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APPROVED
NOV 18 1988

THE WHITE HOUSE
WASHINGTON

*Ceremony + Remarks
Ease Again
Fact Sheet Issued*

November 17, 1988

MR. PRESIDENT:

Attached for your approval is
H.R. 5210, the Anti-Drug Abuse Act
of 1988.

Approval of the bill is recommended
by OMB, other affected agencies,
NSC, and the Offices of Domestic
Affairs, Legislative Affairs,
Cabinet Affairs, and Drug Abuse
Policy. Counsel's Office has no
legal objection.



Rhett Dawson

LAST DAY FOR ACTION: November 18th

Please note: Legislative Affairs
has requested the pen with which you
sign this bill. One is attached for
your convenience.

*Noted
JK*



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

The President has seen

11/18/88

1988 NOV -9 PM 8:09

NOV 9 1988

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5210 - Anti-Drug Abuse Act of 1988
Sponsors - Reps. Foley (D) Washington and
Michel (R) Illinois

Last Day for Action

November 18, 1988 - Friday

Purpose

(1) Strengthens the Nation's anti-drug abuse laws in the following principal areas: criminal justice and law enforcement; interdiction of the entry of illegal drugs into the country; transportation; international cooperation; education; rehabilitation and treatment; drug-free workplaces; drug-free housing; and user accountability; (2) strengthens the laws against child pornography; (3) permits the prosecution of certain corrupt officials under the Federal mail fraud statutes; and (4) makes miscellaneous amendments to criminal and other laws.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Justice	Approval (Signing statement attached)
Department of State	Approval (Signing statement attached)
Department of the Treasury	Approval (Signing statement attached)
Department of Agriculture	Approval (Informally)
Department of Education	Approval
Department of Housing and Urban Development	Approval
Department of the Interior	Approval (Informally)
Department of Labor	Approval (Informally)
Department of Transportation	Approval
Central Intelligence Agency	Approval (Informally)
National Security Council	Approval
Department of Defense	No objection (Informally)

General Services Administration	No objection (Informally)
Veterans Administration	No objection
Office of Personnel Management	No comment (Informally)
Department of Health and Human Services	Defers

Discussion

On October 27, 1986, you approved the Anti-Drug Abuse Act of 1986 (Public Law 99-570). That landmark legislation was based, in large measure, on legislative proposals that you forwarded to Congress in September 1986. Key provisions of the Anti-Drug Abuse Act of 1986: (1) promoted a drug-free environment in the Nation's schools; (2) made improvements in substance abuse programs; (3) strengthened drug interdiction efforts; and (4) enhanced law enforcement capabilities in the fight against illegal drugs.

H.R. 5210, which passed the House by 346-11 and the Senate by voice vote, builds upon the 1986 Act. Its major provisions are described below. A more detailed description of these and other provisions is contained in Attachment "A."

A description of the budget impact of the enrolled bill also follows. Attachment "B" is a summary of the enrolled bill's authorization and appropriations provisions.

Anti-Drug Abuse Amendments

-- Criminal Justice and Law Enforcement

Death Penalty. The enrolled bill would permit the imposition of the death penalty in certain serious drug-related cases in which death results, subject to certain limitations and restrictions (e.g., concerning appeals by financially indigent defendants). The death penalty provisions contain various procedural safeguards designed to ensure that they will withstand judicial review. In particular, the enrolled bill permits the death penalty to be imposed against any person engaged in a "continuing criminal enterprise" or who commits other specified drug crimes and who "intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results." The death penalty could also be imposed for the intentional killing of a law enforcement officer.

Chemical Diversion and Trafficking. The enrolled bill would establish a comprehensive system for keeping track of legitimate chemicals that can be used in the manufacture of illicit drugs. For example, it would require persons engaged in transactions involving these chemicals to keep records of the transactions and make them available upon request to the Justice Department. In

addition, the enrolled bill would make the import and export of specified chemicals a criminal offense, subject to up to ten years imprisonment and a fine, unless the chemicals are intended to be used for a legitimate purpose.

Money Laundering. The enrolled bill would: better facilitate the use of "sting" operations in connection with money laundering transactions; prohibit a financial institution from issuing a cashiers check or similar instrument for over \$3,000 to a person without adequate identification; provide the Treasury Department with broad authority to require information in connection with domestic currency transactions; and enhance the undercover investigative authorities of the Internal Revenue Service. In addition, the President would be required to impose sanctions on countries (i.e., by denying such countries access to the United States' banking system) that are found not to be cooperative in connection with international currency reporting. The President could waive the requirement if he determines that it would be in the national interest to do so.

Civil Penalties. The Department of Justice would be permitted to impose civil penalties of up to \$10,000 against persons found to possess "personal use" (i.e., very small) quantities of illegal drugs. A civil penalty could not be assessed if the person involved was previously convicted of a Federal or State offense "relating to a controlled substance," and a civil penalty could not be assessed against the same person more than twice. In order to assess a penalty, the Justice Department would have to afford the person involved an opportunity for a hearing on the record. A person against whom a civil penalty is assessed would be permitted to seek de novo judicial review of any such assessment. In any court proceeding to review the assessment of a civil penalty, the facts would have to be proven "beyond a reasonable doubt," the standard of proof that applies in criminal proceedings.

-- "Drug Czar"

Title I of H.R. 5210 would establish the Office of National Drug Control Policy in the Executive Office of the President, to be headed by a Director (the "drug czar") compensated at Level I of the Executive Schedule and appointed by the President (subject to Senate confirmation). The key responsibilities of the Director would include: establishing policies and priorities for drug control; promulgating an annual National Drug Control Strategy; developing a consolidated National Drug Control Program budget proposal; and disbursing funds from a newly-created Special Forfeiture Fund. The first Director would be named by the person elected President in the November 1988 general election.

Two Deputy Director positions and one Associate Director position would also be established. These positions would also be subject to Presidential appointment and confirmation by the Senate. No person serving as the Director, one of the Deputy Directors, or the Associate Director would be permitted to so serve while serving in another Government position. The enrolled bill would terminate the National Drug Policy Board, the White House Drug Abuse Policy Office, and the National Narcotics Border Interdiction System. Finally, the provisions establishing the Office of National Drug Control Policy would be repealed five years after the date of enactment of the enrolled bill.

-- Asset Forfeitures

H.R. 5210 would make many changes to the asset forfeiture laws, including the creation of a new Special Forfeiture Fund for disbursement by the drug czar. These funds would be available in amounts specified in appropriations acts and would be used for supplementing funds otherwise provided to the agencies for implementation of the National Drug Control Strategy. With respect to the Justice Assets Forfeiture Fund, the enrolled bill provides that after all program-related expenses have been met, at the end of FY 1989 only, deposits are to be used for prison construction. At the end of FYs 1990, 1991, and 1992, unobligated balances not to exceed \$150 million are to go into the Special Forfeiture Fund, except that up to \$15 million would remain available for appropriation in the next fiscal year. Both Justice and Customs would be permitted in certain situations to transfer seized property or the proceeds of such seizures to foreign countries that participate in such seizures (e.g., if the transfer is approved by the Secretary of State).

The bill would also establish a new statutory "innocent owner" defense, under which the owner of a conveyance, such as a boat, that is seized for a narcotics offense may recover the conveyance upon a showing that the offense was committed without his knowledge, consent, or willful blindness. Justice and Treasury would be required to issue regulations for expedited administrative procedures for drug-related seizures for violations involving "personal use quantities" of a controlled substance.

-- Interdiction

The three principal Federal agencies responsible for stopping the influx of drugs at the Nation's borders -- the Coast Guard, the Customs Service, and the Federal Aviation Administration -- would be provided with additional appropriation authorizations and authorities to help them fight drug traffickers. For example, the bill would establish a demonstration program for at least three high-risk U.S. international airports for which Treasury would establish air carrier inspection practices. Participating carriers would not

be subject to penalty if illegal drugs are found aboard their aircraft and they establish that they were not grossly negligent and did not engage in willful misconduct.

In addition, the enrolled bill provides that "[n]o information collection requests necessary to carry out . . . this subtitle . . . shall be subject to or affect . . . the annual information collection budget goals established for the Federal Aviation Administration" under the Paperwork Reduction Act. The other requirements of that Act would continue to apply, however (e.g., that paperwork collection requests be submitted to this Office for review).

-- Transportation

The enrolled bill includes several provisions intended to make the Nation's highways and railroads drug and alcohol-free. Among other things, the bill would: authorize a new grant program to encourage States to adopt additional anti-drunk driving programs; increase the criminal penalties for operating a common carrier, such as a passenger train, under the influence of alcohol or drugs; and authorize a one-year demonstration program to encourage States to test drivers license applicants for drugs.

