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Testimony of Bill Piper, Director of National Affairs, Drug Policy Alliance, to the Commerce/Justice/Science Subcommittee of the House Committee on Appropriations Regarding Fiscal Year 2013.

Thank you Chairman Wolf and Ranking Member Fattah for the opportunity to present testimony regarding Fiscal Year 2013 appropriations on behalf of the Drug Policy Alliance. I will address the administration's Fiscal Year 2013 funding requests for Drug Courts (\$0), the Byrne brand of federal grant programs (\$458 million total for all subcategories), the COPS program (\$290 million), and the Second Chance Act (\$80 million). In the interest of full disclosure, it is worth noting that the Drug Policy Alliance's New Mexico office received a \$500,000 Byrne discretionary grant in 2006 to create a statewide methamphetamine prevention and education project directed at high-school-age youth.

I would first like to briefly explain Drug Policy Alliance's interest in these issues. The Drug Policy Alliance seeks to end our nation's longest war, the failed war on drugs, which was declared over forty years ago by President Nixon. Decades later, after the spending of more than a trillion dollars, the problems of drug addiction and adolescent access to drugs have clearly not been effectively addressed. Furthermore, the choice by policymakers to punish addicts for a condition that should be treated as a health problem, and to treat people who use drugs but do no harm to others as criminals, and even worse, as an internal enemy to wage war on, has only added to the problems directly related to drugs and drug use.

Punitive drug policies have not only failed to reduce drug-related harm, they have in many instances exacerbated those harms, while creating new social problems of their own. Mass incarceration, racial disparities in enforcement, disenfranchisement, rising overdose fatalities, barriers to education and employment, barriers to effective addiction treatment, lack of effective means of preventing adolescent access to drugs, and the criminalization of millions of otherwise law-abiding citizens at great taxpayer expense are just some of the problems produced by the failed war on drugs.

The failed drug war is the principal driver of the growth in our nation's prison population. For us, as advocates of more effective, affordable and humane drug policies, issues of criminal justice, racial justice, and incarceration are indissoluble from the problem of our failed drug policies. For that reason, we are actively concerned with the accounts and the issues I have cited.

In March of 2011, Drug Policy Alliance released the report, "Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use". The report delivered, in essence, a three-point critique of the drug court model:

- ◆ Drug Courts have not demonstrated cost savings, reduced incarceration, or improved public safety.
- ◆ Drug courts leave many people worse off for trying.

- ◆ Drug courts have made the criminal justice system more punitive toward addiction – not less.

On the first point, we noted that evaluations of the drug court model often were conducted by creators of the programs under review, as well as poor evaluation design that essentially did not ask the right questions, resulting in research that was neither credible nor valuable.

On the second point, we noted that many people entering the drug court system had worse outcomes than if they had gone to treatment outside the criminal justice system, or even if they had been conventionally sentenced, in terms of relapse, recidivism and time served. Because drug court participants can be and often are locked up for relapses – a common and expected occurrence in the recovery process – many participants end up serving more days behind bars than if they had opted out of drug court, often because they gave up the opportunity to plead to a lesser charge as a condition for entering the program.

On the final point, we noted that while drug courts accept the disease model of addictive behavior, the process continues to penalize relapse with incarceration, as if it were a criminal act, rather than a health problem. Unlike health-centered programs, drug courts treat as secondary other important measures of stability and progress, including reduced drug use, improved health, and maintenance of relationships and employment.

We do understand that many people feel very strongly that their drug court experience set them on a better path and helped them rebuild their lives. The Drug Policy Alliance unreservedly acknowledges and celebrates these successes, and believes that drug courts can be a good way to treat certain categories of people, mainly people arrested for theft, assault, driving under the influence or other serious crimes where drug addiction might be a mitigating factor. Unfortunately, drug courts tend to exclude these types of offenders in favor of easy to manage possession offenders who not only may not need treatment but also may not be a threat to themselves or others. Drug courts often “cherry pick” people expected to do well. This is a waste of police and court resources.

As a matter of policy, we see the problems cited above, as well as an inability – acknowledged by the National Association of Drug Court Professionals – to compel drug courts to comply with best practices, creating ineffectiveness, inefficiency, and abuse. This was dramatically demonstrated around the time of our report in two cases profiled on the popular radio show, *This American Life*, which narrated the abuses of power in one drug court in Georgia operated by Judge Amanda Williams. Amanda Williams has since been forced off the bench and faces an ethics inquiry.

If NADCP is unable to guarantee adherence to best treatment practices, we feel it is appropriate for appropriators to step in and do so, to the degree that they are able. A sensible first step toward more fundamental reforms that may be in the domain of the authorizing committee would be to limit the use of federal funds – if appropriators choose to fund drug courts, despite the Administration’s choice not to request funds - to

those drug courts that allow the use of methadone or similar evidence-based treatments.

Too often drug court judges, not treatment professionals, make decisions about health and medicine that are self-evidently outside their expertise as judges not doctors. Methadone is the Institute of Medicine's "gold standard" of effective treatment for opiate addiction, and is endorsed by NADCP. Yet many drug court judges prohibit people struggling with heroin or Oxycontin addiction from using this life-saving addiction medication and then incarcerate them when they relapse. NADCP admits they do not have the power to compel adherence to this and other evidence-based standards; appropriators do. No federal money should go to a drug court that does not allow methadone or otherwise follow evidence-based treatment standards.

In the area of State and Local Law Enforcement Assistance, Drug Policy Alliance recommends shifting Byrne and COPS funding to more effective programs, such as the Second Chance Act.

