

# CRS Report for Congress

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## Ecstasy: Actions of the 107<sup>th</sup> Congress to Control MDMA

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### Summary

Legislation has been proposed in the 107<sup>th</sup> Congress to combat the use and abuse of Ecstasy (MDMA) and other “club drugs.” In a 2001 survey, 12% of 12<sup>th</sup> graders reported ever having taken the drug. The Ecstasy Anti-Proliferation Act of 2000, enacted by the 106<sup>th</sup> Congress, directed the U.S. Sentencing Commission to increase penalties for Ecstasy offenses. As of March 2001, MDMA penalties became more severe than for powder cocaine but less severe than for heroin.

The Reducing Americans’ Vulnerability to Ecstasy Act of 2002 (S. 2633) would intensify the federal effort to control Ecstasy by amending the “crack house statute” to more directly target rave promoters. It has been reported by the Senate Judiciary Committee and placed on the Senate Legislative Calendar. The Ecstasy Prevention Act of 2001 (S. 1208/H.R. 2582) would encourage local communities to crack down on raves and authorize additional funds to be used in High Intensity Drug Trafficking Areas for anti-Ecstasy law enforcement activities. The Senate added S. 1208 by amendment to H.R. 2215, the Department of Justice authorization act, which has gone to conference. H.R. 3138 would also combat Ecstasy and other club drugs but has not seen action. This report will be updated as further congressional actions occur.

### Background<sup>1</sup>

Ecstasy is the street name for MDMA or *3,4-methylenedioxymethamphetamine*. As its full, scientific name indicates, MDMA is in the amphetamine family of drugs, although its effects are unlike other amphetamine compounds. Discovered and patented by Merck Pharmaceuticals in Germany before World War I, MDMA was first tested on animals in the 1950s by the U.S. Army in its search for a brain-washing drug. Civilian researchers became interested in it in the 1970s and were the first to study its unique psychological

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<sup>1</sup> The early history of MDMA is documented in a variety of sources. The facts here, which are recounted elsewhere, are drawn from: Grob, Charles S., M.D. Deconstructing Ecstasy: The Politics of MDMA Research. *Addiction Research*, v. 8, no. 6, 2000. p. 549-588.

effects in human subjects. It seemed to reduce fears and barriers to intimacy, while enhancing communication and empathy, and showed promise as an adjunct to psychotherapy in the treatment of such problems as drug addiction, phobias, post-traumatic stress, depression, suicide, and the difficulties of dealing with terminal illness.

For several years, the relatively small group of pharmacologists and health professionals who were enthusiastic about the promise of MDMA attempted, with some success, to keep it a secret and out of the hands of recreational drug users in order to keep it legal. Inevitably, however, word spread, partly through sensationalized media accounts after the Drug Enforcement Agency (DEA) began the process, in mid-1984, to schedule the substance under the Controlled Substances Act (CSA). DEA's placement of MDMA in Schedule I, the CSA's most restrictive schedule, applied criminal penalties for the manufacture, possession, and use of the drug effective July 1, 1985, abruptly ending the use of MDMA by medical researchers but not its use by casual drug experimenters.

MDMA was given the name Ecstasy by an enterprising drug dealer, and it soon became better known for its popularity as a street drug of abuse than for its promise as a therapeutic agent. According to the 2001 *Monitoring the Future Study*, funded by the National Institute on Drug Abuse (NIDA), 5% of 8<sup>th</sup> graders, 8% of 10<sup>th</sup> graders, and 12% of 12<sup>th</sup> graders report ever having taken the drug. Use has roughly doubled among American teenagers since 1998, but increased little between 2000 and 2001.<sup>2</sup>

Alarmed by rising levels of use, especially by young people at large, all-night dance gatherings known as "raves," and concerned about Ecstasy's possible neurotoxic effects, among other health and safety concerns, the 106<sup>th</sup> Congress passed the Ecstasy Anti-Proliferation Act of 2000 (P.L. 106-310). Among other provisions, this law directed the U.S. Sentencing Commission to increase criminal penalties for Ecstasy. On March 20, 2001, the Commission voted for a penalty structure for MDMA offenses that is more severe by weight than for powder cocaine, but less severe by weight than for heroin, effective May 1.<sup>3</sup> The 107<sup>th</sup> Congress is considering further legislation to control Ecstasy.