-- State and Local Assistance

Among other provisions, the enrolled bill establishes two grant programs, to be administered by the Bureau of Justice Assistance: (1) Drug Control and System Improvement Grants (to go to States for enforcing State and local laws that establish offenses similar to offenses contained in the Controlled Substances Act); and (2) Discretionary Grants (to go to public or private agencies for specified purposes, such as education or training). In addition, the enrolled bill would authorize appropriations of \$275 million for FY 1989 (\$350 million for FY 1989, \$400 million for FY 1990, and "such sums as may be necessary" for FY 1991) for these and other Bureau of Justice Assistance drug grants.

-- International

H.R. 5210 contains numerous provisions to encourage international cooperation in the drug war. For example, the bill authorizes appropriations of \$101 million for FY 1989 for international narcotics control assistance but would earmark and restrict the use of such funds and add or modify various Presidential reporting and certification requirements. The President would be called upon to ask the United Nations to explore ways to establish an international force aimed at stopping trafficking in illegal drugs.

The enrolled bill would designate the State Department as the lead Federal agency in coordinating international anti-drug assistance. It would also call upon the President to convene an international drug conference and permit the denial or revocation of passports of certain convicted drug offenders. In addition, the enrolled bill contains several provisions that are directed at specific source countries (e.g., Bolivia). (A complete list of the countries covered is included in Attachment "A.") The Export-Import Bank would be permitted to guarantee or insure a sale of defense articles but only if the articles are used to combat foreign anti-narcotics efforts. As noted previously, both Justice and Customs would in certain situations be permitted to transfer forfeited property or the proceeds of forfeited property to foreign countries that participate in the seizure of such property.

-- Education

The enrolled bill would amend the Drug-Free Schools and Communities Act of 1986 to authorize appropriations of \$350 million for FY 1989 for drug abuse education efforts, including establishment of regional centers, outreach activities for dropouts, and counseling and referral centers for drug abusers. The bill would also authorize appropriations for a variety of other drug education programs, including: new grants for discouraging participation of youth gangs in drug activities; new grants for various anti-drug efforts directed at juveniles; and grants to provide after-school programs, such as sports activities. H.R. 5210 would also establish new, separate authorizations for teacher training.

-- Rehabilitation and Treatment

Title II of H.R. 5210 would revise and extend the Alcohol and Drug Abuse and Mental Health Block Grant program and authorizes appropriations of \$1.5 billion for FY 1989 for this purpose. It would also create a new grant program for reducing the waiting period for drug abuse treatment. (The authorization would expire after \$100 million has been appropriated.) Title II would also authorize appropriations for several other grant and demonstration programs, such as: grants for projects to discourage and prevent alcohol and drug abuse among pregnant women; new demonstration projects to provide prevention services to the chronically mentally ill; and demonstration projects to provide drug treatment to adolescents, minorities, pregnant women, female drug addicts and their children, and residents of public housing projects.

The Director of the National Institute on Drug Abuse would be required to work with the existing Commission on Alternative Utilization of Military Facilities to identify potential space for drug treatment programs for non-violent persons.

-- Alcoholic Beverage Labelling

The enrolled bill would require that, beginning 12 months after enactment, containers of alcoholic beverages include a warning statement that: (1) the Surgeon General has determined that women should not drink alcoholic beverages during pregnancy; and (2) consumption of such beverages impairs one's ability to drive a car or operate machinery and may cause health problems. State law in this area would be preempted.

-- Drug-Free Workplaces

The enrolled bill would require that Federal contractors and grantees establish and maintain drug-free workplaces. Contractors and grantees could be suspended, terminated, or debarred for failure to take appropriate personnel action against employees convicted of drug violations. (These provisions would also repeal the drug-free workplace requirement in the FY 1989 Treasury-Postal Service appropriations bill applicable to contractors and grantees.) Section 4804 of H.R. 5210 would expressly exempt contracts performed overseas from these requirements.

-- Drug-Free Housing

Several provisions of the enrolled bill are aimed at curbing illegal drug use at public housing projects. For example, the bill would permit termination of a tenancy in public housing for illegal drug use. In addition: the Department of Housing and Urban Development (HUD) would be required to establish a Clearinghouse on Drug Abuse in Public Housing; and HUD would be authorized to make grants to public housing agencies for use in eliminating drug-related crime in public housing projects (e.g., through the hiring of private security personnel).

-- New Commissions

The enrolled bill would establish a National Commission on Drug-Free Schools to develop recommendations for criteria to identify drug-free schools. The enrolled bill would also establish a National Commission on Measured Responses to Achieve a Drug-Free America by 1995. This Commission would be charged with developing a model uniform code of State laws that represents a "measured response" to achieve a drug-free America by 1995. In addition, a new National Advisory Commission on Law Enforcement would be established to examine compensation issues as they affect Federal law enforcement agencies.

-- User Accountability

H.R. 5210 would make convicted drug abusers accountable for their use of illegal drugs by permitting, at the discretion of the court, certain Federal benefits to be denied various persons convicted of drug violations. (Federal benefits not covered

include any retirement, welfare, Social Security, health, disability, veterans, public housing, "or other similar benefit," or any other benefit "for which payments or services are required for eligibility.") These provisions are more stringent with respect to drug traffickers than drug possessors; however, in either case courts are given considerable leeway in deciding to impose sanctions. The period of ineligibility for Federal benefits could be suspended in certain instances (e.g., if an offender completes an approved rehabilitation program). These provisions would become effective for convictions that occur after September 1, 1989.

Amendments Not Related to Anti-Drug Abuse Efforts

H.R. 5210 includes many amendments that are not related directly, or at all, to anti-drug abuse efforts.

-- Child Pornography

The laws against child pornography and obscenity would be strengthened in several ways. For example, the bill prohibits the "buying and selling" of children for the production of child pornography and establishes detailed recordkeeping requirements for the producers of certain sexually explicit material. The bill also creates a criminal offense for engaging in the business of selling obscene matter with respect to such matter that has moved in interstate commerce. H.R. 5210 would establish procedures for forfeitures in Federal obscenity cases and would prohibit the transmission of obscene material on cable television. These provisions are based in large measure on your proposal, which was transmitted to Congress on November 10, 1987.

-- Public Corruption

The enrolled bill would provide that a scheme to defraud the public of the intangible right of the honest services of a public official may be prosecuted under the Federal mail fraud statutes (overriding a Supreme Court decision to the contrary). This provision is based on a proposal made by the Department of Justice earlier this year.

-- Firearms

The enrolled bill would require the Justice Department to develop a plan for a system for the rapid identification of felons in connection with the sale of firearms. Justice would be required to report to Congress within one year on its proposed system. Justice would also be required to conduct, and complete within 18 months, a study of the feasibility of establishing a similar system for identifying other persons who are ineligible to purchase firearms. H.R. 5210 would establish a new criminal offense of possession of a firearm or other dangerous weapon in specified "Federal facilities" (e.g., courthouses).

-- Miscellaneous

H.R. 5210 includes numerous miscellaneous provisions, some major and some minor, such as: a requirement that Congress consider legislation to reform Federal habeas corpus procedures early in the 101st Congress; establishing the United States Marshals Service by statute (as proposed by the Administration); extending authority to Federal Prison Industries, Inc., to borrow from the Treasury to finance the construction, maintenance, and repair of its industrial buildings (as proposed by the Administration); establishing a Native Hawaiian comprehensive master health care plan (identical to S. 136, which you approved on October 31, 1988); and a requirement that the Department of Transportation undertake various regulatory actions and studies to improve the safety of operations of commercial trucks and buses (the "Truck and Bus Safety and Regulatory Reform Act of 1988").

Budget Impact

-- Authorizations

The enrolled bill authorizes appropriations for FY 1989 totalling \$5.2 billion, as well as additional authorizations for FY 1990 and beyond. These authorizations substantially exceed the amounts actually appropriated for FY 1989 by this bill.

-- Appropriations

Title X of the enrolled bill provides supplemental appropriations of \$991 million for FY 1989. We estimate that these appropriations will increase FY 1989 outlays by \$508 million; the remainder will be spent in future years. We estimate that 1989 outlays will be about evenly divided between supply reduction programs and demand reduction programs.

Agency Views

The Department of Justice, in its enrolled bill views letter, "strongly recommends Executive approval of the bill." According to Justice, the enrolled bill, "[w]hile less than perfect . . . includes a wide range of key demand-side tools and supply-side weapons with which to combat the scourge of drug abuse in our country."

