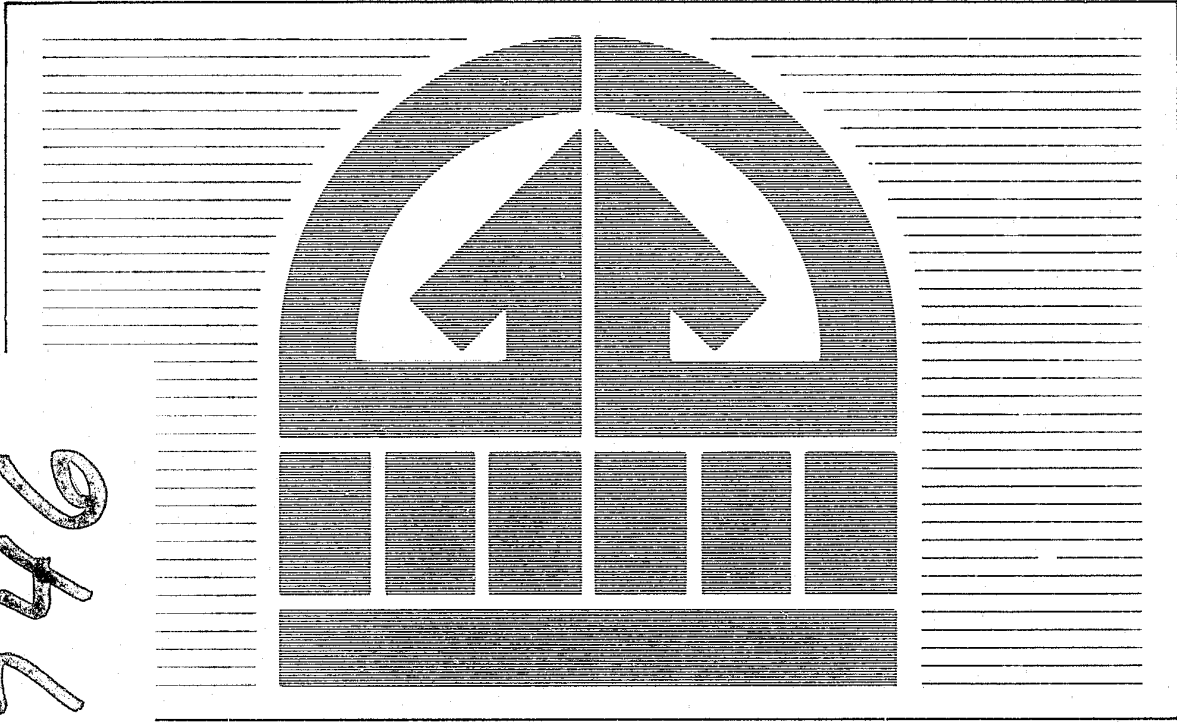




# State-Federal Issue Brief



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## THE 1988 ANTI-DRUG ABUSE ACT IMPACT ON THE STATES

by

Jon Felde, Joy Johnson Wilson, Ron Field,  
Becki Brady, Ann Morse and Kellie Reed

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Deborah Louison wrote the preface and introduction and coordinated preparation of the issue brief.

Carl Tubbesing  
Director, Office of State Federal Relations  
National Conference of State Legislatures

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## PREFACE

The Anti-Drug Abuse Act of 1988, Pub.L. 100-690, which passed at the close of the 100th Congress, contains numerous provisions that affect states from both a fiscal and a policy perspective. The National Conference of State Legislatures actively worked on a number of issues debated in the course of consideration of this bill. Significant victories for the states were attained in many of these areas, including the prevention of a major restructuring of the distribution formula for state and local drug law enforcement grants, and rejection of efforts to impose new federal standards for alcohol and drug traffic safety.

NCSL's committees on Law and Justice, Transportation, Education and Labor, and Health and Human Services were actively involved on various aspects of this comprehensive piece of legislation.

The following State-Federal Issue Brief highlights those portions of the Anti-Drug Abuse Act of 1988 that significantly affect state and local governments, but does not cover other major anti-drug provisions included in the bill.

For further information, please contact the following State Federal Relations staff who prepared the sections of this issue brief:

National Coordination	Jon Felde
User Accountability	
Drug Free Workplace	
Asset Forfeiture	
State and Local Drug Enforcement Assistance	
State Justice Institute	
Federal Prosecution of Political Corruption	
Uniform State Laws	
Alcoholic Beverage Labeling	
Treatment and Prevention Programs	Joy Johnson Wilson
Education and Prevention	Ron Field
Juvenile Justice and Delinquency Prevention	Ann Morse
Runaway and Homeless Youth Act	
Victims' Assistance	Kellie Reed
Alcohol and Drug Traffic Safety	Becki Brady

## I. OVERVIEW - THE ANTI-DRUG ABUSE ACT OF 1988

### INTRODUCTION

The 100th Congress reached agreement on H.R. 5210, the Anti-Drug Abuse Act of 1988, shortly before adjourning. The result, Pub.L. 100-690, was a comprehensive package that includes diverse provisions ranging from the death penalty for drug "king pins" and new penalties for drug use and trafficking to programs for drug education, treatment and prevention, drug law enforcement assistance and international narcotics control, as well as sections on drug user accountability and juvenile justice and delinquency.

