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Sec. 207. (a) The State educational agency shall use that portion of its allotment that is not distributed to local educational agencies or used for State administration for State projects under this section.

(b) Funds under this section shall be used to--

(1) provide inservice training for teachers and schools administrators relating to--

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) Develop, disseminate, and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol abuse;

(3) support State activities designed to enhance the involvement of parents in preventing drug and alcohol use among students, through such activities as educating parents about the symptoms and effects of drug use;

(4) establish cooperative programs between the schools

and law enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources;

(5) collect and disseminate information about drug and alcohol use by students;

(6) provide technical assistance to local educational agencies under this Act; or

(7) support any other State project, consistent with the purposes of this Act, that the State deems necessary to achieve and maintain a drug-free environment that is conducive with learning in the elementary and secondary schools of that State.

LOCAL PROJECTS

Sec. 208. (a) To apply for an award under this Act, a local educational agency shall submit to the State educational agency a plan which describes how the local educational agency will achieve and maintain drug-free elementary and secondary schools. Each plan must be for a period of three years. In addition, the plan must describe for grades kindergarten through 12--

(1) the extent and nature of the current drug and alcohol problem in the schools of the local educational agency, including detailed information which shows--

(A) the number or percentage of students who use drugs or alcohol;

(B) the grade level of those students;

(C) the type of drugs they use; and

(D) how the local educational agency obtained this information;

(2) the local educational agency's drug and alcohol policy, including an explanation of (A) the disciplinary practices and procedures it will strictly enforce to eliminate the sale or use of drugs and alcohol on school premises; and (B) how it will inform students that drug use is both harmful and wrong;

(3) the drug and alcohol prevention curricula, counseling programs, and teaching materials the local educational agency will adopt, including an explanation of why these curricula programs, and materials are appropriate in light of the current drug and alcohol problem in the local educational agency;

(4) the inservice training the local educational agency will provide for teachers and school administrators, including an explanation of why this inservice training is appropriate in light of the current drug and alcohol problem in the local educational agency;

(5) how the local agency's plan was developed and will be implemented with the involvement of local community resources, including parents, law-enforcement agencies, the courts, and drug and alcohol treatment programs;

(6) how the local educational agency will monitor the effectiveness of its plan; and

(7) how the plan, if successful, will be continued after Federal assistance under this Act terminates.

(b)(1) In order to apply for funds under this Act for the second and third year of its plan, a local educational agency shall submit to the State educational agency an annual progress report at the end of the first and second years of its plan, as appropriate. Each annual progress report must describe in detail--

(A) the local educational agency's significant accomplishments under the plan during the preceding year;

(B) the extent to which the original objectives of the plan are being achieved, including a reduction in the number of students who use drugs; and

(C) any modifications of the plan that are appropriate.

(2) No local educational agency may receive funds under this Act for the second or third year of its plan unless its annual progress report shows that the local educational agency is making reasonable progress towards accomplishing the purposes of this Act.

(3) At the end of the third year of its plan, the local educational agency shall submit to the State educational agency a final report which assesses the effectiveness of the three-year plan in meeting its objectives. Each final report must contain information which indicates the extent to which the

plan has succeeded in achieving and maintaining schools that are drug-free.

(c) A local educational agency shall use funds under this section, in accordance with its plan, to--

(1) provide inservice training for teachers and school administrators relating to--

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) support increased security measures in schools;

(3) develop and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(4) involve parents, teachers, and school administrators in preventing drug and alcohol use among students, through such activities as educating those parents, teachers, school administrators about the symptoms and effects of drug use;

(5) establish cooperative programs between local law-enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources; or

(6) any other local project consistent with the purpose of this Act, that the local educational agency deems necessary to achieve and maintain a drug-free environment that is conducive to learning in its elementary and secondary schools.

(d) The Federal share of the cost of a local project under this Act may not exceed 67 per centum.

PARTICIPATION OF PRIVATE SCHOOL TEACHERS, SCHOOL
ADMINISTRATORS, AND STUDENTS

Sec. 209. (a)(1) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools in the State, the State educational agency shall ensure equitable participation in the purposes and benefits of State projects under section 7 for teachers, school administrators, and students in such schools.

(2) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools located in the school district of a local educational agency, that local educational agency shall ensure equitable participation in the purposes and benefits of local projects under section 8 for teachers, school administrators, and students in such schools.

(b) To satisfy the requirements of subsection (a), a State educational agency or a local educational agency shall--

(1) consult with appropriate private nonprofit school representatives during the design and development of the project to determine which schools desire to participate in the project

and the needs of the teachers, school administrators, and students in those participating schools, and

(2) then provide, as appropriate, benefits authorized by this Act for teachers, school administrators, and students in such schools.

(c) No funds under this Act may be used--

(1) for any religious worship, proselytization, or activity of a school or department of divinity, or

(2) to provide or improve any program of religious instruction.

NATIONAL PROGRAMS

Sec. 210. (a) The Secretary shall use funds reserved under section 5(a) to carry out national programs designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this section with the Secretary of Health and Human Services.