In recommending the approval of H.R. 5210, Justice does note that two provisions sought by the Administration are not included in the enrolled bill. These include proposals to: (1) reform the so-called "exclusionary rule" to permit the introduction of illegally-seized evidence in certain criminal cases; and (2) establish uniform procedures in all Federal judicial districts for the collection of debts owed the United States. Justice also notes its opposition to the provisions of the enrolled bill that would establish a "Drug Czar" and that would

establish a statutory "innocent owner" defense in certain forfeiture cases. Justice says that the provision of the enrolled bill that would permit the use of Federal mail fraud statutes to prosecute certain public corruption cases does not go as far as counterpart proposals made by the Department earlier this year. Finally, Justice states that the supplemental appropriations that would be provided by the enrolled bill are "badly needed."

Justice has prepared a draft signing statement for your consideration, which is attached to its enrolled bill views letter. The draft signing statement makes essentially the same points that are made in Justice's enrolled bill views letter (including language addressing the "innocent owner" defense, see below) and concludes that on balance "the drug bill as enacted is a major success for this Administration and for the American people as a whole."

In its enrolled bill views letter, the Department of Transportation, while recommending the approval of the enrolled bill, joins Justice in registering its concern about the provision of the enrolled bill that would establish a statutory "innocent owner" defense for certain owners of conveyances that are seized for drug violations. Transportation believes that this provision would effectively prohibit the Coast Guard from requiring affirmative actions by vessel owners to prohibit the use or transportation of drugs on their vessels. Transportation recommends that this matter be addressed in a signing statement (but has not suggested language for inclusion in such a statement).

The Treasury Department, in its enrolled bill views letter, recommends approval of H.R. 5210; however, Treasury explicitly disagrees with Transportation (and implicitly with Justice) and recommends that any signing statement not address the innocent owner provision. According to Treasury, the innocent owner provision in the enrolled bill does not weaken current law or limit the agencies' authority to require owners of conveyances to take affirmative steps to ensure that their vessels are not used in connection with illegal drug activities. Treasury is concerned that a signing statement that includes language of the kind sought by Transportation would impair or negate the Government's ability to argue that the innocent owner provision does not change existing requirements.

Treasury has recommended that any signing statement issued in connection with the approval of the enrolled bill include language addressing section 4702, which would require the United States to close its banking system to countries that fail to comply with specified currency reporting requirements. Treasury states that the Nation's allies view this provision "as an affront to their sovereignty." Treasury's recommended language is attached to its enrolled bill views letter. It is intended to reassure the United States' allies that the provision would be

invoked infrequently "and only in a manner consistent with their legitimate concerns."

The Education Department characterizes the changes contained in the enrolled bill as "uneven" and opposes some of them, but nonetheless recommends the approval of the measure. For example, Education opposes the creation of new, separate authorizations for teacher training and the development of early childhood drug abuse materials. According to Education, current law is adequate in this regard. Education raises other concerns but does note that it also supports certain provisions in H.R. 5210, particularly specified amendments to the Drug-Free Schools and Communities Act.

The Veterans Administration (VA) also recommends approval of the enrolled bill but raises a concern about the drug-free workplace requirements of the bill. In particular, the VA would have preferred that the waiver authority in the drug-free workplace provisions be broader (i.e., to enable the exemption of entire classes of contracts or grants, instead of individual contracts and grants, as in H.R. 5210) and that an agency head be permitted to delegate the waiver authority to a subordinate.

The National Security Council (NSC) staff recommends approval of the enrolled bill but objects to provisions contained in subtitles "C," "D," and "E" of title IV that would earmark and restrict the use of foreign assistance funds and add Presidential reporting requirements. The NSC staff states that these provisions "amount to Congressional micromanagement of the U.S. anti-drug effort overseas and infringe upon the Executive Branch's conduct of foreign policy."

The Department of State recommends approval of H.R. 5210 but expresses concerns similar to those of the NSC staff. A draft signing statement, which is attached to State's enrolled bill views letter, makes these points: (1) the role of the National Drug Control Policy Office in the conduct of foreign policy and intelligence matters must be carefully evaluated; (2) the provisions of the enrolled bill that impose restrictions on the Executive's authority to conduct international negotiations -- the draft signing statement cites no example -- will be treated as advisory in nature; (3) the provision of the enrolled bill that would designate State as the lead agency in coordinating international anti-narcotics assistance should help improve the United States' efforts to provide such assistance; and (4) the provision that would permit asset sharing with countries that cooperate in anti-drug efforts is desirable.

The Department of Housing and Urban Development (HUD) recommends the approval of H.R. 5210. In its enrolled bill views letter, HUD raises a number of concerns, however. First, HUD opposes the provision that would permit termination of a public housing tenancy for drug-related activity, because the provision could, according to HUD, be interpreted to limit the authority of

public housing authorities to terminate tenancies based upon other kinds of criminal conduct. Second, HUD opposes permitting public housing authorities to use funds provided under the pilot grant program for hiring security personnel. HUD says that this provision would "reemphasize the impression that public housing is a separate community . . . from the local community at large," and that it could lead local police departments to pay less attention to criminal activity in public housing projects. Finally, HUD is also concerned that implementation of the enrolled bill's drug-free workplace provisions by public housing authorities may be unusually difficult.

Conclusion and Recommendation

The enrolled bill provides the Federal Government with important new authorities and resources in fighting the war on drugs and in enhancing anti-drug abuse education, rehabilitation, and treatment. At the same time, it recognizes that those who use illegal drugs must take responsibility for their actions. The supplemental appropriations made by the bill also represent a good faith effort by Congress to meet the requirements of the Gramm-Rudman-Hollings deficit reduction law and avoid a sequestration in FY 1989.

Many provisions of this legislation (e.g., the death penalty, provisions on chemical diversion and trafficking, child pornography, and anti-public corruption) were sought by the Administration. Furthermore, the most troublesome provisions that the Administration opposed (e.g., concerning limitations on diplomatic immunity and drug testing in the transportation industry) were deleted. Although troublesome provisions remain (e.g., concerning innocent owners and currency reporting) and desirable provisions have been omitted (e.g., reform of the exclusionary rule), the enrolled bill is, on balance, a good bill. Accordingly, I join the concerned agencies in recommending its approval.

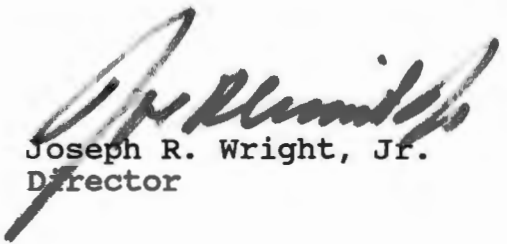
With respect to the disagreement between Transportation and Justice, on the one hand, and Treasury, on the other, over the appropriateness of including "innocent owner" language in a signing statement, we agree with Treasury. We believe it is preferable to resolve this matter within the Administration by seeking a definitive legal opinion about the effect of the "innocent owner" provisions contained in the enrolled bill. Addressing the matter in a signing statement would be premature.

This Office has prepared a draft signing statement for your consideration. It is based primarily on the submission of the Justice Department but incorporates some or all of the language submitted by State and Treasury. Our draft statement: highlights some of the most important and desirable provisions of the enrolled bill (e.g., the death penalty and authority to impose civil penalties); adds asset sharing with foreign governments to a list of provisions that you support

(as in State's draft signing statement); discusses your opposition to the "drug czar" and currency reporting provisions (but incorporates State's concern about the role of the "czar" in foreign affairs and related matters); notes that some desirable provisions (e.g., reform of the exclusionary rule) were omitted from the final bill; and expresses disappointment that Congress has not fully funded the anti-drug programs of the Justice Department.

Paragraph three of the State Department's draft signing statement raises constitutional concerns about certain provisions of the enrolled bill that involve international negotiations. State's draft language has been reviewed and revised by the Department of Justice. We have incorporated Justice's revisions into our draft signing statement.

Finally, our proposed signing statement does not contain a reference to funding for Justice's FY 1990 budget, as proposed by Justice, because the FY 1990 Budget is still under development. Also, in using Justice's language concerning civil penalties, we have corrected the citation of the enrolled bill (section 6486 vice 6480).



Joseph R. Wright, Jr.
Director

Enclosures

**SUMMARY OF KEY PROVISIONS OF H.R. 5210 - ANTI-DRUG ABUSE
ACT OF 1988**

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**SUMMARY OF KEY PROVISIONS OF H.R. 5210 - ANTI-DRUG ABUSE ACT OF
1988**

I. "Drug Czar"

A. In General.

Establishes the Office of National Drug Control Policy in the Executive Office of the President, to be headed by a Director compensated at Level I of the Executive Schedule (and subject to Senate confirmation). Abolishes the National Drug Policy Board, the White House Drug Abuse Policy Office, and the National Narcotics Border Interdiction System. Creates two Deputy Directors for the Office - one on the demand side, the other on the supply side. Also creates within the Office a Bureau of State and Local Affairs, to be headed by an Associate Director. Each of these officials would be appointed by the President and confirmed by the Senate. No person serving serving as the Director, one of the Deputy Directors, or the Associate Director would be permitted to so serve while serving in another Government position.

