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# Drug Enforcement in the United States: History, Policy, and Trends

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## Summary

The federal government prohibits the manufacturing, distribution, and possession of many intoxicating substances that are solely intended for *recreational* use (notable exceptions are alcohol and tobacco); however, the federal government also allows for and controls the *medical* use of many intoxicants. Federal authority to control these substances primarily resides with the Attorney General of the United States.

Over the last decade, the United States has shifted its *stated* drug control policy toward a comprehensive approach; one that focuses on prevention, treatment, and enforcement. In order to restrict and reduce availability of illicit drugs in the United States, a practice referred to as “supply reduction,” the federal government continues to place emphasis on domestic drug enforcement. According to the most recent drug control budget (FY2015) released by the Office of National Drug Control Policy (ONDCP), approximately 60% of all federal drug control spending is dedicated to supply reduction, with approximately 37% of the total budget dedicated to domestic law enforcement.

Federal agencies, primarily the U.S. Drug Enforcement Administration (DEA), enforce federal controlled substances laws in all states and territories, but the majority of drug crimes known to U.S. law enforcement are dealt with at the state level. In the United States in 2012, the DEA arrested 30,476 suspects for federal drug offenses while state and local law enforcement arrested 1,328,457 suspects for drug offenses. In many cases, federal agencies assist state and local agencies with drug arrests, and suspects are referred for state prosecution, and vice-versa.

Most drug arrests are made by state and local law enforcement, and most of these arrests are for possession rather than sale or manufacture. In contrast, most federal drug arrests are for trafficking offenses rather than possession. Over the last 25 years the majority of DEA’s arrests have been for cocaine-related offenses.

Trends in federal drug enforcement may reflect the nation’s changing drug problems and changes in the federal response to these problems. They also may reflect the federal government’s priorities. Drug cases represent the second highest category of criminal cases filed by U.S. Attorneys; however, federal drug cases have steadily declined over the last decade.

This report focuses on domestic drug enforcement. It outlines historic development and major changes in U.S. drug enforcement to help provide an understanding of how and why certain laws and policies were implemented and how these developments and changes shaped current drug enforcement policy. In the 19<sup>th</sup> century federal, state, and local governments were generally not involved in restricting or regulating drug distribution and use, but this changed substantially in the 20<sup>th</sup> century as domestic law enforcement became the primary means of controlling the nation’s substance abuse problems.

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## Introduction

Domestic drug enforcement involves controlled substances that are prohibited *and* controlled substances<sup>1</sup> that are diverted from their intended medical purpose. The federal government prohibits the manufacturing, distribution, and possession of many intoxicating substances<sup>2</sup> that are solely intended for *recreational* use (notable exceptions are alcohol and tobacco); however, the federal government also allows for and controls the *medical* use of many intoxicants. Federal authority to control these substances primarily resides with the Attorney General of the United States.

In 1970, Congress found that many drugs have a legitimate medical purpose and are necessary to sustain the health and welfare of the American people; however, Congress also found that illegal actions involving and improper use of these drugs have a detrimental effect on the health and welfare of the American people.<sup>3</sup> Among other findings that Congress included in the Controlled Substances Act (CSA; P.L. 91-513), it found that federal control of drug trafficking that occurs within states (i.e., intrastate drug trafficking) is essential to the *effective* control of drug trafficking that occurs across state lines (i.e., interstate drug trafficking).<sup>4</sup> Congress relies on its power to regulate interstate commerce as a basis for drug control.

In order to restrict and reduce availability of illicit drugs<sup>5</sup> in the United States, a practice referred to as “supply reduction,” the federal government emphasizes domestic drug enforcement. As a result of enforcement actions, illicit drugs are more difficult, expensive, and risky to obtain.<sup>6</sup> Federal law enforcement agencies cooperate with state and local agencies to dismantle and disrupt criminal organizations involved in illicit domestic drug production and distribution. In practice, federal law enforcement agencies generally target large drug trafficking organizations rather than low-level drug offenders.

Over the last several years, Congress and the Administration have confronted multiple domestic drug enforcement issues. These issues include state marijuana legalization, prescription drug and heroin abuse, and evolving synthetic drugs. Synthetic compounds have been created across the various classes of drugs,<sup>7</sup> and different synthetic drugs have gained and lost popularity among illicit drug users over the last several decades.

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<sup>1</sup> The federal Controlled Substances Act (21 U.S.C. §802) defines a controlled substance as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.”

<sup>2</sup> An intoxicating substance is something that can temporarily diminish mental and/or physical control upon being taken into a body.

<sup>3</sup> 21 U.S.C. §801.

<sup>4</sup> *Ibid.*

<sup>5</sup> Illicit drugs include those that are strictly prohibited by law with exceptions for research, and those that are diverted from their intended medical purpose.

<sup>6</sup> David Boyum and Peter Reuter, *An Analytic Assessment of U.S. Drug Policy* (Washington, DC: The AEI Press, 2005), pp. 77, 94-95.

<sup>7</sup> The CSA regulates drugs in five major classes: narcotics (including marijuana), depressants, stimulants, hallucinogens, and anabolic steroids. For more information on these classes, see the U.S. Drug Enforcement Administration, Drug Classes, [http://www.justice.gov/dea/concern/drug\\_classes.html](http://www.justice.gov/dea/concern/drug_classes.html).

This report reviews federal domestic drug enforcement. First, it provides a history and background of drug enforcement in the United States including how drugs came under the control of federal justice authorities and how legislation and administrative actions changed domestic drug enforcement. It then provides a brief overview of drug enforcement in the United States and summarizes U.S. drug policy. Finally, the report presents trends in federal drug enforcement and concludes with a discussion of drug enforcement issues going forward.

## History and Background of U.S. Drug Enforcement

This section outlines historic development and major changes in federal drug enforcement to help provide an understanding of how and why certain laws and policies were implemented and how these developments and changes shaped current drug enforcement policy.

### Late 19<sup>th</sup> Century–Early 20<sup>th</sup> Century

Both recreational and medical use of drugs, including cocaine and opium, were popular in the 19<sup>th</sup> century, but the federal government was not involved in restricting or regulating their distribution and use.<sup>8</sup> During this time, the federal government did not have any agencies that regulated medical and pharmaceutical practice,<sup>9</sup> and doctors freely prescribed cocaine and morphine as treatment for pain. By the end of the 19<sup>th</sup> century, abuse of these drugs was a significant social issue, and public concern was growing.<sup>10</sup>

Scholars identify the separation of federal and state power as a major reason for an unregulated U.S. drug market in the 19<sup>th</sup> century. Attempts to establish federal control over drugs were met with strong opposition from patent medicine firms<sup>11</sup> and state officials.<sup>12</sup>

### The Harrison Act

Federal control of drugs began to take shape in the early 20<sup>th</sup> century. In response to growing levels of drug abuse, the federal government sought to regulate and control drugs through taxation. The Harrison Narcotics Act of 1914 (Harrison Act; P.L. 63-223), among other things, required importers, manufacturers, and distributors of cocaine and opium to register with the U.S.

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<sup>8</sup> In some instances, state and local governments were involved in restriction and regulation of drugs. For example, the Anti-Opium Smoking Act was enacted in San Francisco in 1875 to prohibit opium dens. After San Francisco passed this ordinance, states began to ban the smoking of opium.

<sup>9</sup> Attempts were made to regulate drugs. For example, U.S. Customs laboratories had been established to administer provisions of the Import Drugs Act of 1848 to enforce drug potency and purity standards of imported drugs, but enforcement of this act was short-lived. For more information, see Wesley J. Heath, “America’s First Drug Regulation Regime: The Rise and Fall of the Import Drug Act of 1848,” *Food and Drug Law Journal*, vol. 59, no. 169 (March 2004).

<sup>10</sup> David T. Courtwright, *Dark Paradise: A History of Opiate Addiction in America* (Harvard University Press, 2001); David F. Musto, “The American Experience with Stimulants and Opiates,” in *Drugs, Crime, & Justice*, ed. Larry Gaines and Janine Kremling, 3<sup>rd</sup> ed. (Waveland Press, Inc., 2013).

<sup>11</sup> In the 1800s, over-the-counter products were often referred to as “patent medicines” although typically these products were trademarked and not patented.

<sup>12</sup> Wallace F. Janssen, *The Story of the Laws Behind the Labels: Part I: The 1906 Food and Drugs Act*, U.S. Food and Drug Administration, June 1981, <http://www.fda.gov/AboutFDA/WhatWeDo/History/Overviews/ucm056044.htm>.

Department of the Treasury (the Treasury), pay a special tax on these drugs, and keep records of each transaction. Under the Harrison Act, practitioners were authorized to prescribe opiates and cocaine; however, the law was subject to interpretation.<sup>13</sup> The Treasury viewed patient drug maintenance<sup>14</sup> using these substances as beyond medical scope, and many physicians were arrested, prosecuted, and jailed.<sup>15</sup> Under authority of the Harrison Act, the Narcotic Division of the Internal Revenue Bureau<sup>16</sup> closed down state and city narcotic clinics and sent drug violators to federal penitentiaries.<sup>17</sup> Enforcement agents were referred to as “nars.” Ultimately, physicians stopped prescribing drugs covered under the Harrison Act, thereby sending users to the black market to seek out these substances.<sup>18</sup>

## The Marihuana Tax Act of 1937

During the 1920s, narcotic enforcement was closely tied to Prohibition enforcement.<sup>19</sup> In 1930, Prohibition enforcement was transferred to the Department of Justice while a standalone federal agency, the Federal Bureau of Narcotics (FBN), was established within the Treasury to handle narcotic enforcement.<sup>20</sup> During Prohibition, a new recreational drug—marijuana—had quickly become unpopular with law enforcement, especially in the southwestern United States.<sup>21</sup> As Prohibition ended, marijuana caught the attention of Congress and the FBN.

Until 1937, the growth and use of marijuana was legal under federal law.<sup>22</sup> During the course of promoting federal legislation to control marijuana, Henry Anslinger, the first commissioner of the FBN, and others submitted testimony to Congress regarding the evils of marijuana use, claiming that it incited violent and insane behavior.<sup>23</sup> Of note, Commissioner Anslinger had informed Congress that “the major criminal in the United States is the drug addict; that of all the offenses committed against the laws of this country, the narcotic addict is the most frequent offender.”<sup>24</sup>

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<sup>13</sup> Prescribers were allowed to prescribe opiates and cocaine “in the course of their professional practice only.”

<sup>14</sup> Doctors prescribed narcotics to addicts or habitual users of these substances.

<sup>15</sup> David F. Musto, *The American Disease: Origins of Narcotic Control*, 3<sup>rd</sup> ed. (New York: Oxford University Press, 1999), pp. 183-200. Hereafter *The American Disease: Origins of Narcotic Control*.

<sup>16</sup> At this time, the Narcotic Division of the Prohibition Unit of the Internal Revenue Bureau was responsible for federal drug enforcement.

<sup>17</sup> *The American Disease: Origins of Narcotic Control*; Charles F. Levinthal, *Drugs, Society and Criminal Justice*, 3<sup>rd</sup> ed. (Boston: Prentice Hall, 2012), p. 56. Hereafter *Drugs, Society and Criminal Justice*.

<sup>18</sup> *Drugs, Society and Criminal Justice*, p. 56.

