ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5297 SJUD SB 30 - SB 32 (file 1)

869

(3) the father of a minor if the father's consent is not required by AS 25.23.040(a)(2);

(4) a parent who has relinquished the right to consent under AS 25.23.180;

(5) a parent whose parental rights have been terminated by order of the court under AS 25.23.180(c)(3) or AS 47.10.080(c)(3);

(6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

(7) a [ANY] parent of the person to be adopted, if the person is 19 or more years of age, and the court dispenses with the consent of the parent;

(8) a [ANY] guardian or custodian specified in AS 25.23.-040(a)(3) or (4) who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably; or

(9) the spouse of the person to be adopted, if the requirement of consent to the adoption is waived by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

* Sec. 4. AS 25.23.130 is amended by adding new subsections to read:

(d) Except as provided in (e) of this section, a decree terminating parental rights on the grounds set out in AS 25.23.180(c)(3) voids all legal relationships between the child and the biological parent so that the child is a stranger to the biological parent and to relatives of the biological parent for all purposes, including interpretation of documents executed before or after the termination of parental rights that do not include the child by name or by a description not based on a parental or blood relationship.

(e) Inheritance rights between a child and a biological parent are not voided by a decree terminating parental rights on the grounds set out in AS 25.23.180(c)(3) unless the decree specifically provides for the termination of inheritance rights.

* Sec. 5. AS 25.23.140 is amended by adding a new subsection to read:

(c) Subject to the disposition of an appeal, one year after a decree is issued terminating parental rights on grounds set out in AS 25.23.180(c)(3), the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

* Sec. 6. AS 25.23.150(b) is amended to read:

(b) The papers and records relating to an adoption <u>or a termination of parental rights under AS 25.23.180(c)(3)</u> that are a part of the permanent record of a court are subject to inspection only upon consent of the court. The papers and records relating to an adoption <u>or a termination of parental rights under AS 25.23.180(c)(3)</u> on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisions of AS 18.50.

* Sec. 7. AS 25.23.150(c) is amended to read:

(c) Except as otherwise provided by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of [EITHER] an adoptive parent<u>,</u> [OR] an adopted child<u>, or a party to a proceeding for the termination of parental rights on grounds set out in AS 25.23.-180(c)(3)</u>.

* Sec. 8. AS 25.23.150(d) is amended to read:

(d) The court may order the disclosure of a natural parent's identity or address only if

(1) the court makes an express finding that the disclosure is required because of a medical necessity or other extraordinary circumstance; and

(2) the natural parent unless the parent's parental rights have been terminated on grounds set out in AS 25.23.180(c)(3), the [ADOPTED] child, and the adoptive parents are afforded proper notice and a hearing; the court may waive the hearing and notice requirement if it finds there is a medical necessity that poses an immediate risk to life.

* Sec. 9. AS 25.23.170 is amended to read:

Sec. 25.23.170. APPLICATIONS FOR BIRTH CERTIFICATES. Within 30 days after an adoption decree becomes final, the clerk of the court shall, if requested by the adoptive parents, prepare an application for a birth certificate in the name of the adopted person. Upon issuing a decree terminating parental rights on grounds set out in AS 25.23.180(c)(3) the court may order the preparation of an application for a birth certificate in the name of the child without reference to the parent whose parental rights have been terminated. The clerk of the court shall [AND] forward the application

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adopted person was born and a copy of the decree to the department for statistical purposes; and

(2) for a person born outside the United States to the state registrar of vital statistics.

* Sec. 10. AS 25.23.180(c) is amended to read:

(c) The relationship of parent and child may be terminated by a court order issued in connection with a [AN ADOPTION] proceeding under this chapter or a proceeding under AS 47.10:

(1) on the grounds specified in AS 47.10.080(c)(3); [OR]

(2) on the grounds that a parent who does not have custody is unreasonably withholding consent to adoption, contrary to the best interest of the minor child; or

(3) on grounds that the child was conceived by an act constituting sexual assault, sexual abuse of a minor, or incest under the laws of this state or a comparable offense under the laws of the state where the act occurred and that termination of the parental rights of the biological parent is in the best interests of the child.

* Sec. 11. AS 25.23.180(e) is amended to read:

(e) A petition for termination of the relationship of parent and child made in connection with an adoption proceeding or in an independent proceeding for the termination of parental rights on grounds set out in (c)(3) of this section may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) another [ANY OTHER] person having a legitimate interest in the matter.

* Sec. 12. AS 25.23.180(g) is amended to read:

(g) Notwithstanding the provisions of (b) of this section, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a

court terminating the parent and child relationship <u>on grounds set out in (c)(1) and (2) of</u> [UNDER] this section may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

* Sec. 13. AS 25.23.180 is amended by adding new subsections to read:

(h) The respondent to a petition filed for the termination of parental rights on grounds set out in (c)(3) of this section is entitled to representation in the proceedings by an attorney. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of sexual abuse of a minor or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

* Sec. 14. AS 25.23.240(5) is amended to read:

(5) "court" means the superior court of this state, and, when the context requires, the court of <u>another</u> [ANY OTHER] state empowered to grant petitions for adoption <u>or to terminate parental rights</u>;

* Sec. 15. AS 25.23.240 is amended by adding new paragraphs to read:

(10) "incest" means a sexual offense defined in AS 11.41.450;

(11) "sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.436, 11.41.438, or 11.41.440;

(12) "sexual assault" means a sexual offense defined in AS 11.41.410 or 11.41.420.

* Sec. 16. AS 44.21.410(a) is amended to read:

(a) The office of public advocacy shall

(1) perform the duties of the public guardian under AS 13.-26.360 - 13.26.410;

(2) provide visitors and experts in guardianship proceedings under AS 13.26.131;

(3) provide guardian ad litem services to children in child protection actions under AS 47.17.030(e) and to wards and respondents in guardianship proceedings who will suffer financial hardship or become dependent upon a government agency or a private person or agency if the services are not provided at state expense under AS 13.-26.112;

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, [AND] to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775, and to indigent respondents in cases involving the termination of parental rights on grounds set out in AS 25.23.180(c)(3);

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for the termination of parental rights on grounds set out in AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public

defender agency because of a conflict of interests.

* Sec. 17. AS 47.10.010(a) is amended to read:

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian, or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately

to supervise the child;

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the parent, guardian, or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Health & Soc Services	Family & Youth Services	SB 30	Senator Paul Fisher

DEPARTMENT POSITION

Qualified support (please see analysis below)

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Myra Munson	3/13/87	Myra K. Munson	3/13/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Law, Alaska Court System	Victims of incest, perpetrators of incest
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

In order to protect the child conceived as the result of sexual abuse of a minor or of incest, the court may terminte the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Department of Health and Social Services supports the objectives of SB 30. This bill would allow termination of the parental rights of a biological parent who conceives a child as a result of sexual abuse of a minor or incest. The department believes this objective can be better accomplished, however, by amendments to AS 25.23, which relates to adoptions. This is preferable to amending AS 47.17, which relates primarily to child abuse and neglect reporting.

AMENDMENTS PROPOSED

Please see attached memo from Alaska Legal Services attorney Andrew Harrington to Randall Burns, Special Assistant, Department of Health and Social Services.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

To: Randall Burns
From: Andy Harrington
Re: SB 30
Dated: 3/11/87 Wed

In response to your request, I am sending along suggestions for how the substance of SB 30 can be accomplished by amending existing statutes rather than creating a separate chapter of statutes.

This focuses on AS 25.23.180, which already contains several of the provisions regarding termination of parental rights. This is contained in the adoption chapter.

There are two substantive matters I'd like to bring to your attention: first, inserting the the private cause of action into AS 25.23.180 will make it possible for a private individual to terminate parental rights based on the child sexual abuse/incest ground; it will enable a private individual to terminate another's parental rights if that private individual can make the same showings the State makes in terminating parental rights in child-in-need cases. (It may be that private individuals can already do so; as far as I know, the State Supreme Court hasn't ruled on that.)

Second, I noted that, in the draft of the bill I received, parental rights can be terminated based on violations of Sexual Abuse of a Child in the First, Second, and Fourth Degrees, but not in the Third (AS 11.41.434, 11.41.436, 11.41.440, but not 11.41.438). I assume this was an oversight. Sexual Abuse of a Minor in the Fourth Degree is an A Misdemeanor, committed by offenders under sixteen against children at least three years younger; Sexual Abuse of a Minor in the Third Degree is a C felony, committed by offenders over sixteen against children at least three years younger. I'm assuming the bill was meant to include SAM 3d and exclude SAM 4th, and have drafted my suggestion accordingly.

I've tried to underline new material and bracket old material being eliminated, but I don't guarantee the accuracy of that.

After the proposed changes, I've listed the sections of the current bill and how that provision is incorporated.

AS 25.23.030: Jurisdiction and venue.

(a) Proceedings for adoption shall be brought in the superior court for the district in which, at the time of filing or granting the petition, the petitioner or the person to be adopted resides or is in military service, or in which the agency having the care, custody or control of the minor is located. Proceedings for non-adoptive termination of parental rights shall be brought in the superior court in which the minor child resides.

(b) [same as original]

(c) For jurisdictional purposes, a proceeding under this chapter is a child custody proceeding subject to the Uniform Child Custody Jurisdiction Act, AS 25.30.020.

AS 25.23.050: Persons as to whom consent and notice not required.

(a) Consent to adoption is not required of

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

(5) a parent whose parental rights have been terminated by order of the court under AS 47.10.080(c)(3) or under AS 25.23.180;

(6) [same as original]

(7) [same as original]

(8) [same as original]

(9) [same as original]

(b) [same as original]

AS 25.23.140: Appeal and Validation of [Adoption] Decree

(a) [same as original]

(b) [same as original]

(c) Subject to the disposition of an appeal, upon the expiration of one year after a decree of non-adoptive termination of parental rights is issued, the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

AS 25.23.150: Confidential nature of hearings and records in adoption and non-adoptive termination proceedings.

(a) [same as original]

(b) All papers and records pertaining to [an adoption] proceedings under this chapter that are a part of the permanent record of a court of are subject to inspection only upon consent of the court. The papers and records relating to [an adoption] such proceedings on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisios of AS 18.50.

(c) Except as authorized by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of [either] an

adoptive parent or an adopted child or any party to an adoption or non-adoptive termination case.

(d) The court may order the disclosure of a natural parent's identity or address only if

(1) the court makes an express finding that the disclosure is required because of a medical necessity or other extraordinary circumstance; and

(2) the natural parent, the [adopted] child, the child's other natural parent (unless that parent's rights have been terminated), and the adoptive parents are afforded proper notice and a hearing; the court may waive the hearing and notice requirement if it finds there is a medical necessity that poses an immediate risk to life.

AS 25.23.170: Applications for birth certificates.

Within 30 days after an adoption decree becomes final, the clerk of court shall, if requested by the adoptive parents, prepare an application for a birth certificate in the name of the adopted person. Upon a non-adoptive termination of parental rights under section 180 of this chapter, the court may order the preparation of an application for a birth certificate in the name of the child without reference to the parent whose rights have been terminated. Such applications shall be forwarded

(1) [same as original]

(2) [same as original]

AS 25.23.180: Relinquishment and termination of parent and child relationships.

(a) [same as original]

(b) [same as original]

(c) The relationship of parent a child may be terminated by a court order issued in connection with an adoption proceeding under this chapter, an independent proceeding under this section, or a proceeding under AS 47.10 on any of the following grounds:

(1) on the grounds specified in AS 47.10.080(c)(3);

(2) on the grounds that a parent who does not have custody is withholding consent to adoption, contrary to the best interests of the minor child; or

(3) on the grounds that (a) the child was conceived by an act constituting sexual abuse of a minor or incest under the laws of this state, or by a comparable offense under the laws of the jurisdiction where the act occurred; and (b) termination of the parental rights of the biological parent is in the best interests of the child.

(d) An order terminating parental rights issued by a court of competent jurisdiction in this or any other state voids all legal relationships between the child and the biological parent so that the child is a stranger to the biological parent, and to the relatives of the biological parent, for all purposes including but not limited to, inheritance, unless the decree specifically provides for continuation of inheritance rights; and including the interpretation or construction of documents, statutes, and instruments, whether executed before or after the termination is

decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship; and including dispensing with the required

(1) consent by that parent to an adoption of that child; and

(2) notice of a proceeding to that parent unless otherwise required by this section.

(e) A petition for termination of the relationship of parent and child, whether or not made in connection with an adoption proceeding, may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) any other person having a legitimate interest in the matter.

(f) [same as original]

(g) [same as original]

(h) Proceedings under this section are to be governed, where applicable, by the provision of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

(i) The respondent to a petition filed for adoption or non-adoptive termination of parental rights is entitled to representation by an attorney in the proceedings. If the respondent is financially unable to employ an attorney, the court shall appoint the Office of Public Advocacy to represent the respondent.

(j) Proceedings under this section do not affect the right of a victim of sexual abuse or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

AS 25.23.240 Definitions.

In this chapter, unless the context otherwise requires,

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

(5) "court" means the superior court of this state, and, when the context requires, the court of any other state empowered to grant petitions for adoption or terminate parental rights;

(6) [same as original]

(7) [same as original]

(8) "incest" means a sexual offense defined in AS 11.41.450;

(9) "sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.436, or 11.41.438;

(10) [renumbered subsection 8 of original]

(11) [renumbered subsection 9 of original]

AS 44.21.410 Powers and Duties of Public Advocacy Office.

(a) The office of public advocacy shall

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, to indigent respondents who are financially unable to employe attorneys in non-adoptive termination cases under AS 25.23.180, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for non-adoptive termination of parental rig.. s under AS 25.23.180; in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

The following list points out where the provision of the former bill are dealt with in the above version.

AS 47.17.180: can probably be eliminated, as the purpose of the statute seems self-evident.

AS 47.17.190: 25.23.180(e) lists the people who can bring the action and seems broad enough to include the people listed.

AS 47.17.200: AS 25.23.180(f) requires notice.

AS 47.17.210: the new grounds can be listed in an addition to AS 25.23.180(c).

AS 47.17.220: 25.23.180(d) specifies the effect of a termination decree.

AS 47.17.230: AS 25.23.150 provides for confidentiality; a small amendment can specify that this applies to non-adoptive termination cases.

AS 47.17.240: 25.23.180(a) covers relinquishments.

AS 47.17.250: A sentence added to section 180 can specify that ICWA controls where applicable.

AS 47.17.260: The finality provision can be inserted into AS 25.23.140 which deals with finality of adoptions.

AS 47.17.270: The availability of an appointed attorney can be added as a subsection to 25.23.180.

AS 47.17.280: The ability to get costs and fees need not be stated as Rule 82 would apply.

AS 47.17.290: The preservation of other victims' rights can be added as a subsection to AS 25.23.180.

AS 47.17.300: Since this clarifies that the UCCJA applies, it would be better to add this as a separate provision applicable to adoptions as well as non-adoptive terminations. I'd put it in AS 25.23.030 and re-label that section "jurisdiction and venue."

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 30
Publish Date:

REQUEST:

Revision Date:
Title: "An Act relating to termination of parental rights ... "
Sponsor: Senator Fischer
Requestor: Senator Fischer

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Phone: 465-3672
Date: March 5, 1987

Richard L. Pegues /for/
Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law
Date: March 5, 1987

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 30

SENATE BILL 30

This bill amends AS 47.17 by adding new sections that provide for the termination of parental rights of perpetrators of certain sexual offenses. Upon petition to the superior court, the court would be empowered to terminate the parental rights of a perpetrator to a child conceived as the result of sexual abuse of a minor or of incest, when termination is in the best interests of the child. Petition could be made by certain private party family members of the child, and this process would not involve the state, except that the Office of Public Advocate would represent indigent respondents. Consequently, this bill will not have a fiscal impact on the Department of Law. The department does note that it would probably not be able to assist petitioners, where they lack the means to petition the court, because of the severity of the department's current and projected budget constraints.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : SB 30
Publish Date :

Revision Date:
Title : "An Act relating to termination of parental rights..."
Sponsor : Fischer
Requestor : Senate Judiciary

Agency Affected : Administration
BRU : Office of Public Advocacy
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Brant McGee, Public Advocate
Phone : 274-1684
Division : Office of Public Advocacy
Date : 2/22/87

Approved by Commissioner : Garrey Peska
Date : 2/6/87
Agency : Department of Administration

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

POSITION PAPER
SB30
"An Act relating to termination of parental rights to perpetrators of certain sexual offenses"

This Bill allows the parental rights of a perpetrator of sexual abuse to be terminated if necessary to protect the best interests of the child.

The Bill is unlikely to generate an increase in the number of Child In Need of Aid actions because such cases are almost always the subject of such proceedings under current law. However, the Bill does mandate the appointment of an attorney from the Office of Public Advocacy where current law mandates that such appointments be from the Alaska Public Defender Agency. Because OPA now almost invariably acts as guardian ad litem for the child victim, the appointment of OPA will necessitate costly contracts with private attorneys to provide this representation.

The Office of Public Advocacy supports this legislation but opposes the provisions mandating OPA appointment to represent alleged perpetrators as unnecessarily costly.

Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87
Date

Commissioner Garrey Peska
Department of Administration

2/4/87
Date

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

M E M O R A N D U M February 24, 1987

SUBJECT: Section-by-section analysis of SB 30, An Act Relating to Termination of Parental Rights of Perpetrators of Certain Sexual Offenses

TO: Senator Paul Fischer

FROM: George Utermohle GU
Legislative Counsel

The following is the section-by-section analysis of SB 30, requested by Jack Sanderson of your staff.

A sectional analysis or summary of a bill should not be considered an authoritative interpretation of a bill, and the bill itself is the best statement of its contents.

Section 1. Section 1 of the bill adds a new article to AS 47.17 providing for the termination of parental rights of certain sexual offenders.

Sec. 47.17.180 states the purpose of the article.

Sec. 47.17.190 lists who may file a petition to terminate the parental rights of a perpetrator of sexual abuse of a minor or of incest to the child conceived as a consequence of the sexual offense.

Sec. 47.17.200 sets out who must receive notice of the action to terminate parental rights.

The biological mother of the child, the biological or alleged biological father, and the guardian or custodian of the child must receive notice of the petition.

If the biological father of the child is unknown or not disclosed, the court must inquire of the biological mother as to information about the biological father unless the court finds that disclosure is harmful to the mother or child.

The court shall decide what notice should be given to unknown, undisclosed, or unlocated biological fathers.

The court may order blood tests to determine the biological father of the child and assess the costs on the parties to the petition.

If the court finds that notice given to a party to the action to terminate parental rights was not adequate the court may continue the hearing until the defect of notice is cured.

Sec. 47.17.210 sets out the powers of the court to terminate parental rights of a sexual offender.

The court shall terminate the parental rights of a biological parent of a child if the court finds by clear and convincing evidence that (1) required notice has been given or the person has relinquished parental rights, (2) the child was conceived by an act constituting sexual abuse of a minor or incest, and (3) the termination of parental rights is in the best interests of the child.

The court may order preparation of a new birth certificate for the child if the court terminates the parental rights of the biological father.

The court may order disclosure of the name of the biological parent only if disclosure is necessary for medical or extraordinary circumstances and the parties are given notice. Notice is not required if there is a medical emergency.

Sec. 47.17.220 states the legal effect of a termination of parental rights under these provisions. The order terminating parental rights voids all legal relationships between the biological parent and child and is a determination that parental rights never attached between the child and biological parent.

Sec. 47.17.230 provides that proceedings under these provisions are closed to non-essential persons and that court records are closed.

Sec. 47.17.240 provides the circumstances under which a biological parent may relinquish parental rights under these provisions.

Sec. 47.17.250 provides for the modification of the procedures in these provisions to comply with the requirements of the Indian Child Welfare Act of 1978. The most significant requirements of the Act include notice to the tribe to which the child is related and proof of facts beyond a reasonable doubt. An "Indian child" is defined as an unmarried person

under 18 years old who is either a member of an Indian tribe or is eligible for membership in a tribe and is a biological child of a member of a tribe.

Sec. 47.17.260 provides that an order terminating parental rights is final and not appealable after six months.

Sec. 47.17.270 provides that the respondent to a petition to terminate parental rights is entitled to representation by an attorney. The court may appoint an attorney to represent the respondent if the respondent cannot afford an attorney.

Sec. 47.17.280 provides that the court may award reasonable attorney fees and costs to a prevailing party.

Sec. 47.17.290 provides that an order terminating parental rights under these provisions does not affect the right of a victim of sexual abuse or of incest to recover civil damages for injuries and costs arising out of the conduct of a perpetrator of sexual abuse or incest.

Sec. 47.17.300 provides that a proceeding to terminate parental rights under these provisions is a child custody proceeding subject to AS 25.30.

Sec. 47.17.310 defines "child", "court", "incest", and "sexual abuse of a minor."

Section 2. Section 2 of the bill amends AS 25.23.050(a) to include references to AS 47.17.210 and 47.17.240.

Section 3. Section 3 of the bill amends AS 44.21.410(a) to allow the office of public advocacy to represent indigent respondents in proceedings to terminate parental rights under this bill.

Section 4. Section 4 of the bill amends AS 47.10.010(a), relating to a "child in need of aid," to include a reference to AS 47.17.210.

GU:mkr
m9/049

Alaska State Legislature

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State Senate

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To: Senator Jay Kerttula, Chairman &
Members Senate Judiciary Committee

From: Senator Paul Fischer

Subject: SB 30, Terminating the Parental Rights of Sex Offenders

Date: April 14, 1987

SB 30, would terminate the parental rights of sexual offenders. This issue was brought to my attention by the courts and concerned parents. It's preposterous to assume that a rapist, child molester or sibling will be acting in the best interest of the child that they accidentally brought into this world. Even if they are, I don't believe they deserve the right to be called a "parent" under these circumstances. For these reasons, I introduced SB 30.

The HESS Committee Substitute for this bill amends current statutes to bring about the same objective as the original bill instead of creating new sections of law. This approach was brought to our attention by the Department of Health and Social Services and is supported by them. The heart and essence of the bill is found in section 10, page 5, lines 5 through 9. All other sections serve to implement this new language.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Health & Social Services	Family & Youth Services	SB 30	Senator Paul Fischer

DEPARTMENT POSITION

Recommend Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Randall P. Burns	3/25/87	Myra M. Munson	3/25/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Law - Civil and Criminal Divsions Alaska Court System	Victims of incest or the sexually abused minors
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

In order to protect the child conceived as the result of sexual abuse of a minor or of incest, the court may terminate the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Department of Health and Social Services supports SB 30. This bill would allow the relationship of parent and child to be terminated on grounds that the child was conceived by an act constituting sexual abuse of a minor or incest, when the termination of the parental rights of the biological parent would be in the best interest of the child. The bill sets out that consent to adoption is not required when parental rights have been terminated by order of the court under AS 25.23.180(c)(3). Sec. 180(c)(3) is a new section providing for termination of parental rights when the child was conceived as a result of sexual abuse or incest.