Key responsibilities of the Director include: establishing policies and priorities for drug control; promulgating an annual National Drug Control Strategy; developing a consolidated National Drug Control Program budget proposal; and disbursing amounts in a newly-created Special Forfeiture Fund (see II.C, below for details). Requires the President to submit with his annual budget request a separate statement of appropriations requested for the Office. The Director is required to report to Congress and the President no later than January 15, 1990, regarding the necessity to reorganize the agencies of the Federal Government with drug-related responsibilities. The Director is to exercise his responsibilities in a manner consistent with the National Security Act of 1947. Authorizes appropriations of \$3.5 million for FY 1989 and "such sums as may be necessary" (hereinafter "such sums") for each of the next four years. These provisions are repealed five years after the date of enactment. Effective date: January 21, 1989.

II. Criminal Justice/Law Enforcement Amendments

A. Money Laundering.

Domestic Transactions. (1) Makes it a criminal offense to engage in a prohibited transaction with the intention of evading income tax. (2) Enables the better use of "sting" operations in connection with money laundering investigations. (3) Prohibits a financial institution

from issuing a cashiers check or similar instrument for over \$3,000 unless the person applying for the instrument has an account with the institution or supplies satisfactory personal identification. (4) Provides Treasury with broad authority to require information with respect to domestic currency transactions. (5) Permits the transfer to the Justice Department of certain financial records without notification to the person to whom the records pertain. (6) Requires the Federal Reserve to study the feasibility of withdrawing the legal tender status of \$100 notes. (7) Enhances the undercover investigative authorities of the IRS (e.g., by permitting the IRS to acquire businesses in connection with an undercover operation).

Foreign Transactions. (1) Urges Treasury to negotiate for the establishment of an international currency control agency to collect and analyze currency transaction reports filed by member countries. (2) Requires the President to impose sanctions on countries found not to be adequately cooperative in connection with international currency reporting (although the President could waive the requirement if he determines that to do so would be in the national interest). Sanctions-related provisions expire on July 1, 1994.

B. Chemical Diversion and Trafficking.

Establishes a comprehensive system for keeping track of "precursor" and "essential" chemicals (i.e., legitimate chemicals that can be used in the manufacture of illicit drugs). In general, requires persons engaged in transactions involving such chemicals to keep records of such transactions and to make them available when requested by the Department of Justice. Requires report to Justice of any regulated transaction that involves an "extraordinary quantity" of a covered chemical. Requires disclosures to Justice with respect to the import or export of covered chemicals. Makes the import and export of specified chemicals a criminal offense, subject to fine and imprisonment, unless the chemicals are intended to be used for a legitimate purpose.

C. Asset Forfeitures.

Justice Assets Forfeiture Fund. Provides, as under current law, that after all program-related expenses have been met, at the end of FY 1989 only, deposits are to be used for prison construction. At the end of FY's 1990, 1991, and 1992, unobligated balances not to exceed \$150 million are to go to a new Special Forfeiture Fund (see below), except that up to \$15 million may be carried forward and remain available for appropriation in the

next FY. (If deemed necessary by the Attorney General, one-twelfth of the previous year's expenditures may be carried forward.) Amounts for paying some expenses (e.g., payment of rewards) must be specified in advance in appropriations Acts; however, other expenditures (e.g., equitable sharing payments) are not subject to appropriations. Permits Justice in certain situations to transfer forfeited property or the proceeds of forfeited property to foreign countries (e.g., if the transfer is approved by the Secretary of State).

Special Forfeiture Fund. Establishes a new fund, to be available to the drug czar without FY limitation and subject to amounts specified in appropriations Acts. Beginning in FY 1990, up to \$150 million is to be deposited in the Fund. The President is to include in his budget a detailed request for the use of amounts in the Fund, reflecting "the priorities of the National Drug Control strategy." Funds are to be used to supplement funds that would otherwise be available.

Innocent Owner. Establishes a new innocent owner defense. In particular, the owner of a conveyance may establish a defense if he shows that a drug-related offense was committed without his knowledge, consent, or willful blindness. Requires Treasury and Justice to promulgate regulations for expedited administrative procedures for drug-related seizures for violations involving "personal use quantities" of a controlled substance. Also requires Treasury and Justice to issue regulations permitting the constructive seizure of commercial fishing vessels in certain situations.

Customs Forfeiture Fund. Makes various changes with respect to the Customs Forfeiture Fund (e.g., by expressly including seizures made by the Coast Guard under the Fund and by removing the Fund's "sunset" date). Authorizes the appropriation of "such sums" for each FY for certain activities under the Fund (e.g., expenses of seizure) and \$20 million for other activities (e.g., the purchase of evidence in drug cases). At the end of each FY, any unobligated balance in the Fund is to be deposited in the general fund of the Treasury. Permits Customs to transfer forfeited property or the proceeds of forfeited property in certain situations to foreign countries that participate in the seizure of such property (e.g., if the transfer has been agreed to by the Secretary of State).

D. State and Local Assistance and Related Matters.

Bureau of Justice Assistance. Overhauls the statutory authority of the Bureau of Justice Assistance, which is now to be headed by a Director, appointed by the President and confirmed by the Senate (instead of appointed by the Attorney General). Establishes two new grant programs: (1) Drug Control and System Improvement grants (to go to States for enforcing State and local laws that establish offenses similar to offenses contained in the Controlled Substances Act); and (2) Discretionary Grants (to go to public or private agencies for specified purposes, such as education and training).

Appropriation Authorizations. Authorizes appropriations under the Justice Assistance Act, as follows: Bureau of Justice Statistics (\$30 million for each of FY's 1989-1992); National Institute of Justice (\$30 million for each of FY's 1989-1992); administrative expenses of the Office of Justice Programs and the Bureau of Justice Assistance (\$25.5 million for FY 1989 and "such sums" for FY's 1990-1992); Bureau of Justice Assistance Grants (\$275 million for FY 1989; \$350 million for FY 1990; \$400 million for FY 1991; and "such sums" for FY 1992); and grants for regional information sharing systems (\$15 million in FY 1989 and "such sums" in FY's 1990-1992).

Also authorizes appropriations for the State Justice Institute (part of the Judiciary) for FY's 1989-1992 (\$15 million per year) and makes other minor changes affecting the Institute. (Note: Title VI of H.R. 4807, another bill that is enrolled and awaiting the President's action, also authorizes appropriations for the State Justice Institute; however, that measure provides only a two-year authorization, for FY's 1989 and 1990, at \$15 million for each year. Otherwise, the two bills are generally consistent in their treatment of the Institute, although H.R. 4807 contains two minor provisions not included in H.R. 5210.)

Other Amendments. Contains many other provisions in this general area. For example: increases to \$100,000 the death benefit payable under the Public Safety Officer Benefit program and makes non-dependent parents eligible for benefits; authorizes appropriations for drug-related programs for various components of the Justice Department (e.g., the INS, DEA, FBI, the Marshals, the Border Patrol, and prisons), the Treasury Department (BATF and FLETC), and the Federal Judiciary; creates the National Advisory Commission on Law Enforcement to examine compensation issues as they affect Federal law enforcement agencies; requires certain Federal research and development facilities to be used for civilian law

enforcement purposes. Permits DEA to pay bonuses of up to 25 percent of base pay to DEA employees who make substantial use of a language other than English in their employment.

E. Firearms.

Makes it a criminal offense to travel in interstate commerce and purchase or attempt to purchase a firearm in pursuance of certain specified criminal activity. Also requires Justice to develop a plan for a system for the rapid identification of felons in connection with the sale of firearms. Justice would be required to report to Congress within one year of enactment on its proposed system. Justice would be required to conduct (and complete within 18 months) a study of the feasibility of establishing a similar system for identifying other persons who are ineligible to purchase firearms. Makes it a criminal offense to possess a firearm or other dangerous weapon in specified "Federal facilities." Mandates revocation of probation for unlawful possession of a firearm.

F. Death Penalty.

Generally permits the imposition of the death penalty in certain particularly serious drug-related cases in which death results, subject to certain limitations and restrictions (e.g., concerning appeals by financially indigent defendants). Contains various procedural safeguards designed to ensure that the provision will withstand judicial review. In particular, permits death penalty to be imposed against any person engaged in a "continuing criminal enterprise" or who commits other specified drug crimes and who "intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results." The death penalty could also be imposed for the intentional killing of a law enforcement officer.