(b) The Secretary shall use funds under this section to--

(1) collect and disseminate information about drug and alcohol use among students in elementary and secondary schools;

(2) collect and disseminate information on effective curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(3) conduct research on the effects of drug and alcohol use on elementary and secondary education;

(4) conduct workshops and seminars to encourage greater cooperation between schools and the community, including parents, law-enforcement agencies, the courts, and social service agencies; or

(5) carry out any other national level project or activity, consistent with the purpose of this Act, that the Secretary deems necessary to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools.

DRUG TESTING IN EDUCATIONAL INSTITUTIONS

Sec. 211. (a) It shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

(b) It shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

(c) It shall not be unlawful under federal law for an

educational institution to refuse enrollment to applicants for admission who use illegal drugs.

(d) It shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who use illegal drugs whether or not committed at the educational institution.

USE OF FUNDS

Sec. 212. Federal funds made available to a State or local educational agency under this Act shall be used to supplement and, to the extent practicable, increase the amount of non-Federal funds that would, in the absence of such Federal funds, be made available for the purposes of this ACT, and in no case to supplant such non-Federal funds.

CONFORMING AMENDMENTS

Sec. 213 Section 583(b) of Education Consolidation and Improvement Act (20 U.S.C. 3851(b)) is amended by--

- (1) inserting an "and" at the end of paragraph (2);
- (2) striking out paragraph (3); and
- (3) by redesignating paragraph (4) as paragraph (3).

DEFINITIONS

Sec. 214. The definitions of terms used in this Act shall be the same definitions given those terms under section 595 of the Education Consolidation and Improvement Act (20 U.S.C. 3875).

EFFECTIVE DATE

Sec. 215. The provisions of this Act shall take effect upon enactment.

DRUG FREE SCHOOLS ACT OF 1986 (THE ZERO-TOLERANCE ACT)

Section-by-Section Analysis

The bill, the Drug-Free Schools Act of 1986 (The Zero Tolerance Act) ("Act") would authorize a new State-administered grant program to assist State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools. The bill would also make clear that federal law would not bar an educational institution from initiating a program of drug testing. The major provisions of the Act are explained in the following section-by-section analysis.

Section 202 Section 202 of the Act would contain a statement of Congressional findings.

Section 203 Section 203 of the Act would state the purpose of the Act as assisting State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools. To accomplish this purpose the bill would authorize national, State and local programs.

Section 204 Section 204 of the Act would authorize the appropriation of \$100 million for the fiscal year 1987 and such sums as may be necessary thereafter through fiscal year 1991 to carry out the Act.

Section 205 Section 205 of the Act would prescribe how funds under the Act for each fiscal year would be allotted. First, the Secretary would be authorized to reserve 20 per centum of the amount appropriated for national programs. From the remainder the Secretary would be authorized to reserve up to one per centum for programs under the Act in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Finally, the Secretary would be required to allot to each State an amount which bears the same ratio to the remainder of the funds as the number of children aged five to seventeen, inclusive, in a State bears to the number of such children in all States. Under certain circumstances, section four would also authorize the Secretary to make appropriate reallocations of funds among the States.

Section 206 Section 206 of the Act describes the three-year State application a State would be required to submit to the Secretary in order to receive funds under the Act. Among other things, the State would be required to assure the Secretary that the State educational agency will be responsible for the administration of the State's program; that at least 90 per centum of the State's allotment will be distributed to local

educational agencies on a competitive basis; and that no more than 5 per centum of the State's total allotment under section 5(c) will be used for State administration. The State would also be required to include in its State administration. The State would also be required to include in its State applications description of its priorities and goals for using funds under this Act; how the State has taken into account the needs of public and private elementary and secondary schools which desire to participate in the program; the procedures and criteria the State will use to select local projects; how parents, local educational agencies, private nonprofit schools, the law enforcement community, State agencies engaged in preventing drug abuse, and drug and alcohol treatment programs have been involved in the development of the State's priorities and goals; the projects the State will carry out; and the State's procedures for ensuring equitable participation for teachers, school administrators, and students in private nonprofit schools. Each State application after the first would contain information on the State and local projects carried out under the preceding application, including data on the number and characteristics of the participants and an assessment of the extent to which those projects accomplished their goals.

Section 207. Section 207 of the Act would authorize State projects, including: inservice training for teachers and school administrators relating to their authority to detect and discipline students using drugs and alcohol, the causes of drug and alcohol use by students, the identification of such students, and how to instruct or counsel them effectively; the development and implementation of curricula and teaching materials to prevent drug and alcohol use; educating parents about the symptoms and effects of drug use; cooperative programs between schools and law enforcement agencies and drug and alcohol treatment programs; and collection and dissemination of information about drug and alcohol use by students.

Section 208. Section 208 of the Act would authorize local projects. To receive funds under the Act, a local educational agency would be required to submit to the State educational agency a three-year plan for achieving and maintaining drug-free elementary and secondary schools. The plan must describe in detail the extent and nature of the current drug and alcohol problem in the applicant's schools; the applicant's drug and alcohol policy, including the disciplinary practices and procedures it will employ; the curricula and teaching materials it will adopt and the inservice training for teachers and schools administrators it will provide; how the plan was developed and will be implemented with the involvement of local community resources, including parents; and how the plan, if successful, will be continued after Federal assistance terminates. In addition, a local educational agency must submit to the State educational agency an annual progress report at the end of the first and second years of its plan, and, at the end of the third year of its plan, a final report which assesses the effectiveness

of the plan in achieving and maintaining schools that are drug-free. Funding for the second or third year of a local educational agencies plan would be contingent upon whether the plan is accomplishing the purposes of the Act. Local educational agencies would be authorized to carry out most of the same activities authorized for State projects; while local educational agencies would not be specifically authorized to increase security in their schools. Finally, Section 208 would establish the Federal share of the cost of local projects as no more than 67 per centum.

