manufacture of illegal drugs and substances at their source in foreign countries. For an analysis of these activities and issues, see CRS Report RL34543, *International Drug Control Policy*, by Liana Sun Wyler. Nor does this report address the drug control approaches of prevention and treatment designed to stem the demand for illegal drugs. Information on these drug control approaches is available in CRS Report RL32352, *War on Drugs: Reauthorization and Oversight of the Office of National Drug Control Policy*, by Mark Eddy, and CRS Report RL33997, *Substance Abuse and Mental Health Services Administration (SAMHSA): Reauthorization Issues*, by Ramya Sundararaman.

Background

Current federal domestic drug enforcement efforts are rooted in a long history of legislation that spans most of the past century.³ Early federal drug control laws established the objective of

¹ Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy*, 2009 Annual Report, January 2009, pp. 2-3.

² The influence of economic theory on drug control policy in the early 1970s led to the conceptualization of illegal drug transactions as the operations of markets for goods. Today, the term “supply-reduction” is broadly used to include domestic federal law enforcement and interdiction activities, as well as international counterdrug strategies designed to reduce the availability and use of illegal drugs. “Demand-reduction” refers to substance abuse treatment and prevention efforts, which are also designed to lower illegal drug use. For this report, federal domestic law enforcement efforts, including interdiction, are used synonymously with the term supply-reduction.

³ For a brief legislative history of selected federal drug control laws, see the **Appendix**.

suppressing the nonmedical use of narcotic⁴ drugs, a classification that originally included only opium and its derivatives morphine and heroin, although soon after also encompassed cocaine. The Narcotics Act of 1914, commonly known as the Harrison Narcotics Act, is generally considered the first federal drug control statute. It established the basis for current drug enforcement policy by criminalizing the manufacture, sale, possession, and nonmedical use of narcotics.⁵ The law regulated the importation, manufacture, and distribution of opium and coca derivatives, and required legitimate dealers in narcotics to register with the federal government and pay a special annual tax. Under the law, Congress acted to protect public safety and health by establishing labeling requirements for medicines and other substances that were legally available, although not previously subject to federal regulation. The law instituted limitations on certain aspects of accepted physician and pharmaceutical practices related to the medical use of narcotic substances. In addition to instituting various regulatory and control mechanisms, the law established mechanisms for enforcing federal criminal penalties for violations of these provisions.⁶

Generally, Congress has taken a “prohibitory approach” to drugs considered to be threats to the general public welfare by establishing criminal penalties aimed at dissuading and deterring illegal suppliers and consumers of controlled substances.⁷ Federal drug control policy has also been shaped by shifting social and cultural currents, as well as by changing trends in drug use and societal tolerance of such use. For example, early drug control laws (i.e., the Marijuana Tax Act of 1937) targeted specific drug problems as their use became a public safety concern. This led to a patchwork of federal statutes that imposed drug-specific criminal penalties that became increasingly stringent. Although early federal anti-drug strategy relied on punitive measures to address the illegal drug problem, the scale of illegal drug use and federal involvement in drug enforcement were relatively minor until the end of the 1960s.⁸

In 1970, the Controlled Substances Act (CSA) was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513, 84 Stat. 1242). Congress passed the CSA to clarify the federal role in the control of dangerous drugs, chemicals, and substances, replacing and consolidating prior disparate federal drug laws. Among other provisions, Title II of the CSA established five “schedules” for various drugs, plants, psychoactive substances, and chemicals, ranking them “by a common standard of dangerousness,”⁹ and balancing the potential for abuse against their medical usefulness by applying differing degrees of control on manufacturers,

⁴ The term “narcotics” originally referred to a drug derived from opium or opium-like compounds, such as its derivatives, morphine and heroin, with potent analgesic effects, and the ability to dull the senses, induce sleep or stupor, and be harmful or addictive if used in large doses or repeatedly. Today, the term is used more broadly to refer to additional drugs or substances, including marijuana. See Glen R. Hanson, Peter J. Venturelli, Annette E. Fleckenstein, *Drugs and Society*, Sudbury, MA: Jones and Bartlett Publishers, Inc., ninth edition, 2004, pp. 252-253.

⁵ National Research Council, *Informing America’s Policy on Illegal Drugs: What We Don’t Know Keeps Hurting Us*, Committee on Data and Research for Policy on Illegal Drugs, Charles F. Manski, John V. Pepper, and Carol V. Petrie, editors, Washington, DC: National Academy Press, p. 17; hereafter referred to as National Research Council, *Informing America’s Policy on Illegal Drugs*.

⁶ Erlen, Jonathon, Spillane, Joseph F., editors, *Federal Drug Control: The Evolution of Policy and Practice*, Binghamton, NY: Pharmaceutical Products Press, 2004, p. 11; hereafter referred to as Erlen and Spillane, *Federal Drug Control*.

⁷ Boyum, David, and Reuter, Peter, *An Analytic Assessment of U.S. Drug Policy*, American Enterprise Institute: Washington, DC, 2005, p. 42; hereafter referred to as Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*.

⁸ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 5.

⁹ Musto, David F., *The American Disease: Origins of Narcotic Control*, Third Edition, Oxford, Oxford University Press, 1999, p. 255.

distributors, and prescribing physicians. The CSA provided federal criminal penalties for the illegal manufacture, distribution, and possession of controlled substances. The law also established the framework for regulating the importation, exportation, and manufacture of controlled substances through registration requirements and penalties for violation of these provisions.

Today, the CSA, as amended, continues to provide the legal framework for federal drug control and enforcement activities.¹⁰ The numerous provisions of the CSA regulate the use of controlled substances for legitimate medical, scientific, research, and industrial purposes and make the diversion of these substances illegal.¹¹ Over the years, Congress has amended the CSA a number of times to reflect changes in the patterns of drug abuse, the development of new psychoactive substances, and to change the related federal penalties.¹² Questions have been raised, however, about whether these and other fundamental tenets of federal drug enforcement policy form an effective strategy.

The Federal Role in Domestic Drug Enforcement

Federal drug enforcement policy, as one of the three components of the national drug control strategy, is based on the premise that drug use can be reduced if the availability, or supply, of illegal drugs is curbed or eliminated. As such, federal domestic drug enforcement activities consist of two overarching methods: (1) domestic law enforcement efforts designed to disrupt all levels of the illicit drug distribution chain to keep illegal drugs from reaching domestic retail markets and drug users through investigations, arrests, seizures of illegal drugs, prosecutions, incarceration, the seizure and forfeiture of drug-related assets and monies, and fines; and (2) interdiction, or the interception of illegal drug shipments in transit to the United States either across U.S. waters or across land borders. These tactics focus on limiting the supply of illegal drugs to make it more difficult, costly, and risky to traffic in, distribute, sell, use or abuse illegal substances.

Federal Drug Enforcement Agencies

Several federal agencies play key roles in implementing domestic enforcement activities. The Department of Justice (DOJ) is the federal agency responsible for enforcing federal criminal laws, and a number of its agencies and divisions play key roles in enforcing anti-drug laws by investigating, arresting, prosecuting, and incarcerating federal drug offenders. At DOJ, the Drug Enforcement Administration (DEA) is the only federal agency whose sole mission is to enforce federal drug laws. Some aspects of DEA's role include

- conducting investigations and preparing for the prosecutions of major drug offenders;

¹⁰ 21 U.S.C. §§801 et seq.

¹¹ For more information on the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by James E. Nichols and Brian T. Yeh, and CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Charles Doyle and Brian T. Yeh.

¹² See the **Appendix** for summaries of selected amendments to the CSA since 1970.

- seizing assets derived from, traceable to, or intended to be used for illegal drug trafficking;
- managing the El Paso Intelligence Center, a multi-agency drug intelligence program designed to collect, analyze, and disseminate strategic and operational drug intelligence information to assist federal, state, local, and foreign law enforcement efforts to counter drug, alien, and weapons smuggling;
- conducting a money laundering program, in conjunction with the U.S. Department of Treasury, to investigate, track, and disrupt the movement of illegal drug proceeds used to fund continued operations of drug trafficking organizations; and
- coordinating task forces of other federal, state, and local law enforcement agencies on drug enforcement efforts to enhance potential interstate investigations beyond local or limited federal jurisdictions with combined resources.

Several other DOJ agencies with general crime-fighting missions also play an important part in domestic anti-drug activities, including the Federal Bureau of Investigation (FBI); Executive Office for U.S. Attorneys (EOUSA); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and the U.S. Marshals Service (USMS). DOJ's Organized Crime Drug Enforcement Task Force (OCDETF) program combines federal law enforcement resources with those of state and local law enforcement to identify and disrupt drug trafficking and money laundering organizations.¹³ The National Drug Intelligence Center (NDIC), a separate component of DOJ, coordinates and consolidates drug intelligence from all national security and law enforcement agencies to provide strategic drug-related intelligence to assist with drug control efforts. In addition, Department of Homeland Security (DHS) agencies, including the U.S. Customs and Border Protection (CBP), U.S. Coast Guard (USCG), and Immigration and Customs Enforcement (ICE), are involved in the apprehension of drug smugglers and the interdiction of illegal drugs. The Office of Counternarcotics Enforcement (CNE) is charged with coordinating policy and efforts to interdict illegal drug trafficking at DHS.

The Office of National Drug Control Policy (ONDCP) is the lead federal agency tasked with organizing and overseeing federal drug control efforts.¹⁴ ONDCP annually issues a report on the national drug control strategy and provides estimates of the federal drug control budget.¹⁵ ONDCP also funds drug enforcement efforts through the High Intensity Drug Trafficking Areas (HIDTA) program.¹⁶ Currently, 28 HIDTAs provide additional federal resources for state and local law enforcement agencies in areas of the country designated as having serious drug trafficking problems to assist with coordination efforts, equipment, and technology.¹⁷ Under the

¹³ Agencies participating in OCDETF include DEA, U.S. Immigration and Customs Enforcement (ICE), FBI, ATF, USMS, the Internal Revenue Service (IRS), and the U.S. Coast Guard. These agencies coordinate their activities with DOJ's Criminal and Tax Divisions, the 94 U.S. Attorney's Offices, and state and local law enforcement.

¹⁴ For more information on ONDCP, see CRS Report RL32352, *War on Drugs: Reauthorization and Oversight of the Office of National Drug Control Policy*, by Mark Eddy.

¹⁵ Available at <http://www.whitehousedrugpolicy.gov/policy/ndcs.html>, accessed on January 27, 2010.

¹⁶ 21 U.S.C. 1701 et seq.

¹⁷ HIDTA funds can also be used for drug treatment and other efforts to reduce the demand for illegal drugs.

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HIDTA program, federal support is provided to 45 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.¹⁸

State and Local Law Enforcement Role in Illegal Drug Control

While this report focuses on federal domestic drug enforcement efforts, state and local law enforcement agencies play a critical role in national drug enforcement efforts. There is considerable overlap in the jurisdictions of federal and state and local law enforcement and in the types of enforcement activities used at each level to apprehend and punish drug offenders. State and local law enforcement efforts, however, are focused primarily on retail-level drug dealers and users, many of whom are arrested on possession charges. As a result, the total number of drug enforcement incidents (arrests, prosecutions, and incarcerations) at the state and local level is much larger than the number of those occurring at the federal level. For example, according to the FBI's Uniform Crime Reports (UCR),¹⁹ the total number of state and local arrests for drug offenses exceeded 1.8 million in 2007.²⁰ Of these drug arrests, 82.5% were for possession and 17.5% were for distribution offenses.²¹ The number of drug arrests at the state and local level in 2007 is much larger than the total federal drug arrests for the same year of almost 31,000 (see section on "Arrests for Federal Drug Offenses"). The difference in the number of arrests between state and local law enforcement and federal agencies is due to the federal role of generally targeting higher-level, illegal drug distribution networks and trafficking organizations.²² Nevertheless, it is important to note that federal drug enforcement activities make up only part of the total national drug control efforts.

Federal Domestic Drug Enforcement Activities

Federal Domestic Drug Enforcement Data

Federal drug enforcement operations generally focus on the investigation, arrest, prosecution, and incarceration of persons involved in the trafficking and distribution of large quantities of illegal drugs.²³ Nevertheless, federal law enforcement operations enforce drug control laws against all levels of offenses, resulting in investigations and prosecutions of mid- and lower-level drug distributors who are agents of high-level traffickers, as well as individuals found to be in possession of illegal drugs. This section of the report provides an overview of federal domestic drug enforcement metrics, including arrests, convictions, incarceration, and selected data on drug sentences; an overview of federal drug seizures, including federal-wide drug seizure data; DEA's

¹⁸ More information on HIDTAs is available at <http://www.ondcp.gov/hidta/index.html>, accessed on January 27, 2010.

¹⁹ The UCR is a voluntary federal law enforcement program administered by the FBI that compiles and provides a national report of crime based on the submission of statistics by law enforcement agencies throughout the country at the city, county, state, and tribal levels of government.

²⁰ U.S. Department of Justice, Federal Bureau of Investigation (FBI), *Crime in the United States 2007*, Table 29- Estimated Number of Arrests, available at http://www.fbi.gov/ucr/cius2007/data/table_29.html, accessed on January 27, 2010.

²¹ Ibid.

²² Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 42.

²³ U.S. Executive Office of the President, ONDCP, *National Drug Control Strategy*, 2008, February 2008, pp. 5, 35-36.

domestic marijuana eradication program data; and information on other federal drug control activities. This section examines the available data from 1998 to 2007.