G. Postal Service/Forest Service and Related Matters.

Postal Service. Clarifies and enhances the law enforcement authorities of the Postal Service (e.g., by permitting authorized Postal investigators to carry firearms and to conduct forfeitures, under agreement between Justice and the Postal Service). Provides for the deposit of Postal Service-conducted forfeitures in the Postal Service Fund.

Forest Service and Related Matters. Enhances the law enforcement authority of the Forest Service (e.g., by permitting limited investigations and enforcement outside the boundaries of national forests). Authorizes

additional funds for the Forest Service, the Park Service, and the Bureau of Land Management for drug-related activities. Makes it a criminal offense to place a "hazardous or injurious" device (e.g., a gun attached to a trip wire) on Federal lands or to pollute Federal lands. Creates a new Drug Pollution Fund for use in cleaning up such pollution.

H. Administrative Office of the United States Courts/National Institute of Corrections.

Increases from \$14 million to \$24 million the amounts authorized for the Administrative Office of the United States Courts for contract services for drug dependent offenders. Requires the establishment of a demonstration project for mandatory drug testing of criminal defendants; requires drug testing as a mandatory condition of probation for those participating. Requires the National Institute of Corrections to establish a training center for training corrections officials in conducting drug rehabilitation programs; authorizes \$14 million for this purpose for each of FY's 1989-1991.

I. Marshals Service. Establishes the Marshals Service by statute in Justice and clarifies its authorities. Makes the Director of the Marshals Service a Presidential appointee, subject to confirmation by the Senate. This was an Administration proposal.

J. DEA-EPA Task Force.

Establishes a joint DEA-EPA task force to formulate and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. \$5 million from an existing authorization is earmarked for the Task Force.

K. Law Enforcement on Indian Reservations.

Directs Interior to provide assistance to two specified Indian tribes in controlling illegal narcotics trafficking and authorizes appropriations of \$1.45 million for FY 1989 for that purpose. Authorizes appropriations of \$1.5 million for FY 1989 for Interior to provide Indians with law enforcement and judicial training. Also authorizes appropriations of \$15 million for FY 1989 for the acquisition and staffing of juvenile detention centers.

L. Civil Penalties.

Authorizes the imposition of civil penalties of up to \$10,000 per violation against persons possessing small amounts of specified illicit drugs. A civil penalty

could not be assessed if the person involved was previously convicted of a Federal or State offense "relating to a controlled substance," and such a penalty could not be imposed against the same person more than twice. In order to assess a penalty, Justice would have to afford the person involved an opportunity for a hearing on the record. A person against whom a penalty is assessed would be permitted to seek de novo judicial review of any such assessment. In any court proceeding to review the assessment of a civil penalty, the facts would have to be proven "beyond a reasonable doubt," the standard of proof that applies in criminal proceedings.

M. Minors and Crime.

Enhances existing penalties for drug offenses involving children. Makes it a criminal offense to possess illegal drugs with intent to distribute within 1,000 feet of a schoolyard. Makes it an offense to engage in drug-related activity within 100 feet of a playground, private youth center, public swimming pool, or video arcade. Applies certain minimum mandatory sentences to offenses involving the purchase of controlled substances from minors.

N. Public Corruption.

Provides that a scheme to defraud or deprive another of the intangible right of honest services may be prosecuted under the Federal mail fraud statutes. (This provision would overturn the Supreme Court's decision in McNally v. United States, which prohibited the Government from using the mail fraud statutes in public corruption cases.) This provision is based on a proposal made by the Department of Justice earlier this year.

O. Minor and Technical Criminal Law Amendments.

Contains a series of about 100 criminal law amendments characterized as "minor and technical." Many of these would correct cross references, correct typographical errors in previously-enacted legislation, redesignate certain provisions, and the like. Others are more substantive, such as those that would: authorize Federal Prison Industries to borrow from the Treasury to finance the construction, maintenance, and repair of its industrial buildings; impose limitations on the furlough of persons hospitalized who have been found not guilty of a crime by reason of insanity; make it unlawful to use the term "Secret Service" without authorization; create a new offense for obstruction of a Federal audit; make several additional offenses (e.g., sexual exploitation of children) predicate offenses under the Racketeer Influenced Corrupt Organization statute; and make

locksmithing devices nonmailable under the Postal Service statutes.

P. Sentencing Amendments.

Includes a series of provisions that affect the United States Sentencing Commission (e.g., permitting the Commission to hire outside counsel to represent the Commission in any proceeding in which the Commission is authorized to represent itself; giving the Commission authority to grant incentive awards to its employees; and concerning procedures to amend the sentencing guidelines). Also establishes procedures for handling of persons received from foreign countries who are on parole from sentences imposed by those countries.

Q. Reimbursement to State and Local Law Enforcement Agencies.

Requires reimbursement to State and local law enforcement agencies whenever such an agency provides information to the IRS that "substantially contributes" to the recovery of Federal taxes. Reimbursement is not to exceed ten percent of the amount recovered and is limited to costs incurred (e.g., reasonable expenses, per diem, salary, and overtime). Establishes a Law Enforcement Agency Account into which ten percent of qualifying recoveries are to be deposited for the purpose of making required reimbursements.

R. Amendments Related to Prisons, Probation, and Supervised Release.

Requires the Sentencing Commission to study the feasibility of requiring Federal prisoners to pay "user fees." Requires revocation of probation if a defendant on probation is found in possession of illegal drugs. Authorizes house confinement as a condition of probation, parole, or supervised release.

S. Violent Criminal Deportation.

Among other provisions dealing with aliens and drug trafficking, requires the Attorney General to take into custody any alien convicted of an aggravated felony upon completion of the alien's sentence. Requires the prompt deportation of such persons. Creates criminal penalties for the reentry of certain aliens convicted of felonies and for aiding or assisting in such reentry.

T. Serious "Crack" Offenses.

Provides enhanced penalties for serious "crack" offenses (e.g., imprisonment of no less than five years and no more than 20 years for a first offense).

U. Habeas Corpus.

Requires Congress to consider legislation -- on an expedited basis -- during the 101st Congress to reform Federal habeas corpus procedures.

V. Protection of Former Federal Officials.

Amends the Federal criminal assault statute to include certain former Federal officials and members of their families (i.e., to make it an offense to assault such persons).

W. Uniform Crime Reports and FBI Jurisdiction.

Requires uniform reporting to the Justice Department by other Federal agencies on crimes committed within their jurisdictions and authorizes \$350,000 for that purpose for FY 1989. Also expands the FBI's jurisdiction to permit the investigation of felonious killings of certain State and local officials while engaged in the performance of their official duties.

X. General Accounting Office Study of Criminal Penalties.

Requires the General Accounting Office to conduct a study to determine the impact of new or enhanced criminal penalties and of additional resources for the Federal criminal justice system, with a view toward the development of a model to be used in determining appropriate budget and staffing levels.

Y. Crime Victims Fund and Related Matters.

Provides that after sums in Crime Victims Fund reach specified levels (\$125 million through FY 1991 and \$150 million in FY's 1992-1994) the first \$2.2 million is to be made available to the Judiciary for administrative costs in carrying out drug-related responsibilities. Establishes by statute the Office for Victims of Crime in Justice, to be headed by a Director appointed by the President with the advice and consent of the Senate. Amends the Victims of Crime Act in various other respects (e.g., by permitting Justice to make grants to Indian tribes for improving the handling of child abuse cases and by clarifying that a State program is eligible for grant funds only if it offers compensation to victims and

survivors of victims of drunk driving and domestic violence).

Z. Juvenile Justice, Runaway Youth, and Missing Children.

Juvenile Justice. Authorizes grants for establishing or maintaining community-based alternatives to traditional forms of institutionalization of juvenile offenders and developing programs related to juvenile delinquents and learning disabilities. Sets up a new grant program to, among other things, reduce juvenile involvement in gang activities, especially activities that are drug-related. Authorizes "such sums" for the juvenile justice program for each of FY's 1989-1992, as well as \$15 million for the new juvenile gang grant program for FY 1989 and "such sums" for each of FY's 1990-1992.

Runaway and Homeless Youth. Makes various amendments to the Runaway and Homeless Youth program. For example: authorizes the establishment of "transitional living projects" and authorizes appropriations of \$5 million for FY 1989 and "such sums" for each of FY's 1990-1992 therefor. Also authorizes new grants for: a national communication system; technical assistance and training; and research, demonstration, and service projects. Authorizes "such sums" for the overall program for each of FY's 1989-1992.

Missing Children. Makes various minor amendments to the Missing Children's Assistance Act (e.g., by abolishing the Advisory Board on Missing Children). Authorizes "such sums" for FY's 1989-1992.

AA. Child Pornography and Obscenity.