<sup>19</sup> In 1919, Congress passed the 18<sup>th</sup> Amendment to the Constitution which prohibited the manufacture, transportation, and sale of alcohol. In 1933, Congress passed the 21<sup>st</sup> Amendment and repealed the 18<sup>th</sup> Amendment. In 1927, the Narcotic Division was transferred from the Internal Revenue Bureau to the Bureau of Prohibition in the Department of the Treasury and remained there until 1930.

<sup>20</sup> *The American Disease: Origins of Narcotic Control*; National Archives, *Records of the Drug Enforcement Administration*, Record Group 170; 170.1 Administrative History, <http://www.archives.gov/research/guide-fed-records/groups/170.html>.

<sup>21</sup> *The American Disease: Origins of Narcotic Control*, p. 219; and *Drugs, Society and Criminal Justice*, p. 58.

<sup>22</sup> It was also legal under state law. States regulated marijuana and did not begin to ban it until after 1937.

<sup>23</sup> See statements by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury and Dr. James C. Munch, before the U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002.

<sup>24</sup> U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002, p. 7.

The federal government unofficially banned marijuana under the Marihuana Tax Act of 1937 (MTA; P.L. 75-238). The MTA imposed a strict regulation requiring a high-cost transfer tax stamp for every sale of marijuana. These stamps, however, were rarely issued by the federal government.<sup>25</sup> Shortly after passage of the MTA, all states made the possession of marijuana illegal.

### ***Enforcement Changes***

Enforcement of drug laws was primarily the responsibility of local police, and the FBN occasionally assisted with enforcement.<sup>26</sup> Due to limited and reduced appropriations during the Great Depression, which began in the United States after the stock market crash of 1929 and lasted through the 1930s, the FBN budget and the number of narcotic agents declined and remained low for years. Publicity and warnings of the dangers of narcotics, in particular marijuana, became methods of drug control for the FBN.<sup>27</sup> In seeking federal control of marijuana and uniform narcotic laws, Commissioner Anslinger made personal appeals to civic groups and legislators and pushed for, and received, editorial support in newspapers; many newspapers maintained a steady stream of anti-marijuana propaganda in the 1930s.<sup>28</sup>

### **Mid-20<sup>th</sup> Century**

Over the next several decades, Congress continued to pass drug control legislation and further criminalized drug abuse. For example, the Boggs Act (P.L. 82-255), passed in 1951, established mandatory prison sentences for some drug offenses while the 1956 Narcotic Control Act (P.L. 84-728) further increased penalties for drug offenses and established the death penalty as punishment for selling heroin to youth.

### ***Shifting Attitudes***

The FBN continued to enforce federal narcotic laws and support local enforcement while the agency remained relatively unchanged until the 1960s. Support for severe punishment for drug offenses, however, waned by this point. Organizations, including the American Bar Association, began to speak out against strict punishments for drug offenders while federal support for a medical approach to drug abuse grew.<sup>29</sup> For instance, methadone maintenance became an acceptable and common treatment for heroin dependence.<sup>30</sup> In 1963, the Presidential Commission on Narcotic and Drug Abuse (the 1963 Presidential Commission) issued a report recommending more funds for narcotic research, less strict punishment for drug offenses, and the dismantling of the FBN.

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<sup>25</sup> *Drugs, Society and Criminal Justice*, p. 58.

<sup>26</sup> *The American Disease: Origins of Narcotic Control*, p. 228.

<sup>27</sup> *The American Disease: Origins of Narcotic Control*, p. 214.

<sup>28</sup> Richard J. Bonnie and Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Conviction in the United States* (New York: The Lindesmith Center, 1999), pp. 94-95.

<sup>29</sup> *The American Disease: Origins of Narcotic Control*, pp. 230-243.

<sup>30</sup> In the 1960s, the opiate methadone was administered to heroin addicts in treatment for their addiction.



Congress also began to support the medical approach to addressing drug abuse. It heeded the recommendations of the 1963 Commission and created the Bureau of Drug Abuse Control within the Department of Health, Education, and Welfare and provided for civil commitment of some drug addicted federal detainees.<sup>31</sup> In the Narcotic Addict Rehabilitation Act, Congress declared its support for rehabilitation through treatment:

It is the policy of the Congress that certain persons charged with or convicted of violating Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health, and return to society as useful members.<sup>32</sup>

While there was a great deal of attention paid to the medical approach to preventing and responding to drug abuse in the 1960s, there was also strong emphasis on law enforcement. The 1963 Presidential Commission, among other findings, had recommended increasing federal drug enforcement personnel and transferring drug enforcement functions from the Treasury to the Department of Justice (DOJ).<sup>33</sup> Subsequently, Congress shifted the constitutional basis for drug control from its taxing authority to its power to regulate interstate commerce,<sup>34</sup> and in 1968 the FBN merged with the Bureau of Drug Abuse Control and was transferred to DOJ.<sup>35</sup> In 1969 President Nixon responded to rising drug abuse, in particular heroin abuse, by making the reduction of drug use one of his top priorities upon taking office. Several years later President Nixon would declare a war on drugs.<sup>36</sup>

## **1970s: War on Drugs and the Controlled Substances Act**

President Nixon's war on drugs involved greater emphasis on law enforcement. He also enhanced international efforts and made a successful push to curb opium production in Turkey.<sup>37</sup> In his efforts to enhance federal control of drugs, Nixon pushed for passage of comprehensive federal drug laws. The Controlled Substances Act (CSA), enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), placed the control of select plants, drugs, and chemical substances under federal jurisdiction. Congress passed this legislation, in part, to replace previous federal drug laws with a single comprehensive statute.

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<sup>31</sup> The Bureau of Drug Abuse Control was established by the Drug Abuse Control Amendments of 1965 (P.L. 89-74). In 1966, the Narcotic Addict Rehabilitation Act (P.L. 89-793) established civil commitment options for some drug addicted federal detainees.

<sup>32</sup> P.L. 89-793, Sec. 2.

<sup>33</sup> The President's Advisory Commission on Narcotic and Drug Abuse, *Final Report*, November 1963, pp. 32-38.

<sup>34</sup> As stated in Article I, §8, cl. 3 of the U.S. Constitution, Congress shall have the Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. For more information about the commerce clause, see CRS Report R43023, *Congressional Authority to Enact Criminal Law: An Examination of Selected Recent Cases*, by Charles Doyle.

<sup>35</sup> *The American Disease: Origins of Narcotic Control*, p. 239. The shift in constitutional authority was part of the Drug Abuse Control Amendments of 1965 (P.L. 89-74).

<sup>36</sup> David Boyum and Peter Reuter, *An Analytic Assessment of U.S. Drug Policy* (Washington, DC: The AEI Press, 2005), p. 6; *Drugs, Society and Criminal Justice*, p. 60.

<sup>37</sup> *The American Disease: Origins of Narcotic Control*, pp. 250-251. Most of the heroin in the United States at this time had originated from Turkey. After diplomatic efforts, threats to cut off U.S. aid to Turkey, and promises to reimburse Turkey for the loss of funds from opium poppy cultivation, Turkey ceased to be a significant source of heroin in the United States.

The CSA established the statutory framework through which the federal government regulates the *lawful* production, possession, and distribution of controlled substances. This comprehensive drug law classified controlled substances under five schedules according to (1) how dangerous they are considered to be, (2) their potential for abuse and addiction, and (3) whether they have legitimate medical use. It became, and remains today, the legal framework through which the Drug Enforcement Administration (DEA) derives its authority.

### **Controlled Substances Act (CSA)**

Under the CSA, there are five schedules under which substances may be classified—Schedule I being the most restrictive.<sup>38</sup> Substances placed onto one of the five schedules are evaluated on

- actual or relative potential for abuse;
- known scientific evidence of pharmacological effects;
- current scientific knowledge of the substance;
- history and current pattern of abuse;
- scope, duration, and significance of abuse;
- risk to public health;
- psychic or physiological dependence liability; and
- whether the substance is an immediate precursor of an already-scheduled substance.

Of the more well-known drugs of abuse, marijuana and heroin are both categorized as Schedule I drugs, while cocaine and methamphetamine have recognized medical use and are categorized as Schedule II.

### **Establishment of the Drug Enforcement Administration (DEA)**

In July 1973, President Nixon authorized the creation of a single-mission federal agency to enforce the CSA: the DEA.<sup>39</sup> Several months later, the Senate Committee on Government Operations issued its reorganization plan regarding the establishment of the DEA in DOJ. Both the committee and President Nixon stressed the importance of the DEA's role in assuring cooperation and coordination among the DEA, Federal Bureau of Investigation (FBI), and other DOJ agencies involved in counterdrug operations. In summarizing the benefits expected from the reorganization plan, the committee stated the following:

- (1) It will put an end to the interagency rivalries that have undermined Federal drug law enforcement, especially the rivalry between BNDD [Bureau of Narcotics and Dangerous Drugs] and the Customs Bureau.
- (2) It will give the FBI its first significant role in drug enforcement by requiring that the DEA draw on the FBI's expertise in combatting organized crime's role in the trafficking of illicit drugs.
- (3) The new DEA will provide a single focal point for coordinating Federal drug enforcement efforts with those of State and local authorities as well as with foreign police forces.

<sup>38</sup> Federal rulemaking proceedings to add, delete, or change the schedule of a drug or substance may be initiated by the Attorney General (through the DEA), the Secretary of Health and Human Services, or by petition by any interested person. 21 U.S.C. §811(a). Congress may also change the scheduling status of a drug or substance through legislation.

<sup>39</sup> Executive Order 11727, "Drug law enforcement," July 6, 1973.

(4) By placing a single Administrator in charge of Federal drug law enforcement, the plan will make the new DEA more accountable than its component parts had ever been, thereby safeguarding against corruption and such enforcement abuses...

(5) The consolidation of drug enforcement operations in the DEA and the establishment of the Narcotics Division in Justice will maximize coordination between Federal investigation and prosecution efforts and eliminate rivalries within each sphere.

(6) Establishment of the DEA as a superagency will provide the momentum needed to coordinate all Federal efforts related to drug enforcement outside the Justice Department, especially the gathering of intelligence on international narcotics smuggling.<sup>40</sup>

In 1973, the newly formed DEA began its work with 1,470 special agents and an annual budget of \$74.9 million (FY1973). By 1975, these numbers grew to 2,135 special agents and an annual budget of \$140.9 million (FY1975).<sup>41</sup> At its onset, the DEA also employed chemists, intelligence analysts, diversion investigators, and other personnel involved in drug operations.<sup>42</sup> In FY2014, the DEA had over 9,000 full time employees and its budget was approximately \$2.0 billion.<sup>43</sup>

### CSA Regulatory Requirements

In addition to criminal enforcement, the DEA is charged with enforcing non-criminal regulatory requirements of the CSA. As previously stated, the CSA is the statutory framework through which the federal government regulates the *lawful* production, possession, and distribution of controlled substances. The CSA requires persons who handle controlled substances or listed chemicals (such as drug manufacturers, wholesale distributors, doctors, hospitals, pharmacies, and scientific researchers) to register with the DEA. Registrants must maintain detailed records of their respective controlled substance inventories as well as establish adequate security controls to minimize theft and diversion.<sup>44</sup> This report focuses on the CSA's criminal provisions for the *unlawful* manufacture, possession, and distribution of controlled substances instead of the act's non-criminal regulatory requirements.<sup>45</sup>

## 1980s: Rising Enforcement

As heroin abuse had been the primary concern of the Administration in the 1960s and 1970s, the rising popularity of cocaine and a new form of cocaine referred to as “crack” led to a renewed demand from the American public that something be done about American drug abuse.<sup>46</sup> By

<sup>40</sup> U.S. Congress, Senate Committee on Government Operations, *Reorganization Plan No. 2 of 1973, Establishing a Drug Enforcement Administration in the Department of Justice*, 93<sup>rd</sup> Cong., 1<sup>st</sup> sess., October 16, 1973, Report No. 93-469, pp. 5-6.