Types of Available Federal Enforcement Data

The available data on federal domestic enforcement activities are largely drawn from administrative data reported by key federal agencies documenting the extent of their involvement in enforcing drug laws.²⁴ These workload statistics are often collected for planning, resource allocation, and budgetary purposes and include drug enforcement statistics on activities such as arrests, convictions, incarcerations, illegal drugs seized, and drug-related asset and currency seizures. In addition, federal enforcement statistics include the number of drug laboratories and/or laboratory equipment that are seized by state and local law enforcement when they encounter toxic clandestine laboratories or dump sites used in the manufacture of illegal drugs. As such, these metrics represent data on the outcomes of enforcing and prosecuting federal drug laws. Compilations of these incidents form the core data available for measuring federal drug enforcement activities. Data on drug enforcement efforts from numerous federal agencies are annually reported, generally by the agencies themselves, and are also compiled and reported by the Bureau of Justice Statistics (BJS) at DOJ.

BJS compiles and publishes annual drug enforcement data in the *Sourcebook of Criminal Justice Statistics* (Sourcebook) from a number of federal agencies, including the EOUSA, USMS, the Administrative Office of the United States Courts, the U.S. Sentencing Commission (USSC), and the U.S. Bureau of Prisons (BOP). Federal drug-related data included in the Sourcebook include enforcement variables such as the processing of federal drug offenders, time served in prison, and type of drug offenses.²⁵ BJS also compiles federal criminal justice statistics through the Federal Justice Statistics Program (FJSP); the online database is a repository for data related to processing defendants in the federal criminal justice system, from arrest and prosecution through adjudication, sentencing, appeals, and corrections.²⁶ The FJSP database also includes case processing statistics for drug offenses in the federal criminal justice system.²⁷

Limitations of Existing Federal Enforcement Data

Federal drug enforcement data are limited in several ways. The data are not collected in a systematic way across federal agencies participating in drug control activities. While some agencies may collect and report data on a particular enforcement activity, other agencies may report a slightly different statistic. For example, the DEA reports the number of drug suspects arrested, while the USMS reports the total number of federal suspects arrested *and* charged with a drug offense by all federal agencies.²⁸ In some cases, drug enforcement data are collected using tracking systems developed and tailored to meet the needs or priorities of a particular agency. As

²⁴ Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy, 2009 Annual Report*, p. 10.

²⁵ Available at <http://www.albany.edu/sourcebook/>.

²⁶ Adams, William P. and Motivans, Mark, "Using Data from the Federal Justice Statistics Program (FJSP)," *Federal Sentencing Reporter*, vol. 16, no. 1, October 2003, p. 18.

²⁷ The FJSP website is available at <http://fjsrc.urban.org>.

²⁸ The USMS Prisoner Tracking System (PTS) contains data on the total number of suspects arrested for violations of federal law by all federal enforcement agencies and booked by the USMS. PTS data include information necessary for the administrative processing of federal offenders in the federal judicial system.

a result, the data may not be comparable across federal agencies. There may also be differences in the definitions used to categorize data from agency to agency, as well as redundancies in aggregated enforcement data. These and other factors could make the data less reliable and complicate its analysis. As administrative, or process, data sets, most existing federal enforcement data may indicate the frequency of aggregated enforcement incidents but are not adequate for assessing whether or the extent to which such efforts achieve federal drug control policy objectives. For example, while existing data on federal drug offender arrests and convictions may indicate the intensity of federal counternarcotics efforts, these data are inadequate for assessing whether or to what extent these enforcement efforts contribute to reductions in illegal drug use. Similarly, data on drug interdiction and seizures are not robust enough to indicate the impact of such seizures on the overall supply and availability of illegal drugs, or the impact of interdiction and seizures on the prices of illegal drugs. While federal enforcement policy seeks to reduce illegal drug use by market disruptions affecting the supply and price of illegal drugs, existing enforcement data is insufficient for assessing such complex interactions. As a result, there has been a long-standing consensus among drug policy researchers that, among other things, improved data on illegal drug prices and consumption could provide useful information for assessing enforcement efforts. Addressing these data gaps, researchers contend, could provide a better understanding of how illegal drug markets work and how effectively federal drug enforcement activities disrupt such markets.

Arrests for Federal Drug Offenses

Many federal agencies participate in arresting drug offenders, but agencies at DOJ and DHS report the largest number of arrests. Among agencies with key drug-enforcement roles, DEA is responsible for the largest number of federal drug arrests, resulting from its investigations and counterdrug activities. CBP apprehends the second-highest number of drug offenders as a consequence of its drug interception activities at the borders. As **Table 1** indicates, federal drug arrests have exceeded 30,000 each year since 1998, peaking at 33,730 total arrests in 2002, and since then have fluctuated slightly and declined to 30,938 in 2007. The data included in **Table 1** are drawn from the FJSP and include the total number of suspects arrested for drug violations by all federal enforcement agencies and charged by the USMS. The USMS compile the data as part of its Prisoner Tracking System (PTS).

Over the 10-year period shown in **Table 1**, cocaine arrests made up the largest proportion of total federal drug arrests and accounted for 40.1% of total arrests, by drug, in 2007. Arrests for marijuana made up the second largest proportion of federal drug arrests, accounting for 23.5% of arrests in 2007, although as a proportion of total arrests, marijuana arrests have been decreasing since 1999. Amphetamine²⁹ arrests increased in most years over the period, from 9.7% in 1998 to 13.4% of total federal drug arrests in 2007. Similarly, federal arrests for “other drugs,” a category that includes prescription drugs and MDMA (Ecstasy), increased from 12.8% in 1998 to 17.2% in 2007. In contrast, arrests for heroin dropped from 6.3% in 1998 to 4.2% in 2007, and the proportion of federal arrests for synthetic narcotics also declined, from 2.0% in 1998 to 1.5% of total arrests in 2007.

Aside from noting that the total number of federal drug arrests has fluctuated over the past 10 years and seems to be dropping in recent years, drawing further inferences from the data could be

²⁹ Includes methamphetamine arrests, which account for more than 90% of arrests in this drug category.

problematic. The disparities between the aggregate number of arrests for different drugs may not be indicative of federal drug enforcement priorities or initiatives. Instead, they could simply reflect differences in the number of users and suppliers of certain drugs. A higher demand for a drug could increase the number of distributors and dealers and could result in more illegal activity and more arrests. Similarly, fluctuations in aggregate drug arrests at the federal level might not reflect federal drug enforcement policies or priorities, because a number of agencies with other missions also apprehend drug offenders through enforcement activities that are not solely targeting illegal drugs. For example, an individual might be stopped for a customs inspection at an airport and found to be in possession of illegal narcotics—the suspect would be arrested but not as the result of a particular drug policy or initiative. Federal investigations could also yield lower numbers of arrests simply because there might be fewer individuals involved at the higher levels of drug distribution networks, or because these types of investigations tend to be more complex and resource-intensive, spanning long periods of time. The number of federal drug arrests could perhaps reflect the intensity of federal enforcement activities, or the effectiveness of law enforcement surveillance and intelligence-gathering activities and investigations.³⁰ However, the annual aggregate numbers of federal drug arrests are not collected or reported with sufficient detail to support further analysis. Moreover, the uncertainty about which factors might cause federal arrest levels to change makes this enforcement metric an unreliable measure of the effectiveness of federal drug control efforts.³¹

³⁰ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 42.

³¹ Ibid.

Table 1. Federal Drug Arrests, by Drug and as a Percentage of Total Arrests, 1998-2007

| Year | Total Arrests | Heroin | | Cocaine | | Marijuana | | Amphetamine | | Synthetic Narcotics | | Other Drugs | |
|------|---------------|---------|------------|---------|------------|-----------|------------|-------------|------------|---------------------|------------|-------------|------------|
| | | Arrests | % of total | Arrests | % of total | Arrests | % of total | Arrests | % of total | Arrests | % of total | Arrests | % of total |
| 1998 | 30,012 | 1,890 | 6.3% | 12,399 | 41.3% | 8,364 | 27.9% | 2,918 | 9.7% | 587 | 2.0% | 3,854 | 12.8% |
| 1999 | 31,867 | 2,297 | 7.2% | 12,276 | 38.5% | 9,227 | 29.0% | 3,518 | 11.0% | 604 | 1.9% | 3,945 | 12.4% |
| 2000 | 32,630 | 2,368 | 7.3% | 12,149 | 37.2% | 8,768 | 26.9% | 3,566 | 10.9% | 752 | 2.3% | 5,027 | 15.4% |
| 2001 | 33,589 | 1,844 | 5.5% | 12,460 | 37.1% | 8,879 | 26.4% | 3,933 | 11.7% | 869 | 2.6% | 5,604 | 16.7% |
| 2002 | 33,730 | 1,953 | 5.8% | 12,500 | 37.1% | 7,464 | 22.1% | 4,409 | 13.1% | 1,369 | 4.1% | 6,035 | 17.9% |
| 2003 | 33,066 | 2,060 | 6.2% | 11,795 | 35.7% | 8,299 | 25.1% | 4,735 | 14.3% | 841 | 2.5% | 5,336 | 16.1% |
| 2004 | 32,980 | 1,881 | 5.7% | 12,167 | 36.9% | 8,117 | 24.6% | 5,212 | 15.8% | 629 | 1.9% | 4,974 | 15.1% |
| 2005 | 33,061 | 1,878 | 5.7% | 12,955 | 39.2% | 6,940 | 21.0% | 5,397 | 16.3% | 613 | 1.9% | 5,278 | 16.0% |
| 2006 | 31,406 | 1,513 | 4.8% | 12,541 | 39.9% | 6,543 | 20.8% | 4,853 | 15.5% | 440 | 1.4% | 5,516 | 17.6% |
| 2007 | 30,938 | 1,296 | 4.2% | 12,421 | 40.1% | 7,276 | 23.5% | 4,150 | 13.4% | 475 | 1.5% | 5,320 | 17.2% |

Source: CRS analysis of data from the Bureau of Justice Statistics, Federal Justice Statistics Program (FJSP), website (<http://fjsrc.urban.org>), based on USMS, Prisoner Tracking System, which contains data on the total number of suspects arrested for violations of federal law by all federal enforcement agencies.

Notes: Cocaine data include arrests for powder cocaine and crack cocaine. Amphetamine data are largely made up of arrests for methamphetamine. Synthetic drugs include manufactured narcotics that can cause addiction, such as methadone and demerol. Other drugs include barbiturates, benzedrine, and other dangerous prescription drugs, hallucinogens, MDMA (Ecstasy), and offenses for drug manufacturing equipment.

Federal Drug Offenders Charged, Convicted, and Sentenced

Since the mid-1980s, Congress has passed a number of drug control measures that increased federal criminal sanctions for drug offenses and emphasized drug enforcement in response to the problem of illegal drug use. In particular, two laws included provisions that established mandatory minimum prison sentences for certain drug offenses: the Anti-Drug Abuse Act of 1986 (P.L. 99-570) and the Anti-Drug Abuse Act of 1988 (P.L. 100-690).³² These two laws are often credited with ushering in a period of renewed federal drug enforcement efforts that emphasized tougher criminal sanctions.³³ Through the enactment of longer sentences and mandatory minimum sentences for certain drug offenses, Congress sought to deter illegal drug use and trafficking by requiring that those convicted of such offenses potentially face longer periods of incarceration.³⁴ Over the ensuing period, drug offenders became an increasing number and proportion of federal defendants in the federal criminal justice system.

According to data collected by BJS from all federal agencies, defendants charged with a federal drug law violation increased from 3,420 in 1970 to 24,141 in 1998.³⁵ As indicated by **Table 2**, the total number of drug defendants charged, convicted, and sentenced to prison terms has exceeded 1998 levels in each subsequent year, despite some year-to-year fluctuations. From 1998 to 2007, the total number of drug defendants charged peaked in 2006, when 30,887 defendants were charged with a federal drug offense (see **Table 2**). From 1998 to 2007, the number of defendants charged with a federal drug offense increased by more than 22%, the number convicted increased by almost 26%, and the total number sentenced increased by almost 29%. Moreover, the number of defendants sentenced to a regular prison term increased by just over 28% during this period. Of those receiving a regular prison sentence between 1998-2007, those sentenced to more than 60 months (more than five years) in federal prison increased by 54%. In contrast, between 1998-2007 the number of defendants sentenced to 1-12 months in prison dropped to almost 1998-levels in 2007, while those sentenced to 13-35 months decreased in 2007 to a level 9.6% lower than the 1998 level. Over the 10-year period, average sentences for convicted drug offenders increased from 78 months (6.5 years) in 1998 to 88.9 months (7.4 years) in 2007 (see **Table 2**).³⁶

Each year since 1990, federal drug offenders have made up more than 50% of the total sentenced federal prison population.³⁷ As of September 2008, there were almost 100,000 drug offenders in federal prisons, representing more than 52% of all federal prisoners.³⁸ According to ONDCP estimates, the cost of incarcerating federal drug offenders exceeded \$2.9 billion in FY2008.³⁹

³² For brief summaries of these laws, see the **Appendix**.

³³ Erlen and Spillane, *Federal Drug Control*, pp. 218-219.

³⁴ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 7.

³⁵ U.S. DOJ, Bureau of Justice Statistics (BJS), *Sourcebook of Criminal Justice Statistics*, Table 5.37.2007.

³⁶ The increase in average sentences for drug offenders is more stark when compared with those prior to the 1980s enactment of mandatory minimum sentences. As noted by Boyum and Reuter (p. 7), in 1980 the average sentence for convicted federal drug offenders was approximately two years.

³⁷ *Sourcebook of Criminal Justice Statistics*, Table 6.57, as reported by U.S. DOJ, Bureau of Prisons (BOP). These data represent prisoners housed in BOP facilities and do not include prisoners housed in contract facilities.

³⁸ U.S. DOJ, NDIC, *National Drug Threat Assessment, 2009*, Product No. 2008-Q0317-005, December 2008, p. III; hereafter referred to as *National Drug Threat Assessment, 2009*.