Section 209. Section 209 of the Act would require State and local educational agencies to ensure equitable participation in the purposes and benefits of their respective projects for teachers, school administrators, and students in participating private nonprofit elementary and secondary schools, consistent with the enrollment in such schools. State and local educational agencies would be required to consult with appropriate representatives of private nonprofit schools during the design and development of projects under the Act to determine which schools desire to participate and the needs of their teachers, school administrators, and students. Funds under this Act could not be used for religious worship or to provide or improve any program of religious instruction.

Section 210. Section 210 of the Act would authorize the Secretary to carry out national programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions and to coordinate activities with the Secretary of Health and Human Services, when appropriate. The Secretary would be authorized to collect and disseminate information about drug and alcohol use among students, as well as information on effective curricula, counseling programs, and teaching materials; consult research on the effects of drug and alcohol use on elementary and secondary education; and conduct workshops and seminars to encourage greater cooperation between schools and the community, including parents, law-enforcement agencies, the courts, and social service agencies.

Section 211. Section 211, paragraph (a), specifies that it shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

Paragraph (b) provides that it shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

Paragraph (c) authorizes educational institutions under federal law to refuse enrollment to applicants for admission who use illegal drugs.

Paragraph (d) provides that it shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who uses illegal drugs (whether or not committed at the educational institution) or who refuses to participate in drug testing.

Section 212. Section 212 of the Act would require that State and local educational agencies use funds under the Act to supplement and, to the extent practicable, increase the amount of non-Federal funds that would, in the absence of Federal funds, be made available for the purposes of the Act, and not to supplant such non-Federal funds.

Section 213. Section 213 of the Act would delete as unnecessary the reference to alcohol and drug abuse education activities among the mandated priorities of the Secretary's Discretionary Program under Chapter 2 of the Education Consolidation and Improvement Act ("ECIA").

Section 214. Section 214 of the Act would incorporate the definitions of pertinent terms under Chapter 2 of the ECIA.

Section 215. Section 215 of the Act would provide for an effective date upon enactment.

DRAFT

TITLE III

SUBSTANCE ABUSE SERVICES AMENDMENTS 1986

A BILL

To extend and make improvements in substance abuse services programs, and for other purposes.

Be it enacted by the Senate and House of
Representatives of the United States of America in Congress
assembled,

SHORT TITLE AND REFERENCES IN ACT

SEC. 301. (a) This Act may be cited as the "Substance Abuse Services Amendments of 1986".

(b) The amendments in this Act apply to the Public Health Service Act.

EXTENSION OF BLOCK GRANT

SEC. 302. Section 1911 amended--

(1) by striking out "and" after "1986,", and

(2) by inserting before the period the following:

" , \$____, ___, ___ for fiscal year 1988, \$____, ___, ___
for the fiscal year 1989, \$____, ___, ___ for fiscal
year 1990, \$____, ___, ___ for fiscal year 1991, and
\$____, ___, ___ for fiscal year 1992".

ELIMINATION OF CERTAIN BLOCK GRANT EARMARKS

SEC. 303. (a) Section 1916(c) is amended by striking out paragraphs (2), (7), (8), (14), and (15).

(b) Subsections (g) and (h) of section 1916 are repealed.

(c) The second sentence of section 1917(a)(1) is amended--

(1) by striking out clause (C) through the comma, and

(2) by redesignating clause (D) as (C).

(d) The amendments made by the preceding subsections apply to appropriations for fiscal year 1988 and succeeding fiscal years.

DRAFT

This document was created in the DPC deliberative process and may not be circulated, disseminated or released without the approval of the DPC.

9-4-86 4:00 p.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

WHEREAS drug use is having serious adverse effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year;

WHEREAS the Federal Government, as an employer, is concerned with the well being of its employees, the successful accomplishment of agency missions and the need to maintain employee productivity;

WHEREAS the Federal Government as the largest employer in the nation can, and should show the way towards achieving drug free workplaces through a program designed to offer drug users a helping hand and, at the same time, getting the message to drug users and potential drug users that drug use will not be tolerated in the federal workplace;

WHEREAS the profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime and otherwise contribute to the breakdown of our society and otherwise increase criminal activity;

WHEREAS the use of illegal drugs, on or off duty, by federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust given to such employees as servants of the public;

WHEREAS federal employees who use illegal drugs, on or off duty, are less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

WHEREAS the use of illegal drugs, on or off duty, by federal employees impairs the efficiency of federal departments and agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively;

WHEREAS the use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS the use of illegal drugs, on or off duty, by federal employees in certain positions evidences less than the complete reliability, stability and good judgment that is consistent with access to sensitive information, and creates the possibility of coercion, influence, and irresponsible action under pressure which may pose a serious risk to national security, the public safety, and the effective enforcement of the law;

WHEREAS federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves; and

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, and to protect the privacy of federal employees:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Section 3301(2) of Title 5 of the United States Code; Section 7301 of Title 5 of the United States Code, Section 290ee-1 of Title 42 United States Code; and as President of the United States, and deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the federal service, it is hereby ordered as follows:

Section 1: *Drug Free Workplace*

- (a) Federal employees are required to refrain from the use of illegal drugs.
- (b) The use of illegal drugs by federal employees, whether on duty or off duty, is contrary to the efficiency of the service.
- (c) Persons who use illegal drugs are not suitable for federal employment.