<sup>41</sup> U.S. Drug Enforcement Administration, *Drug Enforcement Administration: 1970-1975*, p. 4, <http://www.justice.gov/dea/about/history/1970-1975.pdf>.

<sup>42</sup> Ibid.

<sup>43</sup> U.S. Department of Justice, Drug Enforcement Administration, *FY2015 Performance Budget Congressional Submission*, Exhibit F, <http://www.justice.gov/jmd/2015justification/pdf/dea-justification.pdf>.

<sup>44</sup> See 21 C.F.R. §1304.11(a): “Each inventory shall contain a complete and accurate record of all controlled substances on hand ...” See also 21 C.F.R. §1301.74(a): “All applicants and registrants shall provide effective controls to guard against theft and diversion of controlled substances ...”

<sup>45</sup> For discussion of the CSA regulatory requirements, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh.

<sup>46</sup> *Drugs, Society and Criminal Justice*, p. 61.

1989, 27% of the American public felt that drugs, or drug abuse, was the most important problem facing the country as compared to four years prior in 1985 when 2% gave this response.<sup>47</sup>

Like President Nixon, President Reagan stressed the importance of criminal justice agencies in the federal government's efforts to combat drug abuse.<sup>48</sup> In 1986 President Reagan informed the nation of the federal government's progress in combating drug abuse:

From the beginning of our administration, we've taken strong steps to do something about this horror. Tonight I can report to you that we've made much progress. Thirty-seven Federal agencies are working together in a vigorous national effort, and by next year our spending for drug law enforcement will have more than tripled from its 1981 levels. We have increased seizures of illegal drugs. Shortages of marijuana are now being reported. Last year alone over 10,000 drug criminals were convicted and nearly \$250 million of their assets were seized by the DEA, the Drug Enforcement Administration.<sup>49</sup>

Indeed, the number of federal drug convictions rose sharply between 1980 and 1986. The total number of individuals convicted of federal drug offenses more than doubled from 5,244 in 1980 to 12,285 in 1986.<sup>50</sup> This accounted for 51% of the increase in the total number of persons convicted of *all* federal offenses, which increased from 29,952 in 1980 to 43,802 in 1986.<sup>51</sup> Of note, most convicted drug offenders were convicted of offenses other than possession, including trafficking, importation, and distribution; however, the number of individuals convicted of simple possession increased sharply from 302 convictions in 1980 to 1,353 in 1982 and remained relatively stable over the next few years. The Bureau of Justice Statistics explained that "the early increase in convictions for possession of drugs may have been caused by a heightened Federal attention to all drug cases and the rapid expansion of Federal resources for drug prosecutions, which may have resulted in fewer deferrals of simple possession cases to local prosecutors."<sup>52</sup>

## **The Comprehensive Crime Control Act of 1984**

In 1984 Congress passed crime legislation (Comprehensive Crime Control Act of 1984; Title II of P.L. 98-473)<sup>53</sup> that, among other things, enhanced penalties for CSA violations and amended the CSA to establish general criminal forfeiture provisions for certain felony drug violations. These provisions allow the Attorney General to transfer drug-related forfeited property to federal, state, and local law enforcement agencies and retain forfeited property for official use or for transfer to other federal, state, and local agencies related to federal law enforcement. Also, it amended the CSA to allow the Attorney General to place an uncontrolled substance under temporary control that triggers the CSA's regulatory requirements of registration and recordkeeping, as well as

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<sup>47</sup> The question asked by Gallup each year is: "What do you think is the most important problem facing the country today?" For a presentation of Gallup trend data for this poll question, see the *Sourcebook of Criminal Justice Statistics*, <http://www.albany.edu/sourcebook/pdf/t212012.pdf>.

<sup>48</sup> The American Presidency Project, "Remarks Announcing Federal Initiatives Against Drug Trafficking," October 14, 1982, <http://www.presidency.ucsb.edu/ws/?pid=43127>.

<sup>49</sup> Reagan Presidential Library & Museum, "Address to the Nation on the Campaign Against Drug Abuse," September 14, 1986, <http://www.reagan.utexas.edu/archives/speeches/1986/091486a.htm>.

<sup>50</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Drug Law Violators, 1980-86*, June 1988, p. 3, <http://www.bjs.gov/content/pub/pdf/dlv80-86.pdf>.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Title II of a joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes.

authorized criminal penalties in order to avoid imminent hazard to the public safety. This temporary scheduling authority would prove to be useful in combating the onset of new synthetic drugs.<sup>54</sup>

## **Anti-Drug Abuse Acts of 1986 and 1988**

The Anti-Drug Abuse Act of 1986 (1986 Act; P.L. 99-570) was a significant development in pursuing enforcement action against the illicit synthetic drug trade. Among other things, it amended the CSA to allow for controlled substance analogues<sup>55</sup> (intended for human consumption) to be treated as Schedule I substances. It also established criminal penalties for simple possession of a controlled substance.

The 1986 Act is perhaps most well-known for its establishment of mandatory minimum penalties for certain federal drug trafficking offenses; it created two tiers of mandatory prison terms based on the quantity and type of drug involved in the offense. It differentiated “cocaine base”<sup>56</sup> from powder cocaine and required 100 times more powder cocaine than crack cocaine to trigger the more severe minimum sentence. Congress later reduced the cocaine disparity from 100:1 to 18:1 through the Fair Sentencing Act of 2010 (P.L. 111-220).<sup>57</sup>

Through the Anti-Drug Abuse Act of 1988 (1988 Act; P.L. 100-690), Congress aimed to coordinate federal agencies’ efforts to reduce drug supply and demand by establishing the Office of National Drug Control Policy (ONDCP) and the Director of National Drug Control Policy (commonly referred to as the “drug czar”). ONDCP is responsible for creating policies, priorities, and objectives for the federal Drug Control Program.<sup>58</sup> The 1988 Act, among other things, created new criminal penalties for CSA violations on federal lands and established mandatory minimum penalties for drug offenses involving minors.

Of note, Congress passed the Chemical Diversion and Trafficking Act (CDTA; Title VI of the 1988 Act) in an effort to restrict access to chemicals used in the illicit manufacture of certain

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<sup>54</sup> Synthetic drugs, as opposed to natural drugs, are chemically produced in a laboratory. Their chemical structure can be either identical to or different from naturally occurring drugs, and their effects are designed to mimic or even enhance those of natural drugs. When produced clandestinely, they are not typically controlled pharmaceutical substances intended for legitimate medical use. Designer drugs are a form of synthetic drugs. They contain slightly modified molecular structures of illegal or controlled substances, and they are modified in order to circumvent existing drug laws. For more information about synthetic drugs and the federal government response, see CRS Report R42066, *Synthetic Drugs: Overview and Issues for Congress*, by Lisa N. Sacco and Kristin Finklea.

<sup>55</sup> As defined under 21 U.S.C. §802, the term “controlled substance analogue” means a substance, “(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.”

<sup>56</sup> The U.S. Sentencing Guidelines define cocaine base as crack cocaine, but the 1986 Act did not specifically apply the term “crack.”

<sup>57</sup> For further discussion of the cocaine sentencing disparity, see CRS Report RL33318, *Federal Cocaine Sentencing Disparity: Sentencing Guidelines, Jurisprudence, and Legislation*, by Brian T. Yeh.

<sup>58</sup> For further discussion of ONDCP, see CRS Report R41535, *Reauthorizing the Office of National Drug Control Policy: Issues for Consideration*, by Lisa N. Sacco and Kristin Finklea.

controlled substances in violation of the CSA. The CDTA and its subsequent amendments<sup>59</sup> allow the DEA to control 40 chemicals<sup>60</sup> and restrict their diversion; these chemicals are referred to as “listed chemicals”<sup>61</sup> and can be used to illicitly manufacture controlled substances.<sup>62</sup>

### Federal Drug Sentencing

As proscribed by the CSA and guided by the U.S. Sentencing Commission,<sup>63</sup> sentencing for federal drug offenses is based on (1) the quantity and type of drug involved, (2) whether the offense involved violence, and (3) the criminal history of the offender. Mandatory minimum sentences apply for some drug offenses.<sup>64</sup>

Drug offenses account for the majority of federal offenses carrying a mandatory minimum penalty (over 75% in FY2010),<sup>65</sup> which partially explains the current makeup of the federal prison population. Approximately half of the federal prison inmate population is incarcerated for drug offenses,<sup>66</sup> and as discussed in this report, these offenses largely involve drug trafficking. In FY2013, nearly 96% of all offenders sentenced for drug offenses<sup>67</sup> were sentenced for drug trafficking<sup>68</sup> while 0.8% were sentenced for simple possession.<sup>69</sup> Most drug trafficking offenders are sentenced to imprisonment (96.3% in FY2013).<sup>70</sup>

<sup>59</sup> Domestic Chemical Diversion Control Act of 1993, P.L. 103-200; Comprehensive Methamphetamine Control Act of 1996, P.L. 104-237; Methamphetamine Anti-Proliferation Act of 2000, P.L. 106-310; Combat Methamphetamine Epidemic Act of 2005, P.L. 109-177.

<sup>60</sup> The 40 listed chemicals are set forth at 21 C.F.R. §1310.02(a) and (b) and are divided into List I and List II chemicals.

<sup>61</sup> See 21 U.S.C. §§802(33)—(35) and 21 C.F.R. §§1300.02(b)(17)—(19) (defining listed chemicals).

<sup>62</sup> List I chemicals are more strenuously regulated than List II chemicals because List I chemicals are “important to the manufacture of a controlled substance.” See 21 C.F.R. §1300.02(b)(18).

<sup>63</sup> Since its creation in 1984, the U.S. Sentencing Commission has established sentencing policies and practices for the federal courts, “including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes.” See U.S. Sentencing Commission, *Overview of the United States Sentencing Commission*, <http://www.ussc.gov/about>.

<sup>64</sup> For a chart of the maximum fines and terms of imprisonment that may be imposed as a consequence of conviction for violation of the CSA and other drug supply and drug demand related laws, see CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh. For more information on sentencing guidelines, see archived CRS Report RL32766, *Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options*, by Lisa Seghetti and Alison M. Smith.

<sup>65</sup> U.S. Sentencing Commission, *Quick Facts: Mandatory Minimum Penalties*, September 2013, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Mandatory\\_Minimum\\_Penalties.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mandatory_Minimum_Penalties.pdf).

<sup>66</sup> Federal Bureau of Prisons, *Offenses*, April 2014, [http://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp).