The Anti-Drug Abuse Act of 1988 is ambitious in its attempt to provide sweeping tools for the war on drugs. It is less ambitious in providing the federal money needed to implement its provisions. The omnibus bill authorizes funding levels of more than \$2 billion for the programs included in the package, but actually appropriates only \$976 million.

### II. PROVISIONS AFFECTING STATES

The Anti-Drug Abuse Act of 1988 is comprised of 10 titles, many of which contain provisions directly affecting state and local governments. The areas affected most substantially are treatment and prevention programs, funding and administration of drug law enforcement grants and new federal initiatives in drunk driving, drivers' licensing, and motor vehicle safety. The following summaries of major provisions that have an intergovernmental impact track the omnibus bill by title.

#### A. TITLE I - NATIONAL COORDINATION

The bill establishes a central authority on drug policy at the federal level. The new Office of National Drug Control Policy will have authority to establish priorities and coordinate the implementation of a national drug strategy. Within this Office is established a Bureau of State and Local Affairs. It will be one of the responsibilities of the new "drug czar" to consult with and assist states and local governments. The national strategy is to be developed in consultation with agency heads, Congress and state and local officials.

#### B. TITLE II - TREATMENT AND PREVENTION PROGRAMS

Title II of H.R. 5210, the Anti-Drug Abuse Act of 1988, revises and reauthorizes the Alcohol, Drug Abuse and Mental Health Block Grant, provides for funding for substance abuse and mental health services research and programs, and provides for a number of studies.

##### 1. Chapter I - Revision and Extension of Alcohol and Drug Abuse and Mental Health Services Block Grant

The Act consolidates two existing block grants, the Alcohol, Drug Abuse and Mental Health Block Grant and the Emergency Drug Treatment Block Grant, and a proposed new block grant designed to prevent and reduce the transmission of Acquired Immune Deficiency Syndrome (AIDS) among IV drug abusers, into one block grant to states. The Alcohol, Drug Abuse and Mental Health Block grant was established in 1981 and was a consolidation of a number of categorical

grant programs. The funding was allocated on the basis of 1981 funding for the programs consolidated under the block grant. In 1985, Congress established a new formula based on the following factors: (a) 1984 percentage of total funding; (b) state population relative to U.S. population; and (c) state personal income relative to personal income in the U.S.

In 1986, Congress established a new Alcohol, Drug Treatment and Rehabilitation Block Grant as part of the Anti-Drug Abuse Act of 1986. The 1986 Act was included in the 1986 Continuing Resolution. The funding for the block grant is allocated on the basis of state population (45 percent) and a special "needs" criteria established by the U.S. Department of Health and Human Services (55 percent). During the second session of the 100th Congress Senator Edward Kennedy (D-MA) proposed a new block grant designed to help prevent and reduce the transmission of AIDS among IV drug abusers. A revised version of that legislation was included in the Act and is the third component of the new ADAMH Block Grant.

Funding - The Act authorizes \$1.5 billion in FY 1989 for these programs; however, only \$805.694 million has been appropriated. The FY 1989 Labor/Health and Human Services/Education Appropriations bill (P.L. 100-436) provides for \$502.784 million for the ADAMH Block Grant and \$177.84 million for the Emergency Drug Treatment Block Grant. The Act provides through a supplemental appropriation an additional \$125 million to provide special services to IV drug abusers, especially those infected with the AIDS virus. The Act requires the Secretary of the U.S. Department of Health and Human Services (DHHS) to set aside between 5 percent to 15 percent of the funds appropriated (\$40 million - \$121 million in FY 1989) for data collection and service research on community based mental health and substance abuse programs.

Funding Allocation - In addition to consolidating the three block grants into one, the Act revises the allocation formula and phases it in over a four-year period. The new formula is based partially on population characteristic factors and partially on a new concept, the "total taxable resources" of the state. The Act provides for a four-year phase-in or hold-harmless period under which a certain amount of the appropriation for each fiscal year is allotted according to the old formula. The remainder of the appropriation is then allotted under the new formula. The hold-harmless amount begins at \$330 million in FY 1989 and phases down in the following fashion: \$250 million in FY 1990; \$200 million in FY 1991; and \$100 million in FY 1992. Any funds paid to the state and obligated by the state, but unspent at the end of the fiscal year, will remain available during the succeeding fiscal year.

The Act provides that each state will receive a minimum allotment that will be the lesser of: (1) \$7 million; or (2) 105 percent x FY 1988 allotment for the two existing block grants consolidated under the Act. The Act provides that each U.S. Territory will receive the greater of: (1) \$100,000; or (2) population of territory/aggregate population of territories x the amount in the reserve fund equal to 1.5 percent of the fiscal year appropriation. A technical amendment will be required next year with respect to funding for the U.S. Territories because the current formula does not provide sufficient funds to make the minimum allocation to all of the jurisdictions.