Section 2: *Agency Responsibilities*

- (a) The head of each agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:
 - (i) a statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

- (ii) employee assistance programs emphasizing high level direction, education, counseling, referral to rehabilitation and coordination with available community resources;
- (iii) supervisory training to assist in identifying and addressing drug abuse in the workplace;
- (iv) provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;
- (v) provision for identifying users in the workplace, including testing on a controlled and carefully monitored basis in accordance with this order.

Section 3: *Drug Testing Programs*

- (a) The head of each agency shall establish and conduct a program to test for the use of illegal drugs by any employee in or applicant to a sensitive position. The extent and criteria for such testing shall be determined by the agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties, the efficient use of agency resources, and a determination by the agency head that the failure of an employee to discharge adequately his or her position might reasonably be deemed likely to endanger public safety or national security.
- (b) The head of each agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each agency is authorized to test an employee for illegal drug use under the following circumstances:
 - (i) When there is a reasonable suspicion that any employee uses illegal drugs;
 - (ii) In an examination authorized by the agency regarding an accident or unsafe practice; or
 - (iii) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

Section 4: Drug Testing Procedures

- (a) Agencies shall notify employees 60 days prior to the implementation of a drug testing program pursuant to this order that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and the procedures for obtaining such assistance. Drug testing programs already ongoing in agencies are exempted from the 60 day notice requirement. Agencies may take action under Section 3(a) of this order without reference to the 60 day notice period.
- (b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.
- (c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and once promulgated, agencies shall conduct drug testing programs in accordance with these guidelines.

Section 5. Personnel Actions

- (a) Agencies shall refer all employees who are found to use illegal drugs to their Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.
- (b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, *provided* that such action is not required for an employee who:
 - (i) voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order prior to being identified through other means;

- (ii) obtains counseling or rehabilitation through an Employee Assistance Program; and
 - (iii) thereafter refrains from using illegal drugs.
- (c) Agencies must not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, an agency head may, in his discretion, allow an employee to return to duty in a sensitive position if it is determined that such would not pose a danger to public health or safety or the national security.
- (d) Agencies shall initiate action to remove from the service or transfer to a non-sensitive position any employee in a sensitive position who is found to use illegal drugs and:
 - (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (ii) does not thereafter refrain from using illegal drugs.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing the adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.
- (f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, conviction of a criminal offense, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.
- (g) Any action to discipline an employee who is using illegal drugs, (including removal from the service, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

- (h) Drug testing shall not be conducted pursuant to this order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of title 21, United States Code, received as a result of the operation of drug testing programs established pursuant to this order.

Section 6: *Coordination of Agency Programs*

- (a) The Director of the Office of Personnel Management shall:

- (i) Issue government-wide guidance to agencies on the implementation of the terms of this order.
- (ii) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program.
- (iii) Develop a model Employee Assistance Program for Federal agencies and assist them in putting strong programs in place.
- (iv) In consultation with the Secretary of Health and Human Services develop and improve training programs for Federal supervisors and managers on illegal drug use.
- (v) In cooperation with the Secretary of Health and Human Services and agency heads, mount an intensive drug awareness campaign throughout the Federal workforce.

- (b) The Attorney General shall render legal advice regarding the implementation of this order and must be consulted with regard to all guidelines, regulations and policies proposed to be adopted pursuant to this order.

Section 7: *Definitions*

- (a) This order applies to all agencies of the Executive Branch.
- (b) For the purposes of this order, the term "agency" means an Executive agency, as defined in 5 U.S.C. § 105; the Uniformed Services as defined in 5 U.S.C. § 2101(3), (but excluding the armed forces as defined by 5 U.S.C. §2101(2)); the United States Postal Service; or any employing unit or authority of the Federal government,

other than those of the judicial and legislative branches.

- (c) For the purpose of this order, the term "illegal drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- (d) For the purpose of this order, the term "employee in a sensitive position" refers to:
 - (i) an employee in a position which an agency has designated Special Sensitive, Critical-Sensitive or Noncritical-sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position which an agency head has designated or in the future designates as sensitive in accordance with Executive Order 10450 of April 27, 1953 as amended;
 - (ii) an employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order 12356 of April 2, 1982;
 - (iii) individuals serving under Presidential appointments;
 - (iv) members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code;
 - (v) law enforcement officers as defined in 5 U.S.C. § 8331(20);
 - (vi) individuals employed under Schedule C in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577;
 - (vii) members of the uniformed services as defined in 5 U.S.C. § 2101(3);
 - (viii) air traffic controllers as defined in 5 U.S.C. § 2109; and

- (ix) other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.
- (e) For the purpose of this order the term "employee" means all persons described in 5 U.S.C. § 2105. Additionally, employees of the United States Postal Service and the Postal Rate Commission are employees for the purpose of this order.
- (f) For the purposes of this order, the term "Employee Assistance Program" means agency-based counseling programs which offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs which affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

Section 8: *Effective Date*

This Order shall become effective on the date of its issuance.