<sup>67</sup> Of the 84,173 federal criminal cases, 25,712 were sentenced under U.S. Sentencing Guidelines, Chapter Two, Part D (Drugs). Of these, 25,367 cases were sentenced under §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), or 2D2.1 (Simple Possession).

<sup>68</sup> §2D1.1.

<sup>69</sup> §2D2.1. See U.S. Sentencing Commission, *2013 Sourcebook of Federal Sentencing Statistics*, Table 33, <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table33.pdf>.

<sup>70</sup> U.S. Sentencing Commission, *Quick Facts: Drug Trafficking Offenses*, FY2013 data files, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Drug\\_Trafficking\\_2013.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf).

## 1990s-Today

The majority of federal drug legislation over the last 20 years has addressed concern over synthetic drugs. Synthetic compounds have been created across the various classes of drugs,<sup>71</sup> and different synthetic drugs have gained and lost popularity among illicit drug users over the last several decades. Congress and the Administration have responded to the proliferation of these drugs in several ways. In addition, the federal government has faced new concerns over the rise in prescription drug and heroin abuse and state marijuana legalization.

### Methamphetamine

Along with other amphetamines, methamphetamine first emerged in the United States in the late 1960s. It was added as a Schedule II drug under the CSA in 1970.<sup>72</sup> In the 1990s, as cocaine's popularity waned, methamphetamine abuse rose.<sup>73</sup> In addition to larger clandestine labs that produced methamphetamine (largely in California and Mexico), smaller labs in homes and other private locations thrived by producing and distributing methamphetamine on a smaller scale. Methamphetamine was (and is today) commonly produced with legally purchased items including pseudoephedrine, a non-prescription product used to treat a common cold.

In the 1990s, the Clinton Administration implemented strategies and policy initiatives to reduce methamphetamine trafficking, production, and abuse. The DEA dedicated over 200 positions to this purpose, and agencies involved in the High Intensity Drug Trafficking Areas (HIDTA)<sup>74</sup> Program targeted methamphetamine operations in the Southwest, where methamphetamine first gained popularity in the United States.<sup>75</sup> Since the mid-1990s, the DEA has assisted state and local law enforcement with methamphetamine lab cleanups and training.

Due to the unique nature of producing the drug and the dangers associated with production and abuse, Congress has enacted several pieces of legislation designed to address methamphetamine abuse. These measures have included enhanced criminal penalties for manufacturing and trafficking in the drug (Comprehensive Methamphetamine Control Act of 1996; P.L. 104-237), more stringent federal regulation of methamphetamine precursor chemicals such as pseudoephedrine (Combat Methamphetamine Epidemic Act; P.L. 109-177), and authorization of additional funding for grants providing methamphetamine-specific law enforcement assistance.<sup>76</sup>

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<sup>71</sup> The CSA regulates drugs in five major classes: narcotics (including marijuana), depressants, stimulants, hallucinogens, and anabolic steroids. For more information on these classes, see the U.S. Drug Enforcement Administration, Drug Classes, [http://www.justice.gov/dea/concern/drug\\_classes.html](http://www.justice.gov/dea/concern/drug_classes.html).

<sup>72</sup> As a Schedule II substance, methamphetamine is legally available only through a non-refillable prescription. Currently, the only FDA-approved methamphetamine product is Desoxyn®.

<sup>73</sup> *Drugs, Society and Criminal Justice*, p. 182.

<sup>74</sup> For further discussion, see "HIDTA Program."

<sup>75</sup> ONDCP, *The National Drug Control Strategy, 1998: Budget Summary*, [http://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/FY1999-Budget-Summary-February-1998.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/FY1999-Budget-Summary-February-1998.pdf).

<sup>76</sup> In 1998, Congress established the Methamphetamine Initiative and assigned administrative responsibility to the Community Oriented Policing Services (COPS) Office. Congress established the Methamphetamine Initiative to combat methamphetamine production, distribution, and use through funding of enforcement, training, and prevention activities nationwide. Funding was given to state and local law enforcement agencies and the DEA; the DEA provides training to state and local law enforcement professionals on the proper removal and disposal of hazardous materials from clandestine methamphetamine labs. Currently, funding is only given to the DEA for the purpose of methamphetamine lab clean-up (\$10 million in FY2014). For more information, see CRS Report R40709, *Community* (continued...)

## MDMA and the Illicit Drug Anti-Proliferation Act of 2003

MDMA (3,4-methylenedioxy-methamphetamine), also known as ecstasy, first gained popularity in the early 1980s, after which it was permanently placed on Schedule I of the CSA by the DEA. It later resurfaced as a popular drug among youth in the nightclub scene and at raves in the 1990s.<sup>77</sup> MDMA has resurfaced in recent years under the street name “molly.”<sup>78</sup>

The Illicit Drug Anti-Proliferation Act of 2003<sup>79</sup> amended the CSA<sup>80</sup> to more directly target the producers of raves where synthetic drugs such as MDMA were often used. It shifted emphasis from punishing those who *establish* places where drugs are made, distributed, and consumed to those who *knowingly maintain* such places. It also established civil penalties for “maintaining drug-involved premises.”<sup>81</sup> This act also authorized appropriations for the DEA to educate youth, parents, and other interested adults about club drugs.

## Scheduling of Synthetic Drugs

Temporary scheduling of synthetic drugs has been a key tool in combating the onset of new synthetic drugs. As previously mentioned, in 1984 Congress gave the Attorney General the authority to temporarily place a substance onto Schedule I of the CSA to “avoid imminent hazards to public safety;”<sup>82</sup> policy makers were concerned about the effects of pharmaceutically created and other modified drugs. When determining whether there is an imminent hazard, the

(...continued)

*Oriented Policing Services (COPS): Current Legislative Issues*, by Nathan James and U.S. Department of Justice, Office of Justice Programs, *The COPS Office Management of the Methamphetamine Initiative*, Final Report, February 2012, <http://ojp.gov/about/pdfs/metheport.pdf>.

<sup>77</sup> U.S. Department of Justice, Drug Enforcement Administration, Office of Diversion Control, *Lists of: Scheduling Actions, Controlled Substances, Regulated Chemicals*, May 2013, <http://www.deadiversion.usdoj.gov/schedules/orangebook/orangebook.pdf>; Charles F. Levinthal, *Drugs, Society and Criminal Justice*, 3<sup>rd</sup> ed. (New York: Prentice Hall, 2012), pp. 207-208; Associated Press, “U.S. Will Ban ‘Ecstasy,’ a Hallucinogenic Drug,” *New York Times*, June 1, 1985.

<sup>78</sup> In 2013, “molly” gained popularity among youth at concerts, raves, and in nightclubs. While the term “molly” is a street name that has been used for MDMA and substances similar to MDMA, such as methylone and 1-(3-Trifluoromethylphenyl) piperazine (TFMPP), media reports indicated that molly seizures in 2013 involved the powder or crystal form of MDMA with some news articles referring to this version of molly as a purer version of MDMA. In the summers of 2013 and 2014, several deaths and multiple hospitalizations of young adults in the Northeast and mid-Atlantic have been attributed to molly overdoses. See Marina Csomor, “There’s Something (Potentially Dangerous) About Molly,” *CNN*, September 3, 2013; Jack Encarnacao, “DEA Warning: There’s No ‘Good Batch’ of Molly,” *Boston Herald*, September 2, 2013; Maia Szalavitz, “Concert Deaths: Four Myths About the Drug Molly,” *TIME*, September 3, 2013; Peter Hermann and Jenna Johnson, “Clubgoer Who Died in D.C. Might Have Used Drug Linked to Deaths in Boston, New York,” *The Washington Post*, September 5, 2013; Colin Campbell and Carrie Wells, “Second victim, 17, Dies After Overdose at Merriweather Concert,” *The Baltimore Sun*, May 2014; and Yoni Bashan, “Arrest Made in Electric Zoo Overdose Death,” *The Wall Street Journal*, July 30, 2014.

<sup>79</sup> Section 608 of the PROTECT Act (P.L. 108-21).

<sup>80</sup> Specifically, it amended Section 416 of the CSA (codified at 21 U.S.C. §856(a)), also known as the “crack house statute.”

<sup>81</sup> In introducing legislation that addressed the issue of drugs and event facilities (such as concert venues), then-Senator Joseph Biden stated the bill “would help in the prosecution of rogue promoters who not only know that there is drug use at their event but also hold the event for the purpose of illegal drug use or distribution.” See Senator Joseph Biden, “Statements on Introduced Bills and Joint Resolutions (S. 226),” Senate Speeches and Inserts, *Congressional Record*, daily edition, January 28, 2003, p. S1677.

<sup>82</sup> 21 U.S.C. §811(h). The Attorney General was given this authority in the Comprehensive Crime Control Act of 1984 (Title II of P.L. 98-473).



Attorney General (through the DEA) must consider the drug's history and current pattern of abuse; scope, duration, and significance of abuse; and risk to public health.

Once scheduled through this temporary scheduling process, a substance may remain on Schedule I for two years. The Attorney General then has the authority to keep the substance on Schedule I for an additional year before it must be removed or permanently scheduled. The Synthetic Drug Abuse Prevention Act of 2012<sup>83</sup> extended the DEA's temporary scheduling authority. Prior to enactment of this act on July 9, 2012, the DEA was able to temporarily place a substance on Schedule I of the CSA for one year, with a potential extension of six months.

### Temporary vs. Permanent Drug Scheduling

Both Congress and DOJ may permanently schedule substances, but this involves a significantly longer legislative or administrative process than temporary scheduling action. The Attorney General—through the DEA and in consultation with the Department of Health and Human Services (HHS)—may take administrative action to permanently place substances on Schedules I-V of the CSA. Congress may pass legislation that adds a substance to CSA control. Of note, legislative or administrative action may be taken to transfer a substance from one schedule to another or remove a substance from the CSA altogether.

Over the past several years the DEA has taken several temporary scheduling actions to place synthetic drugs on Schedule I. Since 2002 the DEA has used this temporary scheduling authority on 33 synthetic substances. Prior to 2002 the most recent time DEA exercised this authority was in 1995.<sup>84</sup>

Congress has also taken scheduling action in response to the hazardous nature of synthetic drugs. In 2000, for example, Congress passed legislation that provided for emergency scheduling of gamma hydroxybutyric acid (GHB), a synthetic stimulant also known as “liquid ecstasy.” In doing so, Congress cited GHB as “an imminent hazard to public safety that requires immediate regulatory action.”<sup>85</sup> Concern over the reported increase in use of certain synthetic cannabinoids and stimulants led some to call on Congress to legislatively schedule specific substances.<sup>86</sup> This is, in part, because congressional action could place certain substances onto Schedule I of the CSA more quickly than might occur through administrative scheduling actions by the Attorney General and Secretary of Health and Human Services, as authorized by the CSA. In June 2012, Congress passed the Synthetic Drug Abuse Prevention Act of 2012<sup>87</sup> to, among other things, permanently schedule selected synthetic stimulants and other synthetic substances.

<sup>83</sup> Subtitle D of Title XI of the Food and Drug Administration Safety and Innovation Act (P.L. 112-144).

<sup>84</sup> U.S. Department of Justice, Drug Enforcement Administration, Office of Diversion Control, *Lists of: Scheduling Actions, Controlled Substances, Regulated Chemicals*, May 2013, <http://www.deadiversion.usdoj.gov/schedules/orangebook/orangebook.pdf>.