³⁹ Executive Office of the President, ONDCP, *National Drug Control Strategy: FY2009 Budget Summary*, p. A1; hereafter referred to as ONDCP, *National Drug Control Strategy: FY2009 Budget Summary*.

Table 2. Federal Drug Defendants Charged, Convicted, and Sentenced 1998-2007

| Year | Total Arrests | Total Charged | Total Convicted | Total Sentenced | Total Regular Sentence | Imprisoned | | | | | | Average Sentence (months) | |
|------|---------------|---------------|-----------------|-----------------|------------------------|------------------|--------------|--------------|----------------|-----|---------------|---------------------------|--------------------|
| | | | | | | Regular sentence | | | | | Life Sentence | | Other ^a |
| | | | | | | 1-12 months | 13-35 months | 36-60 months | Over 60 months | | | | |
| 1998 | 30,012 | 24,141 | 21,529 | 19,809 | 19,062 | 2,100 | 4,443 | 4,517 | 8,002 | 180 | 567 | 78.0 | |
| 1999 | 31,867 | 27,023 | 24,247 | 22,443 | 21,513 | 2,670 | 5,074 | 5,240 | 8,529 | 205 | 724 | 74.6 | |
| 2000 | 32,630 | 27,220 | 24,786 | 23,120 | 22,207 | 2,523 | 5,095 | 5,452 | 9,137 | 148 | 765 | 75.7 | |
| 2001 | 33,589 | 28,238 | 25,815 | 24,011 | 23,127 | 2,780 | 5,350 | 5,670 | 9,327 | 122 | 762 | 73.8 | |
| 2002 | 33,730 | 29,477 | 27,126 | 25,031 | 23,838 | 2,825 | 5,250 | 5,727 | 10,036 | 168 | 1,025 | 75.9 | |
| 2003 | 33,066 | 29,457 | 26,986 | 25,060 | 23,937 | 2,632 | 4,781 | 5,967 | 10,557 | 157 | 966 | 80.2 | |
| 2004 | 32,980 | 28,087 | 25,702 | 23,920 | 22,984 | 2,581 | 4,181 | 5,553 | 10,669 | 146 | 790 | 82.5 | |
| 2005 | 33,061 | 29,251 | 26,588 | 24,786 | 23,831 | 2,389 | 4,296 | 5,719 | 11,427 | 151 | 804 | 85.7 | |
| 2006 | 31,406 | 30,887 | 28,311 | 26,488 | 25,437 | 2,035 | 4,438 | 6,159 | 12,805 | 195 | 853 | 87.9 | |
| 2007 | 30,938 | 29,578 | 27,114 | 25,520 | 24,439 | 2,132 | 4,017 | 5,962 | 12,328 | 171 | 910 | 88.9 | |

Source: CRS analysis of selected data from BJS, *Sourcebook of Criminal Justice Statistics*, tables 5.37.2007 and 5.38.2007.

Notes: Not all the steps in the federal criminal justice system occur in the same year. Not all of those arrested and charged with a federal drug offense are prosecuted, convicted, and sentenced.

a. Includes deportation, suspended and sealed sentences, imprisonment of 4 days or less, and no sentence.

The rising number of drug offenders during a period of sustained federal efforts to enforce strict drug laws raises questions about how effectively tougher criminal penalties and enforcement efforts deter illegal drug use and trafficking. Despite increased federal criminal sanctions, the data in **Table 2** suggest that drug offenders continued to engage in illegal drug activity at the risk of arrest, conviction, and lengthy periods of incarceration. As an inventory of criminal justice processing facts, the data do indicate that anti-drug laws are being enforced and are resulting in longer average periods of incarceration of such offenders. Some suggest that drug traffickers and dealers may consider the possibility of incarceration as a cost of doing business and a risk worth taking in light of the lucrative drug trade. If the risk of incarceration for substantial periods of time is not a deterrent, then more punitive drug sentences may not be having the desired effect of reducing the availability of illegal drugs and stopping drug trafficking. However, existing enforcement data are not sufficient to determine what impact these enforcement efforts have had on meeting the objectives of federal drug control policy—lowering drug use by disrupting the operations of illegal drug markets.

Federal Domestic Drug Seizures

Drug interdiction efforts are aimed at stemming the flow of illegal drugs and substances into the United States by intercepting and seizing illegal drugs as they are being transported into the country. Federal enforcement agencies also seize illegal drugs collected at crime scenes, as a part of criminal investigations, and when apprehending suspects as evidence for potential use in criminal prosecutions.

Federal Drug Seizure Data

Federal drug seizure data are collected in the Federal-wide Drug Seizure System (FDSS) database (see **Table 3**) maintained by the DEA.⁴⁰ FDSS data reflect the annual combined total amounts of drug seizures reported by DEA, FBI, CBP, and maritime drugs seizures made by the USCG.⁴¹ The drug seizures made by other federal agencies are included in the FDSS database when custody of the drug evidence is transferred to one of the agencies (listed above). The FDSS is designed to provide an unduplicated aggregate statistic in instances when more than one federal agency was involved with or had custody of a single drug seizure. When a federal criminal case is not going to be pursued, federally seized illegal drugs are turned over to state and local law enforcement for prosecution, and the seized drug amounts are not included in the FDSS.

As **Table 3** indicates, between 1998 and 2007 the total amounts of federal drug seizures fluctuated, and there have been sizeable differences in the amounts of illegal drugs seized from year to year. For example, between 2006 and 2007, heroin and marijuana seizures increased by 40.6% and 27.8%, respectively. When compared with 1998 levels, the amount of heroin seized was 72.6% higher in 2007, and the amount of marijuana⁴² seized was 76.7% higher in 2007 than in 1998. In contrast, the total amount of cocaine seized in 2007 was 5.8% less than the amount seized in 2006, and the amount of methamphetamine seized was 39.4% lower in 2007 than the

⁴⁰ The FDSS does not include information on state and local law enforcement drug seizures.

⁴¹ Only seizures that exceed certain threshold weights are included in these statistics. For example, these thresholds include 500 grams of cocaine, 100 grams of heroin, 25 kilograms of marijuana, and 250 grams of methamphetamine.

⁴² As indicated in **Table 3**, due to the bulk of the drug, marijuana seizures make up 86%-91% of the total amount (by weight) of drugs seized each year between 1998 and 2007.



The House of Representatives and Senate Explained

Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

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total seized in 2006. Yet compared with 1998 levels, the total amount of cocaine seized in 2007 was 22.5% greater, and the amount of methamphetamine seized was 12.2% greater in 2007. Overall, compared with the total amount of all drugs seized in 1998, the total amount of all illegal drugs seized in 2007 increased by 69.7%.

Table 3. Federal-Wide Drug Seizures, by Type of Drug, 1998-2007 (in kilograms)

| Year | Heroin | Cocaine | Marijuana | Hashish | Methamphetamine | Total |
|------|--------|---------|-----------|---------|-----------------|-----------|
| 1998 | 1,458 | 118,436 | 827,149 | 241 | 2,559 | 949,843 |
| 1999 | 1,151 | 132,063 | 1,075,154 | 797 | 2,779 | 1,211,944 |
| 2000 | 1,674 | 106,619 | 1,235,938 | 10,867 | 3,470 | 1,358,568 |
| 2001 | 2,496 | 105,748 | 1,214,188 | 161 | 4,051 | 1,326,644 |
| 2002 | 2,773 | 102,515 | 1,101,459 | 621 | 2,477 | 1,209,845 |
| 2003 | 2,381 | 117,024 | 1,229,615 | 155 | 3,853 | 1,353,028 |
| 2004 | 2,116 | 172,804 | 1,180,688 | 166 | 3,899 | 1,359,673 |
| 2005 | 1,692 | 174,679 | 1,117,189 | 388 | 4,772 | 1,298,720 |
| 2006 | 1,790 | 154,047 | 1,143,924 | 178 | 4,739 | 1,304,678 |
| 2007 | 2,517 | 145,103 | 1,461,474 | 338 | 2,871 | 1,612,303 |

Source: U.S. Executive Office of the President, National Drug Control Strategy: Data Supplement 2009, Table 55, p. 68, based on data from the DEA, Federal-Wide Drug Seizure System, 1989-2007, and unpublished data from U.S. DEA, July 2008.

Note: Amounts reflect combined drug seizures of DEA, FBI, U.S. CBP, the U.S. Border Patrol, as well as the maritime seizures of the U.S. Coast Guard.

From a policy perspective, FDSS data are limited and provide little information beyond aggregate totals of the type and weight of drugs seized by federal enforcement agencies. Thus, the aggregated annual FDSS seizure totals are difficult to connect to particular federal enforcement initiatives or investigative efforts. The data reported do not provide other pertinent information, such as how many seizure incidents occurred during a time period, how and where the drugs came to be seized, or how much of which drug was seized per incident. In addition, because the FDSS is a combination of data from several federal databases, the data are not uniformly collected and reported. For example, in some instances FDSS data include seizure reports in which the type of drug and its weight are estimated visually by law enforcement, hence affecting the accuracy and reliability of the data. Moreover, the FDSS data do not include the drug seizures of state and local law enforcement, and thus provide an incomplete picture of total drug seizures. More systematic reporting of federal drug seizures could improve the reliability of FDSS data for analysis of trends in drug enforcement efforts. Similarly, developing a system to capture drug seizures at the state and local level could improve the utility of drug seizure data for assessing drug control policy. Undoubtedly, federal drug seizures lower the supply of illegal drugs that would otherwise be available for domestic distribution in the absence of these efforts,⁴³ and drug seizures increase the costs of drug trafficking organizations. However, it remains difficult to assess what existing federal drug seizures indicate about federal interdiction efforts and drug control policy.

⁴³ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 71.

Eradication of Domestic Cannabis

According to DEA, marijuana is the most widely used illegal drug in the United States, and it is the only illegal drug that is domestically cultivated in both indoor and outdoor settings.⁴⁴ Since 1979, DEA has administered a joint federal and state program called the Domestic Cannabis Eradication/ Suppression Program (DCE/SP). Beginning with Hawaii and California, by 1985, the program was operating in all 50 states.⁴⁵ For the program, DEA contributes funding, training, equipment, investigative, and aircraft resources to support state efforts to target drug trafficking organizations (DTOs) involved in domestic cannabis cultivation. According to DEA, 114 state and local law enforcement agencies actively participated in the DCE/SP in 2007.⁴⁶

Table 4 provides state-reported data on marijuana eradication efforts under DEA's program. In 2007, over 7 million cultivated marijuana plants were eradicated by state and local law enforcement under the program. In addition to eradicating cultivated plants, states reported the seizure of 47,183 pounds of marijuana discovered at cultivation sites that had been processed.⁴⁷ DEA attributed 8,321 arrests and seized \$54.9 million in cultivator assets to the program.⁴⁸ The eradication of ditchweed⁴⁹ plants is also reported by state and local law enforcement agencies. For the period 1998-2006, ditchweed plants represented more than 94% of the total number of marijuana plants eradicated through the DCE/SP (see **Table 4**).

⁴⁴ U.S. DOJ, DEA, Domestic Cannabis Eradication/Suppression Program, "Recent Developments," available at <http://www.usdoj.gov/dea/programs/marijuana.htm>, accessed on January 27, 2010.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Processing cannabis includes removing the flower or bud, leaves, and stems from the plant and permitting them to dry.

⁴⁸ Ibid.

⁴⁹ Ditchweed is a type of marijuana that grows wild and often without cultivation, although in some cases these plants may be surreptitiously tended. Ditchweed typically has low concentrations of tetrahydrocannabinol (THC), the psychoactive ingredient in marijuana, and is less potent than other types of marijuana. For more information on THC comparisons, see University of Mississippi, Potency Monitoring Project report, available at <http://www.whitehousedrugpolicy.gov/pdf/FullPotencyReports.pdf>, accessed on January 27, 2010.

Table 4. Number of Marijuana Plants Eradicated and Seized, 1998-2007

| Year | Cultivated Marijuana Plants | | | Non-cultivated Plants | | Total Plants Eradicated | |
|------|--|--------------------------|------------------------------------|--------------------------------------|--|--|---|
| | Cultivated Outdoor Plants ^a | Cultivated Indoor Plants | Total Cultivated Plants Eradicated | Bulk Processed Marijuana (in pounds) | Ditchweed ^b Plants Eradicated | Total Cultivated and Non-cultivated Plants | Ditchweed as % of Total Plants Eradicated |
| 1998 | 2,283,137 | 232,839 | 2,515,976 | 89,303 | 132,407,688 | 135,012,967 | 98.1 |
| 1999 | 3,205,056 | 208,027 | 3,413,083 | 80,762 | 130,192,389 | 133,686,234 | 97.4 |
| 2000 | 2,597,798 | 217,105 | 2,814,903 | 56,046 | 139,580,728 | 142,451,677 | 98.0 |
| 2001 | 3,068,632 | 236,128 | 3,304,760 | 25,320 | 569,712,725 | 573,042,805 | 99.4 |
| 2002 | 3,128,800 | 213,040 | 3,341,840 | 24,209 | 113,165,885 | 116,531,934 | 97.1 |
| 2003 | 3,427,923 | 223,183 | 3,651,106 | 56,283 | 243,430,664 | 247,138,053 | 98.5 |
| 2004 | 2,996,225 | 203,896 | 3,200,121 | 109,687 | 262,150,881 | 265,460,689 | 98.8 |
| 2005 | 3,938,151 | 270,935 | 4,209,086 | 117,503 | 218,633,492 | 222,960,081 | 98.1 |
| 2006 | 4,830,766 | 400,892 | 5,231,658 | 88,801 | 83,903,653 | 89,224,112 | 94.0 |
| 2007 | 6,599,599 | 434,728 | 7,034,327 | 47,183 | N/A ^c | 7,034,327 ^c | N/A ^c |

Source: Sourcebook of Criminal Justice Statistics Online, based on data provided by U.S. DOJ, DEA.