RONALD REAGAN

THE WHITE HOUSE

September __, 1986



September 5, 1986

MEMORANDUM FOR : Richard K. Willard
Chairman, Legislative Review Task Force
Drug Use Prevention Work Group

FROM: Michael E. Baroody *MEB/AC*

SUBJECT: Comments on Revised Executive Order and
Bill on Workplace Drug Use

We have reviewed the most recent draft Order and bill which you have forwarded to Carlton Turner for DPC consideration next week.

In general, we find that both remain ambivalent concerning rehabilitation. It remains our view that rehabilitation should always be the first response to a finding of drug use. *Why*

While the revised Order is an improvement over prior drafts, we believe it continues to have some of the problems pointed out in memoranda from George Salem to you of August 22 and August 29, particularly in connection with Civil Service Reform Act and Rehabilitation Act requirements. In the present draft, those problems present themselves in section 5(b), which requires agencies to initiate disciplinary action against any employee who is found to use illegal drugs (other than those voluntarily identifying themselves as users, in which case disciplinary action appears to at least be permitted). By covering all employees, and not just those in positions identified as most clearly having a nexus between any drug use and job performance, this provision appears to run directly contrary to the Civil Service Reform Act. By not allowing even those drug using employees who can establish that they are addicted to drugs at least one opportunity to rehabilitate themselves without being subject to disciplinary action, this provision appears to run directly contrary to the Rehabilitation Act. We believe it would be unfortunate to have the Executive Order challenged on these grounds, and its provisions perhaps enjoined, when there are alternatives available. As noted in Mr. Salem's memoranda, we also recommend that the Order specifically recognize existing collective bargaining arrangements.

We have a number of questions about the proposed legislation on workplace drug use. With respect to Federal employees, the bill's approach stands in sharp contrast to that of the proposed Executive order in that it would, among other things,

Some about this
view, therefore
simultaneous
legislative
approach
made.

Circular argument, The EO is wrong because it encroaches on current legislation, and fixing the current law is wrong because it

eliminate Civil Service nexus and Rehabilitation Act protections. The bill is also vague: in not defining who will decide whether an employee testing program is to be carried out; the criteria therefore; the effect of testing on criminal referral provisions; the applicable procedures for challenging test results; and the applicable procedures for disciplinary actions.

not pass
in legislation
Admiral
matter

With respect to private sector employment, we are not aware of any significant need for clarification of Federal law with respect to drug testing in the private sector workplace. Moreover, we are concerned about the potential conflict between the bill's provisions and a host of labor and anti-discrimination laws, including the Taft-Hartley Act, Title VII of the Civil Rights Act, and the Occupational Safety and Health Act among many others. It could be argued, for example, that the bill would authorize an employer to discriminatorily discipline employees using illegal drugs in a manner that would otherwise be prohibited by some of these laws. Should the DPC decide to move forward with legislation concerning drug use in the workplace, we will be prepared to provide language to address this concern.

cc: Peter J. Wallison
Carlton Turner

Hopefully - this is correct - This is the why of the legislation.

This does not appear to be constructive comment.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

320

September 8, 1986

MEMORANDUM FOR: ED MEESE
JIM MILLER
AL KINGON
CARLTON TURNER
WILL BALL

FROM: JOE WRIGHT

SUBJECT: Follow-up on DPC Meeting -- Administration's
Legislative Drug Proposal

We have now begun legislative clearance of the President's Drug Abuse legislative proposals following the Domestic Policy Council Meeting this afternoon. We are following these procedures:

- . The Department of Justice (Richard Willard) is completing their final revisions to Title I and will submit them to OMB by 6:00 PM this afternoon.
- . OMB (Jim Murr) will transmit the legislative package to the interested agencies for a clearance with an expedited 24-hour turnaround. All serious concerns/comments will have to be into OMB by 4:30 PM Tuesday.
- . OMB will review all the comments and have a summary analysis ready by 9:00 AM Wednesday where we will hold a meeting in Room 248 OEOB to review with the EOP offices and the Department of Justice. If problems/conflicts can be easily resolved within this group -- they will be. If not, these will be presented to Ed Meese at the 10:00 AM Wednesday Drug Policy Board Meeting for a possible resolution. If not, then the agency representatives will be brought together at 11:00 AM Wednesday to get resolution prior to the 2:00 PM DPC Meeting.
- . The Department of Justice (Richard Willard) will be responsible for preparing the legislative proposal itself and the fact sheets that will be used to explain the proposal -- these will then go through OMB who will submit a copy to the Office of Drug Abuse Policy (Carlton Turner) for final comments.
- . OMB will collect agency budget amendments with reprogramming requests and offsets for submission with the Administration bill. If agencies provide no proposed offsets, OMB will do so.

- . OMB (Debbie Steelman) will prepare a draft transmittal letter which will be submitted to the Department of Justice (Richard Willard) and the Office of Drug Abuse Policy (Carlton Turner) for comments prior to going to David Chew for distribution in the EOP.
- . The Executive Order will go through the same rapid clearance process as the legislation and is being sent out to the agencies this afternoon. It has not yet been decided whether or not the Executive Order will be released on the same day as the legislation -- perhaps after the President's speech on Monday - Wednesday.
- . All proposals are now considered to have gone through the DPC Working Group and the Drug Policy Board and are in final clearance. Any additional proposals not in the process will probably be too late.