<sup>85</sup> P.L. 106-172.

<sup>86</sup> Statement for the record of Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, before the U.S. Congress, Senate United States Senate Caucus on International Narcotics Control, *The Dangers of Synthetic Cannabinoids and Stimulants*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., April 6, 2011, [http://drugcaucus.senate.gov/hearing-4-6-11/DEA%20\\_Rannazzisi\\_%20testimony.pdf](http://drugcaucus.senate.gov/hearing-4-6-11/DEA%20_Rannazzisi_%20testimony.pdf).

<sup>87</sup> Subtitle D of Title XI of the Food and Drug Administration Safety and Innovation Act (P.L. 112-144). It was offered as an amendment (S.Amdt. 2146) to S. 3187.

## Heroin and Prescription Drug Abuse

Over the last decade, there has been a rise in opioid abuse. From 2004-2011, the number of medical emergencies related to nonmedical use of pharmaceuticals increased 132%.<sup>88</sup> In addition, the number of past-year heroin users increased by approximately 300% between 2004 (166,000 users) and 2013 (681,000 users).<sup>89</sup> Some academic experts have highlighted the connection between the law enforcement crackdown on prescription drug abuse and the subsequent rise in heroin abuse, which has been of growing concern to policy makers.<sup>90</sup> Heroin is a cheaper alternative to prescription drugs that may be more easily accessible to some who are seeking an opiate high.

Unlike illegal drugs such as heroin, individuals may obtain prescription drugs through lawful channels; however, individuals who *abuse* prescription drugs often obtain them through unlawful channels.<sup>91</sup> Federal law enforcement has engaged in diversion control to address the unlawful means through which individuals obtain prescription drugs. The DEA's Office of Diversion Control seeks "to prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs."<sup>92</sup> In response to prescription drug abuse, the DEA has nearly doubled its number of Tactical Diversion Squads (TDS) over the last three years, from 37 in March 2011 to 66 in March 2014.<sup>93</sup> TDS units combine federal, state, and local resources to investigate and prevent the diversion of controlled pharmaceutical substances or listed chemicals.

The Office of Diversion Control also oversees registrations for those who seek to manufacture, import, export, sell, or dispense narcotics. DEA enforcement actions generally have focused on doctors prescribing prescription controlled substances (PCS) or traffickers of PCS (rather than individuals using PCS).

## Marijuana

Under the CSA, marijuana is a Schedule I controlled substance. This officially prohibits the unauthorized manufacture, distribution, dispensation, and possession of marijuana. Despite this,

<sup>88</sup> Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *Drug Abuse Warning Network, 2011: National Estimates of Drug-Related Emergency Department Visits*, May 2013, <http://www.samhsa.gov/data/2k13/DAWN2k11ED/DAWN2k11ED.htm#high4>.

<sup>89</sup> Substance Abuse and Mental Health Services Administration, *Results from the 2004 Survey on Drug Use and Health: Summary of National Findings, 2005*; and *Results from the 2013 Survey on Drug Use and Health: Summary of National Findings, 2014*, <http://www.samhsa.gov/data/NSDUH.aspx>.

<sup>90</sup> Pradip K. Muhuri, Joseph C. Gfroerer, and M. Christine Davies, *Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States*, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, August 2013, <http://www.samhsa.gov/data/2k13/DataReview/DR006/nonmedical-pain-reliever-use-2013.pdf>; Theodore J. Cicero, Matthew S. Ellis, and Hilary L. Surratt, "Effect of Abuse-Deterrent Formulation of Oxycontin," *New England Journal of Medicine*, vol. 367, no. 2 (July 12, 2012), pp. 187-189.

<sup>91</sup> For more information on this topic, see CRS Report R43559, *Prescription Drug Abuse*, by Erin Bagalman et al.

<sup>92</sup> Drug Enforcement Administration, Office of Diversion Control, *Program Description*, [http://www.deadiversion.usdoj.gov/prog\\_dscrpt/index.html](http://www.deadiversion.usdoj.gov/prog_dscrpt/index.html).

<sup>93</sup> U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Statement of Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 29, 2014, p. 7 (hereafter Rannazzisi testimony, April 29, 2014).

over the last 20 years, states have deviated from strict federal restrictions on marijuana by establishing a range of laws and policies allowing its medical and recreational use.<sup>94</sup> Some states have pursued decriminalization initiatives, legal exceptions for medical use, and legalization of certain quantities for recreational use. This has raised domestic law enforcement questions as to how marijuana can remain strictly prohibited under federal law (except for authorized scientific research) while some state authorities allow for its medical and/or recreational use.<sup>95</sup>

Federal law enforcement has generally tailored its efforts to target criminal networks rather than individual criminals; its stance regarding drug (particularly marijuana) offenders appears consistent with this position. Deputy Attorney General Cole has stated that while marijuana remains an illegal substance under the CSA, DOJ would focus its prosecutorial resources on the “most significant threats in the most effective, consistent, and rational way.”<sup>96</sup>

## Overview of Federal Drug Enforcement in the United States

### U.S. Drug Control Policy and Budget

Over the last decade, the United States has gradually shifted its *stated* drug policy toward a more comprehensive approach; one that focuses on prevention, treatment, and enforcement. The Obama Administration states that it coordinates “an unprecedented government-wide public health and public safety approach to reduce drug use and its consequences.”<sup>97</sup> In practice, however, federal drug control dollars mostly go to law enforcement. According to the most recent drug control budget (FY2015) released by the Office of National Drug Control Policy (ONDCP), approximately 60% of all federal drug control spending is dedicated to supply reduction,<sup>98</sup> with around 37% of the *total* drug control budget going toward domestic law enforcement.<sup>99</sup> As illustrated in **Table 1**, these figures, while fluctuating slightly over the last 10 years, have remained relatively unchanged since FY2005.

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<sup>94</sup> For a summary of actions taken by states and a discussion of relevant legal issues, see CRS Report R43435, *Marijuana: Medical and Retail—Selected Legal Issues*, by Todd Garvey and Charles Doyle.

<sup>95</sup> For further discussion of marijuana legalization issues, see CRS Report R43164, *State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement*, by Lisa N. Sacco and Kristin Finklea and CRS Report R43034, *State Legalization of Recreational Marijuana: Selected Legal Issues*, by Todd Garvey and Brian T. Yeh.

<sup>96</sup> James M. Cole, *Memorandum for all United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Enforcement, Washington, DC, August 29, 2013, p. 1, <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

<sup>97</sup> Executive Office of the President, Office of National Drug Control Policy, *About ONDCP*, <http://www.whitehouse.gov/ondcp/about>.

<sup>98</sup> According to ONDCP, supply reduction is “[a]ny activity or program conducted by a National Drug Control Program agency intended to reduce the availability of drugs in the United States and abroad. Supply reduction activities include international drug control; foreign and domestic drug intelligence; interdiction; and domestic law enforcement.” Executive Office of the President, Office of National Drug Control Policy, *FY2012 Budget and Performance Summary*, April 2011, p. 282, [http://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/FY2012-Budget-and-Performance-Summary-April-2011.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/FY2012-Budget-and-Performance-Summary-April-2011.pdf).

<sup>99</sup> Office of National Drug Control Policy, *National Drug Control Budget: FY2015 Highlights*, March 2014, p. 15, [http://www.whitehouse.gov/sites/default/files/ondcp/about-content/fy\\_2015\\_budget\\_highlights\\_-\\_final.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/about-content/fy_2015_budget_highlights_-_final.pdf).

**Table I. Federal Drug Control Budget: FY2005-FY2014**

(Budget authority in billions of dollars)

Functions	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Demand Reduction</b>										
<b>Drug Abuse Treatment</b>	<b>6.15</b>	<b>6.23</b>	<b>6.49</b>	<b>6.73</b>	<b>7.21</b>	<b>7.55</b>	<b>7.66</b>	<b>7.85</b>	<b>7.89</b>	<b>8.83</b>
Percentage of Total Funding	30.9%	30.2%	29.9%	30.8%	29.0%	30.7%	31.4%	32.0%	31.3%	35.0%
<b>Drug Abuse Prevention</b>	<b>2.04</b>	<b>1.96</b>	<b>1.93</b>	<b>1.84</b>	<b>1.95</b>	<b>1.56</b>	<b>1.48</b>	<b>1.34</b>	<b>1.28</b>	<b>1.28</b>
Percentage of Total Funding	10.3%	9.5%	8.9%	8.4%	7.8%	6.3%	6.1%	5.5%	5.1%	5.1%
<b>Total Demand Reduction</b>	<b>8.19</b>	<b>8.19</b>	<b>8.43</b>	<b>8.57</b>	<b>9.16</b>	<b>9.11</b>	<b>9.14</b>	<b>9.19</b>	<b>9.16</b>	<b>10.10</b>
Percentage of Total Funding	41.2%	39.7%	38.9%	39.2%	36.9%	37.0%	37.5%	37.5%	38.5%	40.1%
<b>Supply Reduction</b>										
<b>Domestic Law Enforcement</b>	<b>7.38</b>	<b>7.60</b>	<b>8.02</b>	<b>8.30</b>	<b>9.47</b>	<b>9.25</b>	<b>9.22</b>	<b>9.45</b>	<b>8.85</b>	<b>9.27</b>
Percentage of Total Funding	37.1%	36.9%	37.0%	38.0%	38.1%	37.6%	37.8%	38.5%	35.1%	36.8%
<b>Interdiction</b>	<b>2.43</b>	<b>2.92</b>	<b>3.05</b>	<b>2.97</b>	<b>3.70</b>	<b>3.66</b>	<b>3.98</b>	<b>4.04</b>	<b>3.94</b>	<b>4.05</b>
Percentage of Total Funding	12.2%	14.2%	14.1%	13.6%	14.9%	14.9%	16.3%	16.5%	15.6%	16.1%
<b>International</b>	<b>1.87</b>	<b>1.90</b>	<b>2.19</b>	<b>2.00</b>	<b>2.53</b>	<b>2.60</b>	<b>2.03</b>	<b>1.83</b>	<b>1.85</b>	<b>1.79</b>
Percentage of Total Funding	9.4%	9.2%	10.1%	9.2%	10.2%	10.6%	8.3%	7.5%	7.3%	7.1%
<b>Total Supply Reduction</b>	<b>11.69</b>	<b>12.42</b>	<b>13.26</b>	<b>13.27</b>	<b>15.70</b>	<b>15.51</b>	<b>15.23</b>	<b>15.32</b>	<b>14.64</b>	<b>15.12</b>
Percentage of Total Funding	58.8%	60.3%	61.1%	60.8%	63.1%	63.0%	62.5%	62.5%	61.5%	59.9%
<b>Total Funding</b>	<b>19.88</b>	<b>20.62</b>	<b>21.68</b>	<b>21.83</b>	<b>24.86</b>	<b>24.62</b>	<b>24.37</b>	<b>24.50</b>	<b>23.80</b>	<b>25.21</b>

**Source:** Office of National Drug Control Policy (ONDCP), *National Drug Control Budget: FY2015 Funding Highlights*, March 2014, p. 15.