The committee substitute responds well to the Department's earlier concerns and we are in full support of the legislation as it is now drafted.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

SB

32

(FILE 1)

The Greatest Addiction of All

by Jon Gettman, NORML Director

NORML=IZER

Power is the most addictive habit in the world. The moral influence that shaped the American Revolution and inspired our democracy demands that individual citizens challenge the abuse of power by our leaders. Modern politics is founded on the belief that the government's natural tendency to increase its power requires restraint. Conservatives are inspired by the belief that governmental power needs to be kept minimal in order to preserve individual liberty. Liberals are inspired by the belief that individual rights require protection from authoritarians throughout society.

The War on Drugs is really a war between two opposing ideologies about the management of our society. It is a struggle between authoritarians driven by their craving for ever-increasing power and patriots driven by the love of their democratic heritage.

Marijuana reform will eventually prevail because it is true to the principles that give our society its greatest strength. It will gain support from a diverse coalition of Americans because they abhor abuse of power in their name. When they understand how the War on Drugs has been the excuse for a steady increase in the power of the government to invade their privacy, whether they use drugs or not, they will demand an end to the war.

In the last few years marijuana and other drug use has been exploited by governmental agencies to not only increase their budgets but their authority. And they lie to and mislead the public in order to justify the exceptional steps they wish to take, steps which repudiate the principles upon which our country was founded.

The American Revolution was inspired by a long simmering, deeply felt distrust by the colonists of the men running the English government. They proudly asserted their liberty to exercise their natural rights, which, wrote John Dickinson in a pre-war pamphlet, "are created in us by the decrees of Providence, which establish the laws of our nature. They are born with us; exist with us; and cannot be taken from us by any human power without taking our lives. In short, they are founded on the immutable maxims of reason and justice."

One of these rights was and is held to be a right to privacy. It is this right that is protected by the Fourth Amendment of the United States Constitution which restrains the government from unreasonable search and seizures. However, the anti-drug crusade seeks to have police exempted from this restraint as long as they act in "good faith." And the Fourth Amendment would have been quietly circumvented amidst the anti-drug hysteria of September, 1986 had it not been for a few brave conservatives in the Senate, like Robert Packwood, who seek to block the abuse of governmental power, no matter what the excuse.

But this is not the only assault on the Fourth Amendment. The anti-drug movement has secured rulings which allow the [illegible] to hover over your back yard [illegible] you. They have secured widespread support for forced urine testing. How would George Mason, the father of the Bill of Rights, react to a surprise urine test? "Mr. Mason, take off that wig, we don't want any contaminants in your pee. Now just fill this little bottle and you can go back to writing the Bill of Rights, just as long as you haven't been smoking any of those hemp plants in your garden."

The assertion of a right to be protected from governmental scrutiny precedes the American Revolution. Its advocates were inspired by the tradition of liberty established by the Magna Carta and nurtured by the English Constitution. In an immortal declaration, William Pitt, a man the King's men found to be too reasonable to run the government, said in 1763: "The poorest man in his cottage may bid defiance to all the force of the Crown. It may be frail; its roof may shake; the rain may enter—but the King of England cannot enter—all his forces dare not cross the threshold of the ruined tenement."

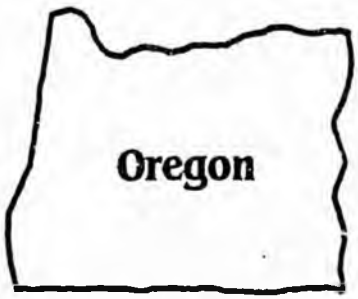
Nearly 200 years later, in 1960, Barry Goldwater wrote **The Conscience of the Conservative**, which "is pricked by anyone who would debase the dignity of the individual human being." Our dignity is debased, by a government that not only seeks to barge into our living rooms and instruct our behavior, but also has dedicated itself to spreading lies about marijuana users and promoting their widespread persecution. Our dignity is debased when Carlton Turner, the President's drug advisor, encourages employers to discriminate against marijuana users by stating the are unfit for work. Our dignity is debased when the National Institute on Drug Abuse releases a story to the press that marijuana causes premature senility without mentioning that it would take the equivalent of 135 joints a day for 40 years to accomplish it, and that 50 joints a day has no effect on the brain.

Conservatism, Goldwater wrote, is guided by "the ancient and tested truths that guided our Republic through its early days (and they) will do equally well for us." Power corrupts, and "the natural tendency of men who possess some power to take unto themselves more power leads eventually to the acquisition of all power."

The 200th birthday of the Constitution is about to be celebrated. We must remember that we, the people, must assert our natural rights so that our society may prosper as our ancestors envisioned.

We believe, as those who brought about the American Revolution, that when faced with tyranny, "submission is a crime." We're not involved in a struggle over whether or not you have a right to smoke marijuana. It's a struggle over how much power we are willing to let the state accumulate at the expense of liberty. The time has come to remind our leaders of this, and begin anew our quest for liberty. ●

Since 1969, enough Americans have been arrested for possession of marijuana to empty the states of:



(pop. 2,633,149)

(pop. 944,038)

(pop. 800,493)

And the cities of:

Fresno, CA (pop. 218,202)
Amarillo, TX (pop. 149,230)
Santa Fe, NM (pop. 48,899)
Spokane, WA (pop. 171,300)
Pueblo, CO (pop. 101,686)
Redding, CA (pop. 41,995)
Salt Lake City, UT (pop. 163,033)
Casper, WY (pop. 51,106)
Flagstaff, AZ (pop. 34,641)

And the towns of:

Piercy, Reynolds, Leggett, Rockport, Cummings, Covelo, Ukiah, Dos Rios, Laytonville, Branscomb, Westport, Longvale, Inglenook, Cleone, Ft. Bragg, Novo, Willits, Casper, Mendocino, Littleriver, Potter Valley, Redwood Valley, Comptche, Albion, Calpella, Navarro, Talmage, Elk, Philo, Manchester, Boonville, Point Arena, Yorkville, Anchor Bay and Gualala, California (pop. 66,783)

In fact, almost 6,000,000 people have been arrested for possession of marijuana. In 1984 alone, over 419,000 marijuana arrests were reported, *one every minute and a half.* The government has pledged to continue. If you think enough is enough, get involved.

Join NORML today by sending $25 membership dues, or write or call for free information:

NORML, 2001 S Street, NW, Suite 640, Washington D.C. 20009 • (202) 483-5500

☐ Yes, I want to do my part to end the suffering caused by America's unjust marijuana laws.

☐ Enclosed are my $25 regular membership dues. Please send me my membership package, a copy of the state and federal marijuana laws and a free NORML button.

☐ Enclosed are my $15 low income, student or military membership dues. I understand that I receive all the benefits of a regular membership.

☐ No, I can't join now, but please put this tax-deductable contribution to good use. I'm enclosing:
___$500 ___$250 ___$100 ___$50 ___$25 ___$10
___$ Other

National Organization for the Reform of Marijuana Laws

NAME:___ _____
ADDRESS _____ APT.#:_____
CITY: _____ STATE: _____ ZIP: _____
TELEPHONE:(___) _____
(All information remains strictly confidential.)

☐ Check here if you would like to receive your mail without our logo on the envelope.

MAIL TO:

NORML
2001 S Street, N.W.
Suite 640
Washington DC, 20009

ACTIVIST NEWS

IN THE EYE OF THE STORM

Activist News by Burt Neal, NORML Projects Coordin[illegible]

At the end of September and the beginning of October of the past year, a storm of hurricane strength overcame Washington D.C. This hurricane became known as "Hurricane Hysteria" and she was a tough one to weather. Hysteria's appearance came to no one's surprise; after all, it was a mid-term election year, and the media rarely gives reform supporters a fair shake. In other words, it is always hurricane season. But the fierceness of Hysteria was the shocker. Who would have thought that crack and cocaine, the killers of 700 people last year, (tobacco—350,000 dead), would have been proclaimed by every publication as the number one security threat facing the nation? And let us not forget the opportunistic politicians trampling of the very constitutional rights that our forefathers fought for.

Needless to say, it was a busy time for **NORML** and its activitists. Everyone was on the anti-drug gravy train, and they were all out to expand their powers, increase their funding, and spread their lies while they could. The anti-marijuana forces in the White House and in the National Institute of Drug Abuse quickly began to increase their exaggerations to an eagerly awaiting and amazingly gullible media. [illegible]

that claimed that excessive mari[illegible] ing could cause brain damage simila[illegible] aging. One government official desc[illegible] "a ticking time bomb." When a report[illegible] tacted NIDA about the story, he was to[illegible] these new findings should have a grave im[illegible] on the voters of Oregon who were co[illegible] dering a proposal on November's ballot to le[illegible] galize possession and cultivation of cannabis[illegible] the Oregon Marijuana Initiative.

What reporters weren't told was that one group of rats was given the human equivalent of **136 joints a day for 30 to 40 years**, the other the equivalent of 54 joints a day for 30-40 years. **The 136 "J's" a day group suffered the ill effects, the 54 a day group showed no problems.**

Typical. **NORML** wrote the papers that ran the story and sent out a press advisory to the media warning about this and other examples of government exaggerations about marijuana. We know that we did have some impact on the media, but the truly important point is that an organization was out there to point out the falsity of this story.

The press frenzy, which began to deteriorate somewhat in October, came in a distant second to what we witnessed in Congress.

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[illegible] Bill allowed illegally seized evi[illegible]ses, not just [illegible] John Adams [illegible]llowed Brit[illegible]?) Over the [illegible]ense Casper [illegible] military to [illegible] days of en[illegible]t forget the [illegible] million fed[illegible]es to a urine [illegible] basis for sus[illegible]

[illegible] Representatives [illegible] such inher[illegible] They include Rep. [illegible] Rep. John Conyers (MI), Rep. [illegible] (MA), Rep. Ron Dellums (CA) [illegible] (CA), Rep. Henry [illegible] Michael Lowry (WA). [illegible] Rep. Edward [illegible]vsabo (MN). [illegible]Stokes (OH). [illegible] (OR) [illegible]. Ted Weiss (NY) [illegible] Republican Rep. Philip Crane [illegible] on this list. [illegible] r displeasure

[illegible] of the Capi[illegible] Bob Dole intro[illegible] allowed the [illegible] alcohol, and mental [illegible] that had de[illegible] deliberate, but [illegible]o recrimina[illegible]

[illegible] this amendment [illegible] the activists in th[illegible] contacted their frienc[illegible] centers and urged [illegible] their Senators and Governo[illegible] sent out a press release and also ca[illegible] offices to make them aware of th[illegible]

All these p[illegible] question for their elected repre[illegible] you in favor of cutting off our [illegible] alcohol, and mental health grants? [illegible] suggest that you do something [illegible]

It takes about ten phone calls from constituents about a specific bill before a Representative [illegible] takes notice. Only ten. Not [illegible] of the Senators were in favor of this [illegible] and they let Sen. Dole know it. The [illegible] was dropped the next day. [illegible]

As I am writing, the storm is slowly subsiding. A fair amount of the media is beginning to admit that they exaggerated the drug crisis. And there are even voices of wisdom coming from certain politicians, especially Pat Schroder (D-CO) and Gary Ackerman (D-NY). Perhaps the bravest was Sen. Evans (R-WA), who was absolutely correct when he said that the Senate Bill "belonged in Orwell's 1984, not America in 1986."

America's civil liberties took a beating this hurricane season. Perhaps it's greatest victim was O.M.I. They'll be back next election. But we were able to in some ways deflect some of Hysteria, and thus alter the course of the debate. NORML activists and members were able to make a difference to the temporary situation.

If you think that the work of NORML as described above is important, please help us to help you. Join NORML or make a contribution today. If you want to alter history, become an activist for justice in America. Contact NORML today. Hysteria was a rough storm, but remember, it is always hurricane season during prohibition.

Here is a listing of some of the NORML college chapters around the country:

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Attn: C. McGrattan

V.P.I. & S.U. NORML
Attn: Susan Anderson
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Blacksburg, VA 24061

Southwestern U.S.L. NORML
Attn: Richard Dafford
USL #43984
Lafayette, LA 70504-3984

Columbia U. NORML
Attn: James Slaughter
423 W. 118th St. #4-G
New York, NY 10027

H.E.M.P.
(Help Educate Missouri's People)
P.O. Box 278
Fremont, MO 63941

CASE IN POINT

● Possession's still legal, eleven years later. ●

BOOZE AND GRASS IN ALASKA

A monthly report on drugs and the law. Written in consultation with Kevin Zeese, NORML Chief Counsel.

BY BOB LABRASCA

The case that gives rise to this column is that of *Hugh Harrison v. State of Alaska*—a case that's not very important in itself.

Harrison, an Alaska state trooper who apparently enjoyed an occasional nip, was transferred in late 1981 to duty in St. Mary's, a "dry" village on the Yukon River. In April '82, he flew a plane in from Nome to St. Mary's carrying a load of beer and vodka. Two days later police searched his home and found 62 liters of beer and 1.75 liters of vodka. He was convicted under the local ordinance of importing alcohol and then appealed, arguing in part that the local law violated his right to privacy under the state constitution.

In August '84, the Alaskan court of appeals affirmed his conviction. In so doing they had to draw some sharp distinctions between Harrison's case and one from 1975 involving a chap named Irwin Ravin. It was the Ravin case that effectively legalized "the possession of marijuana by an adult for personal consumption" in the state of Alaska.

You see, the Alaska Constitution specifically protects the "Right of Privacy." The state proudly guards that right: "Our territory and now state," the Alaska Supreme Court wrote in the Ravin decision, "has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states."

In concluding that the state had no right to go rooting through people's domiciles and belongings in search of their personal pot stashes, they stated unequivocally, "We believe this tenet to be basic to a free society. The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals."

So, in response to Harrison's appeal, the appeals judges had to explain why his case was different from Ravin's—and they had no trouble doing that. The Ravin decision, they pointed out, had not affirmed a fundamental right to possess or ingest marijuana; it was the privacy of the home, and implicitly the person, that was at issue, and that privacy wasn't absolute. If marijuana were the cause of a significant public health problem, then the right might have to give way to the public interest. But, "given the evidence of the relative harmlessness of the drug," they told Harrison, "an individual's right of privacy in the home outweighed the government's interest in regulating personal use of marijuana in the home."

Despite the defeat of the Oregon Marijuana Initiative at the polls last fall, some states continue to exercise a more enlightened attitude toward pot.

Alcohol, on the other hand, was far from harmless, they explained, citing these facts among others: Alaska's alcoholism mortality rate in 1975 was 418 percent higher than the national average. . . one out of every ten Alaskans is an alcoholic [illegible] of the state) 77.9 percent of violent crimes and 55.6 percent of property crimes were committed under the influence of alcohol. With a drug problem of that severity ravaging the Alaskan population, the town of St. Mary's had a perfect right to outlaw the importing of booze, regardless of trooper Harrison's lifestyle. (This decision, by the way, did not address Harrison's right to drink in his own home, but only his right to import or sell alcohol. Smuggling and dealing pot are still illegal in Alaska.)

What I find interesting about this is that it's been well over eleven years since *Ravin*, and it's still a matter of law in Alaska that marijuana is relatively harmless. Nobody gets busted there for head stash. If "legal" pot had the potential to provoke a major health problem, it would have done so by now, and the "parents power" antimarijuana lobby would have made its case before the legislature and the courts, and personal possession of grass would be illegal again. In the intervening decade, hundreds of millions of tax dollars (your money and mine) have been spent to try to discover some intolerably deleterious effect of marijuana, and "experts"—who in that much time could have proven clear, arctic air poisonous—are still coming up dry.

I talked with Anchorage attorney Robert Wagstaff, who handled the Ravin case, before putting this column together and heard for the first time the story of how the Alaskan courts became enlightened on this issue. It seems that he and Irwin Ravin, also a lawyer, actually conspired to change the law.

According to a prearranged plan, Ravin got himself busted with some pot in his pocket way back in December 1972. They moved to dismiss the case, and almost three weeks of hearings ensued in which the entire issue of marijuana and health was examined. Nationally-recognized scientists and zealots, from Dr. Lester Grinspoon to Dr. Gabriel Nahas, took the stand, and the current scientific literature on cannabis was entered in the record. A thorough study of that evidence formed the basis of the Supreme Court's *unanimous* decision in Ravin's favor, delivered in May '75.

Despite the passage of time, it's still quite probably the most thorough and rational discussion on marijuana prohibition yet dispensed by a body of judges. (Courts in the lower 48 have universally rejected the pot-privacy argument.) Anyone with an interest in this issue and access to a law library should give it a read-through. It just might make your day.

You'll find it under *Ravin v. State*, 537 P. 2d 494 (Alaska 1975). ●

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For information about the HIGH TIMES Legal Directory, or to change your current listing, contact Sandy Rosen, HIGH TIMES Magazine, 211 East 43rd Street, New York, NY 10017, (212) 972-8484.

Mike Royko

Legal marijuana —a pot of gold

I've been playing around with a fascinating number—14,000 tons. That's the amount of marijuana—foreign and domestic—that's said to be consumed each year in this country.

Actually, the federal narcs think it might be even higher. A recent raid in northern Mexico turned up 10,000 tons. The narcs were stunned because they thought that Mexico produced only one-fourth that amount.

But for this column's purpose, let's stay with the 14,000-ton figure.

If you break that down, it comes to 448,000,000 ounces.

I'm told that an ounce of marijuana will produce 20 to 40 joints, depending on whether you are frugal and make skinny ones or are self-indulgent and make them stogie-sized.

There's also a waste factor—seeds, twigs, bugs, spillage and so on.

So let's be conservative and figure 20 joints an ounce.

That's just under 10 billion joints a year.

If you divide that by the population of this country, it comes to about 40 joints for every man, woman and child.

Now, we can assume that millions of little toddlers and pre-schoolers don't smoke it. We can even assume that most kids in elementary school don't, since most of them don't have the purchase price.

And we can assume that millions of old codgers in nursing homes or two-room flats don't use it.

So who's doing all this grass-smoking? Recent studies say that teenagers are smoking less and less pot. So the biggest users are the age groups that range from young adults to middle-agers.

And they're a huge part of the population. If they aren't the majority, they're not far from it.

That tells us something obvious: There's a great demand in this country for marijuana.

As any Harvard economist—or dry-goods salesman—will tell you, when there's a great demand for something that isn't hard to supply, somebody is going to supply it.

Obviously, it's happening. Whether you live in a big city, a suburb or a small town, you can easily buy marijuana. If you aren't sure where to get it, just ask the nearest teenager.

So I have a simple question: If so many Americans want and use marijuana, if they are already getting it so easily, if they insist on spending billions of dollars a year on it, why are we screaming at Mexico, why are hordes of narcotics agents floundering around in futile attempts to find it, why are the police and courts still wasting time and money trying to put dealers in jail for selling it?

It ought to be obvious by now that the politicians in Washington can talk all they want about stamping it out, but they can't do it. It's become one of this country's biggest cash crops. It's a big part of Mexico's economy.

So maybe it's time to give up trying to stamp it out and consider legalizing it, thereby controlling it.

If it were legal, we wouldn't have gun-crazy dealers spraying Florida and other big import states with machine-gun bullets. They wouldn't be bribing politicians in this and other countries. In other words, it would be taken out of the hands of the criminal dope dealers, who are quickly becoming some of the world's wealthiest creeps.

It would allow the narcs to stop wasting their time trying to stop it, which they can't do, and would let them concentrate on chasing far more harmful drugs, such as heroin and cocaine.

And, best of all, it could be taxed. A $10 or $20 an ounce federal tax would bring in more than $5 billion or $10 billion a year. And every local government could slap on a little tax of its own.

Who would sell it? Private enterprise, I suppose. The day it became legal, we'd see nationwide pot franchises springing up.

And we could stop feuding with Mexico, since our own needy farmers could grow enough to meet all local demands.

Why, they'd probably wind up dealing in marijuana futures on the Board of Trade.

The sale could be regulated just as we now regulate the sale of booze. TV and radio advertising of pot would be banned, just as we've banned the advertising for hard liquor and cigarettes. Minimum age limits would be set.

Sure, it would be impossible to enforce the laws 100 percent. But the fact that teenagers find ways to buy beer doesn't prevent the rest of us from drinking it.

And, yes, I'm aware that marijuana isn't good for us, although scientists still aren't sure what the effects really are.

However, the scientists do know a lot more about the effects of even the finest scotches, the most elegant gins, the most regal cognacs. Even if you pay $5 a shot and tip the bartender a deuce, they will still quiver your liver and strain your brain.

So it might be time for us to stop pretending that we can do something to stop marijuana from being sold and consumed. In a country where the citizens—and even illegal aliens—have unlimited freedom of movement and where there is almost no control of its own borders, we can't do it.

Then why not try to at least regulate it and let our own farmers and businessmen make a buck.

Are we ready for a McJoint?

Alaska State Legislature

COMMITTEES

Committee on Communities and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

District 5

Kenai — Sterling
Soldotna — Anchor Point
Homer — Point Graham
Seldovia — English Bay
Kachemak — Nikolaevsk
Kasilof — Halibut Cove
Ninilchik — Clam Gulch

Representative Andre Marrou

THE NEW PROHIBITION ?

Some people think that Libertarians favor drugs. This is not so. Libertarians no more favor drugs than they favor guns.

Rather they have taken a look at history and have seen from past experience that outlawing substances (like drugs) or inanimate objects (like guns) simply does not work.

When you attempt that, you don't get rid of such things; you simply drive the use of them underground. Thereby you set up a black market, wherein people deal in the illegal substance or inanimate object, making much money at high prices by providing common citizens with what their leaders have decided is illegal.

For example, during America's "noble experiment" with prohibition from 1919 to 1933, the efforts of Congress to get rid of alcoholic beverages simply did not work. Instead, the underground provided both good and bad alcoholic substances to the American people, thus profiting greatly. The main effect of prohibition was to establish the Mafia in the United States, and it has grown stronger ever since. After seeing for fourteen years that the American public was simply not obeying the law, Congress then repealed the Constitutional amendment which had prohibited alcoholic beverages.

18th century

Similarly, another substance was outlawed in Sweden for 70-odd years, from about 1775 to about 1850. Many of the arguments that we now hear against various illegal substances were advanced against that substance back then. A black market developed in that substance, and an underground market was established, which thrived for the better part of a century by providing the common person with this substance. Believe it or not, that substance was coffee.

What about children →

Whether a substance or an inanimate object is good or bad for individual persons is not, repeat not, properly for the government to decide. Rather, it is for each individual person to decide whether he/she would benefit from the use of a substance or inanimate object.

As you may have noticed, the Ten Commandments in the Bible do not mention substances. Instead, the Ten Commandments refer to actions by human beings.

This, in essence, is what Libertarians believe-- that human actions are what should be considered in judging a person, not whether that person partakes of a certain substance or utilizes a given inanimate object.

