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Department of Justice

STATEMENT

OF

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BEFORE

THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL
HOUSE OF REPRESENTATIVES

CONCERNING

IMPLEMENTATION OF THE ANTI-DRUG ABUSE ACT OF 1986

ON

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I am pleased to testify this morning on behalf of the Department of Justice concerning implementation of the grants program to the states for drug enforcement that was created by the Anti-Drug Abuse Act of 1986.

As you know, Mr. Chairman, Subtitle K of the Act--the State and Local Law Enforcement Assistance Act of 1986--authorizes the Department's Bureau of Justice Assistance, a component of the Office of Justice Programs, to "make grants to the States, for the use of States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act..."

It also authorizes assistance for programs that improve the apprehension, prosecution, adjudication, detention, and rehabilitation of drug offenders; for eradication programs; treatment programs; and programs to focus on major drug offenders.

The Fiscal Year 1987 appropriation for the program is \$225 million, with the bulk of the funds--\$178 million--allocated for formula grants to the states. Each state is eligible to receive \$500,000 with the balance of funds allocated according to the state's relative population. States are required to match Federal funds by 25 percent and must pass through to local units of government a share of the total state allocation that is equal the ratio of local criminal justice expenditures to total criminal justice expenditures in the state.

The Bureau of Justice Assistance has moved swiftly to implement this program. In doing so, BJA has been careful to obtain the maximum amount of input from Federal, state, and local agencies and to avoid Federal intrusiveness and red tape.

Early in November 1986, only a few days after the President signed the bill into law, BJA sent information describing the state and local assistance aspects of the Anti-Drug Abuse Act to all governors, or equivalent chief executive officers, as well as to the directors of the state offices that administer the justice assistance block grant program. The chief executives were asked to designate a state office to administer the new drug control program. To date, only one state has not yet done so.

In December, draft formula grant guidelines and a question-and-answer document designed to help the states further understand the new program were sent for comment to all state chief executives, U.S. Attorneys, state offices administering the BJA grant programs, and interested private groups. BJA currently is reviewing those comments before drawing up final guidelines.

Also in December, BJA received the first state applications for administrative funds. On January 6, 1987, BJA announced the first awards of these administrative funds, totaling more than \$2.9 million, to seven states and the District of Columbia to allow these jurisdictions to begin to establish their federally-assisted drug law enforcement programs. By the end of February, 16 more of these administrative awards had been made.

The states that have received administrative funds are:

Alabama	\$299,600
Washington, D.C.	88,900
Georgia	421,000
Idaho	112,400
Illinois	536,000
Indiana	391,300
Iowa	229,000
Kentucky	281,300
Michigan	160,000
Mississippi	212,200
Missouri	280,177
Montana	101,300
Nebraska	149,700
New Hampshire	111,900
New York	1,153,900
North Carolina	438,300
Ohio	716,900
Oklahoma	254,900
Pennsylvania	785,800
Virgin Islands	56,700
Virginia	404,200
Washington	323,700
West Virginia	170,200
Wisconsin	225,160

The total amount in administrative funds awarded so far is about \$8 million.

The administrative funds comprise 10 percent of the state's total allocation under the program. Before receiving its full award, the Act requires each state to submit to BJA a statewide strategy for enforcing its drug laws. This statewide strategy must be prepared in consultation with state and local drug officials.

To help the states design their enforcement strategies and effectively administer this new drug control program, BJA is hosting three regional workshops this month--one here in Washington, one in Chicago, and one in San Francisco. In fact, the one in Washington begins this afternoon. The three-day workshops will include a discussion of the administrative, financial, and reporting requirements under the new program, development of the statewide strategy, and development of programs for each of the eligible program purposes.

BJA expects to begin receiving the statewide strategies, accompanied by applications for the full funding, from states that have received their administrative awards after these regional workshops. To date, however, no applications for full funding have been received. Once an application is received, BJA will complete the review process and make the award within 60 days, as required by the Act.

As you know, Mr. Chairman, the Act also authorizes BJA to administer a new discretionary grant program for drug control initiatives. The discretionary grant program is being designed to enhance state and local efforts in drug control through national and multi-state programs in the legislatively defined purpose areas.

To help establish priorities for discretionary grants under the new drug control assistance program, BJA asked for recommendations from more than 800 agencies, including national criminal justice associations, state justice assistance administrative agencies, state attorneys general, state supreme court justices and administrators, state departments of corrections, Law Enforcement Coordinating Committees, and many state and local criminal justice agencies.