State Program Administration - The Act reduces the amount of appropriations available for program administration from 10 percent to 5 percent and requires states to provide for periodic independent peer-reviews to assess the quality

and appropriateness of treatment services provided by entities that receive funds under the Act. The Act also requires states to agree to maintain state expenditures at a level equal to the average expenditures maintained by the state for the preceding two fiscal years. This requirement can be waived by the Secretary if he determines that extraordinary economic conditions in the state warrant it. The states are required to provide data as requested by the Secretary and to cooperate with him in developing uniform criteria for collections of data. The states are required to devise and make available upon request a plan that describes how the state can provide services to all individuals seeking treatment, if sufficient resources were made available, and an estimate of the financial and personnel resources necessary to provide such treatment.

a. **Substance Abuse Provisions**

Set Aside for Substance Abuse - The Act requires states to spend at least 50 percent of their FY 1989 appropriation for IV drug abuse treatment programs. The Secretary may grant a waiver if the incidence of IV drug use in the states does not require this level of funding. The Secretary must respond to a request for a waiver within 120 days.

For FY 1990-FY 1992, states are required to spend at least 50 percent of the funds appropriated for substance abuse for activities related to the prevention and treatment of IV drug abuse. Specifically, states are to:

Develop, implement and operate treatment programs, giving priority to HIV infected individuals.

Train drug abuse counselors and other health care providers.

Develop and implement outreach programs to encourage peoples in need of the services to avail themselves of the service.

States may not use these funds to carry out a "clean needle" distribution program or to carry out testing for HIV infection unless testing is accompanied by pre-test and post-test counseling.

Set Aside for Women and Children - The Act requires states to spend at least 10 percent of the appropriated funds for programs and services designed for women (especially pregnant women and women with dependent children) and for demonstration projects to provide residential treatment services for pregnant women.

Construction of Substance Abuse Facilities - The Act authorizes the Secretary to grant a waiver to a state to use funds appropriated under the Act to construct new facilities or to rehabilitate existing facilities. The state must demonstrate that adequate treatment cannot be provided without such a waiver. The state must indicate the cost of building or rehabilitating the facility and must specify the number of in-patient and out-patient beds that would be provided. The state must agree to match federal expenditures at least dollar for dollar. The Secretary is required to respond to waiver requests within 120 days.

Group Homes for Recovering Substance Abusers - The Act requires states to establish, directly or through grants or contracts with a private nonprofit entity, a revolving fund of at least \$100,000 to make loans for four or more

establishing programs for housing for recovering substance abusers in groups of individuals. Loans cannot exceed \$4,000 and must be repaid to the revolving fund within two years. If a state fails to establish such a revolving fund, the Secretary is prohibited from allotting funding to the state for future fiscal years for any program funded under the Act. The Secretary is required to establish guidelines within 90 days of enactment.

State Assurances with Respect to Facilities Treating IV Drug Abusers - States are required to receive notification from facilities receiving funds for IV drug treatment at the point at which the facility reaches 90 percent of capacity. States are required, to the maximum extent possible, to place individuals within seven days of request for treatment. Facilities are required to conduct outreach activities. States are required to target communities with the highest prevalence of substance abuse or the greatest need for treatment services.

#### **b. Mental Health Provisions**

New Mental Health Services and Programs - The Act requires states to spend at least 55 percent of the appropriated funds for mental health activities to develop and provide community mental health services that were not available October 1, 1988. The Act permits states to count new services developed between October 1, 1984 and October 1, 1988. A state may request a waiver to reduce the service requirement to not less than 35 percent by 1991, increased to 55 percent by 1994 according to a schedule approved by the Secretary. The Act establishes criteria that the Secretary will use in approving waivers.

Establish a Mental Health Services Planning Council - The Act requires the state to establish and maintain a State Mental Health Planning Council to serve as an advocate for mentally ill and emotionally disturbed individuals and to monitor, review and evaluate the allocation and adequacy of state mental health services. The Act requires that the council review and evaluate state programs annually.

State Comprehensive Mental Health Service Plan - The General Accounting Office (GAO) is required to prepare and submit to the House Committee on Energy and Commerce and the Senate Committee on Labor and Human Resources a report that evaluates the status of state mental health service plans. The report is to include an assessment of: (a) the number of states that have submitted plans; (b) the number of states that have implemented plans; (c) the efficacy of the plans that have been implemented; and (d) recommendations on additional legislation that is necessary to the development of the state mental health services plans.

Mental Health Services for Children - The Act requires states to spend at least 10 percent of appropriated funds for services and programs for seriously emotionally disturbed children and adolescents. By the end of FY 1990, the states must use at least 50 percent of the funds to provide new or expanded services that were not available prior to October 1, 1988.

Service Research on Community-Based Mental Health Treatment Programs - The Act requires the Secretary to develop and maintain an ongoing program of research on community mental health programs and services. To the extent possible, the Director of the National Institutes of Mental Health (NIMH) is to establish research centers to carry out program evaluation. These centers must maintain liaisons with community mental health systems that provide services to the



mentally ill. From time to time, HHS is to provide a model plan for a community based system of care for chronically mentally ill individuals. The plan is to be developed with consultation from state mental health directors, providers of mental health services providers, chronically mentally ill individuals, advocates for the chronically mentally ill, and other interested parties.

**c. Technical Assistance**

The Secretary is required to provide technical assistance without charge to states receiving funds under the Act. Technical assistance could involve program planning, development and operation. The Secretary may provide such services directly or through contracts or grants.