If we were to outlaw the most dangerous inanimate object in our society, the object that results in the most deaths to our populace, the object that kills the most Americans every year, then we would outlaw automobiles. Obviously, the problem is not with the automobiles, but with the drivers behind the wheels--in other words, the problem is with actions of human beings, not in which objects they use to perform those actions. The same idea applies to substances.

The only two groups who adamantly favor outlawing drugs in our society are: the far-right wing religionists, who consider that certain drugs are "demons" and are thus immoral and sinful; the other group is the underworld, which profits greatly by dealing in these drugs. The common person in the street really does not care whether the drugs are legal or illegal, so long as he/she is protected from violent or coercive acts of other human beings, whether or not they use drugs or inanimate objects.

In sum, the outlawing of drugs is tantamount to the outlawing of guns. Outlawing guns will not stop murders, and outlawing drugs will not stop, nor has it stopped, the drug problem.

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Discriminatory Decision Making at the Legislative Level

An Analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970

Ruth D. Peterson*

This paper is an analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Consistent with value-conflict perspectives, previous research on the social origins of drug legislation suggests that coercive laws occur when the behavior of minority and other subordinate groups become threatening. Liberalizing drug legislation is enacted when the interests of dominant groups seem juxtaposed to existing punitive legislation. The present analysis explores the process of legislative decision making when both subordinate *and* superordinate groups engage in drug-related behaviors which run counter to dominant norms and values. To do so, a detailed analysis of the congressional committee hearings and floor debates which preceded enactment of the 1970 Act was conducted. This analysis revealed that Congress did not pass a strictly coercive drug control policy at the risk of stigmatizing superordinate groups. Nor did it choose to liberalize drug penalties across the board. Congress perceived that strictly liberal policies might undermine both the instrumental goal of reducing illicit drug activity, and the symbolic goal of expressing general societal disapproval of illicit drug use. Instead, the legislation that emerged from congressional debates contained both liberal and coercive provisions reflecting the requirements of dealing with two targeted populations: young middle and upper class white drug users who became identified as victims of drug traffickers; and large-scale and professional drug dealers who became identified as enemy deviants—the true source and symbol of the drug problem. Liberal, and essentially discriminatory, provisions permitted the protection of the former from stigmatization as criminal felons. Coercive, but apparently nondiscriminatory, provisions provided the threat and potential for severe punishment of the latter. The discriminatory features of the 1970 Act are identified and explicated. And, the implications of the Act's provisions for race- or class-based decisions in the application of sanctions are discussed.

INTRODUCTION

An important tenet of American criminal justice is the assumption of equality

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before the law. Ideally then, both lawmaking and law enforcement are class- and color-blind. Laws are based on general and universalistic criteria, and are applied without regard to the social background of those subject to its effects. Legal scholars have long attempted to assess the degree to which justice is exercised in a manner consistent with these legal ideals. The most prominent body of research along these lines considers the role of race, class, and other status characteristics of offenders on arrest, prosecutorial, and judicial decisions. However, scholars also recognize that discriminatory lawmaking represents another way in which the reality of the administration of American justice may depart from our ideals of equality before the law. Legislators may criminalize or assign penalties to behaviors that are common only to certain segments of the population (e.g., the lower classes or minorities), fail to criminalize or assign only slight penalties to harmful behaviors that are common among preferred segments of the population, or allocate resources such that certain groups are more likely than others to be the targets of law enforcement activities (Kleck, 1981). Legislation containing such features is discriminatory not only in its construction, but may also have discriminatory consequences at the level of law enforcement. As Kleck (1981, p. 801) suggests, discriminatory decisions at the legislative level may "reveal far more about why blacks and lower-class persons are overrepresented in arrest, court, and prison data than studies of processing within the criminal justice system."

Although discrimination is not always an explicit concern, there is a fairly substantial body of literature which examines the social origins of criminal legislation. Most such studies are posed as tests of the relative merits of value-consensus versus conflict models of law. In brief, although there are several variants of consensus theory (e.g., Durkheim, 1964; Freidmann, 1959; Bohannon, 1965), the basic argument is that criminal laws grow out of the societal mores, and are expressions of "those societal values which transcend the immediate interests of individuals or groups" (Chambliss, 1969, p. 8). Criminal law, therefore, represents the codification of values and customs that are widely shared in society and that reflect common interests.

In contrast, conflict viewpoints hold that criminal laws are expressions of the interests of the more powerful segments of society. Some conflict theorists draw largely upon the works of Marx and regard criminal laws as expressions of ruling class interests. Thus, for example, Quinney (1975, p. 291) argues that "Criminal law is an instrument that the state and dominant ruling class use to maintain and perpetuate the existing social and economic order." This theme is also echoed in the works of Chambliss (1973, 1974), and Taylor et al. (1973, 1975). A more moderate conflict perspective (Quinney, 1970; Chambliss and Seidman, 1971) views laws as reflecting and symbolizing the victory of one interest group over that of others, but no single set of interests is assumed to underlie all criminal legislation.

Research on the enactment of theft (Hall, 1952), vagrancy (Chambliss, 1964), sexual psychopath (Sutherland, 1950), prostitution (Roby, 1969, 1972), alcohol (Sinclair, 1962; Gusfield, 1963), and drug laws (Becker, 1963; Musto, 1973; Bonnie & Whitebread, 1974) suggests that conflicts of interest rather than consensus of values are the prime factors underlying much contemporary lawmaking. (In many instances too, the interests involved are race and class based.) Importantly, most of the research upon which this conclusion is based has a common feature: the legislation under consideration usually involves a single and fairly uniform type of behavior that is engaged in characteristically by an identifiable but subordinate segment of the population (Galliher & Pepinsky, 1978). Such a bias in the choice of legislation may have permitted only a limited understanding of the role of conflict in legislative decision making. If neither the interests nor the values of dominant populations are being called into question, it is not surprising that the laws which emerge reflect and symbolize their interests at the expense of less powerful and less reputable populations. Importantly too, we are unable to specify on the basis of such research the kinds of circumstances that will give rise to one or the other forms of discriminatory legislation (e.g., legislation favoring the privileged or aimed at controlling subordinates).

A more complete understanding of the role of conflicts of interests and values in lawmaking requires examination of proposed changes that could affect dominant as well as subordinate interests (Hagan, 1980; Hopkins, 1975). What happens, for example, when both subordinate and superordinate groups are believed to engage in behavior which runs counter to dominant values and norms? Are solutions sought which preserve intact dominant values regardless of the groups affected? Or, do lawmakers attempt to differentiate the various populations and their behavior? If the latter, how are such distinctions made, justified, and presented in the form of a general law?

The purpose of this paper is to address the above and related questions by examining passage of the Comprehensive Drug Abuse Prevention and Control Act (CDAPCA) of 1970. This act presents a unique opportunity to investigate the above questions because it deals with behaviors that (1) are complex and varied, (2) involve both subordinate and superordinate population segments, and (3) potentially place into conflict dominant values and dominant interests. In analyzing the 1970 Act particular attention will be given to any discriminatory features in the construction of the legislation, and to the potential of the legislation for permit ing discrimination at the law enforcement level. Before turning to our analysis of the 1970 legislation, a brief review of the previous literature on federal drug control may help to put the present legislation in the appropriate historical perspective.

PREVIOUS LITERATURE ON FEDERAL DRUG CONTROL

Research on the enactment of federal drug laws supports the view that such laws reflect discriminatory decision making (along race and class lines) at the legislative level. Consistent with conflict viewpoints, most explanations of federal drug control have viewed the laws as instruments of social conflict stemming from profound tensions among socioeconomic, ethnic, and racial groups. When such tensions are high, and use of a particular drug is associated with an identi-

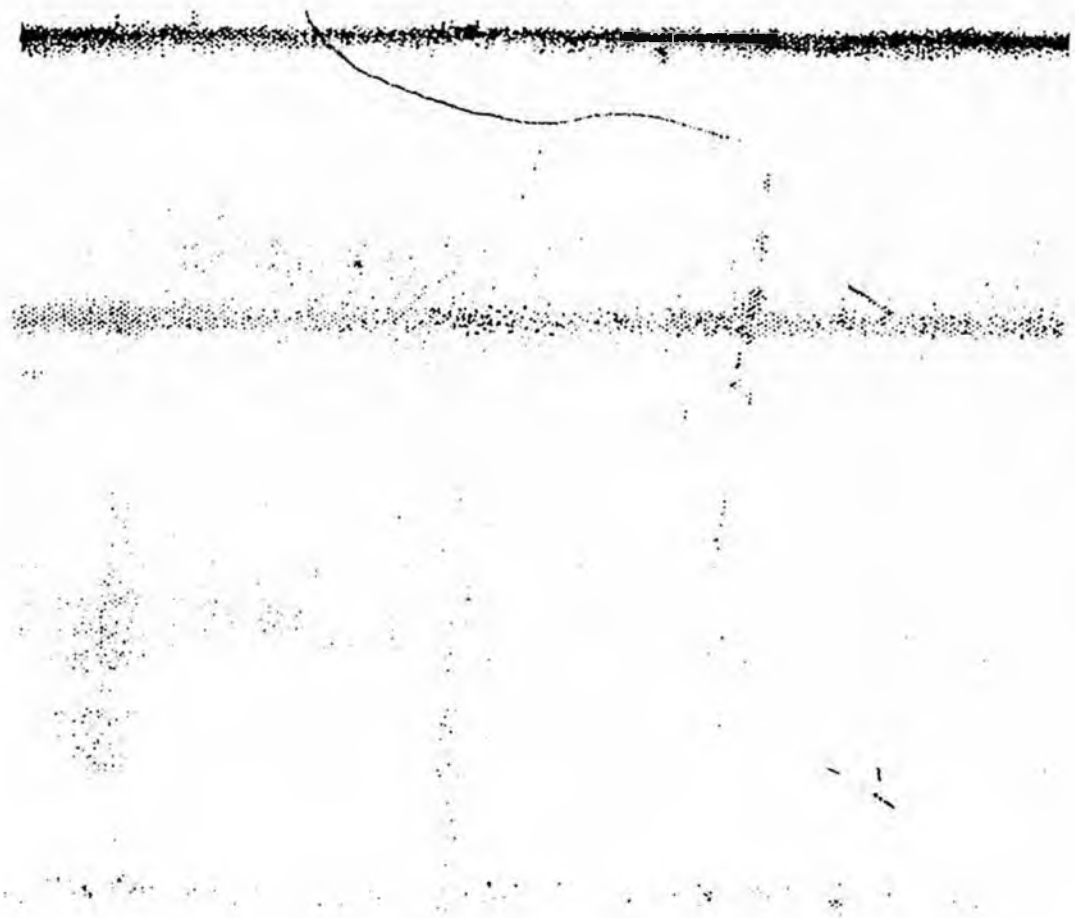
fiable and threatening group, legislation is enacted to control the undesirable behavior, and/or as a symbolic expression of hostile attitudes toward the particular group.

Musto (1973) and others (Reasons & Purdue, 1981; Helmer, 1975) demonstrate how the Harrison Narcotic Act of 1914 was linked to fear of opium smoking among the Chinese during a period when Chinese workers represented a labor surplus and an economic threat to working class Americans. This perceived threat resulted in antagonism against the Chinese, and, "along with this prejudice came a fear of opium smoking as one of the ways in which the Chinese were supposed to undermine American society" (Musto, 1973, p. 6). Musto adds that passage of the Harrison Act was also associated with fear of cocaine use by blacks in southern states. Because of the euphoric and stimulating properties of this drug, "The South feared that Negro cocaine users might become oblivious of their prescribed bounds and attack white society" (Musto, 1973, p. 6).

Similarly, researchers (Musto, 1973; Bonnie & Whitebread, 1974) have documented an association between the passage of the Marihuana Tax Act of 1937 and the threats posed by marihuana-smoking Mexican immigrants under conditions of economic depression in the 1920s and early 1930s. Mexican immigrants had been welcomed as a source of cheap farm labor during the economic boom in the early 1920s. With the onset of the Great Depression the Chicano and Mexican labor force became an unwelcome surplus in regions devastated by unemployment. Under these circumstances, the use of marihuana became a symbol of evil and users were depicted as capable of the most violent crimes under its influence (Reasons & Purdue, 1981). In short, the prohibition of opium and cocaine use under the Harrison Narcotic Act, and marihuana use under the Marihuana Tax Act was aimed at controlling the perceived threats posed by the noted ethnic and racial populations. In addition, the respective laws were symbolic gestures to indicate the superiority of Anglo culture over Oriental, black, and Chicano culture in times of great concern about these threatening groups.

Social research on federal drug legislation since the Marihuana Tax Act is not as extensive or as systematic. However, available literature continues to emphasize economic or social tensions between different segments of society." For example, Susman (1975), the National Parole Institutes (1964), and Glaser (1974) note that following World War II, drug use became concentrated in large cities, among younger persons, persons from the lowest socioeconomic classes, and particularly, among poor slum-dwelling blacks, Puerto Ricans, and Mexican-Americans. Further, among these "outsiders," drug addiction increasingly became associated with other types of illegal behavior (crime and delinquency). In this context Congress enacted the most severe criminal sentences ever imposed for drug use and abuse (see the pre-1970 penalty structure summarized in Table 1).

While the research cited above is clearly suggestive of racial and ethnic discrimination in the making of criminal drug laws, it is noteworthy that under certain circumstances even the drug-related behavior of affluent socioeconomic groups (e.g., middle class whites) may be subject to punitive legislation. Federal drug legislation enacted during the 1960s (The Federal Drug Abuse Control



Amendments of 1965 and 1968) are cases in point. The most distinctive feature of drug use during this period was the consumption of new types of drugs (including LSD and other hallucinogens) by middle class youth in communities and on college campuses. Although the use of dangerous drugs was not concentrated among traditional "social inferiors," Greenberg (1974, p. 190) argues that "the rationale behind the legislation [of the 1960s] was not the control of drug abuse, but the deliberate harassment and supression of an emerging minority group felt to be politically dangerous and morally disruptive." Gusfield (1975) adds that drug use among youth in the 1960s was related to major cultural issues, especially the "moral revolution," which touched off new debates about hedonism, sexuality, individual and public responsibility, and personal ambition. Thus, for Gusfield, the labeling of the new drugs of the 1960s as illicit served to maintain the condemnation of drug users and reinforced the legitimacy of those values threatened by cultural change.

In sum, legal prohibition of drugs or an upgrading of drug penalties is likely to occur when groups (most often minority and low-income groups) threaten powerful interests or challenge dominant cultural values. In Gusfield's (1963) terms, the threats posed are those of "enemy deviants." Importantly, Greenberg's (1974) and Gusfield's (1975) analyses indicate that the drug-related behavior of dominant segments of the population may be subject to punitive legislation if that behavior symbolizes a challenge to the legitimacy of important social values. It is also noteworthy, however, that the penalties enacted in the latter types of cases are likely to be much less severe than those which apply to crimes involving substances (e.g., heroin, cocaine) presumably used by traditional minorities. For example, compare the pre-1970 narcotics and marihuana penalties with the pre-1970 penalties for dangerous drugs in Table 1. It is even possible that a decline in prohibition will occur when the undesirable activity is associated with important segments of society. Although drug penalties are seldom lowered, analyses (Galliher et al., 1974; Galliher & Basilick, 1979; Glaser, 1974) of liberalizing trends in marihuana legislation at the state level emphasize a feature that is more or less a "corollary of the conflict perspective's claim regarding the use of drug laws for minority oppression. The conclusion is that consensus on lenient penalties is most easily achieved if the drug in question is not associated with a threatening minority" (Galliher & Basilick, 1979, p. 295).

Considering the population groups separately, then, it is possible to interpret legal changes which emerge to control the drug-related behavior of both subordinate and superordinate groups within the conflict frame of reference, and as reflecting discriminatory lawmaking. In the case of subordinate groups, the legislation which emerges attempts to protect dominant values and powerful interests by applying coercive reform when the behavior of minority and low-income groups become threatening. On the other hand, drug control laws tend to be liberalized when the interests of dominant groups seem juxtaposed to more punitive existing legislation. A variant on the latter theme is to criminalize the undesirable conduct, but to impose relatively light penalties mainly as a way of reaffirming the legitimacy of values threatened by the drug-related activities of reputable populations.

The questions that provide the impetus for the present analysis remains, however. What happens when a perceived drug crisis simultaneously involves the behavior of both subordinate and superordinate groups? How does a legal system, which is supposed to be blind to race and class considerations in lawmaking and enforcement, deal with the conflicting interests posed by a diverse population of drug offenders? Does Congress differentially weight the threats posed by each group and construct a law that applies to all, but which is more or less coercive or liberal depending upon the relative seriousness of the threats posed? Or, does the legislature attempt to tailor the law to meet the requirements of "substantive justice" for the various populations? If the latter, what is the system's mechanism for differentiating among populations, and justifying the resulting law in universalistic terms? Discovering the answers to these questions is the subject of the following discussion.

METHODOLOGY

To explore the (1) possible discriminatory features of the 1970 federal drug act and (2) the process through which a general law is developed to accommodate a variety of specific concerns, a detailed analysis of the congressional committee hearings and floor debates which preceded the law's enactment was conducted. In total, Senate and House hearings yielded approximately 2000 pages of testimony from more than 118 witnesses representing the Administration, local and state law enforcement (e.g., mayors, police commissioners, etc.), various medical and scientific fields (e.g., pharmacists, physicians, drug manufacturers, psychiatrists), agencies administering to people with drug problems, and a smattering of educators, civil libertarians, and the like. In addition to committee hearings, there were eight days (six in the Senate, two in the House) of floor debates on various versions of the proposed drug legislation.

The congressional records from these debates and hearings were examined in detail to discover Congress' views of its mission in light of the variety of population groups likely to be affected by the legislation; Congress' justification of provisions, if any, that distinguish among offenders on the basis of social criteria, such as race, ethnicity and class; and any hidden agendas, symbolic or instrumental, of the lawmakers. Obviously, there are shortcomings in relying solely upon an examination of congressional records in analyzing legal changes. As Galliher and Basilick (1979, p. 286) note, "complete understanding of any legislation, including drug laws, requires consideration of both triggering events and historical foundations." Such factors may be revealed in a variety of sources, including news reports and interviews with key informants. Thus, for a comprehensive understanding of changes in legislation, it would be desirable to provide a very broad data base. However, when the "political drama" of debates and hearings is complex and detailed (as it is in this case) they may provide sufficient evidence of structural conflicts that underlie the legislation. In addition, in analyzing the process of lawmaking, it is inappropriate simply to take the legislation

at face value. The statutes may not reflect congressional (or public) intent regarding the punishment of offenses or offenders. However, hidden agenda, symbolic and instrumental, may be revealed in the process of hammering out specific provisions of the legislation. Thus, systematic analysis of congressional debate should provide a useful way of discovering (1) what types of offenders (offenses) are actual and symbolic targets of the legislation and (2) how Congress distinguished (and justified such distinctions) among offenders from different social backgrounds in constructing a law that is general in content, tone, and message. More generally, the present analysis provides a case study of the dynamics of the criminal lawmaking process as it occurs in the legislature. Unfortunately, as Gibbons (1982) points out, such detailed study is an important omission in analyses of the creation of law in modern societies.

BACKGROUND OF THE 1970 ACT

Like previous drug legislation, the CDAPCA was a response to a perceived drug crisis. During the late 1960s and early 1970s, public and political concern about drugs reached near crisis proportions (Lidz and Walker, 1980). Several factors seemed to characterize the period. First, as noted above, by the end of the 1960s, new patterns of drug use, abuse, and trafficking were evident among middle and upper class white youth. In part, such drug use stood as a symbol of youth's disaffection with the legal system, Vietnam War policies, and general societal values (Lidz and Walker, 1980; Gusfield, 1975; Greenberg, 1974). Second, there was a presumed increase in opiate use among traditional drug-using populations (i.e., minorities and members of the lower classes). Third, concommitant with the rising and/or presumed increase in drug use was an increase in street crime which increasingly became associated with drug use. The presumption was that addicts committed crimes of theft to support their drug habits, and committed acts of violence while under the influence of drugs. In addition to these drug-using populations, of course, were the suppliers of drugs—manufacturers, distributors, and major and small dealers who sold drugs for profit. Although drug trafficking is racially and ethnically stratified, (Ianni, 1974), traffickers cut across a variety of race, ethnic, and class lines.

In short, unlike in previous legislation, dealing with the drug problem in 1970 meant (1) dealing with a variety of kinds of offenses and offenders and (2) addressing the symbolic challenge to the legitimacy of existing norms and values posed by drug using and pushing among reputable population groups, and the perceived threats to life and property posed by traditional drug using populations. We turn now to our analysis of the process through which the legislature accommodated within a general law the illicit drug behavior and related activites of diverse population segments, while preserving at least in appearance, the ideals of equality and justice, and symbolizing societal disapproval of undesirable drug use.

PROVISIONS OF THE 1970 ACT

The 1970 Act made broad sweeping changes in the structure of federal drug control. The new law consolidated nearly all existing federal drug legislation, and changed the basis of federal drug control from Congress' powers to tax and to control imports to the power of Congress to regulate interstate commerce. In addition, and most importantly for our purposes, the 1970 Act established a new and more complex penalty structure for federal drug offenses (see Table 2) which tied the penalties both to the type of crime (e.g., sale or possession) and the type of substance involved.[1]

Major impetus for new drug legislation came from the White House.[2] Echoing the characteristics of the drug problem described above, on July 14, 1969 President Nixon sent a message to Congress in which he argued that the abuse of drugs had "grown from essentially a local police problem into a national threat to the personal health and safety of millions of Americans" (Congressional Quarterly, 1969, p. 57-A). To cope with this growing menace the President outlined a ten-point program, including proposals for a complete revision of current inadequate and outdated drug laws.

With several exceptions, the Administration's bill as submitted to Congress maintained the same penalties that were in effect under the Narcotics Control Act of 1956 and the Drug Abuse Control Admendments of 1968. As outlined in Title V of S.2637, the original bill would have altered earlier penalties by (1) eliminating minimum mandatory sentences for first-offense possession cases only; (2) providing for special first-offender treatment in unlawful possession cases; (3) requiring that in the application of special penalties for sale to minors, the recipient must be at least three years the junior of the distributor; (4) treating possession with intent to sell in the same manner as sale; (5) separating and extending penalty provisions for the professional criminal engaged in the business of supplying drugs to others for profit; and (6) providing civil penalties for industries which violate certain laws. Significantly, mandatory minimum penalties for offenses other than first-offense possession were retained, as were the specific penalty ranges for most offenses.

Importantly, the penalty provisions that were eventually enacted into law were substantially less severe than those originally proposed by the Administration and those effective prior to the 1970 Act. Especially noteworthy were (1) the wholesale elimination of mandatory minimum penalties; (2) the reduction of maximum sentences for traditional drug offenses; (3) the reduction of first-offense possession, and distribution of small amounts of marihuana for no remuneration, to misdemeanors; (4) the provision of special first-offender treatment for possessors; and (5) the elimination of provisions denying offenders the right to probation and parole or to have their sentences suspended. In only two areas were the 1970 penalty provisions more severe than earlier federal drug penalties. Under the 1970 Act, two new categories of offenders were singled out for especially harsh treatment—those engaged in a continuing criminal enterprise,[3] and the dangerous special drug offender.[4] Even with these tough provisions, however, the bulk of

defendants were likely to be processed under statutes that permitted lower penalties than they may have received under earlier laws. (See Table 2 for a summary of penalties under the 1970 Act.)

