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THE WHITE HOUSE

ACTION

WASHINGTON

Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3355  
Amend the Controlled  
Substances Act

Attached for your consideration is Senate bill, S. 3355, sponsored by Senators Cook and Bayh, which provides authorization for appropriations for the Drug Enforcement Administration and to repeal the "no-knock" laws.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The Counsel's office (Chapman), Bill Timmons and Domestic Council all recommend approval.

RECOMMENDATION

That you sign Senate bill, S. 3355 (Tab B).

APPROVED  
OCT 26 1974

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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3355 - Amend the Controlled  
Substances Act  
Sponsors - Sen. Cook (R) Kentucky and Sen. Bayh (D)  
Indiana

*Posted 10/28*  
*To Archives 10/29*

Last Day for Action

October 29, 1974 - Tuesday

Purpose

To provide authorization for appropriations for the Drug Enforcement Administration and to repeal the "no-knock" laws.

Agency Recommendations

Office of Management and Budget

Approval

District of Columbia  
Department of Justice

Approval  
No objection

Discussion

S. 3355 would extend the authorization of appropriations for the Drug Enforcement Administration of the Department of Justice at levels of \$105 million for fiscal year 1975, \$175 million for fiscal year 1976, and \$200 million for fiscal year 1977. The Administration had requested such an extension and an open-ended authorization. The specific authorizations provided are close to the Administration budget and we anticipate that the Department of Justice will be able to continue the operations of the DEA within these authorization levels.



The enrolled bill would further repeal the "no-knock" provision of Federal law under which an officer authorized to execute a search could lawfully break and enter without notice of his authority and purpose. The Department of Justice states further:

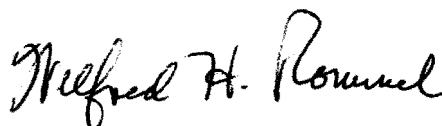
"The Department of Justice has opposed the elimination of statutory 'no-knock' authority. It is not at all certain that repeal of subsection 509(b) would reinstate the common law with respect to 'no-knock' entry, which existed prior to enactment of the statute. The courts might well conclude instead that 18 U.S.C. 3109 would apply to 'no-knock' situations. That provision permits federal officers to enter without announcement of purpose where necessary to liberate one who is assisting in the execution of the warrant or to break in where entry is refused. It does not permit forced entry in order to prevent the destruction of evidence although this may be the most important basis for 'no-knock' entry in drug cases."

The bill would repeal the similar "no-knock" provision of D.C. law. There is an error in the enrolled bill where it refers to D.C. Code "chapter 6" in lieu of "chapter 5." The Justice Department advises us that they consider this a clerical error and that the clear intent of Congress would most likely prevail. The District Government's position on "no-knock" has generally been that it does not need the authority. It has been used only five times in the District of Columbia since the law was enacted in July 1970, the last time being in October 1971 and then only with respect to gambling and narcotic offenses. The District feels that even with the "no-knock" authority there is usually sufficient time for the suspected criminals to dispose of incriminating evidence because drugs can easily be flushed away and gambling slips are often made of "flash paper" which can be almost instantly destroyed by burning. D.C. is also concerned that there may exist a great danger to police officers and public in "no-knock" encounters.

The enrolled bill would also provide that the parole provisions of Federal law shall be applicable to certain people convicted of violating Federal narcotic statutes. With the imposition of mandatory sentences, certain multiple offenders became ineligible

for parole. Subsequently enacted legislation made such offenders eligible for parole but did not apply retroactively. This provision will make it clear that the parole provisions apply retroactively and that the U.S. and D.C. Boards of Parole can rule on the eligibility for parole of multiple offenders who have served one-third of their sentences and who under present law have been found to be ineligible.

Finally, S. 3355 would repeal the provision of law making destruction of evidence subject to seizure a crime punishable by a separate and additional penalty. The Conference Report on the bill states that the Conferees feel "there were sufficient grounds for prosecution of such behavior already available, and therefore, retention of this feature of the 1970 Act was unnecessary."



Assistant Director for  
Legislative Reference

Enclosures



THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

WALTER E. WASHINGTON  
Mayor-Commissioner

October 23, 1974

Mr. Wilfred H. Rommel  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Rommel:

This is in reference to a facsimile of an enrolled  
enrolled enactment of Congress entitled:

S. 3355 - To amend the Controlled Substances  
Act to extend for three fiscal years the au-  
thorizations of appropriations for the adminis-  
tration and enforcement of that Act.

The enrolled bill amends the Controlled Substances  
Act in several respects and authorizes appropriations  
for three additional years to carry out the functions  
of the Act. Of interest to, and affecting activities  
of, the District Government are sections 2 and 4 of  
S. 3355. Section 2 makes applicable the parole pro-  
visions of 18 U.S.C. sec. 4202 to persons convicted  
of violating certain Federal narcotic statutes. Pur-  
suant to the provisions of 26 U.S.C. sec. 7237, a  
statute which was repealed prospectively by the Com-  
prehensive Drug Abuse Prevention and Control Act of  
1970, multiple offenders were not eligible for pro-  
bation or parole under 18 U.S.C. sec. 4202. The  
effect of the amendment made by section 2, therefore,  
is to enable the United States Board of Parole and  
the District of Columbia Board of Parole to determine  
the eligibility for parole of such individuals when  
they have served one-third of their sentences.