**2. Chapter 2 - Revision and Extension of Certain Programs of the Alcohol, Drug Abuse and Mental Health Administration**

This chapter reauthorizes and amends programs authorized in the Anti-Drug Abuse Act of 1986. It authorizes \$95 million in FY 1989 for programs funded through the Office of Substance Abuse Prevention. Of the \$95 million, at least \$5 million is to be set aside to support clinical training programs for substance abuse counselors and related health care professionals, to train individuals in diagnosis and treatment of alcohol and drug abuse, and to develop appropriate curricula and materials for such training.

*Data Collection* - The Secretary is required to collect certain data on an annual basis and is to consult with the states and appropriate national organizations to develop uniform criteria for collecting the data under this provision. The Secretary is required to do an annual survey to collect the necessary data and to make the survey results available to the public.

**a. Reduction of Waiting Period for Drug Abuse Treatment**

The Act authorizes \$100 million for the Secretary to make in grants to public and private nonprofit entities to reduce the waiting list of public and nonprofit drug abuse treatment programs.

**b. Model Projects for Pregnant Women**

The Act authorizes the Secretary to make grants to establish projects for drug and alcohol abuse prevention, education and treatment programs for pregnant and post-partum women and their infants. Priority is to be given to projects for low-income women and their infants and projects designed to develop innovative approaches to drug prevention, education and treatment where insufficient information exists. Inpatient, outpatient and residential treatment facilities are all eligible to apply for grants under this section.

**c. Drug Abuse Demonstration Projects of National Significance**

State Grants - The Act authorizes \$24 million in FY 1989 and such money as may be necessary in FY 1990 and FY 1991 for the Secretary to make grants to states to provide effective treatment to individuals who abuse drugs. Grants under this section are to be made in areas which: (a) have a demand for treatment that exceeds supply, (b) have a high prevalence of drug abuse; and (c) have a high incidence of drug related crime. In addition, the projects must focus on one of the following areas of treatment: adolescents, minorities, pregnant

women, female addicts and their children or residents of public housing projects. At least one project chosen must include a centralized local referral unit.

States interested in receiving grants under this section must submit a written application to the Secretary, who will give preference to projects that demonstrate a comprehensive approach to drug abuse problems and that provide evidence of broad community involvement and support, including the support of private businesses, law enforcement authorities, health care providers, local school systems and local governments. Projects will be funded for at least a three year period, but not longer than five years.

Public and Private Nonprofit Entities - The Act authorizes \$10 million in FY 1989 and such money as may be necessary in FY 1990 and FY 1991 for the Secretary to make grants to public and private nonprofit entities for demonstration projects to: (a) determine the feasibility and long-term efficacy of programs providing drug abuse treatment and vocational training in exchange for public service; (b) conduct outreach activities to IV drug users and to provide information on AIDS to this population; and (c) to provide drug abuse treatment services to pregnant women, post-partum women and their infants.

#### d. High Risk Youth

In making grants for programs to assist high risk youth, priority is to be given to applications that use research designs that can adequately evaluate the effectiveness of the program. The amendments also add one new "high risk" category, and revise an existing category.

The existing definition of high risk youth is an individual under 21 years of age who is at high risk of becoming or who has become a drug or alcohol abuser and who: (1) is identified as a child of a substance abuser; (2) is a victim of physical, sexual or psychological abuse; (3) has dropped out of school; (4) has become pregnant; (5) is economically disadvantaged; (6) has experienced mental health problems; (7) has attempted suicide; (8) has committed a violent or delinquent act; or (9) is disabled by injuries. The amendment changes (9) to "has experienced long term physical pain due to injury," and adds a new factor (10) "has experienced chronic failure in school."

#### e. Establishment of Grant Programs for Mental Health Services Research

This section authorizes the Secretary to make grants to public and private nonprofit entities to conduct a range of research activities related to mental health services research. It also requires the Secretary to establish a National Mental Health Education Program.

#### f. Establishment of Grant Program for Demonstration Projects

The Act authorizes the Secretary to make grants to states and others establish demonstration projects in the areas listed below. The grants are limited to three consecutive one-year grant periods and grantees can spend no more than 10 percent of the grant on administrative expenses.

Chronically Mentally Ill Individuals and Seriously Mentally Disturbed Children  
The Act authorizes the Secretary to make grants to states, local governments and private nonprofit entities for: (a) mental health services demonstration

projects for the planning, coordination and improvement of community services for chronically mentally ill individuals seriously emotionally disturbed children and youth, elderly individuals and homeless chronically mentally ill individuals; (b) demonstration projects for the prevention of youth suicide; (c) demonstration projects for the improvement of the recognition, assessment, treatment and clinical management of depressive disorders; and (d) demonstration projects for treatment and prevention relating to sex offenses.

Individuals at Risk of Mental Illness - The Act authorizes the Secretary to make grants to states, local governments and private nonprofit entities to provide prevention services for individuals who are at risk of developing mental illness.

### 3. Reports and Studies

This section requires the Secretary to conduct or authorize studies on the relationship between mental illness and substance abuse.