EXPLAINING THE 1970 PENALTY REDUCTIONS

Analysis of congressional debates surrounding the enactment of the 1970 Act suggests that the noted penalty structure did in part represent discriminatory lawmaking (i.e., the construction of penalties that would minimize any possible negative consequences that might accrue from the criminal drug activities of a preferred segment of the population—white middle class youth). It would be a misrepresentation, however, to conclude that serving the interests of the middle and upper classes by protecting their sons and daughters from criminalization as felons was Congress' only goal in enacting the provisions of the 1970 Act. Congress also sought to (1) underscore societal disapproval of illicit drug use—whether that characteristic of subordinate or superordinate populations and (2) provide a coercive approach to drug control in dealing with certain conventional types of offenders. Thus Congress distinguished among drug offenders in such a way that permitted the simultaneous achievement of all of these goals. Refocusing the drug problem on the consequences of pushing drugs rather than on their use was the major mechanism by which the distinctions were made and justified. By redefining the problem in this way, Congress was able to develop a law directed at "saving" users and punishing pushers, whatever their respective social backgrounds. Once constructed, such a law would not appear to represent a class-based drug policy, but would provide the vehicle for dealing less harshly with more affluent offenders, the bulk of whom could be conceived as users rather than pushers. (Congress recognized that middle class youth often sold drugs, but profit making was not seen as the major goal of such activity.) Concepts suggested in Gusfield's analyses (1963, 1967) of alcohol prohibition are instructive here.

In discussing the role of the Temperance Movement in the prohibition of alcohol, Gusfield (1963) discerned two types of reform efforts. Assimilative reform is possible when the object of the reform is someone that can be pitied or helped. The sick or repentant deviant is viewed as continuing to hold allegiance to dominant social norms and values. However, because of moral weakness or personal circumstances the individual has slipped into the depths of evilness. The task is to convert and salvage the deviant through benevolent goodwill and humanitarian efforts (to treat or rehabilitate him/her). It is therefore not necessary to apply extreme sanctions to such deviants.

In contrast, coercive reform emerges when the object of the reformer's efforts cannot be pitied or helped; when he or she is an enemy deviant. Enemy deviants reject the reformer's values and do not want to change. They engage in the undesirable behavior for personal pleasure and in defiance of dominant social norms and values. Coercive reformers turn to repressive control mechanisms to deal with the enemy deviant and to reaffirm the dominance of their way of life.

Recall that in previous periods, the targets of federal drug legislation were users perceived as enemy deviants in the sense that Gusfield describe · Recall too, that such users were presumed to be primarily from minority backgr unds.

In the politics of deviance defining surrounding the enactment of the 1970 legislation, a new type of enemy deviant emerged, and users of drugs were redefined as sick or misguided. That is, although (1) middle class youth were largely responsible for the increase in drug use during the period and (2) addicts were seen as responsible for drug-related property and violent crimes, pushers emerged as the designated source and symbol of the drug problem in congressional debate. Congress portrayed pushers, particularly large-scale suppliers and dealers, as evil forces corrupting otherwise innocent youth, and as ultimately responsible for the drug-related criminal activities of addicts who are motivated to steal by the high cost of drugs, and who commit acts of violence while under the influence. (The previous attitude was that users created the market for illicit drugs.) In a sense, major drug dealers became scapegoats for the entire drug problem, bearing the brunt of concern over changes in the distribution of drug use, and the threats to legitimacy symbolized in youthful drug use and other protest activity. For their part, youthful middle class drug offenders could be perceived as innocent victims in need of protection from criminal stigmatization rather than punishment.

Addicts were regarded as sick and their treatment emphasized. However, in our assessment, addicts continued to be viewed as belonging to low income or minority population segments, and their designation as "sick" (rather than as enemies) was coincident to the necessity of defining users (whatever their backgrounds) as less culpable in order to protect youthful offenders from severe treatment in the criminal justice system. Indeed, references to addicts in congressional discussion suggest that the class and ethnic biases that prevailed in earlier conceptions of the drug problem were still prevalent in 1969 and 1970. Apparently though, in the absence of economic competition from such groups, and, in the face of perhaps an even greater peril (the subjection of middle class white youth to severe criminal penalties), the drug use and related activities of subordinate populations did not become the central focus of drug control. Indeed, such groups could essentially be ignored, and the lawmaking process focused on two alternative categories of offenders: middle and upper class youth and major drug dealers whatever their social backgrounds.

PROTECTING THE "CREAM OF AMERICAN YOUTH"

The most notable feature of congressional discussion over the 1970 Act was the great emphasis placed upon dealing with the rising tide of drug use among middle and upper class youth. The following statements of the problem by Representatives Dwyer of New Jersey and Sisks of California were typical. (These statements also reflect the still prevalent race and class biases in conceptions of the drug problem.) First, Congresswoman Dwyer:

> There is no longer an easy victim or an obvious seller to whom we can shake an accusing finger. On the contrary, the patterns of use and "pushing" are changing rapidly. In the past, most heroin was used by male, urban ghetto dwellers. Now many young, suburban men and women are using this drug.
>
> In years past, marihuana was considered prevalent only among populations of disadvantaged individuals—such as the Mexican American community—and among jazz musicians and the like. Now marihuana smokers penetrate the middle and upper income families as well (United States Congress—1970f, p. 33306)

And, Representative Sisks:

> The insidious menace of drug abuse is growing at an alarming rate across our Nation. It knows no particular geographic boundary nor does it prey on any one particular socioeconomic group. While the uninformed may equate drug abuse with the ghetto and minorities, studies show that it is a problem that has touched the sons and daughters of some Members of Congress as well as other leading members of the business, industrial, and political community of these United States (United States Congress, 1970).

Congress adopted the stance taken by President Nixon that, stopping this epidemic of drug use among the "cream of American youth" was of the highest priority. However, it was frequently noted that the then present cure was in many ways worse than the disease. Members of Congress believed, and cited newspaper reports and arrest statistics as evidence, that one consequence of youthful drug use was the turning of the tools of law enforcement (traditionally used to keep "social inferiors" in line) upon the children of the dominant middle class. Such punishment was not regarded as appropriate for this class of drug offenders. Referring to the innocence of drug-using upper status youth, Senator Dodd of Connecticut summarized the views of the majority of his colleagues:

> What concerns me the most is that thousands of these people arrested for one drug offense or another are not hardened criminals leading lives of lawbreaking and violence. They are not even the hardened drug addicts that used to be the main problem in the slums and ghettos of our larger cities. They are college students, often children of parents who suffer from no lack of opportunity in the economic and educational sense. Quite often they are young people on the road to professional careers as lawyers and teachers. Indeed, today, there are even cases of young school teachers, college professors and ministers being arrested on drug charges.
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> . . .
>
> Our reaction has often been to do little more than increase the penalties for drug violations. We make new criminals out of a large number of people whose only lawbreaking has been in connection with drug use in response to some personality inadequacy or weakness or disenchantment with the way of life that exists in America today.
>
> . . .
>
> I think we must be most cautious in processing this new legion of drug and narcotic offenders through our present criminal justice system.
>
> We must be careful that we do not send too many to our so-called "correctional institutions" where it is now obvious they will get worse rather than better (United States Senate, 1969, pp. 2–4).

This theme was echoed repeatedly throughout committee hearings and floor debates in both houses of Congress.

Education and research aimed at prevention of drug abuse, and rehabilitation for those who had fallen prey to their own illness, weakness, or gullibility, were

the agreed-upon long-run answers to the drug problem. However, something had to be done immediately before even more of the, otherwise innocent, "cream of American youth have their futures and careers ruined because of an arrest for marihuana. . . " (United States Congress, 1970b, p. 993).

To solve the problem, some legislators called for decriminalization or legalization of those drug offenses most often committed by middle class youth; primarily, possession of marihuana. For a variety of reasons, the majority of Congress found this solution unacceptable. Chief among the reasons was a concern for preservation of the expressive functions of the law as a statement of proper values. It was argued that having some penalty, however lenient, would be a signal to young people that the controlled drugs are dangerous and that society does not approve of their use. On the other hand, in the words of Administration spokesperson Ingersoll, legalization of marihuana, or further reduction in the marihuana penalties, "would place the government in a position of implicit toleration of the abuse of the drug which we do not want to do" (United States House of Representatives, 1970b, p. 114).

Congress also went to some lengths to emphasize the instrumental value of maintaining a possession offense. Referring to the testimony of witnesses from law enforcement, legislators argued that eliminating the possession offense would seriously handicap law enforcers in apprehending and arresting (1) addicts who were otherwise criminals (those who support their habit through theft or perpetrate violence upon law abiding citizens) and (2) professional traffickers—those most culpable of drug law violators. Captain Mueller of the Chicago Police Department stated the case regarding the addict criminal:

> Many of these addicts that are arrested for possession are criminals; they are a menace to themselves and to society, and we are fortunate to get them before the court with the possession charge, and not implying that that is all they are guilty of. To support their habit they may be doing other things: I do believe that addicts are sick people, and as a result of their illness they become criminals, and anything that can be done to reduce the number of criminals we would greatly appreciate [United States Senate, 1969, p. 484].

The argument for retaining the possession offense in enforcing the law against traffickers was twofold. First, it was noted that the relative ease of proving possession as compared to more serious drug offenses, sometimes renders possession the only basis of incarcerating traffickers and big time users. Second, it was argued that the possession penalty could be used as vehicle in building cases against major traffickers. By holding out the threat of imprisonment for possession, prosecutors and police can extract information from individuals and turn them into useful informants that provide a convenient first rung up the ladder to big dealers. (See Sonnenreich et al., 1973 for an elaboration of this idea.)

Although Congress was not amenable to decriminalizing possession offenses (even for marihuana), there was virtually no opposition to lowering penalties for such crimes. One of the stated advantages of this approach was the protection of youth from the throes of the criminal justice system. Youthful offenders were perceived as those most likely to be hurt by stiff possession penalties.[5] By reducing such penalties and providing special first-offender treatment (which, upon

expungement of records essentially negates the conviction), the negative effects upon this class of offenders would be minimized. At the same time, the expressive and law enforcement advantages of having a possession offense would be preserved.

Reduction of possession penalties was also viewed as one way of dealing with the rebellion and alienation of youth. Congress was aware that in the eyes of American youth the entire legal system suffered a very serious credibility gap, owing to (1) youth's recognition that drug laws, particularly possession laws, are either unenforceable or only selectively enforced; (2) the perceived hypocrisy of adult authority systems that penalize illegal use of some mood-altering substances (e.g., drugs) and not others (e.g., alcohol); and (3) the perception of drug laws, especially those related to marihuana, as inherently unjust. Representative Koch of New York summarized the implications for law enforcement:

> To be operative the law requires an implicit trust of its validity by the people—and when this trust breaks down, so does the law. And no amount of penalty can hold up a law that is unjust or deemed to be unjust by the population. Basically, this is what has happened in the pot revolution on our campuses. The students have experimented with pot and their experience has not corresponded with the description used by those who enacted the severe penalty in the law. So, the force of the penalties as a deterrent has crumbled, the use of marihuana has soared, and the law is clearly no longer effective in providing what restrictions over the use of marihuana may in fact be needed [United States Senate, 1969, p. 563].

Members of Congress and Administration spokespersons argued that the new penalty structure (with its lower possession penalties) would increase the credibility, and thereby, the enforceability of the law.

In a more general sense too, the reduction of penalties for possession may have been symbolic: intended as a concession to youth, and others, disaffected with the Vietnam War, law enforcement, "the Establishment," those over 30, traditional values, and other features of American life. As Rosenthal (1977, p. 69) notes, "reducing the penalties for possession of drugs and transfers of small gifts was perhaps the simplest way to make concessions to the dissatisfied; it was certainly simpler, for example, than ending the War."

In short, in its own eyes, with one provision Congress was able to (1) minimize the danger of involving the "cream of American youth" in the criminal justice system; (2) symbolize the disdain of Americans for illegitimate and nonmedical use of drugs; (3) remove or reduce one possible source of alienation of American youth; and (4) provide a handhold against the criminal addict, and pushers who are difficult to arrest because of their insulation from street traffic. Further, these goals had been achieved largely without dissension or division of opinion among the ranks of Congress, and with the approval of civil libertarians and representatives from the fields of law enforcement, medicine, and various scientific communities.

Since protecting and appeasing middle and upper class youth seemed to be the prime objective of legislators in reducing possession penalties, and since Congress believed marihuana to be the main drug of abuse among these youth, a question arises regarding why harsher penalties were not imposed for possession

of drugs regarded as more dangerous (e.g., heroin). Although there was substantial disagreement on the relative and absolute harmfulness of marihuana compared to other drugs, Congress did distinguish between marihuana and other substances in deciding to treat the distribution of small amounts of marihuana (but not other substances) for no remuneration as a misdemeanor. Further, since opiate drugs and cocaine were presumed to be used primarily by drug offenders from subordinate populations, stiffer penalties for possession of these drugs would not have placed middle class youth at any additional risk of criminalization. Still Congress chose not to rely upon the distinction between marihuana and other types of drugs in setting penalties for possession offenses. There are a number of possible explanations.

First, Congress may have anticipated that youthful offenders might occasionally use more dangerous substances than marihuana. Thus, they could be faced with the greater penalties if the law was administered evenhandedly. Second, prescribing the same penalty for possession of any controlled substance may simply have reflected the symbolic nature of the possession offense. Since Congress intended that federal law enforcement efforts be concentrated on illegal suppliers rather than possessors, the level of the possession penalty, whatever the substance, was not very important, so long as it was high enough to indicate disapproval of nonmedical use of drugs.

A third possibility is that by keeping penalties very light for possession of dangerous drugs (e.g., stimulants, depressants, other hallucinogens), Congress avoided a collision course with the drug industry. In congressional hearings, the drug industry was relatively silent on the question of criminal penalties. Still, it was clear that the industry was very much opposed to the attachment of severe penalties for possession of widely used medicants. Like all other parties, they welcomed the severe punishment of those (i.e., pushers) who would induce drug abuse by others, particularly if they did so for profit.

Fourth, the across-the-board penalties for possession may have been Congress' way of handling the problem of the addict. Although Congress clearly believed that narcotic addicts were responsible for the large increases in property and violent crime in the nation, most did not take as hard a line as Chicago Police Captain Mueller presented earlier. As indicated, and despite their presumed social backgrounds, in the social context surrounding the enactment of the 1970 Act, addicts were seen as victims of "pushers" or their deprived social conditions, and as sick people in need of intensive rehabilitation rather than punishment. Maintenance of a possession offense provided sufficient legal resources for arrest of the addict; and removal of mandatory penalties (see the discussion below) provided sufficient flexibility to permit judges to steer the addict into rehabilitation. Finally, the relatively "soft" penalties for possession of even the most dreaded of controlled substances (e.g., the addictive narcotics) may have been a compromise strategy aimed at facilitating the maintenance of a repressive approach to drug control, while conceding a minor victory to those who would have protested too loudly against a strictly law enforcement approach to the problem.[6]

The reduction of possession penalties was one answer to dealing with the drug involvement of upper status youth. The elimination of mandatory penalties for most traditional drug crimes was another. Doing so, however, was justified mainly on law enforcement grounds. Representative Bush of Texas aptly summarized the wishes of Congress to eliminate mandatory minimum penalties for drug offenses:

> The bill eliminates mandatory penalties, except for professional criminals. Contrary to what one might imagine, however, this will result in better justice and more appropriate sentences.
>
> Philosophical differences aside, practicality requires a sentence structure which is generally acceptable to the courts, to prosecutors, and to the general public. H.R. 18583 [the original House version of the bill that was eventually enacted] does this in several ways. Elimination of the mandatory minimums is one, and, and at the other end of the scale, severe maximums with mandatory minimums for the true professional is another. In between, penalties are graduated and flexible to cover the type of offense and type of offender.
>
> As a result, we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences [United States Congress, 1970f, p. 33314].

In sum, in the name of achieving greater law enforcement, more equitable justice in courts, and preserving traditional American values of fitting the punishment to the crime and the criminal, Congress eliminated almost all mandatory penalities during a major drug crisis. In the meantime, the combination of discretionary penalty provisions, the reduction of first offense possession and selling of small amounts of marihauna to misdemennors, and the provision of special first-offender treatment including expungement of records after a period of good behavior, facilitated the protection of middle and upper class youth from criminal stigmatization, and provided a symbolic offering of appeasement to the alienated among them.

DEALING WITH PUSHERS

As indicated, in the politics of deviance defining during the late 1960s and early 1970s, pushing drugs rather than drug use became the *sine qua non* of the drug problem. Pushers, especially large-scale dealers, were regarded as evil, corrupters of youth, and as ultimately responsible for the drug-related crimes of addicts. Throughout legislative debates, stress was placed on cracking down on this menace to society. Thus, in addition to the liberalizing provisions of the 1970 Act, the bill included a number of features geared toward control of this target population of "enemy deviants." Before proceeding, it should be noted that unlike users, pushers were not differentiated along race and class lines. While it is generally recognized that drug trafficking is racially and ethnically stratified (Ianni, 1974), the only relevant distinctions made in Congress were those between white middle class youth and other users, between users and pushers, and between small- and large-scale dealers.

Among the most coercive features of the Act are the enforcement provisions, and the extreme penalties provided for new categories of drug offenders (i.e., the continuing criminal enterprise and dangerous special drug offender provisions). These features of the 1970 Act are discussed below. Presently, we explain briefly why Congress did not regard the elimination of mandatory minimum penalties and the reduction of maximum penalties for traditional trafficking offenses as counterproductive to cracking down on major federal drug dealers.

We have already indicated that the elimination of mandatory penalties was viewed as necessary for the protection of middle class youth from the negative consequences of criminal drug control. In addition, this could be justified on the grounds that discretionary sentences would facilitate, rather than hinder, punishment of serious drug offenders because the resulting sentences would be more acceptable to the courts and prosecutors.

The reduction in maximum penalties for trafficking offenses is not as easy to explain. Such reductions were not the subject of controversy in either house of Congress. Nonetheless, we would not interpret the penalty reductions for pushers as an indication that Congress was in any way softening its attitude toward traffickers. To the contrary, the altered penalty structure did not reduce substantially the possibility of spending a large portion of one's life behind bars for distributing a controlled substance. One could still be imprisoned for as many as 15 years for first-offense distribution of heroin, where previously the maximum jail term was 20 years. Also, by imposing a mandatory special parole term onto the term of imprisonment received for trafficking, Congress extended the right of the state to intervene in the offender's life after release from prison. Also, the special parole term is not a substitute for regular parole; it begins after regular parole expires. In the case of parole revocation while serving a term of special parole, the original prison sentence is increased by the period of the special parole term, and time spent on parole does not diminish the penalty. Clearly, these provisions indicate that Congress was not "softening" its attitude toward the drug trafficker.

The features of the 1970 legislation which most clearly reveal Congress' coercive approach to traffickers are the provision of special extreme sanctions for those engaged in a continuing criminal enterprise (professional traffickers) and for dangerous special drug offenders. Persons found guilty of the continuing enterprise provision are subject to a mandatory penalty of from ten years to life imprisonment without the possibility of parole, probation, or suspended sentence. Dangerous special drug offenders could receive an additional 25 years of imprisonment for the violation of an offense that might otherwise net only a few years of confinement. Significantly, amendments establishing these offenses were passed overwhelmingly despite strong arguments questioning their constitutionality. Conversely, proposals attempting to eliminate or modify these amendments were defeated soundly.

Opponents questioned the necessity of these provisions, and in the case of professional traffickers, the wisdom of mandatory penalties in light of their questionable efficacy as law enforcement tools. However, opponents' main objections were to the imposition of these very severe penalties without full due process of law. Representative Eckhardt of Texas summarized the position of those opposed to the continuing criminal enterprise provision:

> It is extremely important that minimum mandatory penalties be taken out. This is one of the recommendations of the American Bar Association's Committee studying the questions of criminal process. The argument, of course, is quite simple, and that is this: when the jury is confronted with a case in which if it finds the defendant guilty, the penalty must automatically be 10 years or more it may hold the accused not guilty because, under the circumstances, it feels that the mandatory penalty is too high.
>
> . . .
>
> The other difficulty is that the maximum penalty involved here is life. Given a situation in which someone is considered anathema in the community for reasons other than those involved in the offense and in which he can be got out of the way for life on the basis of passing marihuana cigarettes and maybe buying a $50 stash and distributing it, that man, because he is thought to have engaged in other activities that cannot be proven and perhaps are not true, can be removed from society for life by the judge issuing the sentence [United States Congress, 1970g, p. 33627].

Proponents of the measure (Representative Hunt of New Jersey, for example) countered as follows:

> There is nothing wrong with imposing a mandatory sentence on a hard headed pusher. Mitigating circumstances should not apply to a person of this nature. The only way you can handle narcotics and get rid of the situation is to incarcerate those main pushers and help those who have unfortunately become addicted [United States Congress, 1970g, p. 33629].

Congressman Poff of Virginia proposed the special dangerous drug offender provision of the 1970 Act as a complement to the continuing criminal enterprise section. The rationale was to give prosecutors the option of approaches, and to strengthen the statutes against possible constitutional attack. In Poff's words:

> With a maximum additional sentence of 25 years for offenders falling within the purview of this amendment, we can accomplish much today in assuring that society is rid of devastatingly evil forces who reap the fruits of drug traffic [United States Congress, 1970g, p. 33630].

Significantly, proposals attempting to eliminate or modify these amendments were defeated soundly, while the amendments establishing the offenses were passed overwhelmingly despite the arguments questioning their constitutionality. Following the adoption of the Poff Amendment, Representative Ryan summarized the sentiments of the opposition:

> Perhaps most perilous, an amendment has been adopted today for the sentencing of so-called dangerous special drug offenders which simply refutes the very basics of due process which have marked ours as a system of rule by law and not by arbitrary men.
>
> . . .
>
> But let me be blunt and say that this amendment is a subterfuge designed to allow the Government to incarcerate the defendants whom it cannot prove beyond a reasonable doubt have engaged in the past acts which will be taken into account in the hearing. This hearing, disguised as a procedure for sentencing is in fact, an unconstitutional trial on the issues of guilt, which only need be proved by a preponderance of the information and which is divested of the rules of evidence which attend a trial [United States Congress, 1970g, p. 33661].