Prohibits the "buying and selling" of children for the production of child pornography. Establishes detailed recordkeeping requirements for producers of certain sexually explicit materials. Creates a criminal offense for engaging in the business of selling obscene matter with respect to such material that has moved in interstate commerce. Establishes detailed procedures for forfeitures in Federal obscenity cases. Prohibits the transmission of obscene material on cable television.

III. Interdiction Amendments

A. Coast Guard Provisions.

Provides limited immunity from suit for Coast Guard for firing into or at certain vessels. Clarifies the Coast Guard's mission to include maritime air surveillance or interdiction to enforce or assist in enforcing the laws of the United States. Authorizes appropriations for the

Coast Guard of: \$200 million for FY 1989 for acquisition, construction, and improvements; and \$80 million for FY 1989 and \$20 million for each of FY's 1990-1992 for operating expenses.

B. Federal Aviation Administration Amendments.

Enforcement. Authorizes the FAA to modify its aircraft registration system, its system for issuing airman's certificates to pilots, and related systems to make them more effective in drug law enforcement. Generally prohibits the issuance of an airman's certificate to a person whose certificate has previously been revoked for drug-related activities. Directs the FAA to promulgate regulations requiring that persons applying for aircraft registrations supply certain information, such as drivers license number; authorizes FAA to collect fees to cover the costs of issuing aircraft registration certificates and airman certificates. Establishes criminal penalties for false marking of aircraft and similar acts and related civil penalties.

Funding and Resources. Requires FAA to prepare and transmit to Congress a report on the resources -- including funding and positions -- that will be necessary on an annual basis during the five-year period after enactment to carry out its responsibilities under this legislation. Provides that "[n]o information collection requests necessary to carry out . . . this subtitle . . . shall be subject to or affect . . . the annual information collection budget goals established for" the FAA under the Paperwork Reduction Act. The other requirements of the Act -- that information collection requests be submitted to OMB for review, for example -- would continue to apply.

C. Customs Service Amendments.

Authorizes appropriations for FY 1989 for Customs, as follows: \$441 million for noncommercial operations, \$26 million of which is to be used to fund at least 435 inspectors for intensive cargo examinations; \$615 million for commercial operations; \$142 million for air operations; \$1.6 million for payment to the Customs Cooperation Council; \$4 million for accelerating the availability of x-ray scanning equipment; an additional \$57 million for the air program; and \$7 million as Customs' share of the automatic document reader. Also makes various other Customs-related amendments (e.g., establishes procedures for the reconciliation of inconsistent decisions made by Customs officers regarding the treatment of merchandise imports and transfers an aircraft to the sheriff of Marion County, Indiana). Officially commends Customs Commissioner von Raab "for

his outstanding leadership and dedication," as well as the agents involved in Operation C-Chase (involving the investigation of the Bank of Credit and Commerce).

D. Air Carrier Smuggling Provisions.

Establishes a demonstration program for at least three high-risk U.S. international airports for which Treasury would approve air carrier inspection practices. Participating carriers would not be subject to penalty if illegal drugs are found aboard their aircraft if they establish that they were not grossly negligent, did not engage in willful misconduct, and complied with other applicable procedures.

IV. Transportation Provisions

A. Drunk Driving Grant Program.

Authorizes appropriations (\$25 million in FY 1989, and \$50 million each of FY's 1990 and 1991) for grants to encourage States to implement additional drunk driving enforcement programs (e.g., an expedited driver's license suspension or revocation system or a self-sustaining drunk driving prevention program under which fines collected from individuals are returned to communities that have comprehensive programs for the prevention of drunk driving).

B. Common Carrier Offenses.

Increases the criminal penalties for operating a common carrier (e.g., a passenger train) while under the influence of alcohol or drugs.

C. Alcohol Impairment Standards.

Requires DOT to enter into an agreement with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which a person operating a motor vehicle should be deemed to be under the influence of alcohol.

D. Drug Testing for Drivers License Applicants.

Authorizes certain States to receive Federal highway funds to conduct a one-year pilot program for drug testing of drivers license applicants. Requires DOT to report on results. Authorizes appropriations of \$5 million for FY 1990 for the program.

E. Drunk Driving on Federal Lands.

Provides for penalties for drunk driving on Federal lands. Also provides that a person who drives on Federal lands consents to submit to alcohol and drug tests, to be administered by an appropriate law enforcement officer if there are reasonable grounds to believe that the person has committed the offense of drunk driving.

F. Pilot Program for Drug Recognition Training.

Requires DOT to establish a three-year pilot program training law enforcement officers to recognize persons who are operating motor vehicles under the influence of alcohol or controlled substances. Authorizes appropriations of \$5 million in FY 1989, \$7 million in FY 1990, and \$9 million in 1991.

G. Truck and Bus Safety and Regulatory Reform Act of 1988.

Requires the Department of Transportation to undertake various regulatory actions and studies to improve the safety of operations of commercial trucks and buses (e.g., to: improve compliance with hours of service requirements; establish minimum uniform standards for a biometric identification system for identifying operators of commercial motor vehicles; and study whether commercial vehicles should be equipped with improved brake systems).

V. International Provisions

A. Latin American Regional Anti-Narcotics Force and Related Provisions.

Directs the President to seek the views of the OAS with respect to establishment of a Latin American Regional Anti-Narcotics Force. Contains a related provision calling upon the United Nations to explore ways to establish an international force aimed at stopping trafficking in illegal drugs. Also contains "sense of the Senate" provisions that the President should begin discussions with other countries over the advisability of establishing an international criminal narcotics court, and that President should convene an international drug conference as soon as possible. Authorizes appropriations of \$3 million for FY 1989 for United States contributions to multilateral and regional drug abuse control programs and earmarks all of it (e.g., \$2 million for a United States contribution to the United Nations Fund for Drug Abuse Control). Requires State to consult on the feasibility of creating an integrated regional plan to fight the international cocaine trade.

B. Authorizations and Earmarkings of Foreign Assistance.

Authorizes appropriations of \$101 million for FY 1989 for international narcotics control assistance, earmarks some of these funds for specified activities (e.g., \$500,000 for herbicide testing and \$1 million for aircraft used in eradication efforts) and authorizes supplemental appropriations to complement existing appropriations.

C. Specific Country Provisions.

Contains provisions directed at certain source countries (i.e., Bolivia, Mexico, Peru, Columbia, Pakistan, Laos, and Afghanistan). For example, earmarks \$5 million for the Government of Columbia to provide protection for judges, government officials, and members of the press. Also earmarks \$15 million for military assistance to Columbia, to the extent the funds are used to combat illicit narcotics production and trafficking. Also, provides that the Government should press the government of Afghanistan to reduce heroin production and trafficking.

D. Annual Reports/Certifications and Miscellaneous Assistance Provisions.

Makes various changes in reports furnished by the Executive branch to Congress regarding foreign assistance and international drug trafficking. Contains numerous changes to requirements concerning certification by the President with respect to: assistance to drug-transit countries; bilateral and multilateral assistance; and trade and aviation sanctions. Requires the President to take all reasonable steps to ensure that assistance under the Arms Export Control Act is not provided to any person or entity involved in drug trafficking. Also requires the President to take reasonable steps to ensure that aircraft and other equipment made available to other countries under the Foreign Assistance Act of 1961 is used for the purposes for which the aircraft or equipment was made available. Permits Justice and Customs in certain situations to transfer forfeited property or the proceeds of forfeited property to foreign countries (e.g., if the transfer is approved by the Secretary of State).

E. Department of State Provisions.

Makes State responsible for coordinating assistance provided by the United States in support of efforts to combat international narcotics production and trafficking. Requires State to report annually to Congress on assistance provided by the United States to

support international anti-narcotics efforts. Permits denial or revocation of passports of certain convicted drug traffickers. Requires State, Justice, and Treasury to develop a comprehensive machine-readable travel and identity document border security program and authorizes appropriations of \$23 million for FY 1989 therefor (\$7 million for Treasury, \$7 million for Justice, and \$9 million for State). Requires State and Justice to develop jointly a model extradition treaty with respect to narcotics-related offenses and provides that it is the "sense of the Congress" that security personnel at United States embassies should be directed to expand their investigative activities with respect to illegal drugs.

F. Export-Import Bank.

Permits the Eximbank to guarantee or insure a sale of defense articles only if the article is used to combat foreign anti-narcotics efforts.

VI. Education Provisions

A. Youth Gangs.

Authorizes new grants for discouraging participation of youth gangs in drug-related activities and promoting participation in lawful activities. Authorizes appropriations of \$15 million for FY 1989 and "such sums" for each of FY's 1990 and 1991.