The Administration's position on the House legislation is going through final clearance this afternoon and will be ready to transmit to the Hill tomorrow morning.

We will be sending out information to each of you as it is received during this highly accelerated clearance process. Attached is the CBO analysis of the recent House legislation for your information.

Attachment

cc: Debbie Steelman
Carol Crawford
Larry Harlow
Jim Murr
Dick Willard
Ralph Bledsoe ✓

Actions

DRUG-FREE FEDERAL WORKPLACE

1. President - Executive Order (Signed 9/15/86)
2. President - Letter to all agency heads (NLT 9/25/86)
3. President - Letter to all Federal employees (NLT 9/25/86)
4. President - Legislation re: "handicapping condition (forwarded 9/15/86)
5. OPM - Revise SF 85 & 86 for applicants
6. OPM - Issue guidance on drug testing & rehabilitation
7. HHS/OPM - Ensure most accurate and effective strategies and materials for Federal prevention, EAP's, etc.

DRUG-FREE CONTRACTOR WORKPLACES

1. DOJ TF - Evaluate options
2. All agencies - Encourage drug-free contractor workplaces

DRUG-FREE PRIVATE SECTOR, STATE AND LOCAL WORKPLACES

1. WH - Presidential letters to state and local officials
(letters completed to governors and state legislators)
2. WH PSI - Presidential letters to Fortune 500 CEO's
3. Labor - Presidential letter to labor leaders
4. Selected Cabinet Members - letters to state and local counterparts
5. HHS - Toll-free "drug-free workplace" hotline
6. Labor - Booklet "Workplaces Without Drugs"
7. Labor - Onsite assistance team

DRUG-FREE SCHOOLS

1. President - "Zero Tolerance Act" (forwarded 9/15/86)
2. Education - letter to state boards of education
3. Education - Booklet "Schools Without Drugs" (Completed)
4. Education - Encourage drug abuse education
5. Education - Encourage training of student leaders
6. Education/DOD - Model prevention program for DOD schools
7. Education/Justice - Local cooperation re: Schoolyard Rule
8. Education/Justice - Extension of Schoolyard Rule to college campuses

DRUG TREATMENT AND RESEARCH

1. President - Block Grants: extend & remove earmarks
(forwarded 9/15/86)
2. HHS - \$100 million for emergency treatment expansion
3. HHS - Community Systems Development Projects
4. HHS - Enhance epidemiology and surveillance
5. HHS - Research re: drug abuse prevention, intervention &
treatment
6. HHS - Research re: illegal drug use detection
7. HHS - National accredited system for laboratory testing

AWARENESS AND PREVENTION

1. President - Nationally-televised speech with First Lady (completed 9/14/86)
2. WH PSI - Presidential letter to CEO's and selected foundations (incorporate with workplace letter)
3. WH/ACTION - WH-sponsored briefings
4. WH/ACTION - Presidential Honor Roll
5. WH/Education - National Drug Prevention Contest
6. All Agencies - Encourage use of "Just Say No"
7. WH/ACTION - Media campaign
8. WH - Private Sector Initiative
9. WH - Interagency coordination
10. HHS - Center for Substance Abuse Prevention w/Helpline
11. WH/ACTION - Speakers' Bureau
12. WH/ACTION/HHS - Annual public affairs symposium
13. ACTION/DOJ - Remove statutory impediments to government/private sector programs (forwarded 9/15/86)

DRUG-FREE PUBLIC HOUSING

1. President - Memo to HUD Secretary (c/a 9/25/86)
2. HUD/DOJ - Target major drug trafficking problems
3. HUD/HHS/Labor - Disseminate resource guide
4. HUD/HHS - Drug abuse prevention materials
5. HUD/Labor - Job Training Partnership opportunities
6. HUD - Encourage parent groups & "Just Say No" clubs

Implementation
Memos

WHITE HOUSE STAFFING MEMORANDUMDATE: 9/19/86 ACTION/CONCURRENCE/COMMENT DUE BY: 9/23/86SUBJECT: PRESIDENTIAL MEMORANDUM TO HEADS OF DEPARTMENTS AND AGENCIES RE DRUGS

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	MILLER - ADMIN.	☒	☐
REGAN	☐	☒	POINDEXTER	☐	☐
MILLER - OMB	☒	☐	RYAN	☐	☐
BALL	☒	☐	SPEAKES	☐	☒
BARBOUR	☐	☐	SPRINKEL	☐	☐
BUCHANAN	☒	☐	SVAHN	☒	☐
CHEW	☐	☒	THOMAS	☒	☐
DANIELS	☒	☐	TUTTLE	☐	☐
HENKEL	☐	☐	WALLISON	☒	☐
KING		☐	CLERK	☐	☒
KINGON		☒	TURNER	☒	☐
MASENG	☒	☐	COURTEMANCHE	☒	☐

REMARKS: Please provide any comments/recommendations on the attached directly to Ralph Bledsoe (x6640) by close of business Tuesday, September 23rd, with an info copy to my office. Thank you.