**Notes:** Some percentages calculated by CRS. ONDCP revises drug control budget figures each year; therefore, figures are subject to change. Due to rounding, figures may not precisely sum to totals and percentages may not sum to 100.

## Federal vs. State Enforcement

While federal agencies enforce drug laws under the CSA, all states and territories have their own statutory framework through which they enforce drug laws; however, the CSA places drug control under federal jurisdiction *regardless* of state laws. In other words, federal agencies may enforce the CSA in all states and territories.

The majority of drug crimes known to U.S. law enforcement are dealt with at the state level.<sup>100</sup> In the United States in 2012, the U.S. Drug Enforcement Administration (DEA) arrested 30,476 suspects for federal drug offenses while state and local law enforcement arrested 1,328,457

<sup>100</sup> This is generally true for crime known to law enforcement. In 2009, arrests made by federal law enforcement represented 1% of all arrests in the United States. See Mark Motivans, *Federal Justice Statistics, 2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2011, p. 1, <http://www.bjs.gov/content/pub/pdf/fjs09.pdf>.

suspects for drug offenses.<sup>101</sup> In many cases, federal agencies assist state and local agencies with drug arrests, and suspects are referred for state prosecution, and vice-versa.

Other federal agencies aside from the DEA participate and support federal drug investigations and also make drug arrests. These agencies include, but are not limited to, the Federal Bureau of Investigation (FBI), the U.S. Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), agencies at the U.S. Department of Homeland Security (DHS), and the U.S. Postal Inspection Service. As the only single-mission agency charged with the enforcement of the CSA, the DEA is primarily responsible for enforcing the controlled substance laws and regulations of the United States.

Federal, state, and local law enforcement agencies frequently coordinate drug operations. In establishing administrative and enforcement provisions under the CSA, Congress specifically required that federal law enforcement cooperate with local, state, and tribal agencies in investigative efforts to curb drug abuse and suppress diversion of controlled substances, among other cooperative arrangements.<sup>102</sup> The DEA has 222 offices throughout the United States, and each of these offices partners with state and local authorities, as well as with other federal agencies, to investigate and prosecute drug offenses.<sup>103</sup>

## **Drug Task Forces**

The Department of Justice has long recognized the need for a coordinated response to drug trafficking and organized crime. Coordination and cooperation with state and local law enforcement agencies is essential to federal counterdrug operations. In 2013, the DEA managed 259 state and local task forces, including program-funded, provisional,<sup>104</sup> HIDTA (High Intensity Drug Trafficking Areas), and Tactical Diversion Squad task forces through their State and Local Task Force Program.<sup>105</sup> These task forces share resources and expertise in their drug enforcement efforts, thereby increasing investigative possibilities. They are staffed by over 2,190 DEA special agents and 2,556 state and local officers.<sup>106</sup>

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<sup>101</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 2012*, Uniform Crime Reports, CRS analysis of Table 69, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/69tabledatadec.pdf>; U.S. Department of Justice, Drug Enforcement Administration, *DEA Domestic Arrests*, <http://www.justice.gov/dea/resource-center/statistics.shtml#arrests>.

<sup>102</sup> 21 U.S.C. §873.

<sup>103</sup> Drug Enforcement Administration, *DEA Fact Sheet*, March 2014, <http://www.justice.gov/dea/docs/factsheet.pdf>.

<sup>104</sup> The difference between funded and provisional state and local task forces is that money for funded task forces is provided by DEA headquarters and includes additional resources for state and local overtime. Provisional task forces are financially supported by DEA field division offices, without resources from DEA headquarters, and do not include state and local overtime. See Drug Enforcement Administration, *DEA Programs: State & Local Task Forces*, <http://www.justice.gov/dea/ops/taskforces.shtml>.

<sup>105</sup> Drug Enforcement Administration, *DEA Programs: State & Local Task Forces*, <http://www.justice.gov/dea/ops/taskforces.shtml>.

<sup>106</sup> Participating state and local task force officers are deputized to perform the same functions as DEA special agents.

### ***Organized Crime Drug Enforcement Task Forces (OCDETF) Program***

The first drug task force was established in 1970 in New York under the guidance of the Bureau of Narcotics and Dangerous Drugs, DEA's predecessor agency.<sup>107</sup> In 1982, the Organized Crime Drug Enforcement Task Forces (OCDETF) Program was established "to mount a comprehensive attack against organized drug traffickers."<sup>108</sup> The OCDETF Program focuses federal resources on reducing the illicit drug trade by identifying and targeting major drug trafficking organizations,<sup>109</sup> eliminating their financial infrastructure by emphasizing financial investigations and asset forfeiture,<sup>110</sup> redirecting federal drug enforcement resources to align them with existing and emerging drug threats,<sup>111</sup> and broadly investigating all the related parts of the targeted organizations. Agencies participating in OCDETF include the DEA, FBI, ATF, USMS, Internal Revenue Service, U.S. Coast Guard, U.S. Immigration and Customs Enforcement, all 94 U.S. Attorneys' Offices, the DOJ Criminal and Tax Divisions, and multiple state and local agencies. In FY2013, OCDETF cases made up approximately 21% of all criminal drug cases filed by U.S. Attorneys.<sup>112</sup>

There are 11 OCDETF strike forces around the country as well as an OCDETF Fusion Center.<sup>113</sup> The OCDETFs target those organizations that have been identified on the Consolidated Priority Organization Targets (CPOT) List, which is the "most wanted" list for leaders of drug trafficking and money laundering organizations. In FY2013, OCDETF participants initiated 1,074 investigations, and 16% (822 cases) of active OCDETF investigations were linked to valid CPOTs.<sup>114</sup> Between 2003 and 2013, OCDETF participants have dismantled or severely disrupted 75 CPOT organizations and disrupted or dismantled 2,918 CPOT-linked organizations.<sup>115</sup>

### ***HIDTA Program***

The federal government assists state and local authorities with drug enforcement through financial and personnel support. The HIDTA program primarily supports the law enforcement aspect of the *National Drug Control Strategy*<sup>116</sup> in providing assistance to law enforcement

<sup>107</sup> U.S. Drug Enforcement Administration, *Drug Enforcement Administration, 1970-1975*, pp. 4, 8, <http://www.justice.gov/dea/about/history/1970-1975.pdf>.

<sup>108</sup> U.S. Department of Justice, *Organized Crime Drug Enforcement Task Forces*, <http://www.justice.gov/criminal/taskforces/ocdetf.html>.

<sup>109</sup> OCDETF coordinates the Consolidated Priority Organization Target (CPOT) List, a multi-agency target list of "command and control" elements of the most prolific international drug trafficking and money laundering organizations.

<sup>110</sup> For information about the DOJ Asset Forfeiture Program, including annual reports to Congress and annual financial statements, see <http://www.justice.gov/jmd/afp/index.html>.

<sup>111</sup> For example, there has been a rise in heroin abuse and trafficking over the last several years in the United States, and in response to this issue, the House Committee on Appropriations "urges the Department [of Justice] to intensify its use of task forces to address this disturbing trend." U.S. Congress, House Committee on Appropriations, *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2015*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 46.

<sup>112</sup> CRS calculation of data from Executive Office for U.S. Attorneys, *Fiscal Year 2013: United States Attorneys' Annual Statistical Report*, p. 57, [http://www.justice.gov/usao/reading\\_room/reports/asr2013/13statrpt.pdf](http://www.justice.gov/usao/reading_room/reports/asr2013/13statrpt.pdf).

<sup>113</sup> U.S. Department of Justice, *FY2015 Interagency Crime and Drug Enforcement, Congressional Budget Submission*.

<sup>114</sup> *Ibid.*, p. 23.

<sup>115</sup> *Ibid.*

<sup>116</sup> ONDCP issues the annual *National Drug Control Strategy* (Strategy). It outlines the federal government's plan to reduce (1) illicit drug consumption in the United States and (2) the consequences of such use. In creating the Strategy, (continued...)

agencies—at the federal, state, local, and tribal levels—that are operating in regions of the United States that have been deemed critical drug trafficking regions.<sup>117</sup> The program aims to reduce drug production and trafficking through four means: (1) promoting coordination and information sharing between federal, state, local, and tribal law enforcement; (2) bolstering intelligence sharing between federal, state, local, and tribal law enforcement; (3) providing reliable intelligence to law enforcement agencies such that they may be better equipped to design effective enforcement operations and strategies; and (4) promoting coordinated law enforcement strategies that rely upon available resources to reduce illegal drug supplies not only in a given area, but throughout the country.<sup>118</sup> There are 28 designated HIDTAs in the United States and its territories. On the whole, the HIDTA program is administered by ONDCP; however, each of the HIDTA regions is governed by its own Executive Board.

## International Enforcement

While an in-depth discussion of international drug enforcement is beyond the scope of this report, it is nonetheless important to mention when discussing drug enforcement operations in the United States. While law enforcement efforts to combat drug abuse largely occur within the geographic boundaries of the United States, federal agencies also pursue drug investigations abroad. The DEA has 86 offices in 67 countries, and maintains “sole responsibility for coordinating and pursuing drug investigations abroad and works in partnership with foreign law enforcement counterparts.”<sup>119</sup> Aside from the DEA, the Department of State, the U.S. Agency for International Development, other agencies within DOJ, and the Department of Defense (DOD) also assist with international counterdrug support. For example, DOD detects and monitors aerial and maritime movement of illegal drugs toward the United States and collects, analyzes, and shares intelligence on illegal drugs with U.S. law enforcement and international security counterparts.<sup>120</sup>

International law enforcement cooperation is guided, in part, by international treaties. The United States is a party to the Single Convention on Narcotic Drugs of 1954, which was designed to establish effective control over international and domestic traffic in narcotics, coca leaf, cocaine, and marijuana. The United States is also subject to the Convention on Psychotropic Substances of 1971, which was designed to establish similar control over stimulants, depressants, and hallucinogens. As Congress established under the CSA, treaty obligations may require the

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(...continued)

ONDCP consults with the contributing federal drug control program agencies as well as Congress; state, local, and tribal officials; foreign government representatives; and private sector representatives with expertise in both supply and demand reduction.

<sup>117</sup> Congress created the HIDTA program through the Anti-Drug Abuse Act of 1988 (P.L. 100-690, §1005(c)). For more information on the program, see Office of National Drug Control Policy (ONDCP), *High Intensity Drug Trafficking Areas (HIDTA) Program*, <http://www.whitehouse.gov/ondcp/high-intensity-drug-trafficking-areas-program>. As of June 2011, the HIDTA program provided support for 670 initiatives nationwide. These ranged from enforcement initiatives involving multi-agency investigation and prosecution activities to drug use prevention and treatment initiatives.

<sup>118</sup> 21 U.S.C. §1706(a)(2).

<sup>119</sup> Drug Enforcement Administration, *DEA Fact Sheet*, March 2014, <http://www.justice.gov/dea/docs/factsheet.pdf>.

<sup>120</sup> 10 U.S.C. §124. For a more in-depth review of international drug control efforts, see CRS Report RL34543, *International Drug Control Policy: Background and U.S. Responses*, by Liana Rosen.