B. Community Youth Activity Program.

Authorizes grants for a variety of youth-related purposes (e.g., projects aimed at keeping youths in school, projects that seek to involve dropouts in community-based activities, and projects to provide various after-school activities, such as sports programs). Authorizes appropriations for this purpose of \$40 million for FY 1989, \$55 million for FY 1990, \$60 million for FY 1991, \$66.55 million for FY 1992, and \$73.20 million for FY 1993.

C. Runaway and Homeless Youth.

Authorizes new grants for various anti-drug education programs targeted at juveniles (e.g., through community education activities and the development of peer counseling programs) and authorizes appropriations totalling \$15 million for FY 1989 and "such sums" for each of FY's 1990 and 1991.

D. Drug Abuse Education for Participants in the Special Supplemental Food Program for Women, Infants, and Children.

Authorizes appropriations of \$10 million for FY 1989 and "such sums" for each succeeding fiscal year for a study of appropriate methods of drug abuse education for persons participating in this program, the preparation of drug abuse educational materials, and the like.

E. Volunteer Demonstration Projects for Drug Abuse Education.

Authorizes appropriations of \$4 million for FY 1989 and \$5 million for each of FY's 1990 and 1991 for drug abuse prevention programs under the Domestic Volunteer Service Act and earmarks no less than 15 percent and no more than 25 percent for new community-based volunteer demonstration projects that provide comprehensive drug abuse education to youths during the summer months.

F. Drug-Free Schools.

Amends the Drug-Free Schools and Communities Act to provide authorizations of \$350 million for FY 1989 for drug abuse education efforts including establishment of regional centers, outreach activities for dropouts, and counseling and referral centers for drug abusers. Also authorizes \$16 million for FY 1989 and \$20 million for each of FY's 1990-1993 for teacher training programs. Directs Education to develop age-appropriate drug abuse prevention curriculum materials.

G. Alcohol Abuse Education Programs.

Requires Education to develop materials for innovative programs of alcohol abuse education, especially programs that focus on the effects of alcoholism on the families of alcoholics. Grants would be authorized for educators for programs that address these kinds of problems.

H. Evaluation of Drug Abuse Education and Prevention Efforts.

Directs HHS to evaluate the different approaches in use in the United States to reduce drug abuse. Authorizes appropriations for this purpose of \$12 million in FY 1989 and \$15 million in each of FY's 1990-1993.

I. National Commission on Drug-Free Schools.

Establishes the Commission to: (1) develop recommendations of criteria for identifying drug-free schools; (2) develop recommendations for identifying model programs to meet such criteria; (3) make other appropriate findings and recommendations; and (4) report to Congress and the President on its findings.

VII. Rehabilitation and Treatment

A. Revision and Extension of the Alcohol and Drug Abuse and Mental Health Block Grant.

Authorizes appropriations for this activity of \$1.5 billion in FY 1989 and "such sums" in each of FY's 1990 and 1991. Provides detailed formulas for determining the amounts of allotments for the States in a given fiscal year. Prohibits HHS from making payments to a State in FY 1989 unless the State agrees that such payments will be used only to carry out programs against substance abuse. Permits States to use funds received to develop and operate programs for treatment of intravenous drug abuse, with priority for AIDS cases. Makes numerous other changes to this block grant program (e.g., concerning: set-asides of amounts to be used for services for pregnant women with dependent children; the establishment of State mental health planning councils; the establishment of group homes for recovering substance abusers; and requirements to evaluate the appropriateness and effectiveness of various forms of substance abuse treatment).

B. Model Projects for Pregnant Women.

Requires HHS to make grants to establish projects for prevention, education, and treatment regarding drug and alcohol abuse relating to pregnant and post partum women and their infants. Grants are to be funded from a set-aside of ten percent of drug abuse funds authorized under the grants described in VII.A, above.

C. Grants for Reducing Waiting Period for Drug Abuse Treatment.

Authorizes a one-time appropriation of \$100 million for FY 1989 to expand the capacity of State and local governments to treat drug abusers. Grants may not be made unless the recipient satisfies certain criteria (e.g., the applicant is experienced in the delivery of treatment services for drug abusers and is, upon the date of application, successfully carrying out a program for the delivery of such services).

D. Funding for Office of Substance Abuse Prevention.

Authorizes appropriations of \$95 million for FY 1989 and "such sums" for FY's 1990 and 1991 for the Office of Substance Abuse Prevention. Requires HHS to give priority to grant applicants who propose projects to assist high-risk youth.

E. Mental Health Demonstration Projects.

Authorizes appropriations of \$60 million for each of FY's 1989 and 1990 for new demonstration projects to provide prevention services to the chronic mentally ill and persons thought to be at risk of developing mental illness. Fifteen percent is earmarked for demonstration projects in rural areas.

F. Drug Abuse Treatment Demonstration Projects.

Authorizes \$34 million for FY 1989 and "such sums" for FY's 1990 and 1991 for demonstration projects providing drug treatment to adolescents, minorities, pregnant women, female addicts and their children, and residents of public housing projects.

G. Reporting and Study Requirements.

Requires HHS to conduct a study -- and authorizes appropriations of \$1 million for FY 1989 -- to determine the relationship between mental illness and drug abuse; such study to include recommendations with respect to the most effective treatment methods. Requires HHS to contract out a study of the current use of involuntary commitment for inpatient or outpatient treatment of mental illness and to make recommendations for appropriate changes.

H. Alternative Utilization of Military Facilities for Drug Treatment.

Directs the Director of the National Institute on Drug Abuse to work with the Commission on Alternative Utilization of Military Facilities to identify potential space for drug treatment programs for nonviolent persons.

I. Data Collection.

Requires HHS to collect data each year with respect to mental illness and substance abuse. The data to be collected include: the national incidence and prevalence of various forms of substance abuse and mental illness; and the incidence and prevalence of these forms in major metropolitan areas. HHS is required to consult with

States and appropriate national organizations to develop uniform criteria for data collection.

J. Labelling of Alcoholic Beverages.

Makes it unlawful, beginning 12 months after enactment, to manufacture, bottle, or import any alcoholic beverage unless the container of such beverage contains a specified statement that: (1) the Surgeon General has determined that women should not drink alcoholic beverages during pregnancy; and (2) consumption of such beverages impairs one's ability to drive a car or operate machinery and may cause health problems. Preempts State law in this area.

K. National Commission on Measured Responses to Achieve a Drug-Free America by 1995.

Establishes a National Commission, to be chaired by the drug czar, to develop a uniform code of State laws that represents a "measured response" to achieve a drug-free America by 1995. Urges the States to call conferences to work toward a drug-free America by 1995. Declares that it is the policy of the United States Government to create a Drug-Free America by 1995.

L. Employee Assistance Programs.

Directs Labor to make grants or enter into contracts with employers to enable such employers to develop drug and alcohol employee assistance plans. Authorizes appropriations of \$4 million for FY 1989 and \$5 million for each of FY's 1990 and 1991 for this purpose.

M. Indian Alcohol and Substance Abuse Treatment.

Amends the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 in various respects (e.g., by authorizing the lease of tribally-owned facilities or land to house anti-drug and alcohol abuse programs). Authorizes appropriations for various activities under the Act (e.g., \$8 million for FY 1989 and \$6 million for each of FY's 1990-1992 for emergency shelters and half-way houses and \$15 million for FY 1989 and \$10 million for each of FY's 1990 and 1991 for the construction or renovation of juvenile detention centers).

N. Native Hawaiian Health Care.

Requires the development of a Native Hawaiian comprehensive health care master plan and authorizes appropriations of \$700,000 for FY 1990 for that purpose. Authorizes HHS to make grants or enter into contracts for

the purpose of establishing Native Hawaiian health centers; gives Native Hawaiians a preference with respect to the award of such grants or contracts. Authorizes appropriations of \$5 million for FY 1991 and \$10 million for FY 1992 for this purpose. (Note: These provisions have already been enacted as a freestanding bill, S. 136, which was approved on October 31, 1988.)

O. Anabolic Steroids.

Requires the General Accounting Office to conduct a study on the extent of anabolic steroid use among high school students, college students, and other adults. Also makes it a criminal offense to distribute anabolic steroids or to possess anabolic steroids with intent to distribute.

P. Evaluation of Veterans Administration Inpatient and Outpatient Drug and Alcohol Drug Treatment Programs.

Requires an evaluation of these programs and authorizes appropriations of \$1 million for this purpose for FY 1989 and "such sums" for each of FY's 1990 and 1991. Authorizes appropriations for the VA's drug and alcohol treatment programs of \$15 million for each of FY's 1989-1993. The \$15 million is in addition to any other funds that are authorized.

Q. President's Media Commission on Alcohol and Drug Abuse Prevention.

Authorizes appropriations of \$1 million for each of FY's 1989-1991 for the Commission.