Note: N/A = not available.

- a. May include tended ditchweed.
- b. Ditchweed is a type of marijuana that grows wild.
- c. For 2007, ditchweed eradication was not reported by DEA.

The National Drug Intelligence Center (NDIC) at DOJ reports that most recent marijuana eradication occurred in western states where Mexican DTOs maintain numerous large outdoor plots, some of which are on public lands, such as national parks and forest lands.⁵⁰ According to NDIC, the eradication of outdoor cannabis plants on public lands increased from 986,546 plants in 2004 to more than 2.6 million plants in 2007. NDIC further reports that three states (California, Oregon, and Washington) accounted for 80.2% of all outdoor eradication efforts in that year.⁵¹

Cannabis eradication as an enforcement effort aims to limit the drug's availability from domestic sources. While these efforts reduce the supply of marijuana by the amounts eradicated, domestic sources of marijuana are a small part of the estimated overall supply of the drug. Compared with multi-ton amounts of marijuana smuggled across the Southwest border, domestic eradication is not likely to have a notable effect on the overall availability of marijuana in the United States.⁵²

⁵⁰ NDIC, *National Drug Threat Assessment 2009*, p. 20.

⁵¹ Ibid.

⁵² Ibid., p. 21.

Clandestine Laboratory Seizures

Certain illegal drugs, particularly synthetic drugs, are sometimes manufactured or synthesized from precursor chemicals at clandestine labs operated by drug traffickers. Often these laboratories are located in rural or isolated areas where they can operate undetected. These illegal drug laboratories are of concern because the precursor chemicals necessary to manufacture certain illegal drugs are often highly toxic and volatile, raising concerns about public safety, as well as public health and environmental problems. **Table 5** provides a summary of the number of clandestine laboratories seized solely by DEA agents from 1995 to 2003, the most recent data available.

Table 5. Federal Seizures of Domestic Illegal Drug Laboratories by DEA, Selected Fiscal Years 1995-2003

| Type of Drug Manufactured | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|--|------|------|-------|-------|-------|-------|-------|------|------|
| PCP | 5 | 2 | 1 | 1 | 1 | 0 | 1 | 3 | 3 |
| Methamphetamine | 299 | 776 | 1,289 | 1,157 | 2,122 | 1,873 | 1,176 | 618 | 409 |
| Amphetamine | 4 | 4 | 1 | 1 | 5 | 1 | 2 | 4 | 0 |
| Other drugs ^a | 1 | 20 | 15 | 7 | 23 | 19 | 11 | 16 | 5 |
| Other controlled substances ^b | 21 | 4 | 5 | 9 | 7 | 12 | 18 | 6 | 3 |
| Total illegal drug laboratories | 330 | 806 | 1,311 | 1,175 | 2,158 | 1,905 | 1,208 | 647 | 420 |

Source: *Sourcebook of Criminal Justice Statistics*, 2003-2007, table 4.39, p. 392, based on data provided by U.S. DOJ, DEA.

Note: Laboratory seizures reported here represent only those made by DEA personnel and do not include the collaborative efforts of state and local law enforcement officials.

- a. Includes methaqualone (Quaalude)/methcathinone; hashish oil; LSD; cocaine; and other hallucinogens (MDMA [Ecstasy] and GHB [gamma-hydroxybutyric acid]).
- b. Includes substances such as phenyl-2-propanone, a precursor used in making methamphetamine, amphetamine, and methadone, an opiate-type heroin substitute.

The domestic manufacture of methamphetamine in clandestine laboratories has been a long-standing problem in communities across the country. Seizures of methamphetamine laboratories have comprised the largest number of illegal drug laboratories over the period reflected in **Table 5**. Notably, the clandestine laboratories reflected in **Table 5** do not include the scores of clandestine methamphetamine laboratories that have been seized by state and local law enforcement agencies, sometimes in conjunction with DEA.⁵³ Many clandestine methamphetamine laboratories are small, informal laboratories, where individuals manufacture small amounts of methamphetamine from over-the-counter (OTC) cold medicines containing certain precursor chemicals.⁵⁴ These types of methamphetamine labs continue to be seized by state and local law enforcement in large numbers. However, the number of seized informal

⁵³ DEA provides technical support and training for state and local law enforcement agencies preparing officers to safely dismantle these highly toxic methamphetamine laboratories.

⁵⁴ Methamphetamine can be synthesized using precursor chemicals such as ephedrine, pseudoephedrine, or phenylpropanolamine, which are commonly found in OTC cold and sinus medicines.

methamphetamine laboratories declined markedly after the enactment of state and federal laws⁵⁵ limiting purchases of OTC medicines containing methamphetamine precursor chemicals.⁵⁶ For example, in 2004, a total of 17,033 small methamphetamine labs and/or related chemical dumpsites were seized and reported to DEA by states. By 2007, the number of lab seizures reported to DEA by states had dropped to 5,080. In addition, there continue to be seizures of larger clandestine laboratories, often referred to as *super labs*, capable of manufacturing sizeable amounts of illicit methamphetamine; DEA reports that 260 were seized in 2007. Despite the decrease in the number of clandestine methamphetamine labs seized by state and local law enforcement, the drug's availability has not been affected. DEA currently estimates that 90% of the methamphetamine consumed in the United States is manufactured in Mexico and smuggled across the Southwest border.⁵⁷

Money Laundering and Illegal Drug Financing

The proceeds of the illegal drug trade generate enormous amounts of cash. To conceal the source and/or destination of these illegally obtained amounts, drug trafficking organizations (DTOs) engage in various financial transactions designed to move cash and make it available to finance ongoing illegal drug operations. The transnational nature of DTOs operating in the United States means that large sums of cash proceeds from drug sales are moving in and out of the U.S. through financial institutions, bulk cash smuggling across national borders, and numerous other emerging methods of money laundering, including new financial instruments and technologies that can often bypass regulatory oversight.⁵⁸ In the 2009 National Drug Threat Assessment, the NDIC characterized “drug money laundering as a globalized industry.”⁵⁹

Although money laundering is a component of federal drug enforcement targeting transnational trafficking, large sums of money are often seized domestically as a part of drug arrests and border drug smuggling operations. While it is difficult to estimate the total proceeds of domestic illegal drug sales moved to foreign destinations, NDIC estimates that Mexican and Colombian DTOs alone remove and launder between \$18 billion and \$39 billion in annual wholesale drug proceeds, much of which is thought to be “bulk-smuggled” across the Southwest border.⁶⁰

Issues and Possible Options for Congress

The merits of federal drug enforcement efforts continue to be debated. On one side, critics argue that drug enforcement efforts do not seem to be sufficiently lowering drug use, reducing the supply of illegal drugs, or disrupting the operations of these illegal markets and their attendant crime; therefore, enforcement efforts are ineffective. Alternatives such as decriminalization or legalization of drugs are sometimes offered. Others argue that, since the demand for illegal drugs

⁵⁵ At the federal level, Congress enacted the Combat Methamphetamine Epidemic Act (P.L. 109-177), which included provisions designed to control and limit the availability of methamphetamine precursor chemicals.

⁵⁶ For more information, see CRS Report RS22325, *Methamphetamine: Legislation and Issues in the 110th Congress*, by Celinda Franco.

⁵⁷ NDIC, *National Drug Threat Assessment*, 2009, pp. 9-10.

⁵⁸ U.S. DOJ, NDIC, *National Drug Threat Assessment*, 2009, p. 50.

⁵⁹ *Ibid.*, p. 48.

⁶⁰ *Ibid.*, p. 49.

drives the lucrative illegal trade, it might be more effective to combat illegal drug use by lowering the demand for drugs of chronic and dependent drug users. Still others argue that what is needed are harsher penalties, longer periods of imprisonment for drug offenders, and greater efforts to stem the supply of illegal drugs entering the country. Such divergent views cannot be easily reconciled. However, an analysis of federal drug control objectives, in light of what is known about drug enforcement efforts, may provide the basis for considering future directions in drug policy.

Are Federal Domestic Drug Enforcement Activities Working?

As previously mentioned, federal drug enforcement policy is based on the premise that drug use can be reduced if the availability, or supply, of illegal drugs is restricted or eliminated. If the supply of illegal drugs is sufficiently limited, drug prices could be expected to increase or the product might be further adulterated along the distribution chain, effectively making the drug more expensive to use. If drugs became more expensive, harder to find, or riskier to obtain, some potential users might be discouraged from starting to use, and some current users might quit their use and/or seek drug treatment. This section considers whether drug use is declining, interdiction strategies are reducing drug supplies, and illegal drug prices are rising, in light of long-standing federal domestic enforcement activities.

Have Federal Drug Enforcement Efforts Reduced Drug Use?

According to the latest National Household Survey on Drug Use and Health (NSDUH),⁶¹ in 2008, an estimated 20.1 million Americans aged 12 or older were current (past month⁶²) illegal drug users, representing 8% of the population in this age group (see **Table 6**).⁶³ Among these current drug users, marijuana was the most commonly used drug, with an estimated 15.2 million users (6.1% of the age group), followed by cocaine, with 1.9 million current users (0.7%). The survey estimated that there were 1.1 million current users of hallucinogens (0.4%), of which 555,000 reported use of Ecstasy, and 6.2 million current nonmedical users of prescription-type psychotherapeutic drugs (2.5%). Current users of methamphetamine were estimated at 314,000 persons aged 12 and older (0.1%). The number of reported methamphetamine users dropped by more than half between 2006 and 2008, from 731,000 in 2006, and 529,000 in 2007, to 314,000 in 2008.⁶⁴

Trends in reported drug use over time indicate that current (past month) illegal drug use can vary by a number of factors, including by the type of drug and age group. **Table 6** provides the percentage of current (past month) drug use by age group for 1998-2008. For the population aged 12 and older, between 1998 and 2008 illegal drug use increased from 6.2% to 8.0%. Reported

⁶¹ NSDUH is an annual survey of approximately 67,500 people, including residents of households, non-institutionalized group quarters, and civilians living on military bases. The survey is administered by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services and is available at <http://oas.samhsa.gov/NSDUH/latest.htm>, accessed on January 27, 2010.

⁶² Past month use is reported use of an illegal drug during the 30 days prior to responding to the survey.

⁶³ For NSDUH, illegal drugs include marijuana/hashish, cocaine (including crack), heroin, hallucinogens, inhalants, and prescription-type psychotherapeutics used nonmedically.

⁶⁴ For more information on the 2008 NSDUH survey, see Substance Abuse and Mental Health Services Administration (2008), *Results From the 2008 National Survey on Drug Health and Use: National Findings*, Office of Applied Studies, available at <http://oas.samhsa.gov/nsduh/2k8nsduh/2k8Results.pdf>, accessed on January 27, 2010.

illegal drug use also increased among most age groups, with the exception of those aged 12 to 17. Among the 12-17 age group, reported past year drug use decreased slightly between 1998 and 2008, from 9.9% to 9.3%, after peak reported drug use of 11.6% in 2002. For those aged 26-34, NSDUH data indicate that reported drug use increased from 7.0% to 11.3% during the period, along with an increase among the 35-and-older age group, from 3.3% to 5.1%. Notably, over the same period, for those persons age 12 and older, the number of past-month drug users increased by 47.8% while the size of the population in this age group only increased by 14.4%.⁶⁵

Table 6. Past Month Reported Illegal Drug Use, by Age Group, 1998-2008

(in percent)

| Year | 12 and Older | 12 to 17 | 18-25 | 26-34 | 35 and Older |
|------|--------------|----------|-------|-------|--------------|
| 1998 | 6.2 | 9.9 | 16.1 | 7.0 | 3.3 |
| 1999 | 6.3 | 9.8 | 16.4 | 6.8 | 3.4 |
| 2000 | 6.3 | 9.7 | 15.9 | 7.8 | 3.3 |
| 2001 | 7.1 | 10.8 | 18.8 | 8.8 | 3.5 |
| 2002 | 8.3 | 11.6 | 20.2 | 10.5 | 4.6 |
| 2003 | 8.2 | 11.2 | 20.3 | 10.7 | 4.4 |
| 2004 | 7.9 | 10.6 | 19.4 | 11.1 | 4.2 |
| 2005 | 8.1 | 9.9 | 20.1 | 11.0 | 4.5 |
| 2006 | 8.3 | 9.8 | 19.8 | 11.9 | 4.7 |
| 2007 | 8.0 | 9.5 | 19.7 | 10.9 | 4.6 |
| 2008 | 8.0 | 9.3 | 19.6 | 11.3 | 5.1 |

Source: National Household Survey on Drug Use and Health, 1999-2009.

In contrast, ONDCP's 2009 National Drug Control Strategy (2009 Drug Strategy) used data from two other drug-use surveys to support its claim that drug use had *decreased* in recent years. The 2009 Drug Strategy's claim was based on drug use data taken from narrower subsets of the population than the national household survey data from NSDUH. Specifically, the 2009 Drug Strategy indicated that current (past month) drug use among youth, as reported by 8th, 10th, and 12th grade students combined, had decreased by 25% between 2001 and 2008. Based on special tabulations of survey data drawn from the 2008 *Monitoring the Future* (MTF)⁶⁶ study, the 2009 Drug Strategy indicated that current (past month) drug use of *any drug*,⁶⁷ including alcohol and

⁶⁵ The total number of persons age 12 and older reporting past-month drug use increased from 13.6 million in 1998 to 20.1 million in 2008, while the population size of this age group increased from 218.4 million in 1998 to 249.8 million in 2008.