In brief, Congress seemed quite eager to enact coercive measures to deal with the presumed source and symbol of the drug problem. Indeed, in their enthusiasm to punish traffickers, the legislators enacted amendments that bordered on being unconstitutional in violation of due process guarantees, and which at the very least failed to provide the defendant with a reasonable chance to establish his/her innocence. It should be noted that the difficulty of establishing proof that defendants are professional traffickers or especially dangerous could result in minimal use of the above two provisions (Sonnenreich et al., 1973). If so, then, despite the severity of the prescribed penalties, the provisions may be more symbolic than instrumental, providing a public statement and sound warning that society takes a dim view of drug trafficking and will not tolerate such activities.

ENFORCEMENT: THE NO-KNOCK PROVISION

Also indicative of Congress' intent to maintain a coercive approach to the drug problem are the enforcement powers and supplementary civil sanctions entrusted to the United States' Attorney General. King (1972, p. 318) has summarized the provisions most directly related to criminal law enforcement:

> The Department of Justice may use Treasury funds to hire informers, pay for incriminating information, and make purchases of contraband substances, with any sum or sums the Attorney General "may deem appropriate." All property connected in any way with a violation of the Act, . . . such as raw materials, equipment, packing and shipping containers, and aircraft, vehicles, or vessels used for transportation, are subject to seizure by the Attorney General and forfeiture to the United States. And in addition to the powers usually conferred on federal law enforcers, drug agents may act as compliance inspectors, make arrests for any offense against the United States, seize on sight any property they regard as contraband or forfeitable, and execute search warrants at any time of the day or night, with the controversial "no-knock" procedures if a judge has authorized it."

These and other enforcement provisions led King to conclude that the "proponents of 'soft' attitudes toward drug abuse have been routed, and the new federal drug police force has been given every armament and prerogative that could conceivably be conferred on a peacetime domestic agency" (King, 1972, p. 319).

To carry out the provisions of the Act, the Bureau of Narcotics and Dangerous Drugs was authorized to add at least 300 agents to its existing enforcement staff for the following year. An annual appropriations of $6 million dollars for the purpose of staffing beginning in fiscal 1971 was also authorized.

Enforcement provisions of the law met with little opposition in either House of Congress. The no-knock provision was an exception. In fact, the provision of no-knock authority was probably the most controversial provision of the entire bill (Sonnenreich et al., 1973). Proponents of no-knock argued that it was necessary to avoid quick disposal of controlled substances by suspects, and to avoid placing officers in danger of physical harm. They also noted that no-knock authority was provided for by common law or statutory law in at least 32 states, had withstood Constitutional tests, and, that in places where no-knock was available it had neither been overused or abused.

In contrast, the many opponents of no-knock argued, that such a provision was: unnecessary, already available in the law, subject to easy abuse especially in an era of considerable concern about drug abuse, and, a bad precedent to set in a free society that values the sanctity of privacy. However, as in the case of the provisions discussed above, the main arguments against no-knock authority had to do with its questionable constitutionality. Senator Ervin of North Carolina, the most adamant opponent of no-knock, argued the case:

> Mr. President, when we pray the Lord's Prayer, we make this petition to the Almighty, "Lead us not into temptation." I think that this petition impliedly commands us not to lead others into temptation. And yet we have a Senate bill that will lead the law enforcement officers . . . to make false affidavits in order to obtain search warrants which would enable them to enter the private homes of American citizens like thieves in the night without notice and without warning.
>
> One of the strangest things is why the representatives of a free society are always trying to convert that free society by legislation into a police state. That is precisely what is being attempted on this occasion. My associates and I are attempting to save one of the basic freedoms of the American people, the right not be disturbed in their homes by an unreasonable search and an unreasonable seizure [United States Congress, 1970c, pp. 1159, 60].

Proposals by Senator Ervin to strike this provision of the bill were defeated soundly in the Senate, and no-knock authority was included as a provision of the 1970 Act. As with the continuing enterprise and the dangerous special drug offender provisions, Congress was willing to risk possible constitutional violations to achieve more coercive drug control.

SUMMARY AND CONCLUSIONS

On October 27, 1970, President Nixon signed into law the Comprehensive Drug Abuse Prevention and Control Act. That Act made significant changes in the federal approach to drug control, including establishment of a new and more complex set of penalties for violations of federal drug laws. Significantly, the new legislation was enacted during a period when public concern about drugs was high, and when Congress and the Administration believed that drug abuse, and its consequences (primarily street crime, violence, drug-related deaths, etc.), were on the increase. Further, for the first time in the history of federal drug control, drug use among superordinate as well as subordinate segments of the population was viewed as a significant part of the problem.

Throughout the twentieth centruy, Congress had responded to apparent changes in the levels and distributions of drug use simply by increasing criminal penalties for establishing them where none existed to cover a particular type of drug use). In the present case, this rather straightforward but coercive solution would have placed higher status groups at risk of criminal stigmatization and its

presumed negative consequences. On the other hand, the simple lowering of penalties, as state courts have done in the face of greater drug use by reputable population segments, would have implied societal toleration or approval of drug use, and may have undermined the instrumental goals of reducing illicit drug use and associated problems (e.g., street crime and violence) by all segments of the community. The dynamics of the process through which Congress constructed a general law that would (1) deal with the drug-related behaviors of both subordinate and superordinate groups and (2) communicate societal disapproval of illicit drug use was the major focus of this discussion.

To address this question, a detailed analysis of congressional committee hearings and floor debates on the pending legislation was conducted. Our review of the congressional materials has led to the following general conclusions. First, Congress did not choose a strictly coercive approach to drug control at the risk of stigmatizing middle and upper status white offenders. Nor did it choose to liberalize across the board federal drug penalties in light of the rise in drug crimes among superordinate population segments. Instead, Congress redefined the drug problem as one of pushing drugs rather than using them, and developed a law oriented toward "saving" users (especially upper status youth) and punishing pushers, whatever their social backgrounds. Thus, in enacting the 1970 penalty provisions, Congress was concerned primarily with two target populations: young middle and upper class drug users, and hardcore traffickers and professional drug criminals. The former required protection from the criminal justice system; the latter required both the threat and actuality of severe punishment.

The penalties and other provisions that emerged from congressional debate reflect the compromises reached to deal with these two distinct populations. The reduction of penalties for first-offense possession and for distribution of small amounts of marihuana for no remuneration to misdemeanors; removal of mandatory minimum penalties; and the provision of special first-offender treatment, all served to minimize the possibility of subjecting middle and upper class youth to harsh penalties, and their presumed negative consequences. On the other hand, retention of a possession offense (albeit with very lenient penalties); the relatively minor reductions in maximum penalties for trafficking offenses; provisions of mandatory special parole terms; provision of extreme sanctions for two new offense categories of questionable constitutionality; and the supplementary criminal enforcement provisions provided the coercive policies required for handling (and warning) the second targeted population—major drug traffickers.

Although the downgrading of federal drug penalties was clearly motivated by the desire to protect upper status youth from criminal stigmatization, Congress was unwilling to liberalize penalties at the cost of effective law enforcement. Thus, the downgrading of all penalties, even for possession, was justified partially in terms of providing better justice and more efficient law enforcement. For example, the elimination of mandatory penalties was justified on the grounds that in so doing the punishment of serious drug offenders would be furthered (more certain) rather than hindered.

Some provisions of the 1970 Act were as much symbolic as they were instrumental. For example, retention of a possession offense within the federal code was, in large part for the purpose of indicating a lack of acceptance of indiscriminate or nonmedical use of controlled substances. Also, the reduction of penalties for possession was in part a symbolic gesture to youth believed to be alienated from the legal system and society in general. Congress hoped that in making such a concession the credibility of law enforcement would be restored; and, one source of youth's disaffection with the American way of life removed.

In short, the above findings would seem to establish that penalty, and certain other provisions of the 1970 Act were a result of compromises which permitted Congress to (1) maintain a coercive approach to the drug problem for the purpose of dealing with one target population—major traffickers; (2) protect middle and upper class youth from stigmatization as criminal felons; (3) provide a symbolic gesture (an offer of appeasement) to disaffected youth believed to be alienated from the criminal justice system, and society in general; and (4) express congressional and societal condemnation of indiscriminate and nonmedical use of controlled substances.

Regarding discrimination, our examination of the statute and the decision-making process suggests that the discriminatory aspects of the legislation are limited to those provisions which minimize the consequences of criminal drug behavior for upper status youth. As indicated, in congressional debate legislators were very explicit that protection of this class of offenders was a major goal. Distinctions among drug offenders were made on the basis of their age, class, and social status. And, it was often suggested or implied that the same kinds of penalties ought not be applied to the "cream of American youth" as had been applied to conventional and less reputable types of drug users. Importantly too, the legitimacy of the above distinction was never called into question.

While race, class, and ethnic bias is apparent in Congress' characterizations of the nature of the drug problem, drug users from subordinate populations would seem to be beneficiaries, albeit unintended, of the more lenient penalties for possession offenses. An alternative scenario is possible, however. Since the downgrading of federal drug penalties was motivated almost exclusively by the desire to protect upper status youth from criminal stigmatization, the substitution of discretionary for mandatory penalties actually may have increased the likelihood of race- or class-based decisions in the application of sanctions. No longer would convicted defendants from different social backgrounds be subject to the same minimum penalties for illegal possession of drugs. Thus, in the face of persistent biases in the perception of drug users, and, in light of the presumed connection between drug use among conventional offenders and street crime, minorities and low-income defendants convicted of possession could be the recipients of substantially more severe sentences (e.g., imprisonment versus probation or fines) than their youthful upper status counterparts.

Discriminatory decision making was not evident in congressional discussions related to dealing with drug-trafficking. There were no references to the racial, ethnic, or class composition of this offender group. Indeed, the only major distinction drawn was that between small-scale and major dealers, with the latter types of offenders essentially becoming the scapegoats for the entire drug problem. Again, I would caution the reader that the absence of discriminatory intent does not mean that the law will be applied in an unbiased fashion.

With the provision of discretionary penalties, and especially during eras in

which politicians and the public call for a crackdown on drug traffickers, minority and low-income defendants could indeed bear the brunt of state social control of drugs. Particularly telling would be a situation in which minorities, who are generally confined to the lower levels of the drug trade, receive sentences for trafficking that are significantly more severe than those received by their counterparts with majority status. Elsewhere (Peterson & Hagan, 1984) we have attempted to assess the role of race and class in sentencing decisions during periods prior to and following the passage of the 1970 Act. Our findings there, as well as in the present research, suggest that discrimination in the law is more complicated than a simplistic application of conflict notions of legal decision making might suggest. More generally, our research suggests that studies examining the role of power, status, and class in legislative decision making, followed by, or in combination with, studies of the role of such variables in the application of the law will make possible a greater understanding of (1) the process of legislative decision making, (2) the extent to which people of different race, class, and ethnic backgrounds are protected and/or punished equally in our justice system, and (3) the relative merits of Kleck's (1981) argument that legislative decision making may have more to do with differential patterns of arrest, court, and prison statistics than criminal justice processing. To understand the complexity of interests involved in lawmaking, it is also suggested that future research consider laws that are complex, and that have implications for the interests and values of a variety of population segments, including upper status groups.

REFERENCE NOTES

1. Under the 1970 Act, abusable substances are classified into five schedules based upon their dangerousness and potential for abuse. Restrictions and penalties are downgraded as one moves from controlled substances in Schedule I (e.g., hardcore illicit narcotics such as heroin, and the hallucinogens—including marihuana and LSD—for which there is no currently accepted medical purpose) to those in Schedule V (e.g., all the exempt narcotic preparations—e.g., cough syrups—which may be sold over the counter without a prescription).
2. Cracking down on drug abuse and trafficking and related street crime was a major part of the Nixon Administration's law and order agenda.
3. The continuing criminal enterprise provision is aimed at the importer of controlled substances and high-level drug dealers who command a drug distribution network. Specifically, a person is considered to be engaging in a continuing criminal enterprise if she or he (1) commits a felony which is part of a continuing series of drug offenses, (2) acts in concert with at least five other persons to commit these offenses, (3) commands some organizational or supervisory position with respect to the group, and (4) obtains substantial income from the enterprise. Notably, this is the only offense under the 1970 Act which involves a mandatory sentence and which does not permit suspended or probated sentences.
4. A defendant who is over 21 years of age and has been convicted but not yet sentenced for a drug felony can be declared a dangerous special drug offender in a separate judicial hearing prior to sentencing. A dangerous special drug offender is defined as one who (1) has been previously convicted on two or more occasions of a felony violation of the federal or state drug law and who has been sent to prison for one or more of those offenses, unless more than five years has lapsed between the present offense and defendant's release from prison or the defendant's commission of the last previous offense, or (2) has been guilty of deriving a substantial source of income from a pattern of dealing in drugs and manifests special skill or expertise in that dealing; or (3) in relation to his/her violation, is involved in a conspiracy with three or more other persons to deal in controlled substances and the defendant acted, or agreed to act, to direct such conspiracy or to give or receive a bribe, or to use force in connection with such dealing. Notably, the government only has to establish that one is a special drug offender by a preponderance of the *information* rather than by the usual and more stringent beyond a reasonable doubt standard.
5. In one sense, maintaining penalties for possession offenses may have been of purely symbolic significance. Congress members and witnesses emphasized on a number of occasions that federal enforcement efforts (money and personnel) had never been, and should not be, expended on small time users or even small time pushers (e.g., addicts who sold limited quantities of drugs to supply their own habits). Dealing with such offenders had always been left to state and local authorities despite the offenses being violations of federal drug laws as well. By contrast, federal efforts have been, and it was noted should be, concentrated on the major illegal suppliers of drugs.
6. Some members of Congress were displeased with the overwhelmingly law enforcement focus of the entire bill. They preferred a research, education, and rehabilitation approach to the drug problem. Senator Hughes of Iowa was perhaps the most adamant supporter of a health rather than a law enforcement orientation to dealing with drugs. On the floor of the Senate, Hughes proposed a number of amendments that would have placed more emphasis on research, prevention, and rehabilitation. Most of these proposals were defeated by a large margin, but some concessions were granted. These were contained in "Title I—Rehabilitation Programs Relating to Drug Abuse" of the 1970 Act and consist of several amendments to the Community Mental Health Centers Act. Our point is, however, that the relatively "soft" penalties for possession of even the most dreaded of controlled substances (e.g., the addictive narcotics) may have been a compromise strategy aimed at facilitating the maintenance of a repressive approach to drug control, while conceding a minor victory to those like Senator Hughes, who would have been very displeased with a strictly law enforcement approach to the problem. If this is the case, then the penalty structure only coincidently benefited the addict.

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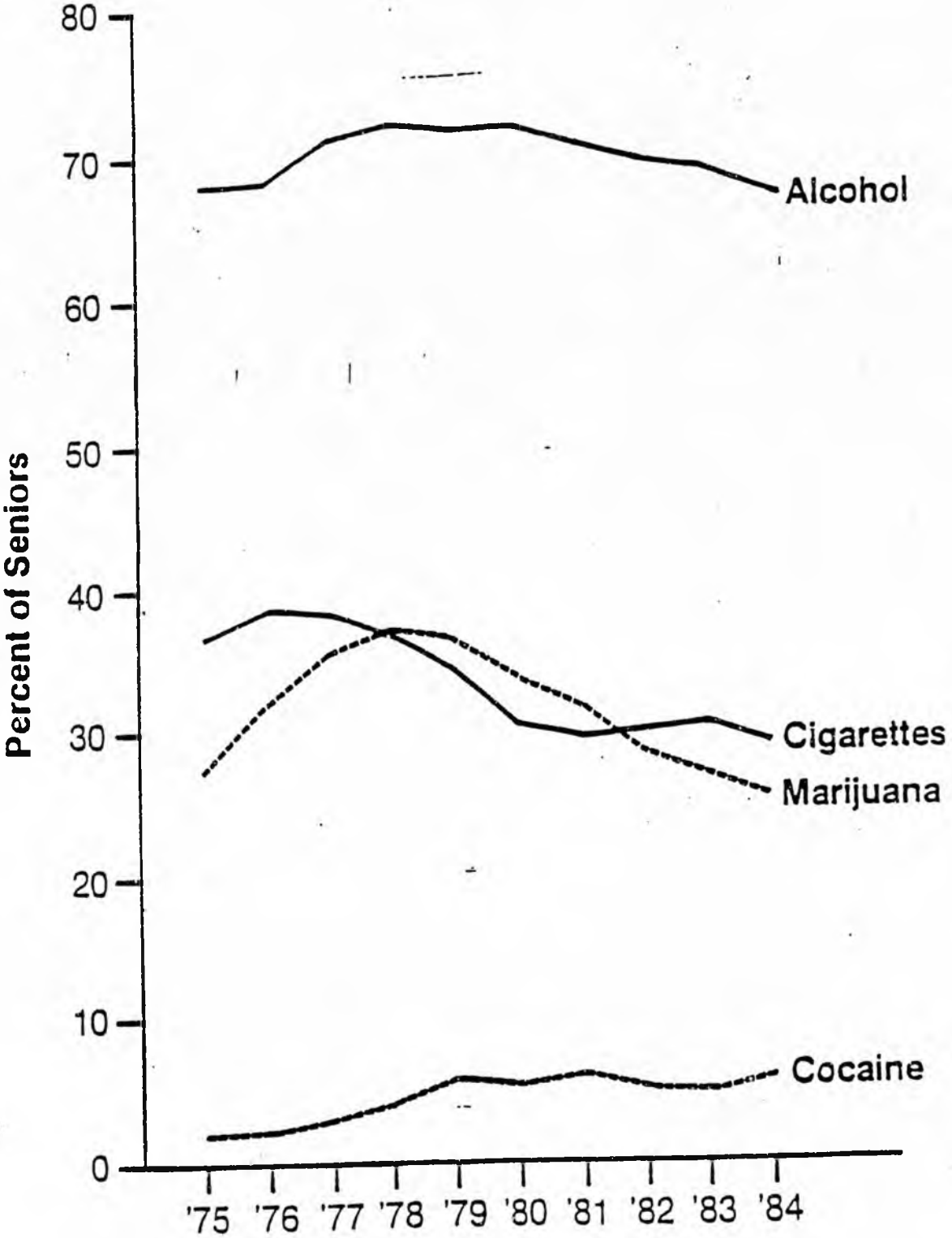
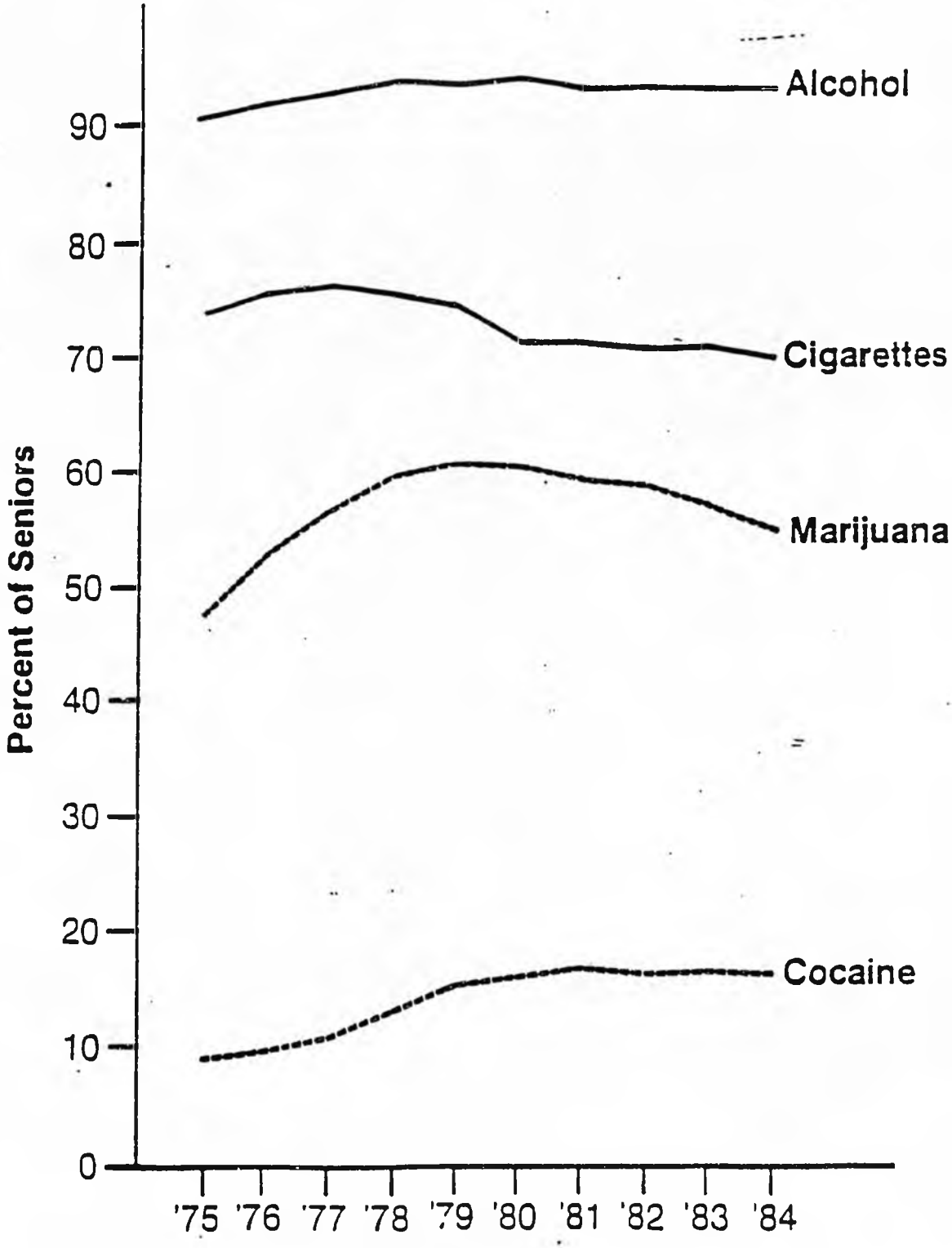
Current Use: Cocaine, Marijuana, Alcohol and Cigarettes Among High School Seniors



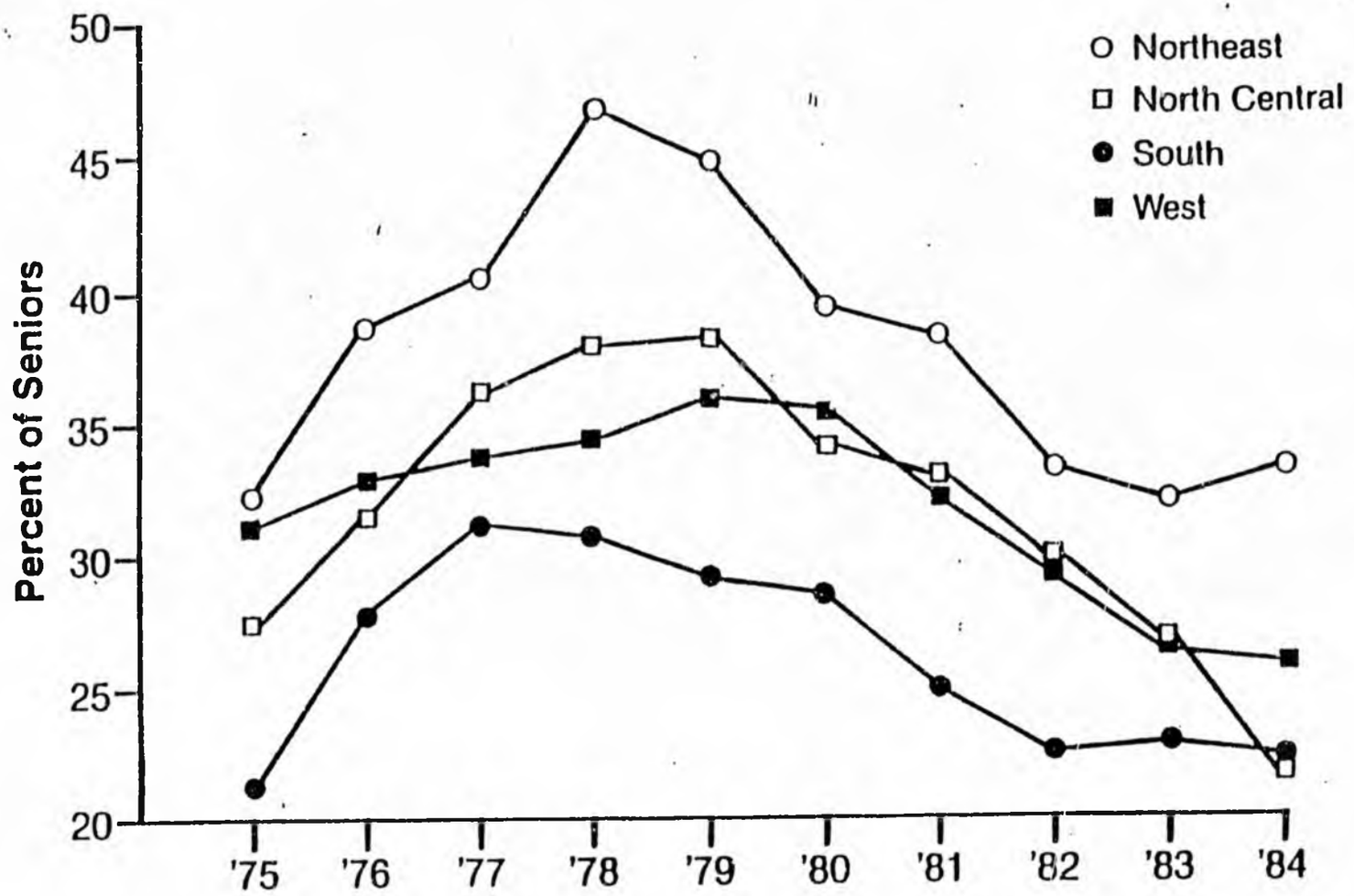
Note: Current use is defined as use at least once in past 30 days.
Source: NIDA. Monitoring the Future Study.