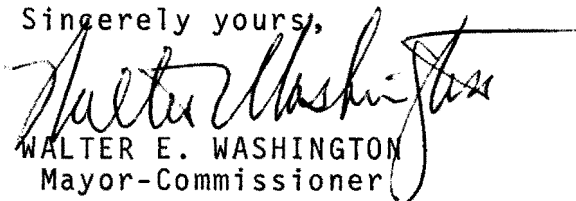
Section 4 of S. 3355 totally repeals the so-called "no-knock" provisions of District law which were added by the District of Columbia Court Reform and Criminal Procedure Act of 1970. These provisions authorized police officers in the District, under certain specified circumstances, to break and enter premises to make arrests or execute search warrants without first announcing their identity and purpose. In lieu thereof, the provisions of 18 U.S.C. sec. 3109 are made applicable to police officers of the District of Columbia when engaged in the execution of a search warrant.

Section 4(a) of the enrolled bill purports to repeal subchapter VI of chapter 6 of title 23 of the District of Columbia Code. As this title of the Code does not have a chapter 6, it is presumed that the Congress intended to repeal subchapter VI of chapter 5 in which is contained the "no-knock" provisions of existing law as codified in section 23-591 of the D.C. Code.

The District does not view the use of "no-knock" entry as an essential police weapon. The "no-knock" provisions have been used only five times in the District of Columbia since the law was enacted in July, 1970, the last time being in October, 1971. It was used here only with respect to gambling and narcotic offenses. Where "no-knock" entry is obtained, there is usually still sufficient time for the suspected criminals to dispose of incriminating evidence because drugs can easily be flushed away and gambling slips are often made of "flash paper" which can be almost instantly destroyed by burning. In addition, a great danger exists to police officers and public in such encounters. Accordingly, the District Government supports those provisions of S. 3355 which abrogate the "no-knock" law for the District of Columbia.

The District Government recommends the approval of S. 3355.

Sincerely yours,



WALTER E. WASHINGTON  
Mayor-Commissioner

**Department of Justice**  
**Washington, D.C. 20530**

Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 3355, "To amend the Controlled Substances Act to extend for three fiscal years the authorizations of appropriations for the administration and enforcement of that Act."

Section 1 of the bill, which would amend section 709 of the Controlled Substances Act to extend the authorizations contained therein to the fiscal year ending June 30, 1977, was proposed by the Attorney General in a different form in a letter to the Speaker of the House on April 3 of this year. The present authority to request appropriations to carry out the responsibilities of the Attorney General under the Act is limited to the fiscal year ending June 30, 1974.

The Department of Justice has no objection to section 2 of S. 3355 which would add a new subsection (d) to section 702 of the Act to apply the more favorable parole provisions of 18 U.S.C. 4202 to persons convicted under statutes repealed by the Act. Section 702 presently provides that pending prosecutions are not to be affected by enactment of the Controlled Substances Act.

Section 3 of the enrolled bill would repeal subsection 509(b) of the Act which provides statutory authority for the issuance of so-called "no-knock" search warrants in certain situations involving federal offenses relating to controlled substances.

The Department of Justice has opposed the elimination of statutory "no-knock" authority. It is not at all certain that repeal of subsection 509(b) would reinstate the common law with respect to "no-knock" entry, which existed prior to enactment of the statute. The courts might well conclude instead that 18 U.S.C. 3109 would apply to "no-knock" situations. That provision permits federal officers to enter without announcement of purpose where necessary to liberate one who is assisting



in the execution of the warrant or to break in where entry is refused. It does not permit forced entry in order to prevent the destruction of evidence although this may be the most important basis for "no-knock" entry in drug cases.

Section 4 of S. 3355 purports to make several amendments to title 23 of the District of Columbia Code the apparent purpose of which would be to repeal the "no-knock" provisions which were enacted by the District of Columbia Court Reform and Criminal Procedure Act of 1970.

Subsection 4(a) would repeal subchapter VI of chapter 6 of title 23 of the District of Columbia Code. However, title 23 of the District of Columbia Code contains a chapter 5 and a chapter 7 but no chapter 6. Subchapter VI of chapter 5 contains only one section, section 23-591, which would have been explicitly repealed by the Senate passed version of S. 3355. The House bill of course contained no provision relating to the District of Columbia Code. Although the Conference Report on S. 3355 indicates that the Conference intended to substitute language conforming to that in the Senate bill, the Conference reported, and both Houses accepted, language repealing a subchapter VI of chapter 6 rather than chapter 5. While the effect of any drafting error is never certain, this error would probably be viewed as a clerical error, in which case the clear intent of the Congress to repeal section 23-591 would prevail. See Fleming v. Salem Box Co., 38 F.Supp. 997 (D. Ore. 1940).

The Department has opposed section 4 of the bill because in addition to repealing the basic authority for "no-knock" warrants, it would also repeal a substantive criminal statute which makes it a felony for a person, after the police have announced their authority and purpose, to destroy or attempt to destroy evidence, and a provision which permits police officers in executing warrants to gain entry by "strategem." The status of the common law with respect to forcible entry which the 1970 enactment purported to codify, and which subsection 4(a) would repeal, would also have been uncertain.

Section 5 of S. 3355 would amend the provisions of 18 U.S.C. 1114, which provides protection for various officers and employees of the United States, to substitute the name of the Drug Enforcement Administration, created by Reorganization Plan No. 2 of 1973, for the name of the Bureau of Narcotics and Dangerous Drugs. The Department of course supports this provision.

Although the Department of Justice has opposed enactment of sections 3 and 4, we support the remainder of S. 3355 and believe that our objections should not prevent Executive approval of the bill. Accordingly, we would have no objection to Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Vincent Rakestraw".

W. Vincent Rakestraw  
Assistant Attorney General

Last Day - October 29

October 25, 1974

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill S. 3355  
Amend the Controlled  
Substances Act

Attached for your consideration is Senate bill, S. 3355, sponsored by Senators Cook and Bayh, which provides authorization for appropriations for the Drug Enforcement Administration and to repeal the "no-knock" laws.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The Counsel's office (Chapman), Bill Timmons and Domestic Council all recommend approval.

RECOMMENDATION

That you sign Senate bill, S. 3355 (Tab B).

Last Day - October 29

October 25, 1974

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SUBJECT: Enrolled Bill S. 3355  
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RECOMMENDATION

That you sign Senate bill, S. 3355 (Tab B).

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 710

Date: October 24, 1974

Time: 5:00 p.m.

FOR ACTION: Geoff Shepard  
✓Andre Buckles  
Phil Buchen  
Bill Timmons

cc (for information) Warren Hendriks  
Jerry Jones  
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3355 - Amend the Controlled Substances Act

ACTION REQUESTED:

\_\_\_ For Necessary Action

XX For Your Recommendations

\_\_\_ Prepare Agenda and Brief

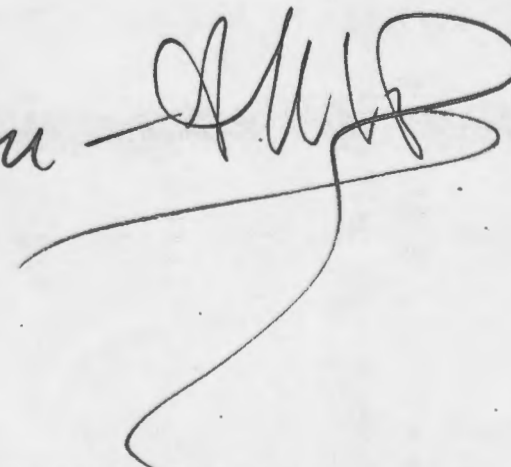
\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

No Objection 

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 710

Date: October 24, 1974

Time: 5:00 p.m.

FOR ACTION: ✓ Geoff Shepard  
Andre Buckles  
Phil Buchen  
Bill Timmons

cc (for information) Warren Hendriks  
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Paul Theis

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Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3355 - Amend the Controlled  
Substances Act

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\_\_\_ For Necessary Action

<sup>XX</sup> \_\_\_ For Your Recommendations

\_\_\_ Prepare Agenda and Brief

\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*Approval*

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Warren K. Hendriks  
For the President

## THE WHITE HOUSE

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WASHINGTON

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Date: October 24, 1974

Time: 5:00 p.m.

FOR ACTION: Geoff Shepard  
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 Bill Timmons

cc (for information) Warren Hendriks  
 Jerry Jones  
 Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3355 - Amend the Controlled  
 Substances Act

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Kathy Tindle - West Wing

*No objection  
 D.C.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a  
 delay in submitting the required material, please  
 telephone the Staff Secretary immediately.

Warren K. Hendriks  
 For the President



THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS *WET*

SUBJECT: Action Memorandum - Log No. 710  
Enrolled Bill S. 3355 - Amend the  
Controlled Substances Act

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 710

Date: October 24, 1974

Time: 5:00 p.m.

FOR ACTION: Geoff Shepard  
Andre Buckles  
Phil Buchen  
✓ Bill Timmons

cc (for information) Warren Hendriks  
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Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S, 3355 - Amend the Controlled  
Substances Act

ACTION REQUESTED:

\_\_\_\_\_ For Necessary Action

xx For Your Recommendations

\_\_\_\_\_ Prepare Agenda and Brief

\_\_\_\_\_ Draft Reply

\_\_\_\_\_ For Your Comments

\_\_\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

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Warren K. Hendriks  
For the President

THE WHITE HOUSE

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<sup>xx</sup> \_\_\_ For Your Recommendations

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\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

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telephone the Staff Secretary immediately.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

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

OCT 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3355 - Amend the Controlled  
Substances Act  
Sponsors - Sen. Cook (R) Kentucky and Sen. Bayh (D)  
Indiana

Last Day for Action

October 29, 1974 - Tuesday

Purpose

To provide authorization for appropriations for the Drug Enforcement Administration and to repeal the "no-knock" laws.

Agency Recommendations

Office of Management and Budget

Approval

District of Columbia

Approval

Department of Justice

No objection

Discussion

S. 3355 would extend the authorization of appropriations for the Drug Enforcement Administration of the Department of Justice at levels of \$105 million for fiscal year 1975, \$175 million for fiscal year 1976, and \$200 million for fiscal year 1977. The Administration had requested such an extension and an open-ended authorization. The specific authorizations provided are close to the Administration budget and we anticipate that the Department of Justice will be able to continue the operations of the DEA within these authorization levels.

## EXTENSION OF CONTROLLED SUBSTANCES ACT

OCTOBER 8, 1974.—Ordered to be printed

MR. STAGGERS, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 3355]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3355) to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to provide appropriations to the Drug Enforcement Administration on a continuing basis, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill insert the following:

*That section 709 of the Controlled Substances Act (21 U.S.C. 904) is amended to read as follows:*

#### "AUTHORIZATIONS OF APPROPRIATIONS

*"SEC. 709. (a) There are authorized to be appropriated \$105,000,000 for the fiscal year ending June 30, 1975, \$175,000,000 for the fiscal year ending June 30, 1976, and \$200,000,000 for the fiscal year ending June 30, 1977, for the expenses of the Department of Justice (other than its expenses incurred in connection with carrying out section 103(a)) in carrying out its functions under this title.*

*"(b) No funds appropriated under any other provision of this Act may be used for the expenses of the Department of Justice for which funds are authorized to be appropriated by subsection (a) of this section."*

*SEC. 2. Section 702 of the Controlled Substances Act is amended by adding at the end thereof the following new subsection:*

*"(d) Notwithstanding subsection (a) of this section or section 1103, section 4202 of title 18, United States Code, shall apply to any*

individual convicted under any of the laws repealed by this title or title III without regard to the terms of any sentence imposed on such individual under such law."

Sec. 3. Section 509 of the Controlled Substances Act (21 U.S.C. 879) is amended by striking out "(a)" and subsection (b).

Sec. 4. (a) Subchapter VI of chapter 6 of title 23 of the District of Columbia Code is repealed and the analysis of such chapter is amended by striking out the item relating to such subchapter.

(b) Section 23-521 (f) of such title 23 is amended—

(1) by inserting "and" at the end of paragraph (5), and

(2) by striking out paragraph (6) and redesignating paragraph (7) as paragraph (6).

(c) Section 23-522(c) of such title 23 is amended to read as follows:

"(c) The application may also contain a request that the search warrant be made executable at any hour of the day or night upon the ground that there is probable cause to believe that (1) it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request."

(d) Section 23-524(a) of such title 23 is amended to read as follows:

"(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 3109 of title 18, United States Code."

(e) The last sentence of section 23-561(b)(1) of such title 23 is repealed.

Sec. 5. Section 1114 of title 18, United States Code, is amended by striking out "Bureau of Narcotics and Dangerous Drugs" and inserting in lieu thereof "Drug Enforcement Administration".

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

HARLEY O. STAGGERS,  
PAUL G. ROGERS,  
DAVID E. SATTERFIELD,  
PETER N. KYROS,  
SAMUEL L. DEVINE,  
ANCHER NELSEN,  
TIM LEE CARTER,

*Managers on the Part of the House.*

BIRCH BAYH,  
JAMES O. EASTLAND,  
SAM J. ERVIN, JR.,  
MARLOW W. COOK,

*Managers on the Part of the Senate.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3355) to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to provide appropriations to the Drug Enforcement Administration on a continuing basis, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the title of the bill reflected an extension of the Controlled Substances Act for three years. Since the conference substitute extends that Act for three years, the Senate receded from its disagreement to the House amendment to the title of the bill.

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House to the text of the bill with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment to the text of the bill, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### AUTHORIZATION OF APPROPRIATIONS

The Senate bill amended section 709 of the Controlled Substance Act to extend the authorization of appropriations for the Department of Justice to carry out its functions under the Act. The amendment made by the Senate bill provided the following:

Fiscal year:	Million
1975 -----	\$125
1976 -----	150
1977 -----	175
1978 -----	200
1979 -----	250

The House amendment extended such authorizations as follows:

Fiscal year:	Million
1975 -----	\$105
1976 -----	175
1977 -----	200

The conference substitute is the same as the House amendment.