⁶⁶ MTF is an annual survey of approximately 50,000 randomly sampled students in public and private schools across the United States. The MTF survey estimates prevalence and trends of self-reported drug use among students in 8th, 10th, and 12th grades. Generally, the survey provides annual drug use data by grade rather than in the aggregate. The aggregation of the survey responses from all three grades of students could generally be expected to yield somewhat lower overall drug use percentages than would be expected for data presented by grade, since older students are generally considered to be at higher risk for drug use and typically report higher levels of use than younger students in lower grades. For more detailed information, see <http://www.monitoringthefuture.org/>, accessed on January 27, 2010.

⁶⁷ The MTF data used in the 2009 Drug Strategy estimate includes self-reporting by students on the use of alcohol, cigarettes, inhalants, and steroids, in addition to responses about marijuana, MDMA (Ecstasy), LSD, amphetamines, methamphetamine, cocaine, and heroin. In contrast, NSDUH data on illegal drugs do not include the use of substances (continued...)

tobacco use, had fallen from approximately 19.4% in 2001 to approximately 14.8% in 2008 among middle school and high school students.⁶⁸ Further, the 2009 Drug Strategy noted that positive drug test results for adult workers reported by Quest Diagnostics had fallen to historically low levels, from 13.6% in 1988 to 3.6% in 2008.⁶⁹ Recent workforce drug testing data from Quest Diagnostics indicated that cocaine, methamphetamine, and marijuana use by drug-tested adult workers had declined by 38% from June 2006 to June 2008 for cocaine, by roughly 50% from 2005 to 2007 for methamphetamine, and by 34% between January 2000 and December 2006 for marijuana.⁷⁰

The different findings of the annual NSDUH report and the selected drug use statistics highlighted in the 2009 Drug Strategy do not lend themselves to direct comparison. These data are drawn from surveys of self-reported drug use and employee drug testing of different subsets of the population. The findings referenced by the 2009 Drug Strategy, on one hand, are based on data from narrow segments of the population, namely students in middle and high school, and the number of positive drug tests of those members of the adult workforce that are required to submit to drug-testing as a condition of employment. The NSDUH estimates, on the other hand, reflect the reported drug use of all persons aged 12 and older who are members of households. Most drug use survey data have their limitations, so, for example, neither drug-use survey includes respondents from certain subpopulations that are at high risk for drug abuse, such as people in jails and prisons, hospitals, substance abuse treatment centers, the homeless, and school dropouts. Other fundamental differences between the MTF and NSDUH data stem from the broad definition of illegal drug use (“any illicit drug”) used in the MTF data, which includes reported past month use of alcohol and cigarettes. These two substances make up a large proportion of drug use reflected in the MTF data (55% of reported past month drug use in 2001, and 43.7% in 2007), and account for a sizeable portion of the decline in drug use reported in the 2009 Drug Strategy.⁷¹ Moreover, the workforce drug-test data from Quest Diagnostics reported in the 2009 Drug Strategy also offer a narrower view of drug use trends, since the data represents the drug-test results of those adult workers whose employment requires that they submit to periodic drug testing. The Quest dataset provides drug-testing data for a subset of the total adult workforce, whose drug use might not reflect that of the broader population.

Regardless of the data considered, establishing a causal link between aggregate federal law enforcement activities and changes in aggregate drug use patterns is difficult, if not impossible. Although it is impossible to determine how the *absence* of federal drug enforcement efforts would have affected the availability and use of illegal drugs in the United States, it is reasonable to assume that federal drug control laws and enforcement efforts have contributed to mitigating the U.S. illegal drug problem. Similarly, it is also reasonable to assume that intensified federal law enforcement activities since the 1980s have also contributed to some of the decrease in the level of drug use, either directly through arrest and incarceration of drug dealers and drug users,

(...continued)

such as alcohol and tobacco.

⁶⁸ ONDCP, *National Drug Control Strategy*, 2009, p. 1.

⁶⁹ Quest Diagnostics Incorporated, Drug Testing Index (DTI), “Cocaine Use Among U.S. Workers Declines Sharply in 2008,” available at http://questdiagnostics.com/employersolutions/dti/2009_05/dti_index.html, accessed on January 27, 2010. The annual DTI is based on 5.7 million urine drug tests performed last year by Quest Diagnostics, Inc, a national provider of drug testing services for public and private sector employers.

⁷⁰ Ibid.

⁷¹ ONDCP, *National Drug Control Strategy*, 2009, Figure 2, p. 1.

or indirectly by deterring some level of new drug offending or recidivism. However, it is difficult to quantify how much of these reductions in drug use can be attributed to federal domestic drug enforcement activities. In the aggregate, many factors unrelated to enforcement activities or drug control policies can influence drug use patterns. Factors such as a person's age, culture, and drug use by friends could influence drug-use patterns, as can broader societal changes such as demographic shifts and the public's tolerance of drug use.⁷² Moreover, research indicates that drug use patterns are cyclical in nature and vary in intensity, initially spreading "like a communicable disease"⁷³ in an epidemic-like manner, with rising rates of initiation, followed by use of a drug peaking and then receding as new and recreational or occasional users begin to desist.⁷⁴ These and other factors can affect increases and decreases in drug use and make it difficult to establish a link between enforcement efforts and changes in national drug use trends.

Have Interdiction Efforts Reduced Illegal Drug Supplies?

As discussed above, federal drug seizure data can vary from year to year. Federally reported seizure data can be influenced by a few very large drug busts resulting from an investigation and specific intelligence on a drug shipment, or can occur in a more random fashion that can be the result of some unrelated enforcement activity, such as border-crossing inspections or traffic stops. As such, drug seizures are generally not considered a useful indication of enforcement effectiveness.⁷⁵ Seizing more drugs one year compared with another year could mean that drug enforcement operations are removing more drugs from the market, or it could indicate that more drugs are being smuggled into the country. All drug seizures remove drugs that would otherwise be available to users and reduce availability by the amount seized. However, the impact of drug seizures on the supply of illegal drugs is limited and always temporary because traffickers are generally able to replace seized drugs. Drug traffickers are quick to adapt to most enforcement efforts and seem adept at finding ways to circumvent interdiction.⁷⁶ For many traffickers, drug seizures "constitute little more than a random tax collection,"⁷⁷ or a "cost of doing business."

In a congressional hearing, the U.S. Government Accountability Office (GAO) testified that hundreds of tons of illicit drugs are transiting through or produced in Mexico and flowing into the United States each year.⁷⁸ According to GAO's testimony, between 2000 and 2006, the estimated amount of cocaine arriving in Mexico for transshipment to the United States averaged about 290 metric tons per year, or more than 639,000 pounds.⁷⁹ GAO testified that during the same period, cocaine seizures averaged about 36 metric tons a year (79,366 pounds), amounting to about 13%

⁷² National Research Council, *Informing America's Policy on Illegal Drugs*, pp. 187-188.

⁷³ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, pp. 22-25.

⁷⁴ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 96.

⁷⁵ Caulkins, Jonathan P., Peter Reuter, Martin Y. Iguchi, James Chiesa, "How Goes the "War on Drugs"?: An Assessment of U.S. Drug Programs and Policy," RAND Drug Policy Research Center, Occasional Paper, 2005, p. 7; hereafter referred to as Caulkins et al., "How Goes the "War on Drugs"?"

⁷⁶ Rowe, Thomas C., *Federal Narcotics Law and the War on Drugs: Money Down a Rat Hole*, New York: The Haworth Press, 2006, p. 34, hereafter referred to as Rowe, *Federal Narcotics Law and the War on Drugs*; National Research Council, *Informing America's Policy on Illegal Drugs*, pp. 171-175.

⁷⁷ Reuter, Peter, "The Limits of Supply-Side Drug Control," *The Milken Institute Review*, 2001, first quarter, p. 22.

⁷⁸ U.S. Government Accountability Office, statement of Jess T. Ford in testimony before the U.S. House of Representatives Subcommittee on the Western Hemisphere, Committee on Foreign Affairs, October 25, 2007, GAO-08-215T.

⁷⁹ *Ibid.*, p. 7.

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of the estimated amount of cocaine arriving in Mexico. Mexican-produced heroin that was smuggled into the U.S. averaged almost 19 metric tons (41,887 pounds) a year over the same period, while seizures were estimated to equal less than 1 metric ton a year.⁸⁰ Similarly, Mexican-produced marijuana flowing toward the U.S. was estimated to have averaged 9,400 metric tons a year (over 20.7 million pounds), while average seizures were estimated to be less than 2,900 metric tons (over 6.4 million pounds), or 30% per year of the total amount being smuggled across the border.⁸¹ GAO's testimony went on to report that, while the U.S. interagency counternarcotics community⁸² had not estimated the amount of methamphetamine produced in Mexico, U.S. border seizures of methamphetamine had increased fivefold between 2000-2006, possibly indicating a dramatic increase in the supply of the drug flowing toward the United States.⁸³

GAO's testimony indicates the scale of the problem of illegal drugs being smuggled into the United States. These drug supply estimates dwarf most of the reported combined federal drug seizures and raise doubts about whether existing interdiction efforts alone can stem a drug flow of this magnitude. Regardless of the disparity between the amounts of illegal drugs seized and drug supply estimates, as previously stated, federal drug seizures contribute to reducing the supply of drugs that would otherwise be available for consumption. However, while law enforcement seizures add to the risks and costs of drug trafficking and distribution, it is unlikely that the added costs are sufficient to overshadow the profitability of the illegal drug trade.

Has More Stringent Enforcement Increased Drug Prices?

One objective of supply-reduction efforts has been to reduce the availability of drugs sufficiently to create scarcity, which in turn should drive prices up and, thereby, make drug users unable or unwilling to continue their drug use. This proposition has been the subject of numerous studies that have attempted to explain why, from 1981 to 2003, the prices of powder cocaine and heroin fell and the purity of these drugs increased, while their demand grew.⁸⁴ This anomalous economic trend is provided for powder cocaine in **Figure 1** and heroin in **Figure 2**.

Contrary to what economic theory would generally predict, powder cocaine and heroin prices fell between FY1981 and FY2003. Rising demand for these drugs also did not cause the purity of these drugs to decline, as might be expected as a result of increased adulteration of the drugs by traffickers seeking to increase their profits. Instead, the purity levels of cocaine and heroin increased between FY1981 and FY2003, as shown in **Figures 1** and **2**.

⁸⁰ Ibid., p. 8.

⁸¹ Ibid.

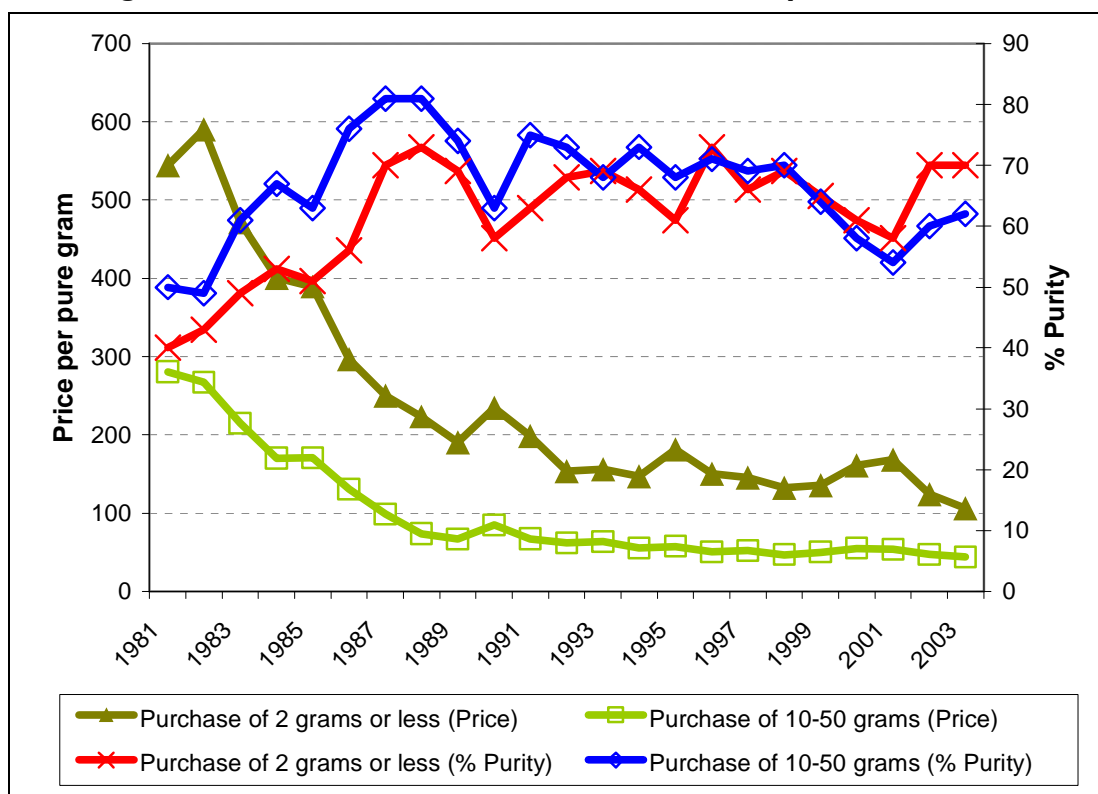
⁸² The interagency counternarcotics community includes the Central Intelligence Agency's Crime and Narcotics Center; the Department of Defense (DOD) Intelligence Agency's Counternarcotics Trafficking Office, DOD's Joint Staff and the Deputy Assistant Secretary of Defense for Counternarcotics; various Department of Homeland Security entities, including Customs and Border Protection, the U.S. Coast Guard, Office of Intelligence and Analysis, Office of Counternarcotics and Enforcement, and the U.S. Interdiction Coordinator; the Department of Justice's DEA, FBI, Narcotic and Dangerous Drug Section, National Drug Intelligence Center, and the Organized Crime and Drug Enforcement Task Force; the National Security Agency; the White House Office of National Drug Control Policy; the Department of State's Bureau for International Narcotics and Law Enforcement Affairs; and the Department of Treasury's Internal Revenue Service and Office of Foreign Assets Control.