Lifetime Use: Cocaine, Marijuana, Alcohol and Cigarettes



Source: NIDA, Monitoring the Future Study.

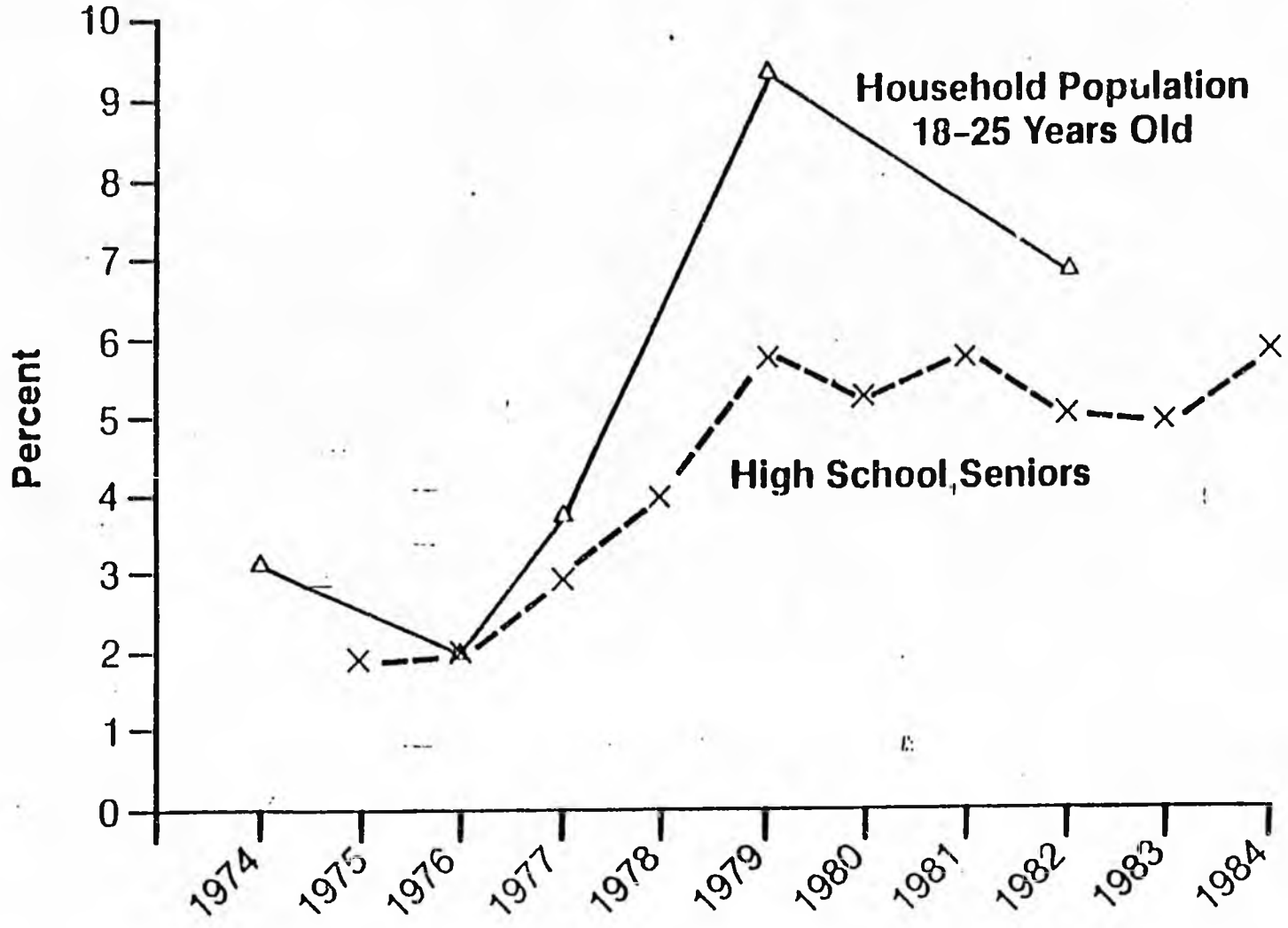
Current Use: Marijuana
Among High School Seniors According to Region



Note: Current use is defined as use at least once in past 30 days.

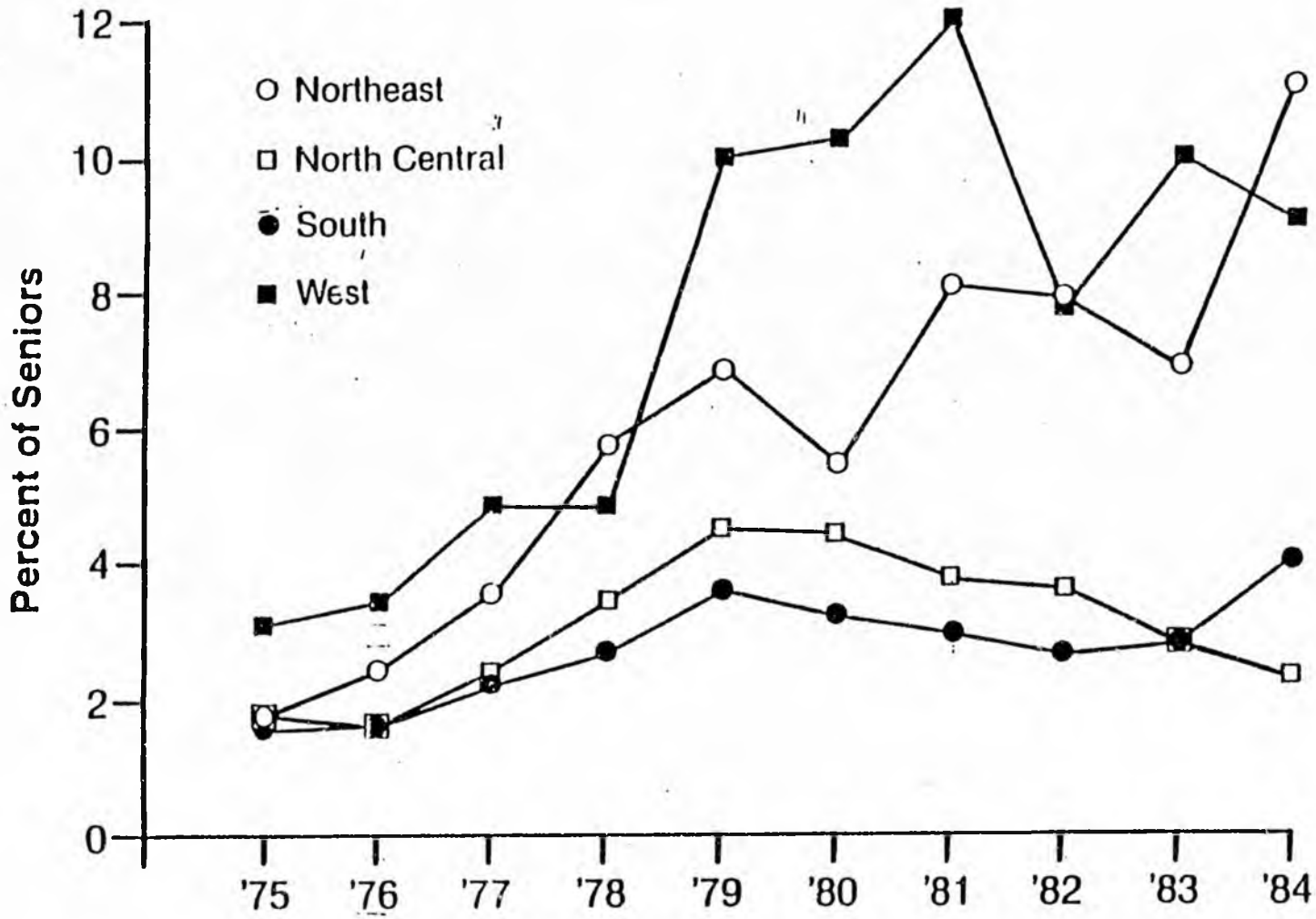
Source: NIDA, Monitoring the Future Study.

Current Cocaine Use, U.S. Household Population and High School Seniors, 1974-1984



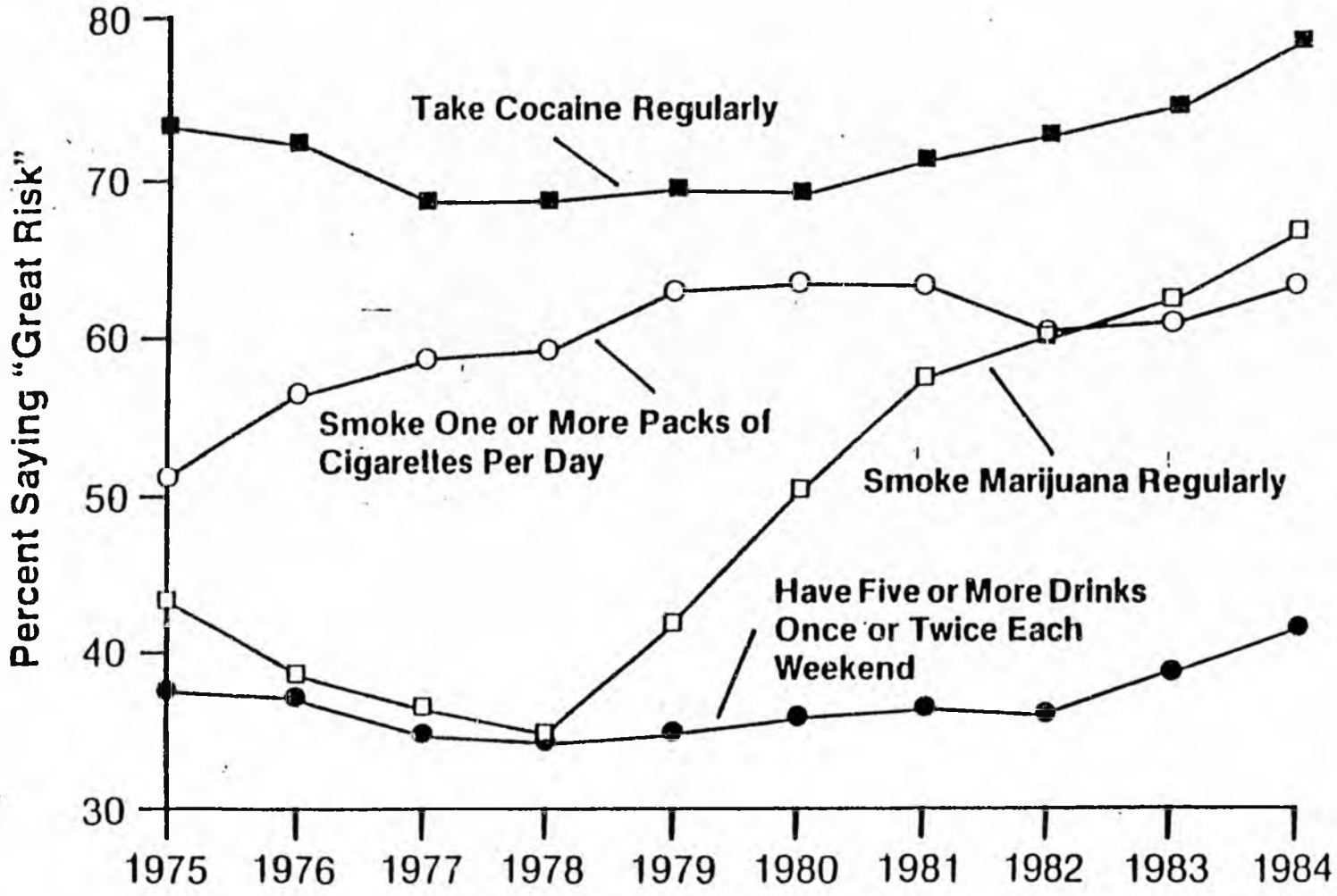
Source: NIDA, Data from the National Survey on Drug Abuse, 1982 and Student Drug Use in America, 1984.

Current Use: Cocaine
Among High School Seniors According to Region



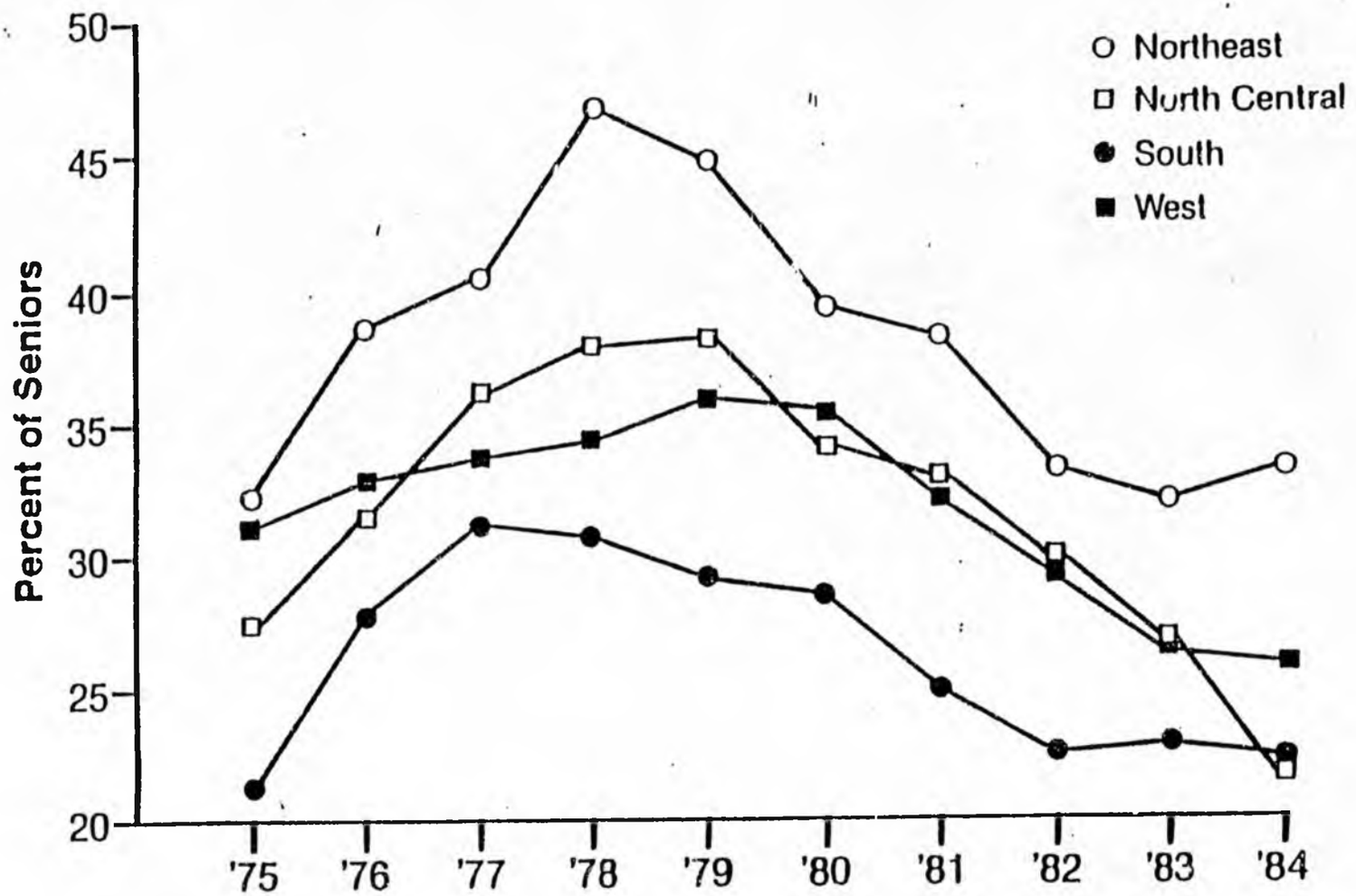
Note: Current use is defined as use at least once in past 30 days.
Source: NIDA, Monitoring the Future Study.

Perceived Harmfulness of Drugs as Reported by High School Seniors



Source: NIDA, Monitoring the Future Study

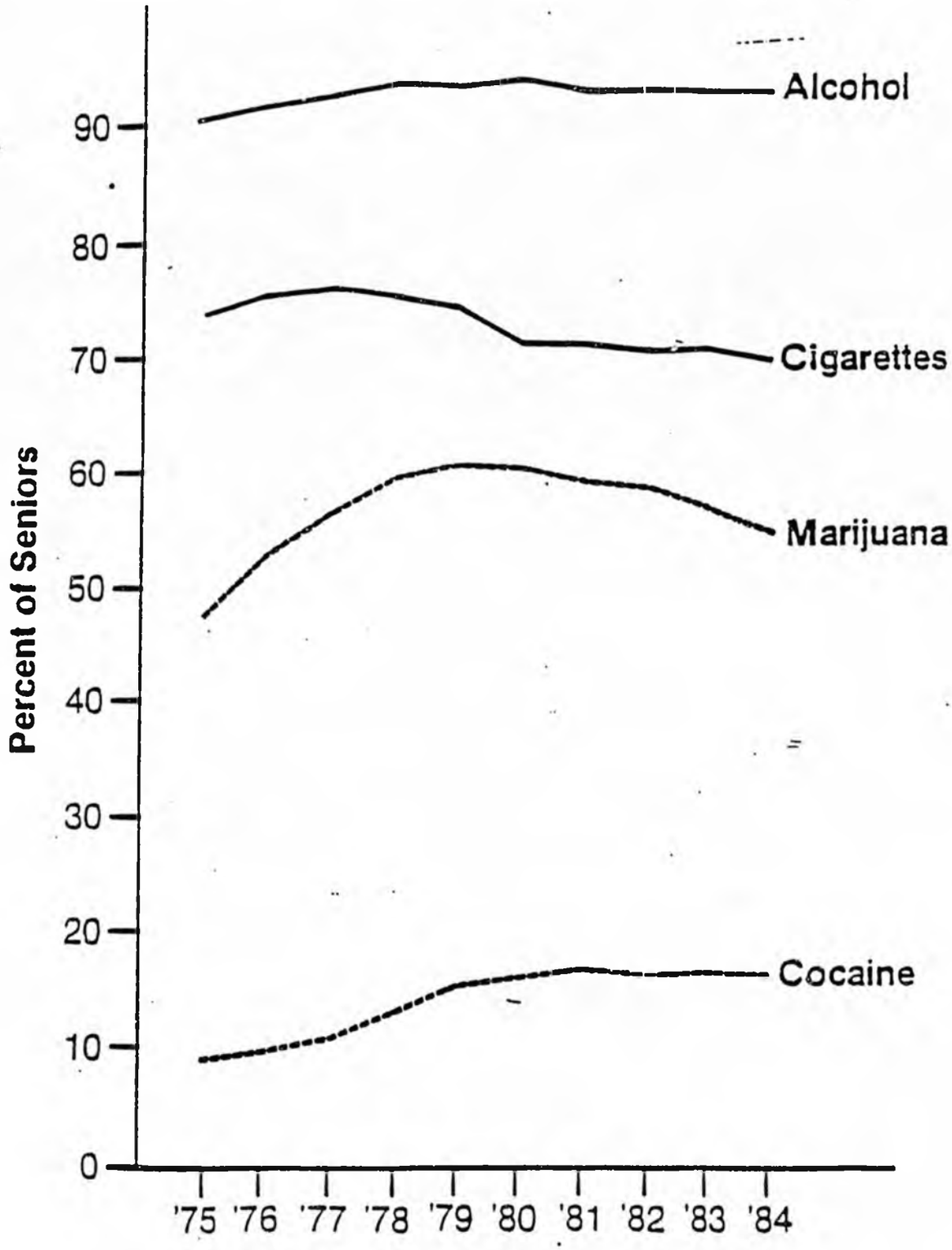
Current Use: Marijuana
Among High School Seniors According to Region



Note: Current use is defined as use at least once in past 30 days.