The Byrne Grant Program has been criticized from a variety of policy and political perspectives. The program insulates states from the full cost of current law, policy, and practice, effectively preempting consideration of alternatives to incarceration. The evidence shows that it is unquestionably driving mass incarceration at the local and state level, splitting families apart and taxing state budgets. Local and county police use federal Byrne funding to arrest hundreds of thousands of Americans each year, in many cases for nonviolent drug offenses. Those offenders are often incarcerated in state prison. Federal subsidies to local law enforcement ends up costing state governments billions of dollars in prison expenditures each year. In state after state we see states paying for these increased expenditures through cuts to health and education, higher taxes, or both.

Civil rights leaders are concerned the Byrne programs subsidize and enable racial disparities and civil rights abuses. Calls for serious reform of the program have come from the ACLU, the Brennan Center, the National Association of Blacks in Criminal Justice, the National Black Police Association, NAACP, and National Council of La Raza. At least four leading conservative organizations have previously written in favor of eliminating Byrne: the American Conservative Union, Americans for Tax Reform, Citizens against Government Waste, and the National Taxpayers Union.

The Justice Policy Institute has documented that the largest single portion of Byrne funding has gone to "Regional Narcotics Task Forces (RNTF)." These task forces result in mass arrests of mostly low-level non-violent drug offenders, and perpetuate the well-documented, disproportionate impact of the drug war on poor people and people of color. The most spectacular example of this was the Tulia, Texas scandal of 2002, in which nearly ten percent of Tulia's black population was arrested on drug charges solely on the uncorroborated word of one man with a history of racism and lying who was working for the "Panhandle Regional Narcotics Task Force." Not only were these offenders later pardoned by Governor Perry, Texas went on to pass numerous drug policy reforms, including changing how the state deals with federal Byrne funding. Congress has yet to look at any of these reforms.

Scandals in other states include the misuse of millions of dollars in federal grant money in Kentucky and Massachusetts, false convictions based on police perjury in Missouri, and making deals with drug offenders to drop or lower their charges in exchange for money or vehicles in Alabama, Arkansas, Georgia, Massachusetts, New York, Ohio, and Wisconsin.

These scandals are not the result of a few “bad apples” in law enforcement; they are the result of a fundamentally flawed bureaucracy that is prone to corruption by its very structure. Byrne-funded regional narcotics task forces are federally funded, state-managed, and locally staffed. This division of the power to fund, hire, evaluate and fire makes real accountability and oversight difficult. In addition, the ability of task forces to perpetuate themselves through asset forfeiture and federal funding adds another layer of insulation from oversight by local taxpayers and authorities.

With a rising national debt, and a public that is in no mood to waste taxpayer money, Congress cannot afford to spend scarce dollars subsidizing day-to-day local law enforcement instead of spending money on enforcement that only the federal government can do. The Obama Administration, like the Bush Administration before it, is right to cut funding to the problematic, non-evidence-based Byrne program.

In addition to enacting cuts, this subcommittee should prohibit Byrne funding from being wasted on investigating, prosecuting, and incarcerating drug possession offenders, especially marijuana possession offenders. Local law enforcement should remain free to waste local money arresting nonviolent, low-level drug offenders, if they want, but federal money should be prioritized towards violent criminals and organized crime syndicates.

It also makes sense to shift funding away from the COPS program to more productive uses. The COPS program was created in the 1990's for the express purpose of putting 100,000 police officers on the street. Yet, COPS continues as a “zombie” program, receiving hundreds of millions of dollars over a decade after its mission has been fulfilled. The federal government has already put these “cops on the street,” and crime is at a historic low, especially considering the weak economy.

At the same time, billions of dollars in new federal assistance has gone to state and local law enforcement through DHS First Responder grant programs. COPS presents the issue of duplication, or even diversion of scarce taxpayer dollars that could go to vital programs that protect us from the threat of terrorism.

Last month, in a hearing of the Crime, Terrorism and Homeland Security Subcommittee of House Judiciary, Chairman Sensenbrenner noted that “there is strong disagreement over whether the COPS hiring program has been effective in reducing violent crime,” and said it is “simply not a good return on our investment.”

He went on to say:

It is clear to me that the purpose of the program has shifted from addressing violent crime nationwide to subsidizing state and local law enforcement agencies with budget problems. The responsibility to fund and manage routine state and local law enforcement efforts has been and should remain with the state and local governments.

This program was intended to address an acute crime problem that no longer exists and has now become a program to bail out state and local governments that made fiscally irresponsible decisions.

Other notable conservatives have made the same point about usurpation of local functions, in reference to Byrne as well as COPS. In 2005, a coalition including Americans for Tax Reform, American Conservative Union, the National Taxpayers Union, and Citizens Against Government Waste signed a joint letter calling for the elimination of both Byrne JAG and COPS.

Turning to the positive side of things, I would like to thank Chairman Wolf for his really critical leadership in defending the Second Chance Act in the FY 2012 cycle. In FY 2013, we endorse the full funding of the Second Chance Act at the authorized level of \$165 million, offset by cuts to the Byrne and COPS programs. The Second Chance Act was passed with overwhelming bipartisan support, in recognition of the cost-effectiveness of investments in re-entry and recidivism prevention, and we think spending levels should reflect what works, and our nation's values of reason as well as compassion.

About 9 million individuals are released from jail each year, and face serious, specific challenges as well as the overarching problem of adjusting to life outside. Second Chance programs specifically address these needs in terms of mental health, substance abuse, housing and homelessness, education and employment, as well as helping children and families cope with incarceration and release.

Spending on re-entry represents a small fraction of our spending on incarceration, and prevents the costs of re-incarceration, as well as helping to make communities safer and stronger, when those who are released are truly able to renew – or fulfill for the first time – their full membership in American society.

I would like to again thank the Chair and Ranking Member for this opportunity to address the committee, and on behalf of the Drug Policy Alliance's Office of National Affairs, we look forward to working with the committee to make progress on these issues