RESPONSE: _____

David L. Chew
Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: ALFRED H. KINGON 
SUBJECT: Memorandum to Heads of Executive Departments
and Agencies Regarding a Drug-Free America

As a result of the various policies and programs you have approved concerning the Administration's drug abuse program, a series of memoranda to different people are being prepared for your signature. This is one of them and it goes to the heads of all departments and agencies concerning a drug-free workplace, helping employees to obtain assistance when needed, and working with the private sector and state and local governments.

I recommend that you sign this memo.

Attachment

THE WHITE HOUSE
WASHINGTON

DRAFT

September 19, 1986

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Initiatives for a Drug-Free America

As you know, I have approved several major new initiatives to achieve a drug-free America. These require the support and commitment of department and agency heads and senior staff.

One of our goals is a drug-free workplace, both for the Federal government and for private companies that work with the government. To achieve that goal, all Federal department and agency heads should:

- o Expand drug abuse awareness and prevention programs for the Federal workforce. The aim is to:
 - Increase each employee's awareness of the health, economic, and social costs of illegal drug use;
 - Ensure that each employee is aware that unauthorized possession of a controlled substance is a crime; and
 - Increase each employee's awareness of what can be done to identify and combat illegal drug use, not only in the workplace but also in homes and communities.
- o Develop a plan for achieving the goal of a drug-free workplace, in accordance with Executive Order 12564, which I signed on September 15, 1986.
- o Reach beyond the Federal workforce by developing and promulgating guidance to government contractors concerning our philosophy and procedures for achieving a drug-free workplace.
- o Send letters to the state and local leaders of your counterpart organizations encouraging them to purge drug abuse from their workplaces.

THE WHITE HOUSE

WASHINGTON

DRAFT

A second major goal is to increase public awareness and prevention of drug abuse. To reach that goal, you should:

- o Broaden your Employee Assistance Program to include drug prevention and education for employees and their families.
- o Provide incentives and recognition for your agency employees who work with the private sector in developing new and innovative awareness and prevention programs.
- o Pursue opportunities to increase drug abuse prevention activities among the private sector groups with which your agency works, through workshops, meetings, special events and the distribution of educational material.

You should proceed on these initiatives as soon as possible. The Departments of Justice and Health and Human Services and the Office of Personnel Management will be prepared to provide assistance as needed. Please report progress on these important initiatives to me through the Domestic Policy Council.

9/19/86 - 3:00 p.m.

DRUG POLICY IMPLEMENTING MEMOS

	<u>ADDRESSEE</u>	<u>FROM</u>	<u>SUBJECT</u>
1.	Working Group	CT	Contractor Guidance
2.	All Agency Heads	RR	Government Contractors; State & Local Governments; Information to Americans; EAP; Incentive Programs; Workforce Awareness; Constituency Groups; Executive Order
3.	Director, PSI	DTR	Letter to CEO's
4.	Labor	RR	Labor Leaders; <u>Workplaces Without Drugs</u> ; Onsite Assistance Team
5.	HHS	RR	"Helpline"; Center for Substance Abuse; Speakers Bureau; \$100 Million Expansion; \$70 Million Community Systems Development; ADAMHA Quotas; \$3 Million Epidemiology; \$33 Million Research; \$15 Million Center Budget; Drug Abuse Prevention Materials; Agency EAP's; Guidelines on Testing & Rehabilitation
6.	Education	RR	Letter to State Boards; Advocate Role; Drug Abuse Education; Essay Contest; Model School Program; Schoolyard Law Enforcement; Local School Law Enforcement Cooperation
7.	Defense	RR	Model School Program
8.	Justice	RR	Schoolyard Law Enforcement; Local School Law Enforcement Cooperation
9.	ACTION	RR	Oversight Mechanism; Encourage Corporation & Service Organizations; Media Advisory Board; Media Campaign
10.	Executive Branch Employees	RR	Set Example; Help Fellow Workers
11.	OPM	RR	EAP; Incentive & Recognition; Oversight Mechanism; Encourage Corporation & Service Organizations; Media Advisory Board
12.	OMB	RR	Private Sector Donations; "Helpline"; Center for Substance Abuse; Speakers Bureau; \$100 Million Expansion; \$70 Million Community Systems Development; ADAMHA Quotas; \$3 Million Epidemiology; \$33 Million Research; \$15 Million Center Budget
13.	HUD	RR	Drug-Free Housing

THE WHITE HOUSE

WASHINGTON

September 18, 1986

MEMORANDUM FOR THE WORKING GROUP ON ~~DRUG ABUSE POLICY~~

FROM: CARLTON TURNER, ~~Chairman~~

SUBJECT: Working Group Meeting on September 22, 1986

There will be a meeting of the Working Group on Drug Abuse Policy on Monday, September 22, 1986 at 2:00 p.m. in Room 208. The following agenda items will be covered:

1. Status of Legislation - Richard Willard, Debbie Steelman
2. Status of Executive Order - Richard Willard
3. Review of Other Initiatives - Carlton Turner
4. Remaining Task
 - Steps Regarding Government Contractors
5. Other Business

THE WHITE HOUSE
WASHINGTON
September 18, 1986

DRAFT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: The Administration's Drug Abuse Program

As you know, I have approved several major new initiatives to achieve a drug-free America. These initiatives require the support and commitment of department and agency heads and senior staff.