BJA also has contacted other Federal agencies in an attempt to avoid duplication of effort and to identify drug programs that, based on research and evaluation, are likely to be successful.

BJA expects to publish a program announcement requesting proposals for projects under the discretionary grant portion of the drug control program in the near future. Most awards will be made through a competitive process, with the first awards made sometime this spring.

I believe you will agree, Mr. Chairman, that the Bureau of Justice Assistance has done an admirable job of implementing the new state and local narcotics control assistance program quickly, efficiently, and with a minimum of red tape for participating state and local governments. The Department of Justice is confident that this Federal seed money will help state and local governments to coordinate and improve their drug enforcement efforts so that they can then continue to build upon these efforts with state and local funds.

As you are aware, Mr. Chairman, the Administration has requested no funds for this grant program for Fiscal Year 1988. Critics have tried to show a diminution of the national effort against drug abuse by ignoring the facts that (1) states can use Bureau of Justice Assistance funds for one-time capital expenditures; that (2) the monies appropriated can be used over a three-year period; and, (3) that some of the grants can be used by the states for start-up costs of multi-year programs.

In crafting its Fiscal Year 1988 budget, the Department has taken care to ensure that adequate resources are provided for its core functions--those functions that can only be carried out on the Federal level. We believe that scarce Federal dollars should be used for uniquely Federal functions, and that is why this Administration has sought each year to fund adequately the programs of the Bureau of Prisons, United States Attorneys, U.S. Marshals Service, Drug Enforcement Administration, and Federal Bureau of Investigation.

To be sure, we will continue to work closely with state and local governments in our fight against drugs. In this regard, the Department already administers a major program that significantly assists the states in their drug enforcement efforts--the Asset Forfeiture Program. We believe the equitable sharing of assets seized from drug dealers and others and forfeited by them is a better way for the Federal Government to assist the states and localities.

Sharing for this fiscal year is estimated at \$28 million, with an FY '88 projection to top \$30 million. When the President's FY '88 drug budget was prepared, this form of help for states and localities was taken into account. We believe this type of sharing represents the approach we should pursue with regard to states and localities and should replace the award of out-and-out Federal grants.

Before I move on to a discussion of the anti-paraphernalia provisions of the Act, Mr. Chairman, I would like to assure you that, should legislation be enacted appropriating additional funds for the state and local narcotics control assistance program, the Department will, of course, ensure that those funds are allocated to the programs authorized by the Act promptly, and that the program is administered in accordance with both the spirit and the letter of the law.

You have also asked about our efforts concerning enforcement of Subtitle O of the Anti-Drug Abuse Act of 1986, the "Mail Order Drug Paraphernalia Control Act." This Act created a new offense making it unlawful to offer for sale or transport in interstate commerce or to import drug paraphernalia. The Act was designed to support state and local efforts to stop the sales of drug paraphernalia by addressing the problems of mail order sales and the importation of drug paraphernalia.

The Postal Inspection Service has begun active enforcement of the mail order prohibitions of the Act. Similarly, the Customs Service has assumed responsibility for investigation of the import/export provisions of the Act. The activities of these two agencies should insure that Federal law enforcement efforts are directed at filling the loopholes that may exist with respect to state enforcement efforts.

The effectiveness of Federal efforts however, may be limited by some shortcomings in the statute itself. First, unlike the DEA Model Drug Paraphernalia Act, the Federal act contains no civil forfeiture provision. This may make it more difficult to act effectively in cases where there is sufficient evidence to meet the burden of proof in civil cases but not in criminal cases where the burden of proof is beyond a reasonable doubt.

Second, the definition of "drug paraphernalia" employed in the act may make it extremely difficult to prove violations. The requirement that the item be "primarily intended" for certain specified uses may preclude prosecutions where the item involved has multiple uses. Is an item that has two legitimate, although arcane, uses primarily intended for a drug-related use? This problem is further compounded by the exclusion from the Act of items that are "primarily intended" for use with tobacco.

We would be happy to work with the Congress to develop a narrower and more workable definition. We are confident that working together we can achieve an act that is enforceable and effective. In an effort to be of assistance, we have provided Committee staff with copies of a study commissioned by Director James K. Stewart of the National Institute of Justice concerning the drug paraphernalia problem.

Thank you Mr. Chairman, I would be happy now to respond to any questions you or Members of the Select Committee may have.