### 4. Miscellaneous

#### a. Action by National Institute on Drug Abuse and States Concerning Military Installations

This section directs the National Institute of Drug Abuse to: (1) identify with agencies represented on the Commission on Alternative Utilization of Military Facilities along with agencies represented in the Commission in Alternative Utilization of Military Facilities, to identify those military facilities or parts thereof that could be used to house nonviolent persons for drug treatment purposes; (2) notify state agencies responsible for the oversight of drug treatment and programs of the availability of space; and (3) assist state agencies in adapting these facilities to the needs of residential drug treatment programs.

State agencies are directed to: (1) establish eligibility criteria for the treatment of individuals at these facilities; (2) provide treatment at the facilities; (3) provide assistance to treatment providers and to obtain funding for the treatment programs; and (4) establish, regulate and coordinate with the military official in charge of the facility.

#### b. Employee Assistance Programs

The Act requires the Secretary of Labor to establish a grant program for employers to help them develop employee drug and alcohol assistance programs and authorizes \$4 million in FY 1989 and \$5 million for each of FY 1990 and FY 1991 for this program.

### 5. Funding Allocation Formula

#### Formula Components

P = State Populations Characteristics

S = Total Taxable Resources per Individual in a State

N = Total Taxable Resources per Individual in the United States

X =  $\frac{\text{State Population} \times \text{State Taxable Total Resources per Individual}}{\text{United States Total Taxable Resources per Individual}}$

U = Sum of X for each State

A = Appropriation for the Fiscal year minus a 1.5percent reserve fund

P = the sum of

- .4 (population of state residing in urbanized area)
- .2 (number of individuals in state 18-24 years of age)
- .2 (number of individuals in state 25-44 years of age)
- .2 (number of individuals in state 25-64 years of age)

S = Total Taxable State Resources (3 year average)  
P

N = Total Taxable U.S. Resources (Sum of all state taxable resources)  
Total of Factor "P" for the U.S.

X = P x the greater of .4 or  $1 - .35(S/N)$

U = sum of Factor "X" for each state

A = Appropriation x 1.5percent

Funding Allocation Formula =  $A(X/U)$

## C. TITLE III - EDUCATION AND PREVENTION

This title is divided into two subparts: (1) drug and alcohol abuse education aimed especially at curbing demand in the general population through school and community-based programs, and (2) drug abuse education and prevention among at-risk youth populations, such as dropouts, potential dropouts and gang members. Also added were funds for

Innovative alcohol abuse programs for children of alcoholics,

A drug abuse education program for participants in the Special Supplemental Food Program for Women, Infants, and Children,

Special teacher training programs,

Early childhood education programs,

A program for runaway and homeless youth, and

Various community programs.

A major feature of this legislation for states is the creation of a new block grant program that, upon competitive application, will provide funds through the state to develop community youth activity, education, training and employment programs for at-risk youth in communities with high incidences of drug problems.

The bill provides for the creation of a new 26-member National Commission on Drug-Free Schools to recommend within one year ways of identifying drug-free campuses and model programs. The Commission must describe the potential of special methods aimed at deterring drug use, including a code of student conduct; better coordination between schools, parents and police; and appropriate corrective measures for users, including the effect of suspending eligibility for higher education student financial aid upon conviction of a drug-related offense.

### 1. Education of WIC Participants

The federal government will develop and disseminate materials to assist state agencies in providing drug-abuse education for participants in the supplemental food program for women, infants and children under the Child Nutrition Act, and referring of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors or other professionals. It authorizes \$6.75 million for distribution to states to carry out their dissemination, education, and referral functions.

### 2. Drug-Free Schools and Communities Act of 1986

An additional \$100 million is authorized for the amendments to this Act, bringing the total authorized to \$350 million, but limiting to 2.5 percent the amount that may be used of each state's allocation for state administration of these programs. The amendments authorize creation of intrastate drug and alcohol abuse education and prevention centers for providing outreach, consultation, training and referral services to schools, organizations and community functions. Of special interest to state officials are new

requirements that call for state applications that include a comprehensive plan of how each state will use its allocation, and providing a description of state teacher certification requirements, if applicable, regarding training in drug and alcohol abuse education and prevention.

State agencies also are responsible for the development, identification and dissemination of the most readily available, accurate and up-to-date model curriculum materials for consideration by local educational agencies.

### **3. Teacher Training**

This section authorizes \$16 million for FY 1989 for grants to states and local educational agencies and institutions of higher education for teacher training programs on drug- and alcohol-abuse prevention. Coordination of these programs will be through the state higher education agency, the state education agency, or the intrastate regional agencies mentioned above, as appropriate.

### **4. Early Childhood Drug-Abuse Prevention Curriculum Materials**

The Department of Education and Health and Human Services will coordinate the development of age-appropriate drug abuse education and prevention curricula, programs and training materials for use in early child development programs, and disseminate these materials to such programs as Head Start, Chapter 1-funded preschool programs, and programs funded under the Education of the Handicapped Act.

### **5. Community based Programs**

It authorizes \$4 million for grants to public and nonprofit organizations for innovative, community based volunteer demonstration projects that provide comprehensive drug abuse education and prevention services and activities to youths during the summer. This authorization increases to \$5 million for FY 1990 and 1991.