## Proposed Legislation

### S. 2633

The Reducing Americans' Vulnerability to Ecstasy Act of 2002, or RAVE Act, was introduced in the Senate on June 18, 2002, by Senators Biden and Grassley,<sup>4</sup> and was referred to the Judiciary Committee. It was reported by the committee without amendment and without written report 9 days later and was placed on the Senate Legislative Calendar.

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<sup>2</sup> University of Michigan News and Information Services. *Rise in Ecstasy Use Among American Teens Begins to Slow*. Ann Arbor, MI. December 19, 2001. Available at: [<http://www.monitoringthefuture.org>], accessed July 3, 2002.

<sup>3</sup> United States Sentencing Commission. *Report to the Congress: MDMA Drug Offenses, Explanation of Recent Guideline Amendments*, May 2001. Federal judges are generally bound by the sentencing range dictated by the Commission's sentencing guidelines.

<sup>4</sup> For the Senators' introductory remarks on the measure, see: *Congressional Record*, daily edition, v. 148, June 18, 2002. p. S5705-5706.

The RAVE Act would slightly amend the so-called “crack house statute”<sup>5</sup> to address rave promoters’ actions more specifically, such as obtaining a space *temporarily to profit* from the use of a controlled substance. Any person who violates the statute would be subject to a civil penalty of not more than the greater of \$250,000 or twice the gross receipts, either known or estimated, that were derived from each violation. The heading of this section of the Controlled Substances Act would be changed from “Establishment of manufacturing operations” to “Maintaining drug-involved premises.” Enforcement of this provision would end the harm reduction efforts of DanceSafe and similar groups that set up tables at some raves to test the drugs being used. Congressional hearing testimony has questioned the wisdom of this approach to the Ecstasy problem: “The use of illegal drugs can ruin lives, but often, the harm arises less from qualities intrinsic to the drug itself than from its legal consequences. ... If you want more deaths stemming from the use of club drugs, then increase penalties, initiate more active policing, and drive the club scene further underground.”<sup>6</sup>

The Act would also: direct the Sentencing Commission to review and consider stiffening the federal sentencing guidelines with respect to offenses involving the club drug gamma hydroxybutyric (GHB); authorize \$5.9 million to be appropriated to DEA for the hiring of a special agent in each state to serve as a “Demand Reduction Coordinator”; and authorize such sums as necessary to DEA for drug education efforts directed at youth, their parents, and others about club drugs.

## **S. 1208 and H.R. 2582**

The Ecstasy Prevention Act of 2001 (S. 1208/H.R. 2582) was introduced in the Senate by Senator Graham on July 19, 2001, and in the House by Representative Mica on the following day. The Senate bill was referred to the Judiciary Committee. The House bill was referred to the Subcommittee on Health of the Energy and Commerce Committee and to the Subcommittee on Crime of the Judiciary Committee. In floor action in the Senate on December 20, 2001, a slightly modified version of S. 1208 was added by amendment to H.R. 2215, the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act. The Senate then passed H.R. 2215, as amended, by voice vote, requested a conference with the House, and appointed conferees.<sup>7</sup> The House appointed conferees on February 6, 2002.

The version of the Ecstasy Prevention Act added to the Department of Justice (DOJ) authorization act would amend the Public Health Service Act to require the Administrator

<sup>5</sup> Sec. 416 of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, as amended by P.L. 99-570, Title I, sec. 1841(a), October 27, 1986); 100 Stat. 3207-52; 21 U.S.C. 856.

<sup>6</sup> U.S. Congress. House. Committee on the Judiciary, Subcommittee on Crime. *Threat Posed by the Illegal Importation, Trafficking, and Use of Ecstasy and Other “Club” Drugs*, hearing, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 15, 2000. Washington, Govt. Print. Off., 2000. Statement of Phillip Jenkins, Distinguished Professor of History and Religious Studies, Pennsylvania State University, University Park, PA, p. 73, 70.