(3)

DENIAL OF FOREIGN AID TO COUNTRIES WHICH DO NOT EFFECTIVELY  
CONTROL THE DIVERSION OF OPIUM AND ITS DERIVATIVES INTO ILLICIT  
MARKETS

The Senate bill contained a provision not in the House amendment which amended section 481 of the Foreign Assistance Act (1) to require the denial of economic and military aid to foreign countries which after January 1, 1975, do not ban the production of opium poppies and do not have effective measures to prevent the diversion of opium and its derivatives into illicit markets, and (2) to require the Director of the Drug Enforcement Administration to report immediately to the President and the Congress any evidence that opium and its derivatives are being diverted from permitted production in foreign countries into illicit markets, and to make a detailed report on or before June 30 of each year which would describe the extent to which opium and its derivatives are being diverted into illicit markets from producing countries. The amended section 481 further provided that if the Congress, within a specified period of time after receipt of such report, adopts a concurrent resolution finding that any country has not effectively banned the growing of opium poppies and that such country is not effectively preventing opium, or its derivatives, produced in such country from being diverted into illicit markets, then the President would be required to take specified actions including suspension of economic and military assistance to such country.

The conferees agreed that Congress should take action in response to the Turkish Government's decision to again cultivate the opium poppy. They were of the view, however, that a resolution such as H. Con. Res. 507, which passed the House on August 5, 1974, calling on the President to suspend aid to Turkey if that country fails to take steps to assure that opium is not diverted or amendments to the pending foreign assistance legislation would be more appropriate vehicles for expressing the concern of Congress about a matter with such grave foreign policy ramifications.

The conference substitute conforms to the House bill.

NO-KNOCK

The Senate bill amended section 509 of the Controlled Substances Act to repeal the authority of a judge or magistrate to issue a search warrant (relating to offenses involving controlled substances) which authorizes, under certain circumstances, an officer to break and enter a building in the execution of the search warrant without giving notice of his authority and purpose.

The Senate bill also amended title 23 of the District of Columbia Code to repeal (1) the statutory authority under that title of the District of Columbia Code for an officer to break and enter in the execution of a search warrant or in making an arrest and to make, under certain specified circumstances, such break and entry without announcing his identity and purpose; (2) a provision making it a specific criminal offense to destroy evidence subject to seizure; and (3) a provision to exclude from the concept of breaking and entering entries obtained by trick and stratagem. In addition, the Senate bill made

the requirements of section 3109 of title 18, United States Code (announcement of identity and purpose and actual refusal of admittance before breaking and entering) applicable to District of Columbia police.

The House amendment was the same as the Senate bill, except that it did not contain any provision relating to the District of Columbia Code.

The conference substitute conforms to the Senate bill.

The effect of the conference substitute is to return law enforcement officers in the District of Columbia to the same legal situation that existed prior to the enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (referred to as the "1970 Act") which added the provisions of title 23 of the D.C. Code repealed by the Senate bill. Prior to that Act judicial decisions made the requirements of 18 U.S.C. 3109 applicable to District of Columbia police (*See, e.g., Miller v. United States*, 357 U.S. 301 (1958)). The conference substitute converts these judicial holdings to a statutory rule.

Various exceptions to the rule of announcement of identity and purpose before breaking and entering have been noted by the Supreme Court and by State and lower Federal courts. By way of example, in the *Miller* case the "useless gesture" exception was noted by the Court as follows:

It may be that, without an express announcement of purpose, the facts known to officer would justify them in being virtually certain that the petitioner already knows their purpose so that announcement would be a useless gesture.  
357 U.S. at 310.

Moreover, in *Ker v. California* 374 U.S. 23 (1964) a 5-4 majority found that the fact that officers had reason to believe the person to be arrested was in possession of evidence which was easily destroyed and that such person indicated he knew police were following him excused the officer's compliance with the announcement rule.

Although various exceptions to the rule have been identified by the courts, the courts have not been consistent in defining what standard of proof is needed to justify the various exceptions or what set of facts will satisfy a particular standard of proof. Furthermore, since the courts are continuing to define and explicate the exceptions to the announcement rule, the conferees do not intend the references in this statement to specific examples of exceptions (and the facts underlying them) as being an enumeration of the only exceptions to be permitted in the District of Columbia. Rather, it is the intent of the conferees that the common law exceptions, as they may be prescribed by judicial decisions which must be adhered to in the District of Columbia, apply in the District. It is the conferees' intent that D.C. police be required to announce their authority and purpose in the same situations in which other Federal law enforcement officers are required to make such announcement. Conversely, they should be excused from compliance with the rule in those situations where other Federal law enforcement officers are excused. This is achieved by repeal of D.C. Code 23-591, and the concomitant application of 18 U.S.C. 3109 to the D.C. police.

As noted above the conference substitute also repeals a provision added to the 1970 Act which made it a specific new crime to destroy or conceal evidence subject to seizure after an officer had given notice of his presence, or, if notice was excused by the statute, after he had entered the home or dwelling place. Prior to the 1970 Act, such criminal behavior was prosecuted under one of three provisions: The general prohibition in the District law against obstruction of justice (D.C. Code 22-703); the general prohibition in the United States Code prohibiting the destruction of evidence subject to seizure (18 U.S.C. 2232); or the provision of District law punishing the obstruction of an officer who is authorized to execute a search warrant for narcotic drugs (D.C. Code 33-414(n)). Each of these provisions is still part of the law, and provides grounds for prosecution. It is not the conferees' intent to foreclose criminal prosecution for the destruction of evidence. The conferees felt only that there were sufficient grounds for prosecution of such behavior already available, and therefore, retention of this feature of the 1970 Act was unnecessary.