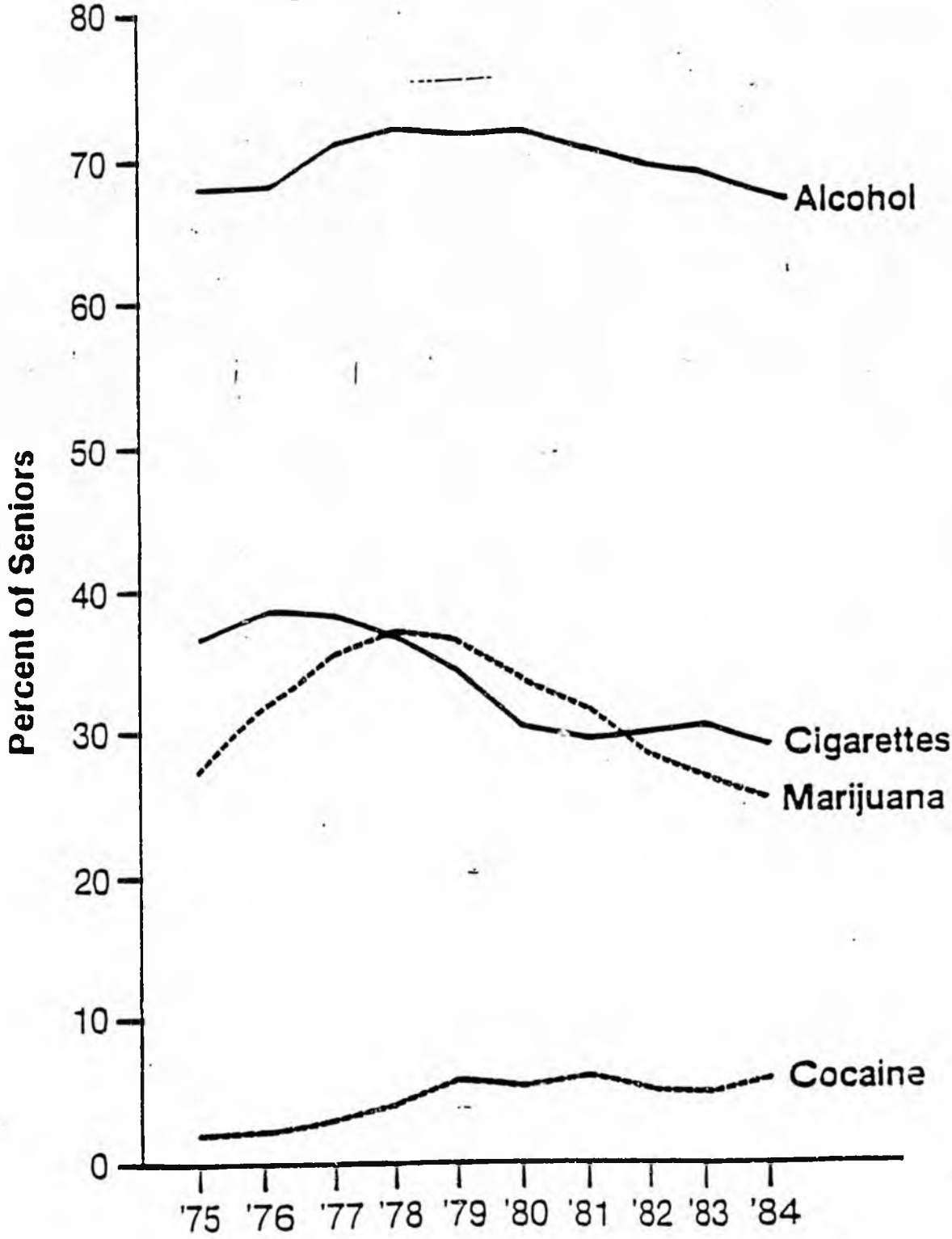
Source: NIDA, Monitoring the Future Study.

Lifetime Use: Cocaine, Marijuana, Alcohol and Cigarettes



Source: NIDA. Monitoring the Future Study.

Current Use: Cocaine, Marijuana, Alcohol and Cigarettes Among High School Seniors



Note: Current use is defined as use at least once in past 30 days.
Source: NIDA. Monitoring the Future Study.

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE
Monday, Jan. 7, 1985

Contact: Claire del Real
(202) 245-6343

HHS Secretary Margaret M. Heckler today released the tenth annual survey of drug abuse among high school seniors, and she said the survey "shows significant progress on a broad front against the specter of drug abuse by our youth."

The survey shows that "more students are recognizing the dangers of drugs, more are saying they disapprove of drug use, and more are making the personal choice against drugs," Secretary Heckler said.

In many instances, the survey showed the lowest usage of illicit drugs since the survey was initiated ten years ago, including daily use of marijuana.

But at the same time, Mrs. Heckler said illicit drug use among American youth is still "much too high," and she cited figures showing that cocaine use remained at the level reached in 1981.

The high school survey, conducted each year since 1975 by the University of Michigan Institute for Social Research, is primarily funded by the National Institute on Drug Abuse, an HHS agency. It measures illicit drug use by questioning 16,000 seniors in 140 public and private schools throughout the country. The primary investigator for the survey is Dr. Lloyd Johnston of the University of Michigan.

- MORE -

Highlights from the new survey, which covers the class of 1984, included:

-- Current use (used at least once in the past 30 days) of illicit drugs among seniors dropped to 29 percent in 1984, down from 33 percent in 1983 and from a peak of 39 percent in 1978 and 1979. The 29 percent level is the lowest since the survey began. Mrs. Heckler said this level "is still far too high," but she called the long term trend of reduced drug abuse "strong and positive."

-- Only 5 percent of seniors used marijuana daily, less than half the 11 percent found in the peak year of 1978. The 5 percent finding was also the lowest ever recorded by the survey.

-- Other measures of marijuana use also declined. Current use of marijuana dropped to 25 percent in 1984 from 27 percent in 1983. This is approximately one-third lower than the peak level of 37 percent in 1978. However, 55 percent of the senior class of 1984 still reported having used marijuana at some time in their lives.

-- Cigarette smoking by the seniors also declined to the lowest level ever recorded by the survey, with less than 19 percent smoking half a pack or more a day. Disapproval of smoking a pack or more of cigarettes a day rose to 73 percent, the highest level yet measured by the survey.

-- The prevalence of "binge" drinking (five or more drinks in a row within two weeks prior to the survey) declined to 39 percent in 1984 from 41 percent in 1983.

- MORE -

-- Daily use of alcohol among seniors declined to 5 percent in 1984, compared with the peak level of 7 percent in 1979.

"Increasingly, students are resisting the temptations and the pressures to use drugs," Mrs. Heckler said. "Increasingly, I believe, they are taking control."

However, Secretary Heckler cited cocaine as a remaining "disturbing area."

Current use of cocaine rose to 6 percent in 1984 from 5 percent in 1983. While statistically this measure does not represent a significant increase, Mrs. Heckler said, it does mean that "cocaine use is still at the level it reached in 1981."

The survey shows moderate declines in cocaine use in the west and north central regions of the country, with a slight increase in the south and an increase in current use from 7 percent in 1983 to 11 percent in 1984 for the northeastern region.

However, Mrs. Heckler also pointed to figures in the survey showing increased awareness of cocaine's dangers, compared with a lower perception of the dangers five years earlier.

###

NOTE: Attached are tables now available from the survey.

TABLE 6

Trends in Lifetime Prevalence of Sixteen Types of Drugs

AMONG HIGH SCHOOL SENIORS

	Percent ever used									
	Class of 1975	Class of 1976	Class of 1977	Class of 1978	Class of 1979	Class of 1980	Class of 1981	Class of 1982	Class of 1983	Class of 1984
Approx. N =	(9900)	(15400)	(17100)	(17800)	(15500)	(15900)	(17500)	(17700)	(16300)	(15900)
Marijuana/Hashish	47.3	52.8	56.4	59.2	60.4	60.3	59.5	58.7	57.0	54.9
Inhalants[a]	NA	10.3	11.1	12.0	12.7	11.9	12.3	12.8	13.6	14.4
Inhalants Adjusted[b]	NA	NA	NA	NA	*18.7*	*17.6*	*17.4*	*18.0*	*18.8*	19.0
Amyl & Butyl Nitrites[c]	NA	NA	NA	NA	11.1	11.1	10.1	9.8	8.4	8.1
Hallucinogens	16.3	15.1	13.9	14.3	14.1	13.3	13.3	12.5	11.9	10.7
Hallucinogens Adjusted[d]	NA	NA	NA	NA	*18.6*	*15.7*	*15.7*	*15.0*	*14.7*	13.3
LSD	11.3	11.0	9.8	9.7	9.5	9.3	9.8	9.6	8.9	8.0
PCP[c]	NA	NA	NA	NA	12.8	9.6	7.8	6.0	5.6	5.0
Cocaine	9.0	9.7	10.8	12.9	13.4	13.7	16.3	16.0	16.2	16.1
Heroin	2.2	1.8	1.8	1.6	1.1	1.1	1.1	1.2	1.2	1.3
Other opiates[e]	9.0	9.6	10.3	9.9	10.1	9.8	10.1	9.6	9.4	9.7
Stimulants[e]	22.3	22.6	23.0	22.9	20.2	26.4	32.2	33.6	33.4	NA
Stimulants Adjusted[e,f]	NA	NA	NA	NA	NA	NA	NA	*27.9*	*28.9*	27.9
Sedatives[e]	18.2	17.7	17.4	16.0	14.6	14.9	16.0	13.2	14.4	13.3
Barbiturates[e]	16.9	16.2	15.6	13.7	11.8	11.0	11.3	10.3	9.9	9.9
Methaqualone[e]	8.1	7.8	8.3	7.9	8.3	9.3	10.6	10.7	10.1	8.3
Tranquilizers[e]	17.0	16.8	18.0	17.0	16.3	15.2	14.7	14.0	13.3	12.4
Alcohol	90.4	91.9	92.5	93.1	93.0	93.2	92.6	92.8	92.6	92.5
Cigarettes	73.6	73.4	73.7	73.5	74.0	71.0	71.0	70.1	68.6	69.7

NOTES: Level of significance of difference between the two most recent classes: s = .05, ss = .01, sss = .001.

NA indicates data not available.

[a] Data based on four questionnaire forms. N is four-fifths of N indicated.

[b] Adjusted for underreporting of amyl and butyl nitrites (see text).

[c] Data based on a single questionnaire form. N is one-fifth of N indicated.

[d] Adjusted for underreporting of PCP (see text).

[e] Only drug use which was not under a doctor's orders is included here.

[f] Adjusted for overreporting of the non-prescription stimulants. Data based on three questionnaire forms. N is three-fifths of N indicated.

Source: NIDA, monitoring the Future Study, 1984.

TABLE 7

Trends in Annual Prevalence of Sixteen Types of Drugs

AMONG HIGH SCHOOL SENIORS

	Percent who used in last twelve months									
	Class of 1975	Class of 1976	Class of 1977	Class of 1978	Class of 1979	Class of 1980	Class of 1981	Class of 1982	Class of 1983	Class of 1984
Approx. N =	(9400)	(15600)	(17100)	(17800)	(15500)	(15900)	(17500)	(17700)	(16300)	(15900)
Marijuana/Hashish	40.0	44.5	47.6	50.2	50.8	48.8	46.1	44.3	42.3	40.0
Inhalants[a]	NA	3.0	3.7	4.1	5.0	4.6	4.1	4.3	4.3	5.1
Inhalants Adjusted[b]	NA	NA	NA	NA	*9.2*	*7.8*	*6.0*	*6.6*	*6.7*	7.9
Amyl & Butyl Nitrites[c]	NA	NA	NA	NA	6.3	5.7	3.7	3.6	3.6	4.0
Hallucinogens	11.2	9.0	8.5	9.6	9.9	9.3	9.0	8.1	7.3	6.5
Hallucinogens Adjusted[d]	NA	NA	NA	NA	*12.8*	*10.6*	*10.1*	*9.3*	*9.3*	7.9
LSD	7.2	6.4	5.5	6.3	6.6	6.5	6.5	6.1	5.4	4.7
PCP[c]	NA	NA	NA	NA	7.0	4.4	3.2	2.2	2.6	2.3
Cocaine	5.6	6.0	7.2	9.0	12.0	12.5	12.4	11.5	11.4	11.6
Heroin	1.0	0.8	0.8	0.6	0.5	0.5	0.5	0.6	0.6	0.5
Other opiates[e]	5.7	5.7	6.4	6.0	6.2	6.3	5.9	5.3	5.1	5.2
Stimulants[e]	16.2	15.8	16.3	17.1	18.3	20.8	26.0	26.1	24.6	NA
Stimulants Adjusted[f]	NA	NA	NA	NA	NA	NA	NA	*20.3*	*17.9*	17.7
Sedatives[e]	11.7	10.7	10.6	9.9	9.9	10.3	10.3	9.1	7.9	6.6
Barbiturates[e]	10.7	9.6	9.3	8.1	7.3	6.8	6.6	5.5	5.2	4.9
Methaqualone[e]	5.1	4.7	5.2	4.9	5.9	7.2	7.6	6.8	5.4	3.3
Tranquilizers[e]	10.6	10.3	10.8	9.9	9.6	8.7	8.0	7.0	6.9	6.1
Alcohol	88.8	85.7	87.0	87.7	88.1	87.9	87.0	86.8	87.5	86.3
Cigarettes	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

NOTES: Level of significance of difference between the two most recent classes:
s = .05, ss = .01, sss = .001.

NA indicates data not available.

[a] Data based on four questionnaire forms. N is four-fifths of N indicated.

[b] Adjusted for underreporting of amyl and butyl nitrites (see text).

[c] Data based on a single questionnaire form. N is one-fifth of N indicated.

[d] Adjusted for underreporting of PCP (see text).

[e] Only drug use which was not under a doctor's orders is included here.

[f] Adjusted for overreporting of the non-prescription stimulants. Data based on three questionnaire forms. N is three-fifths of N indicated.

Source: NIDA, monitoring the Future Study, 1984.

TABLE 3

Trends in Thirty-Day Prevalence of Sixteen Types of Drugs

AMONG HIGH SCHOOL SENIORS

	Percent who used in last thirty days									
	Class of 1975	Class of 1976	Class of 1977	Class of 1978	Class of 1979	Class of 1980	Class of 1981	Class of 1982	Class of 1983	Class of 1984
Approx. N =	(9400)	(13400)	(17100)	(17800)	(15500)	(15900)	(17500)	(17700)	(16300)	(15900)
Marijuana/Hashish	27.1	32.2	35.4	37.1	36.5	33.7	31.6	28.5	27.0	25.2
Inhalants[a]	NA	0.9	1.3	1.3	1.7	1.4	1.5	1.5	1.7	1.9
Inhalants Adjusted[b]	NA	NA	NA	NA	3.1	2.7	2.3	2.5	2.7	2.7
Amyl & Butyl Nitrites[c]	NA	NA	NA	NA	2.4	1.8	1.4	1.1	1.4	1.4
Hallucinogens	4.7	3.4	4.1	3.9	4.0	3.7	3.7	3.4	2.8	2.6
Hallucinogens Adjusted[d]	NA	NA	NA	NA	5.5	4.4	4.4	4.3	3.8	3.6
LSD	2.3	1.9	2.1	2.1	2.4	2.3	2.5	2.4	1.9	1.5
PCP[c]	NA	NA	NA	NA	2.4	1.4	1.4	1.0	1.3	1.6
Cocaine	1.9	2.0	2.9	3.9	5.7	5.2	5.8	5.0	4.9	5.9
Heroin	0.4	0.2	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.3
Other opiates[e]	2.1	2.0	2.8	2.1	2.4	2.4	2.1	1.8	1.8	1.8
Stimulants[e]	8.5	7.7	8.8	8.7	9.9	12.1	15.8	13.7	12.4	NA
Stimulants Adjusted[e,f]	NA	NA	NA	NA	NA	NA	NA	*10.7*	*8.9*	8.3
Sedatives[e]	5.4	4.5	5.1	4.2	4.4	4.8	4.6	3.4	3.0	2.3
Barbiturates[e]	4.7	3.9	4.3	3.2	3.2	2.9	2.6	2.0	2.1	1.7
Methaqualone[e]	2.1	1.6	2.3	1.9	2.3	3.3	3.1	2.4	1.8	1.1
Tranquilizers[e]	4.1	4.0	4.6	3.4	3.7	3.1	2.7	2.4	2.5	2.1
Alcohol	68.2	68.3	71.2	72.1	71.8	72.0	70.7	69.7	69.4	67.2
Cigarettes	36.7	38.8	38.6	36.7	34.4	30.3	29.4	30.0	30.3	29.3

NOTES: Level of significance of difference between the two most recent classes:
s = .05, ss = .01, sss = .001.

NA indicates data not available.

[a] Data based on four questionnaire forms. N is four-fifths of N indicated.

[b] Adjusted for underreporting of amyl and butyl nitrites (see text).

[c] Data based on a single questionnaire form. N is one-fifth of N indicated.

[d] Adjusted for underreporting of PCP (see text).

[e] Only drug use which was not under a doctor's orders is included here.

[f] Adjusted for overreporting of the non-prescription stimulants. Data based on three questionnaire forms. N is three-fifths of N indicated.

Source: NIDA, monitoring the Future Study, 1984.

TABLE 9

Trends in Thirty-Day Prevalence of Daily Use of Sixteen Types of Dru

AMONG HIGH SCHOOL SENIORS

	Percent who used daily in last thirty days									
	Class of 1975	Class of 1976	Class of 1977	Class of 1978	Class of 1979	Class of 1980	Class of 1981	Class of 1982	Class of 1983	Class of 1984
Approx. N =	(9400)	(13400)	(17100)	(17800)	(15500)	(15900)	(17500)	(17700)	(16300)	(15900)
Marijuana	6.0	8.2	9.1	10.7	10.3	9.1	7.0	6.3	5.5	5.0
Inhalers	NA	0.0	0.0	0.1	0.0	0.1	0.1	0.1	0.1	0.1
Inhalers	NA	NA	NA	NA	0.1	0.2	0.2	0.2	0.2	0.2
Amyl & Butyl Nitrites[c]	NA	NA	NA	NA	0.0	0.1	0.1	0.0	0.2	0.1
Hallucinogens	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Hallucinogens Adjusted[d]	NA	NA	NA	NA	0.2	0.2	0.1	0.2	0.2	0.2
LSD	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.1	0.1
PCP[c]	NA	NA	NA	NA	0.1	0.1	0.1	0.1	0.1	0.1
Cocaine	0.1	0.1	0.1	0.1	0.2	0.2	0.3	0.2	0.2	0.2
Heroin	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0
Other opiates[e]	0.1	0.1	0.2	0.1	0.0	0.1	0.1	0.1	0.1	0.1
Stimulants[e]	0.5	0.6	0.5	0.5	0.6	0.7	1.2	1.1	1.1	NA 0.5
Stimulants Adjusted[e,f]	NA	NA	NA	NA	NA	NA	NA	0.7	0.8	0.1
Sedatives[e]	0.3	0.2	0.2	0.2	0.1	0.2	0.2	0.2	0.2	
Barbiturates[e]	0.1	0.1	0.2	0.1	0.0	0.1	0.1	0.1	0.1	0.0
Methaqualone[e]	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.0	0.0
Tranquilizers[e]	0.1	0.2	0.3	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Alcohol	5.7	5.6	6.1	5.7	6.9	6.0	6.0	5.7	5.5	4.8
Cigarettes	26.9	28.8	28.8	27.3	25.4	21.3	20.3	21.1	21.2	18.7

NOTES: Level of significance of difference between the two most recent classes: s = .05, ss = .01, sss = .001.

NA indicates data not available.

[a] Data based on four questionnaire forms. N is four-fifths of N indicated.

[b] Adjusted for underreporting of amyl and butyl nitrites (see text).

[c] Data based on a single questionnaire form. N is one-fifth of N indicated.

[d] Adjusted for underreporting of PCP (see text).

[e] Only drug use which was not under a doctor's orders is included here.

[f] Adjusted for overreporting of the non-prescription stimulants. Data based on three questionnaire forms. N is three-fifths of N indicated.

Source: NIDA, monitoring the Future Study, 1984.

ERRATUM

Please note the following correction to "Crime as Commonsense Theory" by Clayton A. Hartjen, which appeared on pages 435-452 of the Feburary 1981 issue of CRIMINOLOGY:

Page 438, the sentence beginning on line 6 in the second paragraph should read: "The 'deep structure' of a language is the set of rules (or grammar) that underlies the sounds or symbols of experienced language."

As for the relationship between marijuana use and other deviant behaviors, the general scenario was presented to us many decades ago by Harry J. Anslinger, the director of the Federal Bureau of Narcotics from its inception in 1930 through the 1950s:

> In the earliest stages of intoxication the will power is destroyed and inhibitions and restraints are released; the moral barricades are broken down and often debauchery and sexuality results. While mental instability is inherent, the behavior is generally violent. An egotist will enjoy delusions of grandeur, the timid individual will suffer anxiety, and the aggressive one often will resort to acts of violence and crime [Anslinger and Tompkins, 1953: 21-22].

While Anslinger's position on marijuana has been viewed by many as either politically motivated or as the ravings of a madman, the spectre of a relationship between marijuana, crime, and violence periodically reemerges. Furthermore, the vast majority of the studies which have focused on any relationship between drug use and crime have typically singled out the impact of heroin use on street crime. Data sets do exist on users of marijuana which document that if any relationship does exist it is generally limited to the subculture and marketplace circumscribing the distribution and sale of the drug (Johnson, 1973; Pottieger and Inciardi, forthcoming). Nevertheless, any agenda for marijuana decriminalization research should address itself to the many studies which have touched upon this issue in order that more thorough documentation can be provided. A similar approach might be structured for a resolution of the marijuana-heroin progression hypothesis.

Turning to an alternative area for research, the impact of arrest and conviction on cohorts of marijuana users remains unstudied. An overview of the FBI's *Uniform Crime Reports* suggests that there have been almost three million marijuana-related arrests during the 1972-1978 period. What proportion of these arrests involve simple possession vs. sales, and what proportion represent misdemeanors or lesser crimes in those jurisdictions where marijuana has been decriminalized, is not known. However, what

is clear is that the number of marijuana arrests annually is almost one-half million; and furthermore, the *proportion* of arrests involving marijuana has become more or less stabilized. This becomes a crucial issue when one considers that, as has been pointed out elsewhere, as soon as arrest patterns and rates for a given crime have become stabilized, they will remain at that level for many years to come (Inciardi, 1978). From this perspective it is suggested that almost one-half million persons (or perhaps slightly less, since some individuals experience multiple arrests) will be confronted with criminal justice processing during the next few years as a result of marijuana use. This suggests a whole range of research questions:

- Of some 1/2 million arrests each year, what proportion are possession arrests?
- How many *persons* are arrested for possession of a quantity of marijuana which would not involve criminal processing in a decriminalized state?
- How many of the possession arrests involve first offenders *of any type?*
- How many personal and occupational disruptions occur as a result of these arrests?

An interesting study which might address these questions could involve a follow-up of matched samples of marijuana users who are, and who are not, arrested. With such an effort, one could easily measure the impact of the marijuana prohibition on a user's finances, family, and career.