<sup>7</sup> *Congressional Record*, daily edition, v. 147, December 20, 2001. p. S14028-14029, S14075. S.Amdt. 2697 also added S. 304, the Drug Abuse Education, Prevention, and Treatment Act of 2001, to the Senate’s version of the Justice Department authorization bill.

of the Substance Abuse and Mental Health Services Administration (SAMHSA), in awarding grants for ecstasy abuse prevention, to give priority to communities that have taken measures to combat club drug use, including passing ordinances restricting rave clubs, increasing law enforcement on Ecstasy, and seizing lands under nuisance abatement laws to make new restrictions on an establishment's use.

The priority to communities that pass ordinances restricting rave clubs raises an issue under the First Amendment. Such ordinances might be unconstitutional if they ban rave clubs or prohibit membership in them except where there is substantial evidence that such clubs exist predominantly to promote illegal activity, and that such activity is engaged in by the club as a whole, and not merely by a segment of it.<sup>8</sup> To the extent that such ordinances would be unconstitutional, it would also apparently be unconstitutional for Congress to promote them through a grant program. Congress's spending power, the Supreme Court has said, "may not be used to induce the States to engage in activities that would themselves be unconstitutional."<sup>9</sup>

The Act would require the Director of the Office of National Drug Control Policy (ONDCP) to combat the trafficking of MDMA in the 26 areas of the United States designated as high intensity drug trafficking areas (HIDTAs). The Act would authorize the appropriation of such sums as are necessary for each of the fiscal years 2002 through 2005. The Act stipulates that these federal funds shall be used to supplement, not supplant, non-federal funds that would otherwise be used in HIDTAs to carry out anti-Ecstasy law enforcement activities, including assistance for investigative costs, intelligence enhancements, technology improvements, and training. The Act further stipulates that the ONDCP Director (the "Drug Czar") shall designate the HIDTAs that will receive the extra funding and shall apportion the funding among and within these designated areas based on the threat assessments submitted by the individual high intensity drug trafficking areas.

The Act would authorize appropriations of such sums as are necessary for each of the fiscal years 2002 through 2005 to ensure that the national youth anti-drug media campaign specifically addresses the reduction and prevention of abuse of MDMA and other club and emerging drugs. (The media campaign is conducted by the Drug Czar under Section 102 of the Drug-Free Media Campaign Act of 1998 (P.L. 105-277) and was appropriated \$180 million for FY2002.) The Act would also authorize to be appropriated to the ONDCP such sums as are necessary to commission a drug test for MDMA that

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<sup>8</sup> In *Noto v. United States*, 367 U.S. 290, 298 (1961), the Supreme Court overturned a conviction for violating a statute that made it a felony to be a member of any organization that advocates the overthrow of the U.S. Government by force or violence. For a conviction to be valid, the Court wrote, "[t]here must be some substantial . . . evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive . . . to justify the inference that such a call to violence may be imputed to the [Communist] Party as a whole, and not merely to some narrow segment of it." (This paragraph of legal analysis was prepared by CRS legislative attorney Henry Cohen, who may be consulted for additional information on the First Amendment issue.)

<sup>9</sup> *South Dakota v. Dole*, 483 U.S. 203, 210 (1987).

would meet the Department of Health and Human Services' drug testing standards for the federal workplace.<sup>10</sup>

In addition, the Act would authorize to be appropriated such sums as are necessary for research to be conducted by NIDA that would evaluate the effects that MDMA use can have on an individual's health, such as:

- physiological effects such as changes in ability to regulate one's body temperature, stimulation of the cardiovascular system, muscle tension, teeth clenching, nausea, blurred vision, rapid eye movement, tremors, and other such conditions, some of which can result in heart failure or heat stroke;
- psychological effects such as mood and mind altering and panic attacks that may come from altering various neurotransmitter levels such as serotonin in the brain;
- short-term effects like confusion, depression, sleep problems, severe anxiety, paranoia, hallucinations, and amnesia; and
- long-term effects on the brain with regard to memory and other cognitive functions, and other medical consequences.

Not funded would be research into the reasons why people use MDMA. A final report documenting these research findings and identifying the health consequences of MDMA use would be submitted to Congress by January 1, 2003, and would be made available to the public.