Attorney General to control or reschedule a substance if existing controls are less stringent than those required by a treaty.<sup>121</sup>

## Intelligence Operations and Interdiction

The gathering and analyzing of drug-related intelligence is an essential function of federal drug enforcement. Intelligence is used to support tactical operations; arrests, seizures, and interdictions can be based on tactical intelligence. Also, investigative intelligence is used against large criminal organizations in investigations and prosecutions. Finally, strategic intelligence is used to inform policy, administrative decisions, and resource management.<sup>122</sup> Multiple federal agencies, including the U.S. military, as well as state and local law enforcement contribute to and utilize drug intelligence. Drug interdiction is inextricably linked to domestic drug enforcement; both are methods of supply reduction.

The El Paso Intelligence Center (EPIC), the federal center for operational tactical intelligence, plays a key role in drug interdiction. EPIC is led by the DEA and staffed by 15 federal agencies from the Departments of Justice, Homeland Security, Transportation, and Defense as well as state and local law enforcement agencies. EPIC has long supported the federal government's drug interdiction efforts and drug trafficking investigations in addition to efforts to combat alien and weapon smuggling, terrorism and other criminal activities.<sup>124</sup>

### Drug Interdiction

Interdiction involves actions taken to prevent illicit drugs from being transported into the United States. As shown in **Table 1**, around 16% of the current federal drug control budget is spent on interdiction. The U.S. Coast Guard, Customs and Border Protection, and Department of Defense lead the federal government's interdiction efforts.<sup>123</sup>

In addition to EPIC, the DEA's Special Operations Division (SOD) also plays a key role in gathering, analyzing, and distributing intelligence in support of domestic and foreign law enforcement operations. Similar to EPIC, SOD coordinates the efforts of multiple federal, state, and local agencies. SOD operates at a classified level and its functions include the following:

- coordinate special operations and projects targeting trafficker command and control communications;
- provide funding support, guidance, and technical assistance to all DEA divisions that have Title III operations<sup>125</sup> involving drug trafficking;<sup>126</sup>

<sup>121</sup> 21 U.S.C. §811(d).

<sup>122</sup> U.S. Drug Enforcement Administration, *Operations, Intelligence*, <http://www.justice.gov/dea/ops/intel.shtml>.

<sup>123</sup> Office of National Drug Control Policy, *FY2014 Budget and Performance Summary*, April 2013, p. 14, [http://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/fy2014\\_budget\\_and\\_performance-summary.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/fy2014_budget_and_performance-summary.pdf).

<sup>124</sup> *Ibid.*

<sup>125</sup> Federal electronic surveillance statutes are commonly referred to as "Title III." For more information on wiretapping and electronic surveillance, see CRS Report 98-327, *Privacy: An Abbreviated Outline of Federal Statutes Governing Wiretapping and Electronic Eavesdropping*, by Gina Stevens and Charles Doyle.

<sup>126</sup> According to DEA, "SOD provides foreign and domestic based law enforcement partners with timely investigative information enabling them to fully exploit federal law enforcement's investigative authority under Title III of the U.S. Code." See U.S. Drug Enforcement Administration, *FY2015 Performance Budget Congressional Submission*, p.8, <http://www.justice.gov/jmd/2015justification/pdf/dea-justification.pdf> (Hereafter DEA, *FY2015 Performance Budget Congressional Submission*).



- disseminate investigative data to participating law enforcement partners;
- develop and support the DEA Analysis and Response Tracking System (DARTS) for DEA users, and the De-Confliction and Information Coordination Endeavour (DICE) system, a similar system utilized by federal, state, and local law enforcement;<sup>127</sup>
- address financial crime and narcoterrorism related issues and investigations; and
- support the operations of the National Gang Targeting, Enforcement and Coordination Center (GangTECC).

GangTECC coordinates information and enforcement activities to disrupt and dismantle regional, national, and international gang threats.<sup>128</sup>

Since its establishment in 1973, the DEA has relied heavily on drug intelligence to accomplish its mission. At first, the Intelligence Program was staffed by DEA special agents and several intelligence analysts. Over the years, the Intelligence Program has grown significantly, and today, the DEA employs over 700 intelligence analysts.<sup>129</sup>

## Enforcement Trends

Trends in federal drug enforcement may reflect changes in the nation's drug problems and changes in the federal response to these problems. These trends also may reflect the federal government's enforcement priorities. For example, as shown in **Figure 4**, the number of drug cases filed by U.S. Attorneys steadily increased in the late 1990s and early 2000s. While this may reflect a higher drug crime incidence rate, it also may reflect a federal enforcement focus on drug crimes. This section provides a snapshot of federal enforcement trends over the last several decades.

## Federal Drug Arrests and Seizures

### Arrests

Most drug arrests are made by state and local law enforcement, and most of these arrests are for possession rather than sale or manufacturing.<sup>130</sup> In contrast, most federal drug arrests are for trafficking offenses rather than possession.<sup>131</sup> While multiple federal agencies (as previously

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<sup>127</sup> According to DEA, "these tools provide the ability for law enforcement investigators to check if other investigators are targeting the same communications devices. This allows for immediate field de-confliction, which enhances ongoing investigations as well as ensuring officer safety when 'blue on blue' investigative actions are uncovered. Currently these two systems have more than 20,000 established law enforcement users." See DEA, *FY2015 Performance Budget Congressional Submission*, p. 52.

<sup>128</sup> DEA, *FY2015 Performance Budget Congressional Submission*, pp. 8-9, 51-52.

<sup>129</sup> U.S. Drug Enforcement Administration, *Drug Enforcement Administration: 1970-1975*, p. 15, <http://www.justice.gov/dea/about/history/1970-1975.pdf>.

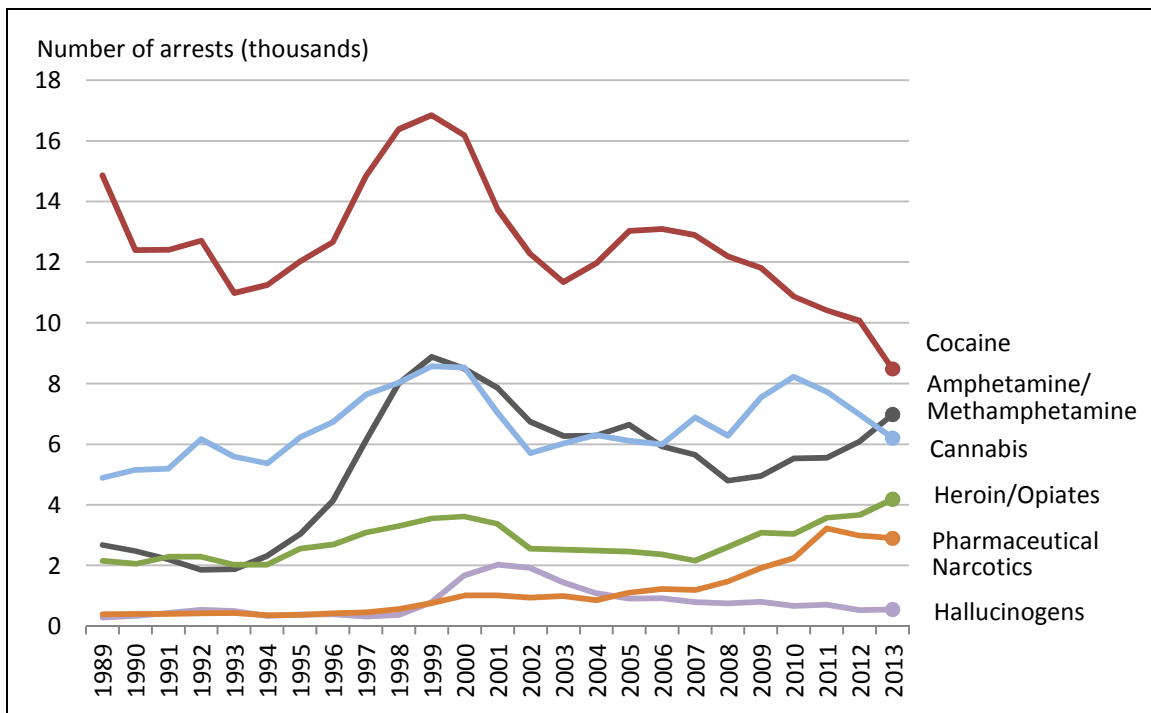
<sup>130</sup> Federal Bureau of Investigation, *Crime in the United States 2012*, Arrests Table, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested>.

<sup>131</sup> In FY2013, approximately 9% of all DEA arrests were for possession. These arrests do not include possession with (continued...)

identified in this report) engage in federal drug enforcement, the DEA is the primary federal agency responsible for the enforcement of federal drug laws; therefore, it is the agency of focus in this section.

As shown in **Figure 1**, over the last 25 years the majority of the DEA’s arrests have been for cocaine-related offenses. Like arrests for amphetamine/methamphetamine and cannabis, arrests for cocaine peaked in the late 1990s (16,947 cocaine arrests in FY1999). With notable exceptions of pharmaceutical narcotics and heroin/opiate-related arrests, most arrests have declined since their peak in FY1999. In FY1989, the total number of DEA arrests was 25,986. This figure rose to 40,278 in FY1999, declined to 29,212 in FY2003, and has remained fairly steady over the last 10 years (between 29,000 and 33,000 arrests each year).

**Figure 1. Number of DEA Domestic Arrests**  
(By drug type, FY1989-FY2013)



**Source:** CRS presentation of data from the DEA’s Defendant Statistical System.

**Notes:** These trends represent select DEA drug arrest categories.

## Seizures

As illustrated in **Figure 2**, over the last 25 years, marijuana seizures have made up the strong majority of the volume of drugs seized by federal agencies. In FY2013, the amount of marijuana seized by federal agencies made up 95% of the total amount of drugs seized that year. This

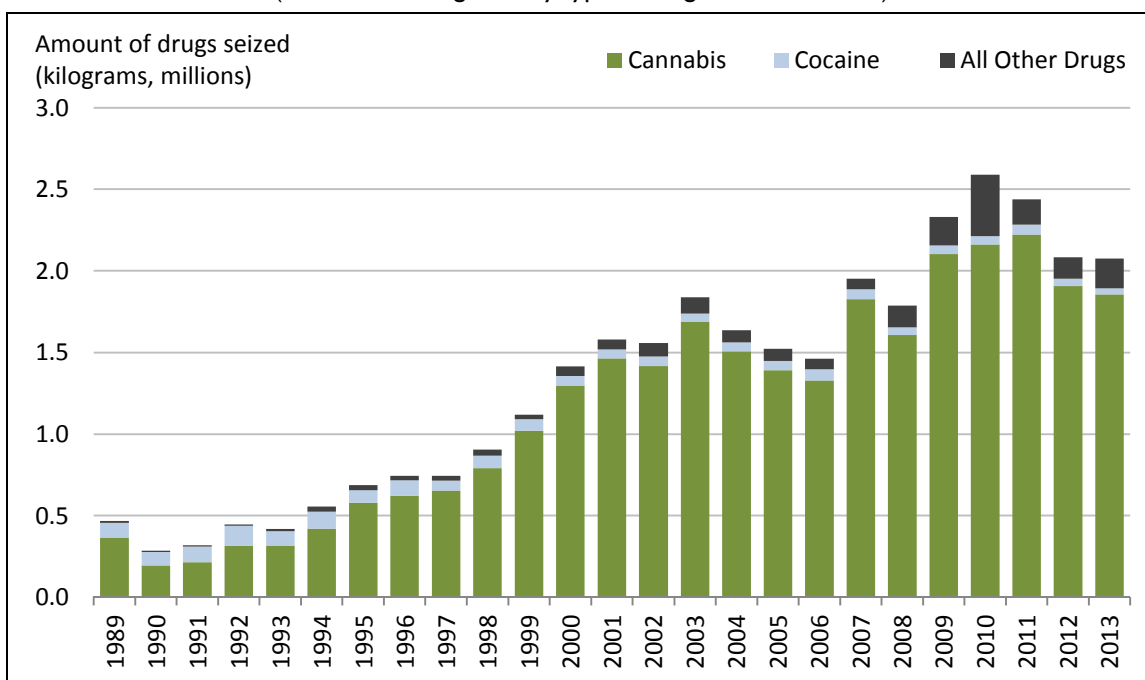
(...continued)

intent to distribute. Data provided by the DEA, Defendant Statistical System (Data extracted June 23, 2014).