⁸³ U.S. Government Accountability Office, statement of Jess T. Ford, testimony, p. 8.

⁸⁴ For more detailed information, see Executive Office of the President, ONDCP, *The Price and Purity of Illicit Drugs: 1981 Through the Second Quarter of 2003*, November 2004, p. 70.

There is no consensus about why retail prices for cocaine and heroin dropped substantially while drug purity levels increased.⁸⁵ Some have argued that, in part, drug prices fell because there were productivity and efficiency gains in the manufacture and distribution of cocaine and heroin. Others have suggested that increasingly stringent enforcement over the period prompted changes and innovations in smuggling behavior, such as switching from smuggling marijuana to cocaine.⁸⁶ It has also been suggested that prices fell because more stringent enforcement created widespread change in the illegal drug trade, moving retail drug markets to poor neighborhoods and, thus, creating a steady supply of low-level dealers willing to risk incarceration and the violence of street-level drug dealing for more income than they could otherwise expect to earn.

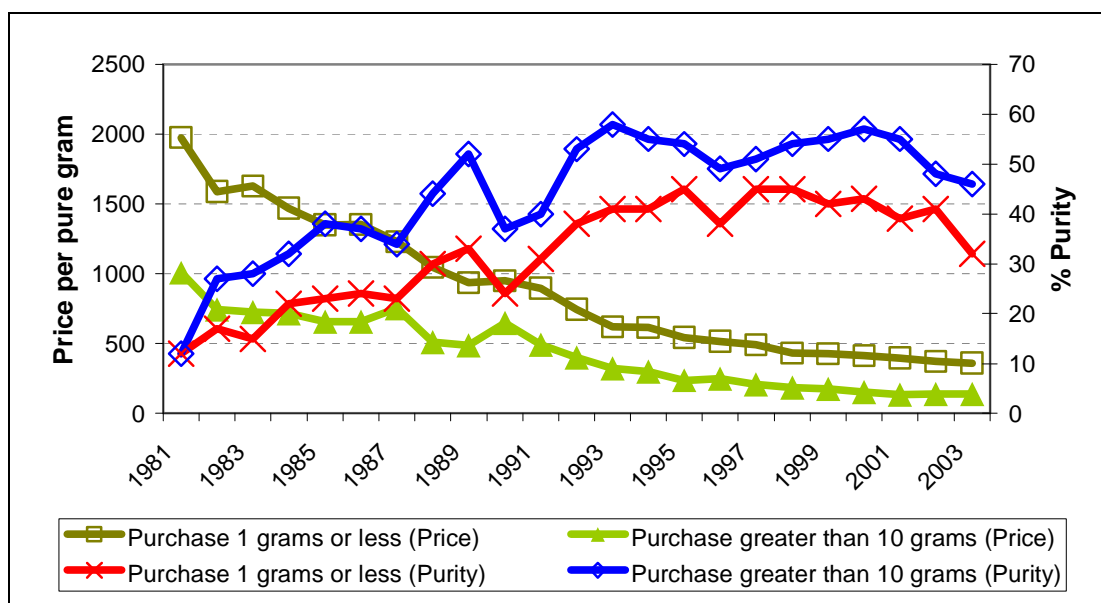
Figure I. Trends in Powder Cocaine Price and Purity, FY1981-FY2003



Source: Executive Office of the President, ONDCP, November 2004.

⁸⁵ National Research Council, *Informing America's Policy on Illegal Drugs*, pp. 151-153; Caulkins, Jonathan, and Peter Reuter, "What Price Data Tell Us About Drug Markets," *Journal of Drug Issues*, vol. 28, no. 3, pp. 593-612; Caulkins, Jonathan and Peter Reuter, "Illicit Drug Markets and Economic Irregularities," *Socio-Economic Planning Sciences*, vol. 40, 2006, p. 12.

⁸⁶ Basov, Suren, Mireille Jacobsen, and Jeffrey A. Miron, "Prohibition and the Market for Illegal Drugs," *World Economics*, vol. 2, no. 4, October-December 2001, p. 23.

Figure 2. Trends in Heroin Price and Purity, FY1981-FY2003

Source: Executive Office of the President, ONDCP, November 2004.

To date, it remains unclear why illegal drug prices fell so precipitously between 1981 and 2003, or why a general overall downward trend continues. There is, however, general agreement that the federal database that collects the price and purity data used for these analyses, DEA's System to Retrieve Information from Drug Evidence (STRIDE), is imperfect in a number of ways, including⁸⁷

- the data are not representative of national drug prices but instead consist of information on the price and purity of drugs purchased by undercover law enforcement officers in "buy and bust" operations or by their paid informants, or drugs obtained in drug seizures;
- the drug data are gathered in an inconsistent manner;
- the database has a relatively small number of observations that can vary greatly; and
- there is no systematic collection of information on drugs seized by state and local law enforcement that could provide critical information for these analyses.⁸⁸

These drug price and purity studies seem to suggest that, among other things, law enforcement and interdiction efforts were not able to curb illegal drug supplies enough to drive prices up and drug purity down. However, the data limitations and poorly understood dynamics of illegal drug markets limit the use of these data for assessing federal drug enforcement efforts.

⁸⁷ National Research Council, *Informing America's Policy on Illegal Drugs*, pp. 107-117, 283-295.

⁸⁸ Caulkins, Jonathan P., Peter Reuter, "The Meaning and Utility of Drug Prices," *Addiction*, vol. 91, issue 9, p. 1265.

Options for Assessing Federal Drug Enforcement Strategies

Research and Enforcement Data Development

In 2001, the National Research Council (NRC) reported the findings of its Committee on Data and Research for Policy on Illegal Drugs.⁸⁹ At the request of ONDCP, the committee was charged with (1) assessing the available sources of data and research supporting drug policy analysis, (2) identifying new data and research that might enable the development of more effective evaluations of alternative drug policies, and (3) exploring the ways that research could increase understanding of drug abuse and how illegal drug markets operate.⁹⁰ The most critical shortcoming in the data and research on illegal drug use, the committee concluded, was “a woeful lack of investment in programs of data collection and empirical research that would enable evaluation of the nation’s investment in drug enforcement.”⁹¹ The committee further identified two major data deficiencies for evaluating the impact of enforcement: “the absence of adequate data on drug consumption and reliable data on drug prices.”⁹² The committee report recommended that ONDCP encourage information gathering and empirical research on three critical issues:

- *geographic substitution*—the extent to which producers and traffickers are able to thwart enforcement efforts by moving production or trafficking from one geographic area to another;
- *deterrence*—the extent to which enforcement and supply-reduction efforts deter drug trafficking; and
- *adaption*—the time lag between successful enforcement efforts and adaptive responses of drug producers and traffickers.⁹³

The findings of the NRC were largely ignored, and the inability to evaluate drug enforcement policies continues. Existing federal drug enforcement data are no further developed and continue to be inadequate for evaluating federal drug enforcement activities and interdiction strategies. Nor can existing drug enforcement data be used to demonstrate the cost-effective use of limited federal resources.⁹⁴ Moreover, there continues to be little support for social science research on drug enforcement efforts, and as a result, fundamental research questions, such as how drug markets work, remain poorly understood. It remains unclear whether enforcement and interdiction efforts have been or can be expected to yield the desired objectives of federal drug control policies. Research on these and other drug enforcement issues could provide the foundation for assessing drug enforcement strategies, considering alternative approaches, and achieving federal drug control policy objectives. Whether there is an interest among policymakers

⁸⁹ National Research Council, *Informing America’s Policy on Illegal Drugs*, p. 16.

⁹⁰ *Ibid.*, p. 2.

⁹¹ *Ibid.*

⁹² *Ibid.*, p. 3.

⁹³ *Ibid.*, p. 5.

⁹⁴ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 70.

in knowing the extent to which federal drug enforcement efforts are having the desired effect on drug use and availability remains unclear.

Changing the Balance of the Federal Drug Control Budget

According to ONDCP,⁹⁵ for FY2008 Congress provided more than \$13.655 billion⁹⁶ for total drug control spending across federal agencies participating in the nation's anti-drug policy (see **Table 7**).⁹⁷ Of this total amount, the federal drug supply reduction activities of domestic law enforcement, interdiction, and international drug control efforts were funded at more than \$8.672 billion and comprised more than 63% of total federal drug control funding for FY2008. The balance of federal drug control spending went for demand-reduction activities, such as substance abuse treatment, prevention, and research. More specifically, FY2008 funding for federal domestic enforcement activities reached \$3.8 billion, while funding for interdiction efforts was more than \$3.2 billion. Taken together, these two components accounted for 51.4% of total federal drug control funding in FY2008.

As a proportion of the total drug control budget, funding for all federal supply-reduction activities, including international efforts, increased from 47.4% in 1996 to 63.4% in 2008. Most of this increase is attributable to increases in federal resources for interdiction and international efforts, rather than for federal domestic law enforcement efforts (see **Figure 3**). As **Table 7** indicates, as a proportion of the total federal drug control budget, interdiction funding increased from 17.6% to 23.5% over the 13-year period. Although continuing to be the smallest dollar-amount in the drug control budget, estimated funding for international drug control efforts grew over the period, increasing from 3.9% of the total drug control budget to 12.1%, growing from \$243 million in FY1996 to almost \$1.7 billion in FY2008.

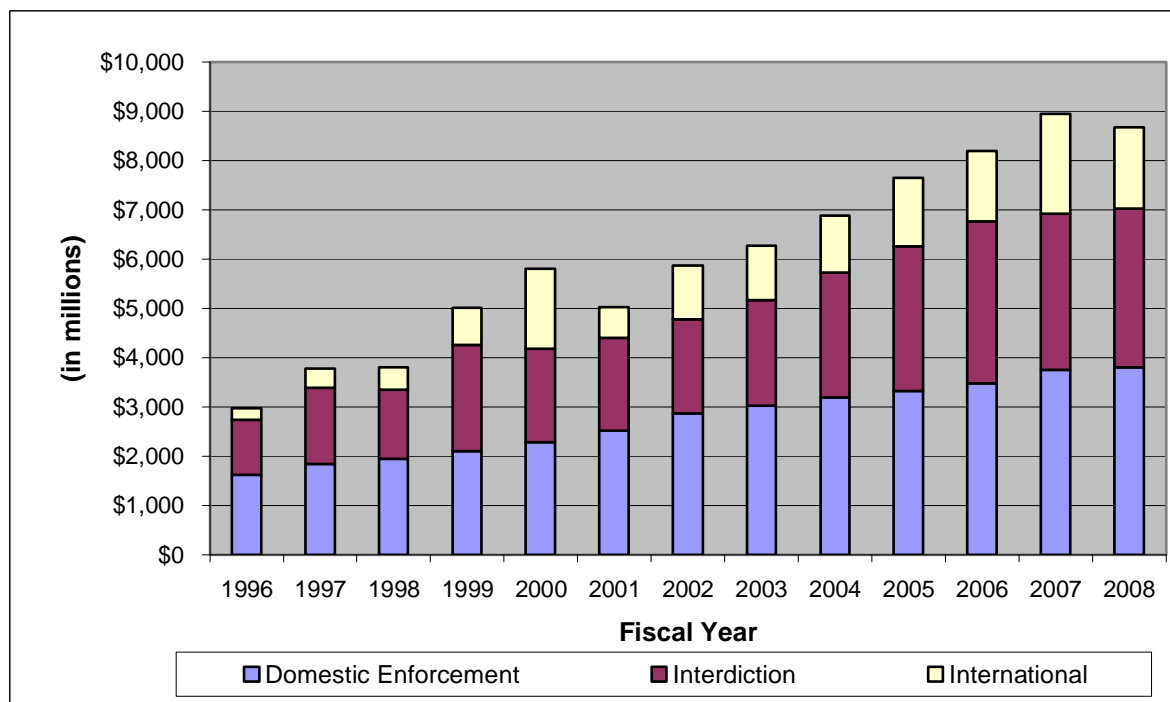
Roughly 36% of the total federal drug control budget in FY2008 was allocated for demand-reduction activities, including treatment and prevention, while 64% was allocated for domestic enforcement, interdiction, and international supply-reduction activities. In contrast, in FY1996, roughly 52% of the total drug control budget was for demand-reduction activities, and 47% was for supply-side activities. Some observers argue that this shift of federal resources toward supply-side activities has come at the expense of alternative drug control efforts. Supporters of shifting the balance of federal support toward demand-reduction activities such as treatment and prevention efforts argue that as long as there is a demand for illegal drugs, there will be suppliers. Thus, they argue, if the federal counterdrug objective is to lower the use of drugs, focusing on reducing the demand for illegal drugs of chronic and dependent drug users with substance abuse treatment might be more effective.

⁹⁵ ONDCP annually estimates federal funding for drug control efforts across key participating agencies, although the ONDCP does not have control over the drug control activities or related budgets of these agencies.

⁹⁶ This amount does not include \$465 million in FY2008 supplemental appropriations for counternarcotics support to Mexico and Central America for the Mérida Initiative enacted in the FY2008 Supplemental Appropriations Act (P.L. 110-252). For more information on the Mérida Initiative, see CRS Report R40135, *Mérida Initiative for Mexico and Central America: Funding and Policy Issues*, by Clare Ribando Seelke.

⁹⁷ U.S. Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy: FY2009 Budget Summary*, p. 13.