Finally, the Act would authorize to be appropriated such sums as are necessary for the creation of an interagency Task Force on Ecstasy/MDMA and Emerging Club Drugs. The task force would: (1) design, implement, and evaluate the education, prevention, and treatment practices and strategies of the federal government with respect to MDMA and other emerging club drugs and recommend appropriate and beneficial models for education, prevention, and treatment; (2) identify appropriate government components and resources to implement task force recommendations; and (3) make recommendations to the President and Congress to implement proposed improvements in accordance with the National Drug Control Strategy and its budget allocations. The task force would be established by, and be under the jurisdiction of, the Drug Czar, who would designate a chairperson. Its members would include law enforcement, substance abuse prevention, judicial, and public health professionals as well as representatives from federal, state, and local agencies. It would meet at least once every 6 months and terminate 3 years after the date of enactment of the act.

## **H.R. 3138**

The Comprehensive Club Drug Abuse Reduction Act was introduced by Representative Graves on October 16, 2001, and was referred to the Subcommittee on Health of the Energy and Commerce Committee. It has seen no further action.

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<sup>10</sup> U.S. Department of Health and Human Services. Mandatory Guidelines for Federal Workplace Drug Testing Programs. *Federal Register*, v. 59, no. 110, June 9, 1994. p. 29907-29931.

Title I of the bill would establish a Club Drug Task Force, a 14-member interagency group to be chaired by the Attorney General or a designee, that would be responsible for designing, implementing, and evaluating the education, prevention, and treatment efforts of the federal government with respect to club drugs and other synthetic stimulants. The task force would meet at least once every 6 months, would terminate 4 years after the date of enactment of the act, and would be paid for out of existing DOJ appropriations. Title I would also direct the Secretary of Health and Human Services to develop a public health monitoring program to monitor club drugs in the United States.

Title II of H.R. 3138 would expand club drug abuse prevention efforts by amending the Public Health Service Act to authorize the Director of SAMHSA's Office for Substance Abuse Prevention to make grants to, and enter into contracts and cooperative agreements with, public and nonprofit private entities to conduct school- and community-based programs on the dangers of club drugs. Priority would be given to rural and urban areas that are experiencing high rates of, or rapid increases in, club drug use. The bill would authorize such sums as may be necessary for the grant program for FY2002 and each subsequent fiscal year.

## Hearings

The Senate Committee on Governmental Affairs held a hearing on "Ecstasy Use Rises: What More Needs to be Done by the Government to Combat the Problem?" on July 30, 2001. Chaired by Senator Lieberman, the hearing attempted to dispel the perception, said to be common among young people, that Ecstasy is harmless. Witnesses included Dr. Alan Leshner, Director of NIDA, John Varrone, Assistant Commissioner of the U.S. Customs Service, Dr. Donald Vereen, Deputy Director of ONDCP, and Joseph Keefe, DEA Chief of Operations. A 16-year-old former drug user now in a residential treatment program told the Committee: "To anyone who thinks Ecstasy isn't a serious drug, I give this advice: Stop before you get hurt. ... I was once a normal kid and Ecstasy took me down a deadly, destructive path I could never have imagined. Life is too precious. Ecstasy is not worth it."<sup>11</sup>

On December 4, 2001, the Senate Caucus on International Narcotics Control held an oversight hearing, co-chaired by Senators Biden and Grassley, on "Looking the Other Way: Rave Promoters and Club Drugs." Asa Hutchinson, DEA Administrator, and Dr. Glen Hanson, Acting Director of NIDA, testified on the first panel. The second panel was composed of law enforcement officials from Miami, New Orleans, and Des Moines, Iowa, and a concerned mother. The focus of the hearing was to explore ways in which federal, state, and local law enforcement agencies have cracked down on raves and rave promoters including: making it a state criminal offense to knowingly maintain a place where controlled substances such as Ecstasy are sold and used; offering "rave training classes" to parents to educate them about the danger of raves and the club drugs associated with them; and using the "crack house statute" or other federal charges to go after rave promoters and prohibit raves. This was the last of a series of hearings by the Senate narcotics caucus that resulted in the introduction of S. 2633, described above.

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<sup>11</sup> U.S. Congress. Senate. Committee on Governmental Affairs. *Ecstasy Use Rises: What More Needs to Be Done by the Government to Combat the Problem?*, hearing, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., July 30, 2001. Washington, Govt. Print. Off., 2001. p. 6.