The conference substitute also repealed a provision added by the 1970 Act which exempted from the requirement of giving notice of identity and purpose, police officers who obtained entry without force by means of a "trick or stratagem". This is consistent with the conferees' intent that D.C. police be guided like other Federal law enforcement officers in regard to the requirements of the announcement rule. Entry by trick or stratagem was judicially recognized as an exception to the announcement rule in the District of Columbia prior to the 1970 Act (*See, e.g., Jones v. United States* 304 F. 2d 381 (1962)). Therefore, even with repeal of the statutory language, this rule continues to obtain in the District of Columbia. In view of this, the conferees felt that retention of this provision added by the 1970 Act was unnecessary and that, if kept, may lead to confusion with regard to congressional intent. Since the other statutory exceptions to the announcement rule are repealed, the conferees were concerned that retention of the exception relating to entry by trick or stratagem could lead courts to conclude that no other exceptions are available in the District of Columbia. This was not the conferees' intent.

#### PROTECTION OF AGENTS OF THE DRUG ENFORCEMENT ADMINISTRATION

The Senate bill contained a provision not in the House amendment which amended section 1114 of title 18 of the United States Code (which makes it a Federal crime to kill certain designated Federal officers and employees) to conform the provisions of that section to Reorganization Plan No. 2 of 1973 (which established the Drug Enforcement Administration and abolished the Bureau of Narcotics and Dangerous Drugs) and, consequently, to extend the protection of such section 1114 to officers and employees of the Drug Enforcement Administration.

The conference substitute conforms to the Senate bill.

#### PAROLE

The House amendment contained a provision not in the Senate bill which made the parole provisions of section 4202 of title 8 of the

United States Code applicable to persons who were convicted under laws repealed by the comprehensive Drug Abuse Prevention and Control Act of 1970.

The conference substitute conforms to the House amendment.

HARLEY O. STAGGERS,  
PAUL G. ROGERS,  
DAVID E. SATTERFIELD,  
PETER N. KYROS,  
SAMUEL L. DEVINE,  
ANCHER NELSEN,  
TIM LEE CARTER.

*Managers on the Part of the House.*

BIRCH BAYH,  
JAMES O. EASTLAND,  
SAM J. ERVIN, JR.,  
MARLOW W. COOK,

*Managers on the Part of the Senate.*

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AMENDING THE COMPREHENSIVE DRUG ABUSE PREVENTION AND  
CONTROL ACT OF 1970 TO PROVIDE APPROPRIATIONS TO THE DRUG  
ENFORCEMENT ADMINISTRATION ON A CONTRIBUTING BASIS

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JUNE 12, 1974.—Ordered to be printed

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Mr. Cook, from the Committee on the Judiciary,  
submitted the following

## REPORT

[To accompany S. 3355]

The Committee on the Judiciary, to which was referred the bill, S. 3355, to amend the Comprehensive Drug Prevention and Control Act of 1970 to provide appropriations to the Drug Enforcement Administration on a continuing basis, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

### AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 709 of the Controlled Substances Act of 1970 (P.L. 91-513, 84 Stat. 1284, 21 U.S.C. 904) is amended by inserting immediately before the period at the end thereof the following: “, \$125,000,000 for the fiscal year ending June 30, 1975, \$150,000,000 for the fiscal year ending June 30, 1976, \$175,000,000 for the fiscal year ending June 30, 1977, \$200,000,000 for the fiscal year ending June 30, 1978, and \$225,000,000 for the fiscal year ending June 30, 1979.

### PURPOSE OF THE BILL AS AMENDED

The purpose of S. 3355, as amended, is to extend the authorization for appropriations for the Drug Enforcement Administration for 5 years through fiscal year 1979. The existing 3-year authorization for this agency will expire at the end of the current fiscal year. The bill was introduced by Senators Cook and Bayh, the ranking minority member and chairman, respectively, of the Judiciary Subcommittee

to Investigate Juvenile Delinquency which concerns itself with legislative efforts to reduce the problem of drug abuse. As introduced, the measure would have provided an open-end authorization.<sup>1</sup>

#### BACKGROUND

Upon introduction of the subject bill, Senator Cook made the following comments:

\* \* \* \* \*

[O]ver the last several years the Federal Government has mobilized an all-out effort to deal with rapid increases in drug abuse and illegal drug traffic. Since 199 Federal support for research in this area has increased fourfold, support for treatment and rehabilitation has increased sixfold, and spending in the areas of education and training has increased nearly thirtyfold.

The principle thrust of this country's drug effort, however, has been the elimination of illegal drug traffic and the reduction of drug related crime. The Drug Enforcement Administration and, previously, the Bureau of Narcotics and Dangerous Drugs have led the Government's fight in this regard. In the last few years steady and impressive progress has been made. Confiscations of illegal drugs, both domestically and abroad, have increased dramatically since 1970. Federal arrests for heroin trafficking and use were up to 29 percent in 1973 over the previous year, and convictions for all drug related arrests increased 54 percent over the same period.