R. Miscellaneous Health Amendments.

Contains a long series of miscellaneous health-related amendments, many of a technical or conforming nature. Others would: Require HHS to establish in the National Institute of Deafness the National Deafness and Other Communication Disorders Advisory Board, in part to assure the most effective use of resources respecting deafness. Permits HHS to establish a counterpart interagency coordinating committee to the Advisory Board. (Note: H.R. 5560, an enrolled bill that is awaiting your action, includes identical health-related technical and conforming changes. Furthermore, legislation establishing a new National Institute of Deafness and Other Communication Disorders has been enacted as a freestanding bill, S. 1727, which was approved on October 28, 1988 (Public Law 100-553).)

VIII. Drug-Free Workplaces

A. Drug-Free Workplace Requirements.

Requires Federal Government contractors and grantees to establish drug-free workplaces meeting specified criteria (e.g., by setting up a drug-free awareness program). Those who fail to comply may be suspended, terminated, or debarred, as appropriate, using existing procedures for such actions. Applies only to contracts above \$25,000 and to grants in any amount. Waivers may be granted by the head of agency with respect to a particular contract or grant in certain situations. The authority to grant waivers is non-delegable. Provisions become effective 120 days after enactment. Repeals the drug-free workplace provision in the 1989 Treasury-Postal Service appropriations bill applicable to contractors and grantees; it does not affect Federal agency compliance. Note: Section 4804(b) of the bill expressly exempts contracts performed overseas from these requirements.

B. Employee Sanctions.

Requires that a grantee or contractor take appropriate personnel action against employees convicted of drug violations.

IX. Drug-Free Housing

A. Clearinghouse on Drug Abuse in Public Housing.

Directs HUD to establish such a clearinghouse. Also requires HUD to establish a regional training program for public housing officials to combat drug abuse in public housing.

B. Termination of Tenancy in Public Housing.

Permits termination of tenancy in public housing if tenant or member of tenant's household engages in criminal activity, including drug-related activity on or near public housing premises. Provides that a leasehold interest in a public housing project is forfeitable under the Controlled Substance Act.

C. Study of Public Housing Security and Related Matters.

Requires HUD to study the extent to which security activities in public housing are funded under the performance funding system of the United States Housing Act of 1937. Also requires HUD to report on the impact

of the public housing tenancy grievance procedure regulations issued under the 1937 Act on the ability of public housing agencies to evict or otherwise act against tenants engaging in criminal activity, especially drug-related activity.

D. Public Housing Drug Elimination Pilot Program.

Authorizes HUD to make grants to public housing agencies for use in eliminating drug-related crime in public housing projects. The grants could be used for a number of purposes, such as the hiring of security personnel by public housing authorities. Authorizes appropriations of \$8.2 million for FY 1989 and "such sums" for FY 1990.

X. User Accountability

A. In General.

With respect to persons convicted of drug violations, permits, at discretion of the court, certain Federal benefits to be denied. ("Federal benefit" defined to exclude retirement, welfare, Social Security, health, veterans, public housing, "or other similar benefit," or any other benefit "for which payments or services are required for eligibility.") Provisions are more stringent with respect to drug traffickers than drug possessors; in either case, courts are given considerable discretion in imposing sanctions. Period of ineligibility may be suspended in certain instances (e.g., if an offender completes an approved drug rehabilitation program). President is required to report to Congress no later than May 1, 1989, on how agencies will implement and enforce these provisions, recommending modifications to the system, delineating the role of State courts, and the like. Provisions become effective for convictions occurring after September 1, 1989.

XI. Funding

A. Authorizations.

Authorizes appropriations of \$5.166 billion for FY 1989.

B. Appropriations.

Appropriates \$991 million for FY 1989, thereby increasing estimated 1989 outlays by \$508 million. Appropriations are roughly evenly split between demand side programs and supply side programs.

ATTACHMENT "B"

FUNDING PROVISIONS OF H.R. 5210 FOR FY 1989
 (\$ in millions)

Authorizations *	Budget Authority	Outlays
Agriculture. 20.0	--	--
Education 366.0	108.0	13.3
HHS. 2,041.3	321.0	218.4
Interior 43.8	--	--
Justice. 832.8	360.4	185.2
Labor. 5.0	2.0	1.2
State. 14.0	5.0	3.9
Transportation . . 310.3	116.0	24.6
Treasury 1,284.8	22.5	17.4
ACTION 4.0	2.0	1.2
Veterans 16.0	--	--
Judiciary. 120.1	51.0	40.6
Executive Office of the President. . . 3.5	3.5	2.6
Funds Appropriated to President . . (international). 104.0	--	--
President's Media Commission . . . <u>1.0</u>	<u>--</u>	<u>--</u>
Totals 5,166.6	991.4	508.5 **

 * = Not all authorizations are for anti-drug abuse programs.
 ** = Detail does not add to total because of rounding.



THE SCHEDULE OF
PRESIDENT RONALD REAGAN

Friday, November 18, 1988

10:00 am (30 min)	<u>Staff Time</u>	Oval Office
10:30 am (20 min)	<u>National Security Briefing (Powell)</u>	Oval Office
10:50 am (10 min)	<u>Meeting with President Ershad of Bangladesh (Powell)</u>	Oval Office
11:00 am (30 min)	<u>Budget Briefing (Crippen)</u>	Oval Office
11:30 am (30 min)	<u>Personal Staff Time</u>	Oval Office
12:00 m (75 min)	<u>Lunch and Personal Staff Time</u>	Oval Office
1:15 pm (15 min)	<u>President's Historic Preservation Awards Ceremony (Risqué)</u>	Indian Treaty Room
1:30 pm (30 min)	<u>Meeting with Secretary Shultz</u>	Oval Office
2:00 pm (5 min)	<u>Accept Thanksgiving Turkey (Range)</u>	Rose Garden
2:30 pm (15 min)	N <u>Signing Ceremony for the Anti- Drug Abuse Act of 1988 (H.R. 5210) (Kranowitz)</u>	East Room
2:45 pm	<u>Personal Staff Time for Remainder of the Afternoon</u>	Oval Office/ Residence

11/17/88
4:00 pm

THE WHITE HOUSE

WASHINGTON

November 15, 1988 1988 NOV 15 PM 5:19

MEMORANDUM FOR RHETT B. DAWSON
ASSISTANT TO THE PRESIDENT
FOR OPERATIONS

FROM: ARTHUR B. CULVAHOUSE, JR. 
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5210 -- Anti-Drug Abuse
Act of 1988 and Proposed Signing Statement

At your request, we have reviewed the attached OMB enrolled bill memorandum and proposed signing statement on H.R. 5210 -- the Anti-Drug Abuse Act of 1988. We understand that the decision to sign this bill has already been made and that a public signing ceremony is planned for Friday, at which time the President is expected to deliver essentially laudatory remarks about the bill. Accordingly, we have reviewed these materials with two basic questions in mind: (1) whether there are legal issues which need to be addressed in a signing statement and (2) assuming such problems exist, whether it is possible to include those comments in the President's spoken remarks at Friday's ceremony or whether a separate written statement is appropriate.

While we have identified a number of legal issues which might be worthy of comments in other circumstances, we believe that for various reasons only the constitutional concern raised by provisions purporting to require international negotiations need be noted in a signing statement. Because this concern can be articulated in a relatively brief fashion, and in order to avoid the pressure to catalogue additional problems that would result if a separate written statement were issued, we recommend that suitable language, along the following lines, be included in the President's spoken remarks:

I note that several provisions of H.R. 5210, such as those concerning the formation of a multinational force in the Western Hemisphere and the adoption of currency reporting requirements abroad, instruct the President, or his subordinates, to undertake particular international negotiations. In light of the President's Article II plenary authority to conduct such negotiations, these provisions shall be construed and applied consistent with those constitutional authorities.

We note that the proposed OMB signing statement describes a number of grievances against the bill which -- although not strictly legal in nature -- should be considered in drafting the

President's spoken remarks. In particular, the OMB statement laments the deletion from the bill of exclusionary rule reform and requested DOJ funding and complains about the enactment of the "drug czar" apparatus. We recommend that at least the references to Congress' failure to amend the exclusionary rule and to enact meaningful habeas corpus reform be included in the President's spoken remarks. It may be possible to note all of these concerns in a single sentence or paragraph, *e.g.*, "I am deeply disappointed that Congress missed this opportunity to enact meaningful habeas corpus and exclusionary rule reform and also failed to provide necessary resources to key components of the Justice Department." In this regard, we recommend that a draft of the remarks be provided to the Attorney General's office for comment.

Attachment

cc: Danny Crippen
Alan M. Kranowitz