Also, \$15 million is authorized for FY 1989, and such sums as may be necessary for FY 1990 and 1991, for grants to public and non-profit private agencies and organizations, institutions and individuals to prevent and reduce youth participation in gangs that engage in drug-related activities; to provide for education to prevent drug abuse and referral to treatment and rehabilitation for gang members who abuse drugs; to support local police and other federal, state and local agencies that have outreach programs in communities where gangs commit drug-related crimes; and to provide technical assistance.

Another \$15 million is authorized for grants to public and non-profit private agencies for counseling to runaways and their families; to develop and support community education activities related to illicit use of drugs by runaway and homeless youths, including outreach to individual youths; and to improve the availability and coordination of local services related to drug abuse for runaway and homeless youths.

Finally, \$40 million is authorized for FY 1989, \$50 million for FY 1990 and \$60 million for FY 1991 for block grants to states, on competitive application, to create community and youth activities aimed at

Providing special training and employment services for school dropouts or potential dropouts;

Special recreational and outreach programs for at-risk youth; and

Concentration projects targeted at communities with the most serious drug-abuse problems to help them develop better coordination between federal, state and local efforts at developing comprehensive, long-term, community-wide prevention and education strategies.

#### **D. TITLE V - USER ACCOUNTABILITY**

Title V, which addresses user accountability, includes provisions that could affect states and localities indirectly, by terminating tenancy in federal public housing for offenses of possession or trafficking. By choosing to eliminate subsidies for criminals in this manner, the federal government has left to state and local governments the question of how to deal with children whose parents might be criminals and whose tenancy may be terminated. The intent of the law is to deter use through meaningful penalties and moral persuasion.

##### **2. Federal Benefits**

The law would allow termination of specified federal benefits for conviction on federal and state charges of possession or distribution of controlled substances. For the first two such offenses, the penalties would be at the discretion of the court; for the third or subsequent conviction, benefits would be terminated permanently. Penalties could be waived for certain individuals who submit to treatment and who are deemed rehabilitated.

The federal benefits to be denied include the issuance of any "grant, contract, loan, professional license or commercial license," but do not include "any retirement, welfare, Social Security, health, disability, veterans benefit or any other benefit for which payment or services are required for eligibility...."

The impact on the states is not entirely clear, but the imposition of federal penalties for violations of state law suggests that the most likely area of conflict between states and the federal government in the implementation of the policy. The rules are to be established by the Secretary of Health and Human Services. The denial of federal benefits will take effect for convictions occurring after September 1, 1989.

Apparently realizing that their good intentions might have outrun their ability to develop a coherent policy in the closing days of the session, Congress requires the President to report to Congress by May 1, 1989--four months before the effective date--on (a) the role of state courts in implementing this section; (b) the manner of federal agency implementation; (c) the means by which federal and state agencies will exchange and share data necessary to enforce; and (d) recommendations for modifications to improve the administration of the section.

##### **3. Drug-Free Workplace**

The drug bill expanded upon the idea of using federal money to mandate demand reduction policies from contractors and grant recipients. The idea became law

first with the adoption of the Treasury appropriation, which included a provision by Rep. Robert Walker (R-PA.) that all institutional recipients of federal money certify that they maintained a drug-free working environment. With agencies and the Office of Management and Budget beginning to prepare regulations to implement the Walker amendment, Congress chose to put specifics in its bill, which superceded the Walker language.

The rules for contractors and grant recipients are essentially the same. Both must certify to the federal agency that they will provide a drug-free workplace by "publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the ... workplace and specifying the actions that will be taken against employees for violations of such prohibition ...". The employer must take certain steps to ensure that all employees are informed of the policy and understand their responsibilities under it. Finally, the employer must continue "good faith" efforts to maintain the policy. Failure to establish and enforce the policy can lead to termination, suspension or debarment.

The effective date for the drug-free workplace law is March 18, 1989. Regulations effective on March 18, 1989 were issued in Vol. 54 Federal Register, 4946, January 31, 1989. Every state agency receiving federal grant money, including block grants and entitlement grant programs, must comply with the new regulations or face suspension or debarment.

## **E. TITLE VI - ANTI-DRUG ABUSE AMENDMENTS**

### **1. Asset Forfeiture**

When the Department of Justice announced in January 1988 that its budget request for the drug enforcement assistance grants was zero, it noted the increasing distribution to states and local governments through asset forfeiture sharing, from \$2.5 million in FY 1985 to \$28 million in 1987. Although Congress chose to ignore the request to eliminate the drug enforcement assistance grants for FY 1988, it nevertheless chopped \$150 million from the authorization, dropping the appropriation level to only \$75 million.

Recognizing the importance of the forfeiture sharing program for its fiscal impact and its incentive value, Congress added to the Controlled Substances Act the principle of equitable sharing of forfeited assets. State and local agencies are to receive forfeited assets in relation to their participation in the enforcement leading to the forfeiture. However, the law does not allow the transfer to circumvent state law "that prohibits forfeiture or limits use or disposition of property forfeited to state or local agencies." See 21 USC 881(e). The effective date for the prohibition begins October 1, 1989.