This Nation is just beginning to come to grips with its drug abuse problem. It is essential that a vigorous and determined effort be sustained in this area.<sup>2</sup>

\* \* \* \* \*

The committee is in accord with these views of our colleague. However, we are of the view that this effort can best be sustained with the continuing oversight of Congress and thus have seen fit to limit the appropriation authorization to a period of 5 years in order to allow for periodic reconsideration.

Public Law 93-513, the "Controlled Substances Act of 1970," was designed to improve Federal efforts toward the elimination of illegal drug traffic and the reduction of drug related crime. At that time, the primary enforcement role was under the aegis of the Bureau of Narcotics and Dangerous Drugs (BNDD) within the Department of Justice.

Reorganization Plan No. 2 of 1973<sup>3</sup> expanded substantially the role of BNDD. The plan was designed to place primary responsibility for Federal drug law enforcement in a single, new agency, the Drug Enforcement Administration (DEA), in the Department of Justice.

At that time, 10 Federal agencies in five Cabinet departments performed drug enforcement functions. Budgeting for these agencies in

fiscal year 1974 was proposed at \$257 million, a sevenfold increase in funding from \$36 million in fiscal year 1969. Several other agencies had related functions. There was no overall coordination.

As specified in the reorganization plan, the new DEA assumed responsibility for the following activities:

(1) All functions of the Bureau of Narcotics and Dangerous Drugs (BNDD), which was abolished as a separate entity in Justice;

(2) All functions of the Customs Bureau related to drug investigations and intelligence, which were transferred from the Secretary of the Treasury to the Attorney General;

(3) All functions of the Office of Drug Abuse Law Enforcement (ODALE), which was abolished in Justice by Executive order; and

(4) All functions of the Office of National Narcotics Intelligence (ONNI), which was abolished in Justice by Executive order.

Implementation of the plan provided DEA with the 3,000 employees from the three Justice Department agencies and 500 special agents from the Customs Bureau of Treasury.

Hopefully, establishment of the Drug Enforcement Administration will eliminate many of the institutional problems that have frustrated efforts to develop a truly flexible, enlightened national drug law enforcement strategy. In seeking ways to further intensify the country's counteroffensive against drug abuse, it is expected that funding requirements for this effort will substantially increase in future years.

#### DEA OBJECTIVES

Steady and impressive progress has been made in reducing the dimensions of drug problems. The committee's desire is that the Drug Enforcement Administration aim its manpower at responding to the polydrug epidemic by further penetration of illicit traffic in narcotics and non-narcotic drugs and by increasing regulatory activity at all levels. These efforts should complement other high priority Federal programs of drug abuse, prevention, treatment, and rehabilitation.

The means by which DEA intends to fulfill its objectives may be summarized as follows:

1. *Law enforcement.*—(a) Criminal enforcement: This activity encompasses the enforcement of Federal laws regarding narcotics and dangerous drugs; reducing the supply of illicit drugs entering the United States from foreign sources; laboratory analysis of evidence for support of prosecutive cases; training foreign narcotic officers; preparing information necessary to the process of scheduling substances under the Controlled Substances Act. (b) Compliance and regulation: This activity encompasses the regulation of the legal trade in narcotics and dangerous drugs, and includes establishment of import, export and manufacturing quotas for controlled drugs; registration of manufacturers, handlers and dispensers of controlled drugs; investigations to determine suitability for registration and compliance with regulations; and monitoring traffic in legal controlled drugs to determine points of diversion into the illicit market. (c) State and local assistance: This activity encompasses cooperative law enforce-

<sup>1</sup> S. 3355, introduced on Apr. 11, 1974. See Congressional Record, 93d 2d sess., Apr. 11, 1974 (daily edition), at p. S5779.

<sup>2</sup> *Ibid.*

<sup>3</sup> Effective July 1, 1973, sec. 10, H. Doc. 93-69.

ment activities with State, county, and local officers; a continuing drug enforcement training program for State, county, and local law enforcement officers; training programs for State and local forensic chemists; laboratory support for State and local enforcement agencies including analysis of evidence and professional testimony in State prosecutive cases; and educational programs on drug abuse and controlled substances for local, State, and Federal personnel, and the drug industry.

2. *Intelligence.*—This activity encompasses the acquisition and analysis of drug intelligence and the dissemination of the data. It will support DEA, other Federal, State, local, and foreign efforts to interdict or suppress the illicit international or domestic movement of drugs through ability to attack the drug traffic in a systematic way, assessment of vulnerabilities of traffickers, and supplying information for policy determination and strategy.

3. *Research and Development.*—This activity encompasses research programs directly related to the DEA law enforcement and regulation functions and includes, but is not limited to, studies designed to compare the deterrent effects of various enforcement strategies; assess and detect accurately the presence of controlled substances in the human body; evaluate the nature and sources of supply of dangerous substances; develop more effective methods to prevent diversion of controlled substances into illicit channels; develop information necessary to carry out functions of section 201, Public Law 91-513, Authority and Criteria for Classification of Substances; develop and apply systems and technologies for limiting the supply of illicit drugs in the United States, and to undertake analyses to insure the most effective utilization of these systems.