The other side of this question relates to the economic costs of enforcing the marijuana laws. Again, these data are not readily available. Even rough estimates cannot be structured since the activities of so many agencies impact on marijuana enforcement activity. Research in this behalf could estimate the cost of a single marijuana arrest in a given jurisdiction by examining the budgets and activities of local, county, and state police, municipal and state court and correctional agencies, and diversion programs. A study of this order would begin to give us some indication of the economic burden imposed by the marijuana statutes.

DECRIMINALIZATION, PUBLIC OPINION, AND SOCIAL POLICY

Shifting to an alternative area of inquiry, the beginnings of the epidemic of marijuana use during the 1960s occurred at a time when *any* possession of the drug was a felonious offense under federal and *all* state laws. The "movement" toward decriminalization began in 1973 with Oregon, followed by Colorado, Alaska, Ohio, and California in 1975, Maine and Minnesota in 1976, Mississippi, North Carolina, and New York in 1977, and Nebraska in 1978. But as Dr. Eric Josephson (1980) of the Center for Socio-Cultural Research on Drug Use at Columbia University has pointed out, this "movement" has become stalled, and for a variety of reasons. He suggests that further progress has not been made because of the failure of the U.S. Congress to pass legislation that would decriminalize marijuana under federal statutes, because the issue has not been salient enough throughout the nation as a whole to result in concerted action in favor of decriminalization, because the lobbying on behalf of marijuana law reform has not demonstrated the power and influence necessary for repeal, and because marijuana is a drug favored by youth.

Within the context of Josephson's observations, it seems clear that the lack of further movement toward decriminalization can be tied primarily to the images of the drug and its users which have been nurtured in American drug mythology since the beginning decades of the twentieth century.

Descriptions of marijuana as a "weed of madness" appeared as early as the mid-1800s, and were brought before a national audience during the 1920s. In a New York *Times* article datelined Mexico City, July 5, 1927, and headlined "Mexican Family Go Insane," for example, the following report was offered.

> A widow and her four children have been driven insane by eating the Marihuana plant, according to doctors, who say that there is

no hope of saving the children's lives and that the mother will be insane for the rest of her life.

The tragedy occurred while the body of the father, who had been killed, was still in a hospital.

The mother was without money to buy other food for the children, whose ages range from 3-15, so they gathered some herbs and vegetables growing in the yard for their dinner. Two hours after the mother and children had eaten the plants, they were stricken. Neighbors, hearing outbursts of crazed laughter, rushed to the house to find the entire family insane.

Examination revealed that the narcotic marihuana was growing among the garden vegetables.

Combined with this image of the drug as a creator of madness, a more formal crusade was organized and pursued by Harry J. Anslinger and his Federal Bureau of Narcotics during the 1930s, who targeted marijuana as the "assassin of youth." Using *American Magazine* as his national forum, Anslinger initiated a series of reports in 1937 aimed at shocking the American public. For example:

The sprawled body of a young girl lay crushed on the sidewalk the other day after a plunge from the fifth story of a Chicago apartment house. Everyone called it suicide, but actually it was murder. The killer was a narcotic known to America as marijuana, and to history as hashish. It is a narcotic used in the form of cigarettes, comparatively new to the United States and as dangerous as a coiled rattlesnake [Sloman, 1979: 34].

And in terms of crime:

An entire family was murdered by a youthful addict in Florida. When officers arrived at the home, they found the youth staggering about in a human slaughterhouse. With an ax he had killed his father, mother, two brothers, and a sister. He seemed to be in a daze. . . . He had no recollection of having committed the multiple crime. *The officers knew him ordinarily as a sane, rather quiet young man; now he was pitifully crazed.* They sought the reason. The boy said he had been in the habit of smoking something which youthful friends called "muggles," a childish name for marijuana [Sloman, 1979: 63].

The end product of these moral enterprises has been well documented. By the 1940s, a body of literature had begun to develop which stereotyped marijuana users as sex-crazed maniacs, degenerate street criminals, and members of the "living dead." The drug reportedly ravaged the human body; it destroyed morality; users were sexually violent and criminally aggressive, and in general were weak and ineffective members of society; marijuana "addiction" was contagious since users had a mania for perpetuating the social anathema of drug taking; and finally, once addicted, the user entered a lifetime of slavery to drugs. Furthermore, the erroneous conception was typically emphasized that marijuana, like heroin, was an addicting narcotic, and that such drug use was concentrated almost exclusively among criminals and other social outcasts.

By mid-century, after marijuana had become outlawed throughout the nation, it then became associated with the "Beats" of America's bohemian underground.

Beat, as a slang term, originated in *harlem jive*, the jargon of the black musician of the 1920s and 1930s. With a meaning of "exhausted and worn out," beat was descriptive of a part social, part literary phenomenon of the late 1940s and 1950s initiated by the postwar disaffected and a cult of west coast writers. They were of a genertaion that was trying to make sense of a postwar world, a world that seemed to offer no respite, only an eternal state of war and chaos. Reality, as the Beats viewed it, was a state of consciousness where nature, history, and humanity could not be controlled; where the worship of reason had fallen into obscurity; where progress was both a false concept and an illusion; and where the future and past were of little value.

The Beats believed that the path to harmony in a chaotic world could not be had by the more traditional consolations of success and achievement which demanded a feigning of beliefs, feelings, and virtues, and a relentless obligation to the prevailing social forms and customs. Many Beats, in their attempt to more readily attain the success of setting themselves right with nature, pursued their "true" reality through an effort of the mind and rejected the perceived discontinuities of life in organized society. For most,

however, their conceptual reality of the irrational properties of everyday existence was escaped through the sensation of a drug, and high frequency/long duration marijuana and hashish use became a pervasive part of Beat life (Inciardi, 1972).

The chief spokesmen of the Beat movement were Allen Ginsberg, Jack Kerouac, William Burroughs and Lawrence Ferlinghetti, but the most celebrated of these was Ginsberg, whose writings were so charged with obscenity that they brought awkward attention to the movement that was national in scope. The best known of Ginsberg's works was *Howl*, written, for the most part, while he was under the influence of drugs. In its 75 lines of inelegant poetry aimed at dismaying the middle class, *Howl* condemned American society and suggested a new set of values that were almost totally antisocial. And it was from this context that Ginsberg again emerged during the early 1960s making the rounds on Capitol Hill lobbying for the legalization of marijuana (Viorst, 1979: 57-59). Understandably, legalization of the drug could be viewed as nothing more than the radical politics of the time, and Ginsberg's appearance in the midst of the issue did much to confirm the persisting images of the marijuana user.

As the 1960s grew more mature, the nonconformist notions of the tiny minority of Beats in the 1950s emerged as the common social currency of the new youth movement. And the new counterculture contained a variety of types. It included what social critic Norman Mailer called the "philosophical psychopaths" who had found a need to throw off the political and social restraints of their generation. They lived immoderately and for the moment, congregated in communes, spoke a special avant garde language, experimented with sex, and smoked marijuana. It included the political activists whose radical perception of society's horrors were communicated in a manner that was attractive to the existing adolescent propensity to rebel. And finally, it included the tens of thousands of "plastic" or weekend "hippies" and "heads" whose social schizophrenia placed them partially in the straight world and partially in this "new underground"; they were children of two cultures, never wholly in phase with either, and not believing fully in the values and mores of either.

Concomitant with the rise of the counterculture was a revolution in the technology and handling of drugs which had begun at mid-century and served to designate the sixties as a "new chemical age." Recently compounded psychotropic agents were enthusiastically introduced and effectively promoted, with the consequence of exposing the national consciousness to an impressive catalogue of chemical temptations which could offer fresh inspiration as well as simple and immediate relief from fear, anxiety, tension, frustration, and boredom. Exploiting the new hallucinogenic, stimulant and sedative drugs that emerged during this period, the new counterculture also became the new drug culture, and the image of the marijuana user was further denigrated.

It was not until the 1970s that the nation had become conscious of the fact that marijuana use went well beyond the "dangerous and criminal classes." In 1965, less than ten million persons were estimated to have used marijuana, but by the mid-seventies this figure had more than tripled, and a large and rapidly expanding segment of the American population had become the target of legal concern.

The initial surge of decriminalization statutes which did occur appeared, for the most part, in those states where marijuana use was most prevalent, and the movements toward decriminalization emerged primarily as an attempt to implement anti-marijuana statutes of reduced severity that were more likely to produce arrests and convictions. In the main, however, public attitudes toward marijuana use and users continued to reflect much of the stigma that had been originally attached to the drug, and the decriminalization movement remained stalled.

With the onset of the 1980s, the growing number of users within the youthful population at all class and social levels drew much attention away from the former images of the marijuana user, but the depiction of the drug as an "assassin of youth" seemed to reemerge. Currently, articles in the popular media present aspects of marijuana use in an alternative, but still problematic, context. A segment of contemporary literature, for example, emphasizes (but fails to document) that most new recruits to marijuana are younger than their counterparts of a decade ago.

Such articles focus on how marijuana smoking has become a major part of many 10-year-olds' daily routines, and that their involvement with the drug has served to destroy their family relationships and coping skills (for example, Brynner, 1980). This type of rhetoric, however, often serves only to incite parents into hysterical antidrug behavior and further stimulate intergenerational disaffection.

The research issue which must address this phenomenon is three-fold in nature. *First,* in those areas where marijuana use rates among youth are said to be high, data on the incidence, prevalence, and pattens of use of marijuana are critical. *Second,* accurate documentation is also warranted as to the extent to which family relationships and coping skills are, or are not, being impacted by marijuana use. And *third,* whether or not the findings of these studies portray marijuana use among youth in a negative light, a public education campaign seems appropriate which places reliable data, untainted by melodrama and demagoguery, before both parents and youth.

EPILOGUE

As a final note, perhaps the most crucial variable in a marijuana decriminalization research agenda relates to the possible benefits of marijuana as a substitute drug. There is an indication that at least within some populations of college students, the nature of drug use has changed over the last ten years. While more students are using drugs now than those of a decade ago, current student drug use has become more focused. Marijuana and alcohol are the primary, and typically the *only,* drugs of abuse, while narcotics, sedatives, stimulants, and hallucinogens are rarely seen. As such, while marijuana and alcohol use may be more prevalent now, the use of the more debilitating drugs may have become less significant.

Research that would target this issue could be readily undertaken as a part of the much needed impact evaluations of marijuana use in those states where the drug has already been decriminalized. Of the eleven states that have reduced the penalties for the possession of marijuana, the effects of the new legislation have been examined only in the states of Oregon (Drug Abuse Council, 1978), California (California Health and Welfare Agency, 1977), and Maine (State of Maine, 1979), and these studies are beset with a variety of severe shortcomings (see Cuskey et al., 1978). In short, the range of variables employed to describe marijuana use were extremely limited, age categories were too broadly defined, actual patterns of use were not examined, questions regarding the onset of marijuana use were not addressed, the effects of decriminalization on the use of other drugs was not approached, nor were the effects of the new law examined in terms of the behavior of users, the agencies of social control, public attitudes, and the wider society as a whole. In short, while these studies did attempt to determine if marijuana use did increase subsequent to decriminalization, they accomplished little else. And among those cohorts where marijuana use did increase, it is not known whether such usage was a substitute for other more dangerous and debilitating drugs.

As research descriptive of the health consequences of marijuana use continues, findings suggest that the drug is neither the "devil drug," "weed of madness," or "assassin of youth" that was alleged by some, nor the totally innocuous substance that was suggested by others. Indeed, marijuana does have its effects on immediate memory and intellectual performance in ways that impair thinking, reading comprehension, and verbal and arithmetic problem solving; acute intoxication has a clear impact on motor skills; it has its effects on circulation, the immune system, and the reproductive cycle; furthermore clinical studies have demonstrated that the drug effects lung functioning—in fact, one study suggests that smoking as few as four "joints" per week decreased vital lung capacity to the same extent as smoking as many as 100 conventional cigarettes during the same period of time (Pollin, 1979). These effects should not be ignored, nor should they be overstated. What is important, however, is that they be further examined within the cost/benefit or cost/cost

paradigm suggested, in order that more informed decisions regarding decriminalization or continued prohibition be entertained.

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ALCOHOLISM AND OTHER ALCOHOL-RELATED PROBLEMS AMONG CHILDREN AND YOUTH

- ☐ Alcohol is America's No. 1 drug problem among youth. In 1985, an estimated 4.6 million adolescents aged 14 through 17 experienced negative consequences of alcohol use (e.g., arrest, involvement in an accident, impairment of health or job performance). (NIAAA, Projection of data in Alcohol and Health Monograph 1, Alcohol Consumption and Related Problems 1982, p. 85, updated with Bureau of the Census 1985 Population Projections.)
- ☐ Alcohol is over twice as popular among college students as the next leading drug, marijuana, and over five times as popular as cocaine. Ninety-two percent of college students reported using alcohol in a twelve-month period compared to 42 percent who had used marijuana and 17 percent who had used cocaine. (Institute for Social Research, University of Michigan, Ann Arbor, MI, Drug Use Among American High School Students and Other Young Adults, 1985.)
- ☐ Only 42 percent of fourth graders know that alcohol is a drug, compared to 81 percent who consider marijuana a drug; the percentage of students considering alcohol a drug drops with age to 28 percent in the upper grades. (Weekly Reader Publications, A Study of Children's Attitudes and Perceptions About Drugs and Alcohol, Middletown, CT, Apr. 25, 1983.)
- ☐ The earlier in life a child starts using any dependence-producing drug, the more likely he or she is to experience dependence and other health problems, and go on to other dependence-producing drugs. (Robert L. DuPont, "Substance Abuse," Journal of the American Medical Association, Vol. 254, #16, Oct. 25, 1985, p. 2336.)
- ☐ Lower expectations for the future, alienation and boredom are associated with drinking among children in all socio-economic groups. (Nancy P. Gordon & Alfred McAlister, "Promoting Adolescent Health," Adolescent Drinking: Issues and Research, New York: Academic Press, 1982, p. 205.)
- ☐ Approximately 10,000 young people aged 16–24 are killed each year in alcohol-related accidents of all kinds, including drownings, suicides, violent injuries, homicides and injuries from fire. (US DHHS; NIAAA, Public Health Service, "Questions and Answers: Teenage Alcohol Use and Abuse," Prevention Plus: Involving Schools, Parents and the Community in Alcohol and Drug Education, Publication No. CADM 841256, Rockville, MD, 1983, p. xiii.)
- ☐ Alcohol-related highway deaths are the number one killer of 15- to 24-year-olds. (US DHHS National Center for Health Statistics, Public Health Service, Health, United States, 1980, Pub. No. (PHS) 81-1232, December 1980.)
- ☐ It takes less alcohol to produce impairment in youth than in adults. Younger drivers in fatal crashes have lower average blood alcohol concentrations (BACs) than older drivers. Blood alcohol concentration is the amount by weight of alcohol in a volume of blood, and is typically expressed as percent weight by volume. A BAC of .05 percent is equal to 50 mg of alcohol per deciliter of blood (approx. 3.5 fluid oz). ("Blood Alcohol Concentrations among Young Drivers, 1983," Morbidity and Mortality Weekly Report (MMWR),33:699-701, 1984.)
- ☐ Drivers 16–24 years old represent 20 percent of licensed drivers and less than 20 percent of total miles driven, and yet account for 42 percent of all fatal alcohol-related crashes. (US DOT Fatal Accident Reporting System, 1982. DOT No. HS-806-566, 1984 (h).)
- ☐ Of 27,000 New York public school students, grades 7 through 12, 11 percent described themselves as being "hooked" on alcohol, with 13 percent admitting to attending classes while "high," "drunk" or "stoned" on alcohol. (New York State Division of Alcoholism and Alcohol Abuse, Drug and Alcohol Survey, 1983.)
- ☐ Nearly 100,000 10- and 11-year-olds reported getting drunk at least once a week in 1985. Over 185,000 sixth graders have used hard liquor by age 10. Alcohol use at least once a week by sixth graders more than doubled from 1983 to 1984. (Ronald Adams and Thomas Gleaton, Parents' Resource Institute for Drug Education, PRIDE—Drug Usage Prevalence Questionnaire, 1985.)
- ☐ About one-third of fourth-graders (9-year-olds) said children their age pressured others to drink beer, wine or liquor; the figure increased to nearly 80 percent by high school. (Weekly Reader Publications, A Study of Children's Attitudes and Perceptions About Drugs and Alcohol, Middletown, CT, 1983.)
- ☐ Alcoholics are more likely than non-alcoholics to have an alcoholic father, mother, sibling or distant relative. Almost one-third of any sample of alcoholics had at least one parent who was also alcoholic. (Alcoholism: An Inherited Disease, US DHHS, Pub. No. [ADM] 85-1426, 1985, p. 3.)
- ☐ Children of alcoholics have a four times greater risk of developing alcoholism than children of non-alcoholics. There are 28.6 million children of alcoholics in the U.S. today, 6.6 million of whom are under the age of 18. (Children of Alcoholics Foundation, Children of Alcoholics: A Review of the Literature, 1985, Introduction and p. 2.)

☐ While no one is predestined to become an alcoholic, genetic factors may increase or decrease the level of vulnerability toward alcoholism. (Marc A. Schuckit, M.D., "Genetics and the Risk for Alcoholism," Journal of the American Medical Association, Vol. 254, Nov. 8, 1985, p. 2616.)

☐ At present, first drinking usually occurs around age 12, in contrast to age 13–14 in the 1940s and 1950s. (Gordon and McAlister, Adolescent Drinking: Issues and Research, p. 204.)

☐ Nearly a third of high school seniors have said that most or all of their friends get drunk at least once a week. (L.D. Johnston, P.M. O'Malley and J.G. Bachman, Use of Licit and Illicit Drugs by America's High School Students, 1975-1984, US DHHS Pub. No. [ADM] 85-L394, Washington, D.C., Supt. of Docs., US Govt. Print. Off., 1985.)

☐ Up to half of heavier youthful drinkers also use marijuana at least once a week, and a third of the youth who use marijuana more than once a month also are classed as heavier drinkers. (Research Triangle Institute, Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980, RTI/2734/00-01FR, June, 1984, p. 114.)

☐ Many surveys suggest that the best predictor of the drinking habits of adolescents is the attitude and behavior of their parents with regard to alcohol use. Adolescent heavy drinkers tend to come either from homes where one or both parents are heavy drinkers, or from homes where both are abstainers. (Gordon & McAlister, Adolescent Drinking: Issues and Research, p. 206.)

☐ Annual surveys of 17,000 high school seniors aged 17 and 18 years old consistently show that 85 percent of the participants have had at least one drink in the preceding year and that more than 66 percent have consumed at least one drink in the preceding month. Forty percent of seniors have participated in the "party drinking syndrome," that is, consumed five or more drinks on one occasion, at least once in the preceding two weeks. Thirty percent did so on two or more occasions, and 20 percent did so three or more times in the designated two-week period. In response to a related question, only a third of the seniors thought there was great risk in this type of binge drinking. (Johnston, O'Malley and Bachman: Drugs and American High School Students: 1975–1983.)

☐ A child will see alcohol consumed an average of 75,000 times on TV before he or she is of legal drinking age. (Dr. Thomas Radecki, Chairman of the National Coalition on Television Violence and psychiatrist with the University of Illinois School of Medicine, 1983.)

☐ Adolescents and young adults more heavily exposed to alcohol ads on TV and in magazines are more likely to perceive drinking as attractive, acceptable and rewarding than are those who have been less exposed. The heavily exposed group in a recent study was more likely to engage in drinking liquor—31 percent vs. 15 percent—than was the less exposed group. (C. Atkins and M. Block, Content and Effects of Alcohol Advertising, Bureau of Alcohol, Tobacco and Firearms, US Govt., Washington, D.C., Report of Michigan State University Study, 1981.)

☐ Drinking differences between boys and girls is diminishing. The number of young female drinkers has been increasing more rapidly than the number of young male drinkers. Girls also tend now to experiment with a wider variety of substances. (Robert H. Coombs, David K. Wellisch and Fawzy I. Fawzy, UCLA School of Medicine, Los Angeles, CA, Drinking Patterns and Problems among Female Children and Adolescents: A Comparison of Abstainers, Past Users and Current Users, Am. J. Drug Alcohol Abuse, II [3 & 4] pp. 315–348 [1985].)

☐ It is estimated that increasing federal excise taxes on beer, the favorite alcohol beverage among youth, would reduce alcohol-related motor vehicle fatalities by 55 percent among 18- to 20-year-old young men and by 45 percent among 18-to 20-year-old young women. (Henry Saffer, Kean College of New Jersey and National Bureau of Economic Research; and Michael Grossman, City University of New York Graduate School and National Bureau of Economic Research, Effects of Beer Prices and Legal Drinking Ages on Youth Motor Vehicle Fatalities, November 1985.)

☐ Alcoholism is a chronic, progressive and potentially fatal disease characterized by tolerance and physical dependency or pathologic organ changes, or both. All are the direct or indirect consequences of the alcohol ingested. (National Institute on Alcohol Abuse and Alcoholism [NIAAA], Fourth Special Report to the U.S. Congress on Alcohol and Health, ed. John R. DeLuca, DHHS Pub. No. [ADM] 82-1080, 1981, p. 36.)

☐ Alcoholism is one of the most serious public health problems in the United States today. Among the 18.3 million adult "heavier drinkers" (those consuming more than 14 drinks per week) 12.1 million have one or more symptoms of alcoholism, an increase of 8.2 percent since 1980. (NIAAA, Department of Biometry and Epidemiology, Working Paper: Projections of Alcohol Abusers, 1980, 1985, 1990, prepared by John Noble, 1985, pp. 5 and 6.)

☒ One out of three American adults—56 million Americans—say that alcohol abuse has brought trouble to their families. This is about four times the number of families that say that other drugs have troubled their homes. (P. Regans, ABC News/Washington Post Poll, Survey #0190, May 1985.)

Founded in 1944, NCA is the nation's nonprofit voluntary health organization established to prevent and reduce problems of alcohol abuse and alcoholism. NCA's network of 184 state and local affiliates conduct similar activities in their areas and provide information and referral services to families and individuals with a drinking problem.

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TABLE 1

Total Marijuana and Drug Arrests Since 1965

Year	Total Drug Arrests	Total Marijuana	Percent Marijuana
1965	60,500	18,815	31.1
1966	75,900	31,119	41.0
1967	121,500	61,843	50.9
1968	198,900	96,379	48.2
1969	288,600	118,903	41.2
1970	415,000	188,682	45.4
1971	492,000	225,828	45.9
1972	527,400	292,179	55.4
1973	628,900	420,700	66.9
1974	642,080	445,900	69.3
1975	691,300	476,197	69.2
1976	679,700	441,100	72.3
1977	662,700	457,600	71.2
1978	628,700	445,800	70.9
1979	553,600	391,600	70.1
1980	580,900	405,600	69.8
1981	559,900	400,300	71.5
1982	676,000	455,600	67.4
1965-82	8,309,180	5,382,639	63.9

Source: FBI Uniform Crime Reports 1965-1983