### **2. State and Local Drug Enforcement Assistance**

NCSL focused its lobbying effort to oppose changes in the 1986 Anti-Drug Abuse Act distribution formula, which required development of statewide strategies. In the end, the distribution formula remains materially the same as in the 1986 Act. The U.S. Conference of Mayors, the National Association of Counties and other representatives of local governments had lobbied hard to by-pass states in order to receive a direct pass-through of funding for cities and local governments. Their efforts succeeded in the House, but were thwarted in



the Senate and conference committee after state organizations such as NCSL, NGA and the National Criminal Justice Association, relying in part on data provided by the Bureau of Justice Assistance, showed that changing the formula would actually delay distribution, undermine existing programs and exacerbate existing disparities between localities in need and those with more adequate law enforcement resources.

Under the 1988 Act, states must still develop strategies for using the federal money, which would supplement rather than supplant state and local money. The law lists 20 areas for appropriate expenditures -- from multi-jurisdictional task forces to improving criminal justice system response to domestic violence.

The allocation from the federal government to the states is essentially the same as current law, with \$500,000 going to each state and the remainder of federal funds appropriated being distributed to the states based upon population. Rather than a direct pass-through to localities, states would have to base distributions to local jurisdictions on need. The total to be distributed to all local jurisdictions would be based upon the total local criminal justice expenditures as a percentage of all state and local criminal justice expenditures.

Demands by localities for faster distribution led to reducing the time for state legislative review of the state drug application from 60 days to 30 days. If the plan is not reviewed by the state legislature or its designated body within 30 days of submission by the governor's office, it is deemed to have been reviewed. In addition, the governor's office will be required to act upon applications of local jurisdictions within 45 days, or the application shall be deemed approved. The state must distribute the funds to the local jurisdictions within 45 days of receipt from the federal government.

In addition to funds allocated by formula, the Director of the Bureau of Justice Assistance will have discretionary funds to distribute among public and private agencies at the state and local level for training, technical assistance, demonstration programs, and multi-jurisdictional projects.

The program is structured to increase state and local contributions from 25 percent the first year to 50 percent in subsequent years. To encourage innovation, no grants will be made to programs that have received grants under this law for four years. As a clarification, the law permits the use of funds distributed under the equitable sharing program to be allocated as the non-Federal portion of the cost of programs.

A new mandate for approval of the state plan requires states to try "user accountability" laws to reduce demand. The law requires states to certify that they are "undertaking initiatives to reduce, through the enactment of innovative penalties or increasing law enforcement efforts, the demand for controlled substances by holding accountable those who unlawfully possess or use such substances."

To facilitate enforcement activities, the Bureau of Justice Statistics has added to its responsibilities the enhancement of criminal justice information systems.

Congress has authorized \$275 million for FY 1989, \$350 million for FY 1990 and \$400 million for FY 1991 to implement the drug enforcement grants to state and

local jurisdictions. States should not be too optimistic about the eventual appropriations. Of the \$225 million authorized for FY 1988 only \$75 million was appropriated.

## F. TITLE VII - LAW ENFORCEMENT AND PENALTIES

### 1. Victims' Assistance

The Act extends the operation of the Crime Victims' Fund until September 30, 1994. It also stipulates that the Director of the Office for Victims of Crime will now have final authority for all grants from the fund, and will report to the Attorney General.

The Act now requires that money from the Fund be made available to grant programs aimed at the historically underserved population of victims of violent crime. The guidelines for this requirement will be developed by the Director, after consultation with state and local officials. The guidelines must allow for flexibility to the states in determining these populations.

Finally, the Act extends the coverage of compensation to victims. A state program will now provide compensation to a resident of the state who is a victim in another state, if the "resident" state recognizes compensation for the crime and the "crime" state does not. In addition, programs will now recognize compensation for not only victims and survivors of victims of crime, but also victims of drunk driving and domestic violence.

### 2. Juvenile Justice and Delinquency Prevention (JJDP)

The Juvenile Justice Act is reauthorized for four years, effective October 1, 1988. The following changes were made:

Allocations - Allocations were amended to give a larger percentage of funds to the formula grant program, and the minimum formula grant allocation to states was raised from \$255,000 to \$325,000.

Annual Report - An annual report must be submitted to the President and the Congress on juvenile offenders, to include: types of offenses, race, gender, age, types of facilities used to hold juveniles in custody, and number of juveniles who died while in custody and why. The report must describe status, results and evaluation of activities funded under the act.

State Plans - As required under the Anti-Drug Abuse Act of 1986, the Act provides that states must submit plans outlining efforts to address juvenile justice and delinquency problems. The 1988 Act: (a) provides funds for Indian tribes that perform law enforcement functions; (b) directs states to "address efforts" to reduce the disproportionate incarceration of minority youth; and (c) provides greater flexibility regarding the mandate to remove juveniles from adult jails.

Compliance: JJDP mandates a 75 percent reduction in the number of juveniles in adult jails, or requires states to make an unequivocal commitment to achieving full compliance through legislative or executive action. The compliance deadline was December 8, 1988. The bill is modified to allow states to achieve compliance through a special assessment by the Administrator.

**Sanctions:** Under current law, the Administrator must terminate a state's eligibility. The bill is amended to permit the Administrator to waive termination of eligibility on the condition that the noncomplying state spend all its federal funds on jail removal.