#### BUDGETARY PROPOSAL

Enactment of S. 3355, as amended, will authorize appropriations for the Drug Enforcement Administration for a period of 5 years beyond June 30, 1974.

This bill will provide authorization for appropriations in the following amounts: \$125,000,000 for fiscal year 1975, \$150,000,000 for fiscal 1976, \$175,000,000 for fiscal 1977, \$200,000,000 for fiscal 1978, \$225,000,000 for fiscal 1979. These figures generally represent the trend of the agency's appropriation levels over the years.

S. 3355 seeks to provide appropriations authority for only those responsibilities imposed on the Department of Justice by the Controlled Substances Act of 1970 (Public Law 91-513, 84 Stat. 1242, 21 U.S.C. 801 et seq.) exclusive of section 103 of the act. The activities within the purview of this bill are those relating primarily to domestic drug law enforcement, the elimination of diversion and the regulation of the legitimate commerce in drugs. This measure will provide the needed flexibility to allow continued growth in the regulatory domestic enforcement, and other specific areas within the Controlled Substances Act while meeting uncontrollable periodic increases in budgetary matters.

This bill, however, will not serve as authorization for all of the programs operated by the Drug Enforcement Administration. Part of this agency's support functions, its operations in foreign countries, its na-

tional intelligence system and its research activities are provided separate authorization elsewhere and, therefore, fall outside the scope of this bill.

#### CONCLUSION

For the foregoing reasons, the Committee on the Judiciary recommends prompt enactment of the subject bill, as amended.

#### CHANGES IN EXISTING LAW

In compliance with rule XXIX of the Senate, changes in existing law made by the bill are shown as follows: (1) existing law proposed to be omitted is enclosed in black brackets; (2) new matter is printed in italic; and (3) existing law in which no change is proposed is shown in roman.

#### PUBLIC LAW 513, 91ST CONGRESS

#### 1ST SESSION

(Act of October 27, 1970)

84 Stat. 1284

\* \* \* \* \*

#### APPROPRIATIONS AUTHORIZATIONS

Sec. 709. There are authorized to be appropriated for expenses of the Department of Justice in carrying out its functions under this title (except section 103) not to exceed \$60,000,000 for the fiscal year ending June 30, 1972, \$70,000,000 for the fiscal year ending June 30, 1973, and \$90,000,000 for the fiscal year ending June 30, 1974, *\$125,000,000 for the fiscal year ending June 30, 1975, \$150,000,000 for the fiscal year ending June 30, 1976, \$175,000,000 for the fiscal year ending June 30, 1977, \$200,000,000 for the fiscal year ending June 30, 1978 and \$225,000,000 for the fiscal year ending 1979.*

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# Ninety-third Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

### An Act

To amend the Controlled Substances Act to extend for three fiscal years the authorizations of appropriations for the administration and enforcement of that Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 709 of the Controlled Substances Act (21 U.S.C. 904) is amended to read as follows:

#### "AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 709. (a) There are authorized to be appropriated \$105,000,000 for the fiscal year ending June 30, 1975, \$175,000,000 for the fiscal year ending June 30, 1976, and \$200,000,000 for the fiscal year ending June 30, 1977, for the expenses of the Department of Justice (other than its expenses incurred in connection with carrying out section 103(a)) in carrying out its functions under this title.

"(b) No funds appropriated under any other provision of this Act may be used for the expenses of the Department of Justice for which funds are authorized to be appropriated by subsection (a) of this section."

SEC. 2. Section 702 of the Controlled Substances Act is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding subsection (a) of this section or section 1103, section 4202 of title 18, United States Code, shall apply to any individual convicted under any of the laws repealed by this title or title III without regard to the terms of any sentence imposed on such individual under such law."

SEC. 3. Section 509 of the Controlled Substances Act (21 U.S.C. 879) is amended by striking out "(a)" and subsection (b).

SEC. 4. (a) Subchapter VI of chapter 6 of title 23 of the District of Columbia Code is repealed and the analysis of such chapter is amended by striking out the item relating to such subchapter.

(b) Section 23-521(f) of such title 23 is amended—

(1) by inserting "and" at the end of paragraph (5), and

(2) by striking out paragraph (6) and redesignating paragraph (7) as paragraph (6).

(c) Section 23-522(c) of such title 23 is amended to read as follows:

"(c) The application may also contain a request that the search warrant be made executable at any hour of the day or night upon the ground that there is probable cause to believe that (1) it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request."

S. 3355—2

(d) Section 23-524(a) of such title 23 is amended to read as follows:  
“(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 3109 of title 18, United States Code.”

(e) The last sentence of section 23-561(b)(1) of such title 23 is repealed.

Sec. 5. Section 1114 of title 18, United States Code, is amended by striking out “Bureau of Narcotics and Dangerous Drugs” and inserting in lieu thereof “Drug Enforcement Administration”.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

October 17, 1974

Dear Mr. Director:

The following bill was received at the White House on October 17th:

S. 3355

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.