Figure 3. Estimated Federal Drug Supply-Reduction Budget, FY1996-FY2009
(in millions)



Source: Executive Office of the President, ONDCP, National Drug Control Strategy, FY2005-FY2009.

According to the 2001 NRC report, ONDCP estimated that federal expenditures for research on enforcement were \$113.2 million in 1999, almost 2.7% of spending on federal domestic drug enforcement.⁹⁸ More recently, ONDCP estimated that funding for domestic law enforcement research and development was estimated to be \$87.1 million in FY2007, almost 1.3% of enforcement expenditures, while in FY2008 research and development funding fell to \$45 million, or almost 0.6% of funding for domestic drug enforcement efforts.⁹⁹ Despite the lack of data and research assessing federal drug enforcement efforts and declining funding for research and development on these efforts, supply-reduction activities continue to be a major part of federal drug control policy and funding. The federal drug budget is often viewed as a barometer of federal drug control priorities. Funding for drug enforcement and interdiction activities, as well as the drug control budget as a whole, are considered by Congress each year. Policymakers may consider changing the balance of federal funding for domestic drug enforcement and interdiction activities as they consider how best to achieve the objectives of federal drug control policy.

⁹⁸ National Research Council, *Informing America's Policy on Illegal Drugs*, p. 27.

⁹⁹ ONDCP research funding estimates provided by request, ONDCP Office of Legislative Affairs, November 7, 2008, personal communication (e-mail). It should be noted that 68% and 59% of funding went to the Department of Defense for drug interdiction and counterdrug activities in FY2007 and FY2008, respectively.

Table 7. Total Federal Drug Control Budget and Supply Reduction Budget Amount and Percentage of Total Drug Control Budget, FY 1996-FY2008

(in millions of dollars)

| Fiscal Year | Total Drug Control Budget | Supply Reduction | | | | | | | |
|-------------|---------------------------|-------------------------------|----------------------------------|--------------------------|----------------------------------|--------------|----------------------------------|---------------|----------------------------------|
| | | Total Supply Reduction Budget | | Domestic Law Enforcement | | Interdiction | | International | |
| | | Amount | Percentage ^a of Total | Amount | Percentage ^a of Total | Amount | Percentage ^a of Total | Amount | Percentage ^a of Total |
| 1996 | \$6,274.1 | \$2,974.4 | 47.4 | \$1,624.1 | 25.9 | \$1,106.7 | 17.6 | \$243.6 | 3.9 |
| 1997 | 7,221.6 | 3,775.5 | 52.3 | 1,836.3 | 25.4 | 1,549.3 | 21.5 | 389.9 | 5.4 |
| 1998 | 7,475.8 | 3,808.0 | 50.9 | 1,937.5 | 25.9 | 1,406.5 | 18.8 | 464.0 | 6.2 |
| 1999 | 9,030.8 | 5,002.5 | 55.5 | 2,100.6 | 23.3 | 2,155.6 | 23.9 | 746.3 | 8.3 |
| 2000 | 9,936.6 | 5,797.6 | 58.4 | 2,274.0 | 22.9 | 1,904.4 | 19.2 | 1,619.2 | 16.3 |
| 2001 | 9,467.0 | 5,023.8 | 53.0 | 2,511.2 | 26.5 | 1,895.3 | 20.0 | 617.3 | 6.5 |
| 2002 | 10,781.4 | 5,865.4 | 54.5 | 2,867.2 | 26.6 | 1,913.7 | 17.8 | 1,084.5 | 10.1 |
| 2003 | 11,220.1 | 6,270.9 | 55.8 | 3,018.3 | 26.9 | 2,147.5 | 19.1 | 1,105.1 | 9.8 |
| 2004 | 12,005.6 | 6,883.2 | 57.4 | 3,189.8 | 26.6 | 2,534.1 | 21.1 | 1,159.3 | 9.7 |
| 2005 | 12,784.3 | 7,640.1 | 59.8 | 3,318.1 | 26.0 | 2,928.7 | 22.9 | 1,393.3 | 10.9 |
| 2006 | 13,144.1 | 8,196.5 | 62.3 | 3,475.0 | 26.4 | 3,287.0 | 25.0 | 1,434.5 | 10.9 |
| 2007 | 13,844.1 | 8,941.3 | 64.6 | 3,748.8 | 27.1 | 3,175.9 | 22.9 | 2,016.6 | 14.6 |
| 2008 | 13,655.4 | 8,672.6 | 63.4 | 3,800.3 | 27.8 | 3,214.2 | 23.5 | 1,658.1 | 12.1 |

Source: Executive Office of the President, Office of National Drug Control Policy, National Drug Control Strategy: FY2005-FY2009.**Notes:** Percent may not add to 100 due to rounding.

a. Data represent percentage of Total Drug Control Budget.

Conclusion

For more than 30 years Congress has responded to the illegal drug problem at the federal level with enforcement measures aimed at drug-supply reduction measures as a means of curbing illegal drug use. At the federal level, more than 323,000 drug arrests were made between 1998 and 2007, and many of these defendants were charged with trafficking or drug distribution offenses. Over this period, 258,204 federal drug offenders were convicted. In September 2008, there were almost 100,000 inmates in federal prisons convicted and sentenced for drug offenses, representing more than 52% of all federal prisoners.¹⁰⁰ Federal spending for domestic drug enforcement and interdiction efforts between FY1998 and FY2008 exceeded \$58.8 billion,¹⁰¹ representing more than 82% of total federal funding for all supply-reduction efforts, and more than 58% of total federal spending for all drug control efforts for those years. Additionally, ONDCP estimates that the cost of incarcerating federal drug offenders in FY2008 exceeded \$2.9 billion.¹⁰²

Federal drug enforcement efforts are an important aspect of national drug control policy. Yet, there is little agreement on how to best address the drug problem, and the merits of federal drug enforcement efforts are at the heart of the debate. Some argue that the emphasis on drug enforcement is not an effective strategy. Others argue that these efforts are not optimally balanced with other drug control strategies, such as reducing the demand for illegal drugs. Some are of the opinion that what is required to stop illegal drug use and distribution are more punitive sanctions and more emphasis on enforcement. Still others have suggested that existing drug enforcement efforts should be considered a success as long as drug use does not continue to increase.¹⁰³ While such divergent views on drug control policy are difficult to reconcile, better information on drug enforcement efforts might help to focus and inform the debate.

Despite federal efforts to reduce the supply and use of illegal drugs, illegal drugs remain a persistent social problem in the United States. It has been noted that federal drug control policy has not fundamentally changed since the mid-1980s, despite significant shifts in the nature of the illegal drug problem.¹⁰⁴ However, empirical assessments of federal enforcement efforts are hampered by the lack of data and research. Research could provide a better understanding of how federal law enforcement efforts support the objectives of drug control policy and inform the future development of more effective enforcement strategies.

¹⁰⁰ *National Drug Threat Assessment 2009*, p. III.

¹⁰¹ Federal domestic enforcement funding estimated by ONDCP does not include the costs of prosecution or incarceration of federal drug offenders.

¹⁰² ONDCP, *National Drug Control Strategy: FY2009*, p. A1.

¹⁰³ Rowe, *Federal Narcotics Law and the War on Drugs*, p. 63.

¹⁰⁴ Reuter, Peter, "The Limits of Supply-Side Drug Control," *The Milken Institute Review*, 2001, p. 15; Caulkins et al., "How Goes the 'War on Drugs?'" pp. 27-29.



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Testifying Before Congress

Appendix. Federal Drug Control Legislation

The federal role in drug control began to emerge early in the 20th century in an effort to fill the gap between variations in state laws regulating narcotics. Questions were raised, however, about the limits of federal regulatory control over the drug supply and limited federal policing powers.¹⁰⁵ Some argued that federal control over narcotic use and prescription practices of the medical profession was unconstitutional.¹⁰⁶ Despite these concerns, one of the earliest federal drug control laws stemmed from a coalition of medical and reform interests¹⁰⁷ and led to the enactment in 1906 of the Pure Food and Drug Act.¹⁰⁸ The act included the first federal regulations and laws restricting and criminalizing certain narcotic use and required accurate labeling of medical products that contained opium, morphine, and heroin, and products containing alcohol, marijuana, and cocaine. While the act provided the historical basis of the Food and Drug Administration, the law also established the early federal enforcement role linked to restricting and regulating the use of narcotics in legal, readily available medicines or while under the care of a physician.¹⁰⁹

This appendix briefly summarizes some of the major provisions of federal drug control laws enacted over the past century. The appendix is divided into two sections. The first section summarizes early federal legislation through the late 1960s. The second section summarizes the enactment of the CSA and its subsequent amending legislation, which forms the basis for current law.

Early Federal Drug Control Legislation (1914-1968)

The Harrison Narcotics Act

Enactment of the Harrison Narcotics Act of 1914¹¹⁰ is generally considered to mark the federal government's official entry into the area of drug regulation and enforcement. The act was an effort to simplify record keeping for the dispensing of narcotic drugs and regulate the production and distribution of opium and coca derivatives through licensing and taxation.¹¹¹ Dealers in narcotics were required to register with the federal government and pay a special annual tax. The law required that all transactions had to be recorded on official order blanks and kept for two

¹⁰⁵ Ibid., p. 14.

¹⁰⁶ Musto, *The American Disease*, pp. 9-10. For a discussion of how the Supreme Court's decisions broadened federal regulatory power over narcotics through expansion of federal commerce and tax powers in the early years of the 20th century, see Erlen and Spillane, *Federal Drug Control*, pp. 34-42.

¹⁰⁷ The American Medical Association and the American Pharmaceutical Association, as well as representatives of companies manufacturing medicines and products containing narcotics, were among those groups engaged in various reform efforts during this period. See Musto, *The American Disease*, pp. 10-23.

¹⁰⁸ The Pure Food and Drug Act of 1906 (P.L. 58-384) provided for federal inspection of meat products; forbade the manufacture, sale, or transportation of adulterated food products or patent medicines; and included accurate labeling requirements for certain products containing cocaine and heroin. This law paved the way for the eventual creation of the Food and Drug Administration and was replaced by the Federal Food, Drug, and Cosmetic Act in 1938.

¹⁰⁹ Erlen and Spillane, *Federal Drug Control*, p. 14.

¹¹⁰ P.L. 63-223.

¹¹¹ Epstein, Edward Jay, *Agency of Fear: Opiates and Political Power in America*, 1977 (New York: G.P. Putnam's Sons), p. 26.

years, although physicians in the course of their professional practice were exempt from having to comply with these record requirements. Physicians were precluded from prescribing drugs to maintain a patient's narcotic addiction. The law did permit certain patented medicines to continue to include small quantities of heroin, morphine, and cocaine.¹¹² The act also made possession of the regulated substances a violation of the law unless individuals were able to prove that the narcotics found in their possession had been purchased legally. A violation of the law could mean that an offender could face criminal sanctions of up to \$2,000 or five years in prison.¹¹³ As such, the Harrison Narcotics Act was the beginning of federal efforts to control the trade in opiates and cocaine in a more comprehensive manner than was possible through the patchwork of state laws of the period.

The Marijuana Tax Act of 1937

The emergence of other substances, such as cannabis—then used as an ingredient in legally available medicines—gradually came to be considered societal threats that needed to be brought under federal control.¹¹⁴ Growing concerns about cannabis use led to the 1937 enactment of the Marihuana Tax Act (MTA).¹¹⁵ The act required persons who handled or distributed the substance, and physicians who prescribed it, to register with the federal government and pay a \$1 per-ounce tax. Those who did not register could face fines of up to \$2,000, imprisonment of up to five years, or both.¹¹⁶

While the MTA did not prohibit the therapeutic use of marijuana, the requirements for registering were so onerous that physicians were reluctant to register with the Federal Bureau of Narcotics (FBN) to continue to legally prescribe marijuana.¹¹⁷ The law also required registered physicians to report their patients' names and addresses, illnesses, and prescribed doses, thus further discouraging continued therapeutic use of the drug. Thus, the MTA was able to effectively deter legal marijuana use through regulation, criminal penalties, and fines.

The Boggs Act of 1951

For the next two decades, concerns about growing drug use and abuse, particularly among juveniles, as well as the growing involvement of organized crime in narcotics trafficking, continued to be raised, and eventually culminated in the 1951 passage of what is commonly known as the Boggs Act of 1951.¹¹⁸ The Boggs Act increased criminal penalties for drug offenders to a maximum of 10 years' imprisonment, ranging from a 2- to 5-year sentence for a first offense, to a mandatory sentence of 5 to 10 years for a second offense, to a mandatory 20-

¹¹² Erlen and Spillane, *Federal Drug Control*, p. 17.

¹¹³ Boyum and Reuter, *An Analytic Assessment of U.S. Drug Policy*, p. 5; Erlen and Spillane, *Federal Drug Control*, p. 17.

¹¹⁴ As early as the 1906 Pure Food and Drug Act, marijuana had been included as an ingredient that had to be clearly marked on the label of any drug or food sold to the public, but its use had not been prohibited under the Harrison Act. See, Musto, *The American Disease*, p. 216.

¹¹⁵ P.L. 75-238.

¹¹⁶ Erlen and Spillane, *Federal Drug Control*, p. 76.