**Gangs and Drugs** - The Act establishes new prevention and treatment programs relating to juvenile gangs, drug abuse and drug trafficking.

**Grants** - Competition and peer review requirements are extended to cover not only new grant activity, but also proposals to continue an activity for a new project period.

### 3. Runaway and Homeless Youth Act (RHYA)

The Runaway and Homeless Youth Act is reauthorized for an additional four years, effective October 1, 1988.

**Grants for Runaway and Homeless Youth Centers** - Not less than 90 percent of annual appropriations are allocated for 311 basic center grants, and a minimum allotment of \$75,000 is allocated to each state. States are protected from a reduction in funding as a result of the minimum allotments.

**Transitional Living Programs** - The bill creates a new program for homeless youths 16-21 years of age; and authorizes \$5 million for FY 1989.

### 4. State Justice Institute

As part of its omnibus drug bill, Congress reauthorized several programs supported by NCSL Law and Justice Committee policy. One such program is the State Justice Institute, which was established to provide grants to projects to improve state judicial systems; \$15 million has been authorized for the State Justice Institute for each of the next four fiscal years.

### 5. Federal Prosecution of Political Corruption

This section reverses the 1987 Supreme Court decision, *McNally v. United States*, which had set aside convictions that were based upon federal mail fraud statutes. The law now says that it is illegal to use the mails "to deprive another of the intangible right of honest service."

### 6. Uniform State Laws

Congress establishes the National Commission on Measured Responses to Achieve a Drug-Free America by 1995. The purpose of the Commission is to propose a uniform code of state laws relating to penalties, testing, education, treatment, forfeiture of assets, crop eradication and cooperative ventures. Rather than recommending that state legislatures give consideration to appropriate avenues for uniform laws, Congress recommends that the governors of the 50 states and the mayor of the District of Columbia convene conferences composed of "attorneys general, district attorneys, mayors, other elected officials, law enforcement officials, educators, drug prevention and treatment experts, and other interested parties. The state conferences should consider the proposed uniform code ... and make recommendations thereon."

## **G. TITLE VIII - ALCOHOLIC BEVERAGE LABELING**

The new requirement that alcoholic beverages be labeled with a government warning preempts all state laws that may require labels relating to alcoholic beverages and health.

## **H. TITLE IX - MISCELLANEOUS**

### **a. Alcohol and Drug Traffic Safety**

The Act establishes a new 410 grant program for states that enact legislation to adopt federal standards for drivers' license revocation. The new program is authorized at \$125 million in general revenues, and funds for eligible states will be based on the state's 402 apportionment. (Section 402 of the Highway Safety Act of 1966 created the State and Community Highway Safety Grant Program.)

An eligible state may receive up to 30 percent of its 402 apportionment as a basic grant for no more than three years. The federal share is limited to 75 percent of the state's implementation and enforcement costs in the first year, and 50 percent and 25 percent in the next two years, respectively. In order to qualify, states must enact legislation to provide for expedited license revocation procedures for drivers presumed to be operating under the influence of alcohol. Specifically, a state must authorize an administrative "per se" procedure allowing an officer of the law to revoke a license on suspicion and a 15-day formal revocation process. (The Secretary of Transportation can extend this period to 30 days if shown that the state would face an undue hardship.)

Supplemental grants (as a percentage of 402 funds) will also be available to states that:

- 1) Mandate blood alcohol content (BAC) testing for drivers involved in serious or fatal accidents (up to 10 percent)
- 2) Develop a distinctive "under 21-year old" drivers license (up to 10 percent)
- 3) Ban open alcohol containers in motor vehicles (up to 25 percent)
- 4) Provide for license plate revocation for repeat offenders (up to 10 percent)

A state meeting qualifying criteria for the basic and supplemental grants would be eligible to receive up to 85 percent of its 402 apportionment level.

In addition, the Alcohol and Drug Traffic Safety title creates a one-year pilot program for random drug testing for first-time drivers. This program is authorized at \$21 million and is limited to four participant states. The states as statutorily defined are a populous Western state and one state each from the South, Northeast, and Central United States. Modifying criteria for the last three states includes a rural populace and less than average drug abuse.

Another pilot program authorized under this section would fund drug recognition expert training such as that being launched in California. Under this process, law enforcement officers are trained to recognize substance abuse and unconscious bodily functions.

The U.S. Department of Transportation is directed to conduct a study of the appropriate Blood-Alcohol Content (BAC) level for non-commercial drivers. The Federal Highway Administration on October 4, 1988 established a .04 BAC level for commercial drivers for which state law must conform by October 1993.

**b. Truck and Bus Safety and Regulatory Reform Act of 1988**

Under this title, miscellaneous changes were made in existing commercial motor vehicle regulations. These include:

- 1) Elimination of the commercial zone exemptions for motor carriers with some medically unqualified drivers "grandfathered." Will extend federal safety regulations to commercial zones.
- 2) Compliance with "hours of service" requirements.
- 3) Safety studies on speed control devices and braking systems.
- 4) A biometric identification system for commercial drivers' licenses.
- 5) One-year extension for states to comply with federal truck safety standards. Deadline is moved to October 1990.