reflects both marijuana's availability and popularity; marijuana is the most widely available and commonly used illegal drug in the United States.<sup>132</sup>

Over the last several years, there has been an increase in the amount of heroin seized at the southwest border of the United States. According to the DEA, the amount of heroin seized each year in this region has increased 320% from 2008 to 2013.<sup>133</sup> In FY2012 and FY2013, the DEA seized 4,518 and 4,836 kilograms of heroin, respectively, in the United States.<sup>134</sup> This has been coupled with higher availability of heroin in the United States as compared to recent years. The DEA attributes the increase in heroin availability to an increase in Mexican heroin production and trafficking to the United States.<sup>135</sup> According to recent congressional testimony, "DEA intelligence reveals that heroin trafficking organizations are relocating to areas where non-medical use of prescription drugs [is] on the rise."<sup>136</sup>

**Figure 2. Federal Drug Seizures**  
(Amounts in kilograms, by type of drug, FY1989-FY2013)



**Source:** CRS presentation of data provided by the DEA's National Seizure System (NSS) on August 13, 2014.

<sup>132</sup> U.S. Drug Enforcement Administration, *National Drug Threat Assessment Summary 2013*, DEA-NWW-DIR-017-13, November 2013, p. 11, <http://www.justice.gov/dea/resource-center/DIR-017-13%20NDTA%20Summary%20final.pdf>. For more information regarding federal enforcement of marijuana laws, see CRS Report R43164, *State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement*, by Lisa N. Sacco and Kristin Finklea.

<sup>133</sup> U.S. Department of Justice, Attorney General Holder, Calling Rise in Heroin Overdoses 'Urgent Public Health Crisis,' Vows Mix of Enforcement, Treatment, March 10, 2014, <http://www.justice.gov/opa/pr/2014/March/14-ag-246.html>.

<sup>134</sup> Data provided by the U.S. Drug Enforcement Administration, National Seizure System (NSS) on August 13, 2014.

<sup>135</sup> Drug Enforcement Administration, *National Drug Threat Assessment Summary 2013*, November 2013, <http://www.justice.gov/dea/resource-center/DIR-017-13%20NDTA%20Summary%20final.pdf>.

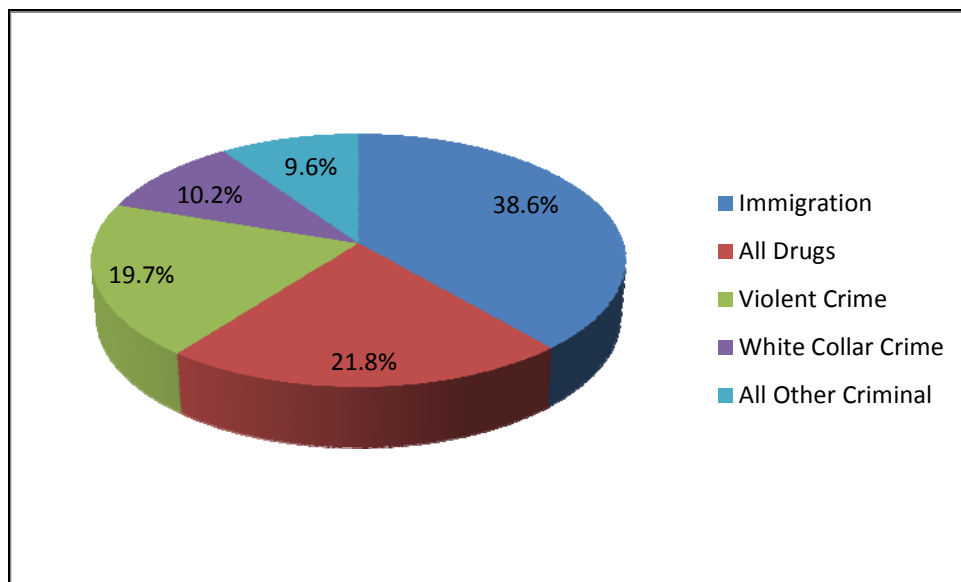
<sup>136</sup> Rannazzisi testimony, April 29, 2014, p. 7.

**Notes:** Data are submitted by participating federal agencies; these data are not necessarily comprehensive because contributing agencies are not required to report data. “Cannabis” includes marijuana (including marijuana oil) and hashish (solid and oil/liquid). “Cocaine” includes cocaine powder, crack, paste, liquid, base, coca derivative, and coca leaf. “All Other Drugs” includes heroin, khat, pharmaceuticals, synthetic cannabinoids (as of FY2001), synthetic cathinones (as of FY2003), methamphetamine (as of FY1994), other synthetic substances such as amphetamines, steroids (as of FY1999), and unknown substances.

## Prosecutions

U.S. Attorneys are prosecutors under the Attorney General and conduct the trial work for federal drug cases. Currently, drug cases represent the second highest category of criminal cases filed by U.S. Attorneys (see **Figure 3**). Since enactment of the CSA, drug cases have either been the highest or second highest category of criminal cases filed by U.S. Attorneys.<sup>137</sup> Drug offenses represent the largest offense category (31.6% in FY2013) for federal criminal appeals filed by or against the United States.<sup>138</sup>

**Figure 3. U.S. Attorneys Criminal Cases Filed by Program Category (FY2013)**



**Source:** CRS presentation of data from Executive Office for U.S. Attorneys, *Fiscal Year 2013: United States Attorneys' Annual Statistical Report*, p. 11.

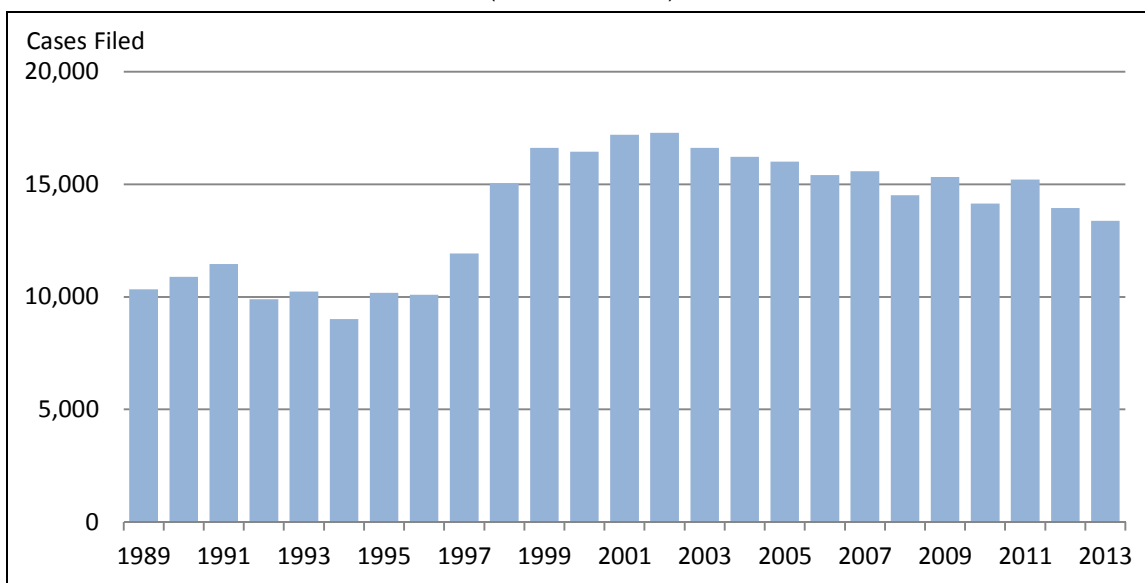
As shown in **Figure 4**, and mirroring arrest trends for federal drug offenses, over the last 25 years the number of federal prosecutions for drug offenses peaked in the early 2000s (17,284 cases filed in FY2002), and then steadily declined, with a few exceptions, since FY2002 (13,383

<sup>137</sup> Not including 1970. See Executive Office for U.S. Attorneys, Annual Statistical Reports, 1971-2013, <http://www.justice.gov/usao/resources/reports/>. CRS was unable to check data for 1976 and therefore cannot confirm that drug cases represented the highest or second highest category of criminal cases filed by U.S. Attorneys in 1976.

<sup>138</sup> Executive Office for U.S. Attorneys, *Fiscal Year 2013: United States Attorneys' Annual Statistical Report*, p. 38, [http://www.justice.gov/usao/reading\\_room/reports/asr2013/13statrpt.pdf](http://www.justice.gov/usao/reading_room/reports/asr2013/13statrpt.pdf).

cases filed, 27,106 defendants in FY2013). In FY2013, the U.S. Attorneys recorded 24,307 convictions for all drug offenses.<sup>139</sup> Similar to the DEA and other federal agencies, U.S. Attorneys largely target drug dealing as opposed to drug possession. 1.4% of the 10,542 drug cases<sup>140</sup> filed by U.S. Attorneys in FY2013 were for drug possession, while the rest were categorized under “drug dealing.”<sup>141</sup>

**Figure 4. Number of Drug Cases Filed by U.S. Attorneys**  
(FY1989-FY2013)



**Source:** CRS compilation and presentation of data from U.S. Attorneys’ Annual Statistical Reports, FY1989-FY2013, <http://www.justice.gov/usao/resources/reports/>.

## Conclusion

U.S. federal drug enforcement policies will continue to generate debates among policy makers, law enforcement officials, scholars, and the public. Even prior to the federal government’s move in 1970 to criminalize the manufacture, distribution, dispensation, and possession of controlled substances,<sup>142</sup> there were significant discussions over the morality and efficacy of criminal drug enforcement. As discussed in this report, federal law enforcement has generally not targeted individuals for drug possession (as state and local law enforcement have), but rather has aimed to disrupt and dismantle organizations involved in illicit drug trafficking.

Drug trends will evolve along with law enforcement response to drug crimes, but the same fundamental issues will likely continue to confront lawmakers. These issues include the social impact of the criminalization of drugs and federal involvement in domestic drug control. In the

<sup>139</sup> Ibid, p. 57.

<sup>140</sup> Not including the 2,841 Organized Crime Drug Enforcement Task Force cases.

<sup>141</sup> Ibid.

<sup>142</sup> 21 U.S.C. §812 and §841.

coming years, Congress may opt to address current drug uses, including prescription drug and heroin abuse, synthetic drugs, and state legalization of marijuana, through changes to the Controlled Substances Act or other legislative means.

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