¹¹⁷ *Ibid.*

¹¹⁸ P.L. 82-255.

year sentence for third offenders; second and third offenders had no chance of probation or parole, and all offenders could be fined up to \$2,000.¹¹⁹

Narcotics Control Act of 1956

More stringent federal penalties were included in the Narcotics Control Act of 1956.¹²⁰ For example, the act included a mandatory 2- to 20-year mandatory sentence for first time offenders convicted of possessing narcotics; a 5- to 20-year mandatory sentence for second convictions of possession and for first convictions of selling narcotics, without parole or probation; and a mandatory 10- to 40-year sentence for the third possession conviction, and a second or subsequent conviction for selling narcotics, without parole or probation. Among other provisions, the act also included up to a \$20,000 fine and a minimum sentence of 10 years' imprisonment for selling narcotics or marijuana to someone under age 18, while giving juries the discretion to recommend the death penalty.¹²¹

Drug Abuse Control Amendments of 1965

The first federal effort to establish special controls on stimulant drugs was included in the Drug Abuse Control Amendments of 1965.¹²² Under the law, amphetamines and any of their optical isomers were brought under federal regulation. The law tightly regulated any drug containing any amount of amphetamine by requiring that it could only be legally obtained by a physician's prescription. This law also required that manufacturers, suppliers, distributors, and others involved in producing stimulant drugs be subject to registration and regulation under the Federal Food, Drug, and Cosmetic Act.

The Narcotic Addict Rehabilitation Act of 1966 (NARA)

The enactment of the NARA¹²³ expanded the federal approach to the American narcotics problem to include treatment for drug offenders, under certain circumstances. The 1966 act provided the option of drug treatment for addicts in lieu of federal prison. If an individual was addicted to a narcotic and deemed "likely to be rehabilitated through treatment," they could be civilly committed for confinement and drug treatment for up to 36 months instead of going to federal prison.¹²⁴ While the law permitted addicts to voluntarily turn themselves in for treatment, once they were admitted, they were not permitted to back out of the program.¹²⁵ The law also permitted relatives of an addict to petition the court for the addict's admission and subjected to the court's decision and involuntary civil commitment. Under the law, the final decision to offer treatment was up to the court.

¹¹⁹ Erlen and Spillane, *Federal Drug Control*, p. 87.

¹²⁰ P.L. 84-728.

¹²¹ Erlen and Spillane, *Federal Drug Control*, p. 111; Rowe, *Federal Narcotics Law and the War on Drugs*, p. 34.

¹²² P.L. 89-74.

¹²³ P.L. 89-793.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

The Stagers-Dodd Bill of 1968

As an amendment to the Federal Food, Drug, and Cosmetic Act, the Stagers-Dodd bill (P.L. 90-639) made it illegal to possess lysergic acid diethylamide (LSD). The law also made it illegal to possess other depressant or stimulant drugs without a valid prescription from a physician. For violations of these provisions, the law provided fines and penalties for possession and trafficking in such drugs.

Federal Drug Control Laws Since 1970

The Controlled Substances Act of 1970

The Controlled Substances Act (CSA) of 1970 (P.L. 91-513, 84 Stat. 1242) is the commonly used name for Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Congress passed the CSA to clarify federal control of dangerous drugs and substances, replacing and consolidating prior disparate federal drug laws. Title I of the original law included a number of provisions authorizing drug research, rehabilitation, and education. Title II of the CSA established five “schedules” for drugs and substances, ranking them “by a common standard of dangerousness,”¹²⁶ and balancing potential for abuse against medical usefulness.

As originally enacted, P.L. 91-513 did not include the mandatory minimum sentences that had been set by federal drug control laws of the 1950s, although the law did provide a minimum sentence for “continued criminal enterprise” offenses for those involved in drug-related organized crime. The law provided criminal penalties for the possession and sale of illegal drugs, distinguishing between narcotics and marijuana, and specifying lighter penalties for the sale or transfer of marijuana than provided for cocaine or heroin.¹²⁷ The CSA established a new federal agency to oversee all aspects of illicit drugs, and authorized the hiring of additional enforcement agents. The law established the framework for regulating the importation, exportation, and manufacture of controlled substances, as well as registration requirements and penalties for violation of these provisions. Since its enactment, the scope of the CSA was also expanded to include regulation of chemicals used in the illicit production of methamphetamine and other illicit drugs.¹²⁸

Today, the legal framework for federal drug control and enforcement activities continues to be embodied in the CSA,¹²⁹ as amended, which prohibits the manufacture, sale, possession, or use of illegal drugs. The CSA is designed to regulate the use of controlled substances for legitimate medical, scientific, research, and industrial purposes and to prevent these substances from being diverted for illegal purposes. The CSA assigns various drugs, plants, and chemicals to one of five schedules. Schedule I lists substances that have no currently accepted medical use in treatment and have a high potential for abuse. Schedule I substances include heroin, marijuana or cannabis,¹³⁰ peyote, mescaline, psilocybin, lysergic acid diethylamide (LSD), and

¹²⁶ Musto, *The American Disease*, p. 255.

¹²⁷ Erlen and Spillane, *Federal Drug Control*, p. 41.

¹²⁸ For more information on regulation of pseudoephedrine in OTC medications, see CRS Report (archived) CRS Report RL33385, *The Legal Regulation of Sales of Over-the-Counter Cold and Allergy Medication*, by Jody Feder.

¹²⁹ 21 U.S.C. §§801 et seq.

¹³⁰ The inclusion of cannabis on Schedule I has generated controversy, as some health-care professionals and their (continued...)

methylenedioxymethamphetamine (MDMA, Ecstasy), among other substances. Schedule II includes drugs or substances that can have accepted medical use in treatment with severe restrictions due to a high potential for abuse, and include opium, cocaine, methamphetamine, methadone, and phencyclidine (PCP). Schedules III, IV, and V include substances that have recognized medical uses and may be manufactured, distributed, and used in accordance with the CSA. These substances are arranged progressively so the higher schedules include comparatively more dangerous and addictive drugs with a high potential for abuse as well as physical and psychological dependence. These substances include commonly prescribed pharmaceuticals like codeine and benzodiazapines.¹³¹

Over the years, the CSA has been amended a number of times. Some of the major enforcement amendments related to the CSA were included in the following:

Comprehensive Crime Control Act of 1984 (P.L. 98-473)

The law amended the CSA to provide for asset seizure and forfeiture of property derived from illegal drug activities, as well as property used in drug-related activities. The act increased the criminal and monetary penalties for drug trafficking offenses. Chapter II of Title II, the Sentencing Reform Act, established the U.S. Sentencing Commission and charged it with creating sentencing guidelines. The act established mandatory minimum sentences for drug offenses committed near schools, mandated prison sentences for all serious drug felonies, and provided sentencing enhancements for all drug and violent offenses involving the use or possession of a firearm.

Controlled Substance Analog Act of 1986 (P.L. 99-570)

This law was designed to close a loophole in the original CSA. Under the schedule of drugs provided in the CSA, if a new drug was “invented” by chemically altering an existing drug,¹³² or an entirely new drug was formulated, getting the new drug listed on one of the CSA schedules would require a lengthy process. P.L. 99-570 provided that a new or altered drug producing substantially the same effect as a drug that was already scheduled would automatically be scheduled at the same level as the already-scheduled drug.

Anti-Drug Abuse Act of 1986 (P.L. 99-570)

The law required mandatory minimum penalties for drug offenses and modified threshold quantities for specific types of controlled substances that would trigger revised and enhanced criminal penalties. The act also established penalties for employing anyone under the age of 18 in

(...continued)

patients believe the plant has therapeutic values. For further information, see CRS Report RL33211, *Medical Marijuana: Review and Analysis of Federal and State Policies*, by Mark Eddy.

¹³¹ It is noteworthy that the CSA includes a provision that explicitly exempts alcohol, nicotine, and caffeine from the act, even though in the cases of alcohol and nicotine these substances are addictive and have substantial personal and societal costs.

¹³² These so-called “designer drugs” are often referred to as an analog of the original substance because of its similar physical properties or structures. Notably, although physically similar, analogs can have different chemical or biological properties from the original drug.

drug operations, established mandatory minimum sentences for drug offenses committed near schools, provided sentencing enhancements for drug and violent offenses involving a firearm, and criminalized the possession of drug paraphernalia.

Anti-Drug Abuse Act of 1988 (P.L. 100-690)

The law provided a mandatory minimum penalty for simple possession of crack cocaine. In addition, the act provided a mandatory sentence of life in prison, without parole, for a third offense of simple possession of 5 grams or more of crack cocaine. The act provided additional penalties for other drug offenses, including a mandatory minimum penalties of five years' imprisonment for drug trafficking conspiracies, as well as for attempted drug trafficking conspiracies. The act included the death penalty for major traffickers convicted of involvement in a continuing criminal enterprise, as well as for those offenders convicted of a felony drug violation who were also responsible for the intentional death of another person. The law also provided regulatory controls for precursor chemicals used to illegally manufacture methamphetamine.¹³³ The act established ONDCP to coordinate drug policy across federal agencies. The act authorized federal and state judges to deny a number of federal benefits to persons convicted of any drug offenses, including simple possession, such as welfare benefits, housing benefits, and student loans. The law included provisions related to money laundering, asset forfeiture, and penalties for trafficking in anabolic steroids. The act authorized additional requirements on certification of foreign governments' cooperation in drug interdiction and eradication efforts.

Domestic Chemical Diversion Control Act of 1993 (P.L. 103-200)

The law added a registration requirement for List I-controlled chemical manufacturers and distributors, imposed record-keeping requirements on brokers or traders involved in international transactions of listed chemicals, and provided criminal sanctions for violations of these provisions in order to stem the international trafficking in listed chemicals. The law required that importers and exporters of controlled chemicals notify the Attorney General within 15 days of any transaction involving certain listed chemicals, and required that manufacturers of listed chemicals report to the Attorney General annually on the production of listed chemicals.

Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322)

The law provided relief from mandatory minimum sentences for nonviolent, low-level, first-time drug offenders with little or no criminal history. Under Title VIII of the act, the U.S. Sentencing Commission was required to develop sentencing guidelines in cases where these defendants could receive a sentence of 24 months instead of the five-year mandatory minimum. Title IX provided increased penalties for drug trafficking in prisons and drug trafficking in designated drug-free zones. The act also required ONDCP to implement and issue an annual national drug control strategy report with outcome measures to assess the reduction in the availability and use of drugs, as well as the status of substance abuse treatment.

¹³³ Title VI, subtitle A, of P.L. 100-690 included the Chemical Diversion and Trafficking Act (CDTA), which established the CSA's chemical control provisions.

Comprehensive Methamphetamine Control Act (MCA) of 1996 (P.L. 104-237)

The law broadened federal regulation of listed chemicals to include those found in over-the-counter (OTC) cold and sinus medicines. Under the MCA, the methamphetamine precursor chemicals containing ephedrine, pseudoephedrine, or phenylpropanolamine were added to Schedule II of the CSA, broadening existing restrictions on these precursor chemicals used to produce illicit methamphetamine. Other provisions of the MCA also increased penalties for the trafficking and manufacturing of methamphetamine and methamphetamine-related listed chemicals.¹³⁴

Methamphetamine Trafficking Penalty Enhancement Act of 1998 (P.L. 105-277)

The law lowered the quantity thresholds of methamphetamine necessary to trigger mandatory minimum drug trafficking penalties. The law cut in half the quantities of methamphetamine mixture and pure methamphetamine substance necessary to trigger the 5- and 10-year mandatory minimum prison sentences for individuals convicted of certain methamphetamine offenses.¹³⁵

Methamphetamine Anti-Proliferation Act (MAPA) of 2000 (P.L. 106-310)

This law included provisions to address the problem of diversion of OTC drug products containing methamphetamine precursor chemicals from retail and mail order sources to the illicit production of methamphetamine. MAPA established thresholds for single purchases of OTC cold and sinus medicines containing ephedrine, pseudoephedrine, and phenylpropanolamine of 9 grams per day. P.L. 106-310 added the requirement that the products be packaged in containers of not more than 3 grams of precursor base chemical. Products packaged in “blister packaging” were exempted from these threshold limits. The act also strengthened sentencing guidelines and provided training for federal and state law enforcement officers on methamphetamine investigations and the safe handling of the chemicals used in clandestine methamphetamine labs. It also put in place controls on the distribution of the chemical ingredients used in methamphetamine production and expanded substance abuse prevention efforts.

Combating Methamphetamine Epidemic Act of 2005

Title VII of the USA PATRIOT Improvement and Reauthorization Act (P.L. 109-177) included provisions to regulate the domestic and international commerce in methamphetamine precursor chemicals and increased penalties for methamphetamine offenses.¹³⁶ In addition, the law expanded environmental regulations related to toxic chemical dumping by clandestine methamphetamine labs, and provided grant programs for the treatment of drug-endangered children and parents addicted to methamphetamine. The law required drugstores, convenience

¹³⁴ In 2000, the Food and Drug Administration (FDA) issued a health advisory on the use of OTC and prescription products containing phenylpropanolamine hydrochloride because its use increased the risk of hemorrhagic stroke. While many drug manufacturers voluntarily reformulated their products to remove phenylpropanolamine, some products using the chemical remain on the market.

¹³⁵ For the Sentencing Commission’s implementation of the law see, U.S. Sentencing Commission, *Methamphetamine, Final Report*, Nov. 1999, at <http://www.ussc.gov/publicat/methreport.PDF>, accessed on January 27, 2010.

¹³⁶ For a legal analysis of the provisions of P.L. 109-177, see CRS Report RL33332, *USA PATRIOT Improvement and Reauthorization Act of 2005: A Legal Analysis*, by Brian T. Yeh and Charles Doyle.

stores, grocery stores, news stands, mobile retailers (e.g., lunch wagons, street vendors), and other retailers to limit sales of OTC cold and sinus medicines to 3.6 grams of the precursor base per customer per day (previously limited to 9 grams per transaction); limited mobile retail sales to 7.5 grams of precursor base per customer per month; required that products containing methamphetamine precursor chemicals be kept “behind the counter;” and, for mobile retailers, required that these products be secured under lock and key.

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