One of our goals is a drug-free workplace, both for the Federal government and for private companies that work with the government. To achieve that goal, all Federal department and agency heads should:

- o Expand drug abuse awareness and prevention programs for the Federal workforce. The aim is to:
 - (1) Increase each employee's awareness of the health, economic, and social costs of illegal drug use;
 - (2) Ensure that each employee is aware that unauthorized possession of a controlled substance is a crime; and
 - (3) Increase each employee's awareness of what can be done to identify and combat illegal drug use, not only in the workplace but also in homes and communities.
- o Develop a plan for achieving the goal of a drug-free workplace, in accordance with Executive Order 12564, which I signed on September 15, 1986. Each plan should set guidelines for identifying users of illegal drugs and managing their treatment and rehabilitation.
- o To reach beyond the Federal workforce, develop and promulgate guidance to all government contractors concerning our philosophy and procedures for achieving a drug-free workplace. You should also send letters to the state and local leaders of your counterpart organizations encouraging them to purge drug abuse from their workplaces.

THE WHITE HOUSE

WASHINGTON

DRAFT

A second major goal is to increase public awareness and prevention of drug abuse. To reach that goal, you should:

- o Encourage your Employee Assistance Program to be broadened to include drug prevention and education for employees, their families and communities.
- o Develop incentive and recognition programs for your agency employees who work with the private sector in developing new and innovative programs.
- o Stimulate the development of community-based drug prevention programs by pursuing opportunities to increase drug abuse prevention activities among the private sector groups with which your agency works, through workshops, meetings, special events and the distribution of educational material.

You should proceed on these initiatives as soon as possible. If assistance is needed, the Departments of Justice and Health and Human Services and the Office of Personnel Management will be prepared to provide it.

The Administration and all Americans need your help to make our drug abuse program a success. Please forward your action plans on these important initiatives to me through the Domestic Policy Council.

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR THE DIRECTOR OF PRIVATE SECTOR INITIATIVES

FROM: DONALD T. REGAN

SUBJECT: The President's Drug Abuse Program

As you know, the President has approved major new initiatives designed to achieve a drug-free America. Two of these are:

- o mobilize management and labor leaders in the private sector to fight drug abuse in the workplace, and
- o encourage all citizens and private sector groups to join the First Lady's drug abuse prevention awareness campaign.

Consistent with these, please draft a letter to chief executive officers of Fortune 500 companies for the President's signature. The letter should outline the philosophy and goals of our national crusade against drug abuse, acknowledge the many management efforts already underway, and emphasize the important role corporations can assume in their community. These leaders should be asked to establish or continue company policies aimed at a drug-free workplace, and to support national and community efforts to wipe out illegal drug use.

You should coordinate the preparation of the letter with the White House Drug Abuse Policy Office, and work with Carlton Turner in handling follow-up responses. Results should be periodically reported to the President through the Domestic Policy Council.

DRAFT

(4)

September 17, 1986

MEMORANDUM FOR THE SECRETARY OF LABOR

SUBJECT: The Administration's Drug Abuse Program

As you know, I have approved a comprehensive drug abuse program that includes legislative and executive initiatives designed to achieve a drug-free America. One of the principle initiatives in the program is to "mobilize management and labor leaders in the private sector to fight drug abuse in the workplace." I know you have already begun work on this task, and I strongly encourage you to continue your personal efforts in this regard.

Several other steps have been approved which I would like for you to carry out:

- o You should prepare a letter to major labor leaders for my signature, outlining our program's philosophy and goals. The letter should emphasize labor leaders' critical role in protecting the rights of workers, and ask for their action and support in ridding all workplaces of illegal drug use.
- o You should develop and disseminate a "what works" booklet on Workplaces Without Drugs, which would provide reliable and practical information about the problems of illegal drug use in the workplace, and what can be done to stop it. The booklet should include examples of effective programs, a summary of the critical issues, and technical guidance. It should serve as a basic resource guide for labor to use.
- o You should establish and make available a team of experts who could provide, upon request, on-site technical assistance and training to unions and businesses on how to develop or expand programs to remove illegal drugs from the workplace.

I truly appreciate the special attention you have given to the development of our program thus far, and look forward to receiving progress reports on the above initiatives forwarded to me through the Domestic Policy Council.

(5)

DRAFT

September 18, 1986

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: The Administration's Program to Fight Drug Abuse

As you know, I have approved several new initiatives to achieve a drug-free America. This program requires the support and commitment of every department and agency head, but several initiatives require the specific attention of your department.

One of our major goals is to promote drug-free workplaces, in particular by providing accurate and credible information about how drugs can be eliminated from offices, factories and all workplaces. You should:

- o Establish and publicize a toll-free "Drug-Free Workplace Helpline" to answer questions about illegal drugs and how to eliminate their use by workers, and to provide referrals to experts and other resources.
- o In consultation with the Office of Personnel Management, you should ensure that Federal department and agency drug abuse prevention programs are using accurate and credible materials, as well as effective strategies, for preventing illegal drug use in the Federal workplace.
- o Working with OPM, you should also develop and issue guidelines on drug testing and screening, and on rehabilitation programs. These should be consistent both with the philosophy of our overall program and with Executive Order 12564, which I signed on September 15, 1986.

A second major goal is to expand drug treatment and research. To achieve this goal, you should: