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Drug Reform Bill Creates Major Controversy

by LADB Staff

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In late April, the Mexican Congress overwhelmingly approved a highly controversial bill that would have decriminalized possession of small amounts of narcotics while toughening the government's efforts against drug trafficking. President Vicente Fox's administration initially publicly supported the bill, which it helped draft. "The presidency congratulates the Congress for approving the reforms," presidential spokesperson Ruben Aguilar said shortly after the initiative was approved. "This law gives police and prosecutors better legal tools to combat drug crimes that do so much damage to our youth and children."

Because the bill was a cooperative effort between the executive and legislative branches, the measure was easily approved in both chambers of Congress. On April 25, the lower house approved the measure by an overwhelming vote of 349-0 with six abstentions. Two days later, the Senate passed the legislation by a 53-26 vote with one abstention. Fox had fully intended to sign the bill but reversed his position because of strong pressures from the business community, the Catholic Church, and especially the US government.

Bill would remove sanctions for simple possession

The most controversial aspect of the bill was the proposal to eliminate sanctions for simple possession of a wide range of drugs, including cocaine, heroin, marijuana, opium, LSD, amphetamines, methamphetamines, and other controlled substances. Critics objected to this provision, arguing that it would have turned Mexico into one of the most permissive countries in the world, surpassing the Netherlands and Colombia. In the Netherlands, coffee shops are allowed to sell small amounts of marijuana, while Colombia allows possession of small amounts of marijuana (20 g), cocaine (1 g), and heroin (1 g).

Proponents argued, however, that the intent of the provision was misinterpreted. Legislators who steered the bill through Congress said they were only attempting to simplify Mexico's drug laws, which currently allow law-enforcement officials to drop charges against anyone caught with a small amount of drugs if they are considered addicts. The changes would have removed the "addict" requirement, and established specific quantities of drugs that individuals would be allowed to possess. The current criminal code allows judges to waive jail time for people who can prove they are addicts and possess drugs "for personal use."

Victor Clark, director of the Binational Human Rights Center in Tijuana, said the new law intended to give law-enforcement authorities the tools to more effectively prosecute any individual found in possession of drugs above the allowable limits. Under the existing law, anyone who is detained and can effectively argue that he or she is an addict can be back on the street within hours, said Clark. "The object of this law is to not put consumers in jail, but rather those who sell and poison," said PAN Sen. Jorge Zermeno Infante, who chairs the justice committee (Comision de Justicia) in the upper house.

Similar comments came from Zermeno's counterpart in the Chamber of Deputies. "We are not turning those who have developed an addiction to drugs into criminals nor are we legalizing drugs," said Deputy Claudia Ruiz Massieu, chair of the justice committee in the lower house.

Bill intends to strengthen local anti-drug efforts

Proponents said one of the most important aspects of the legislation was that it empowers local police to make drug arrests and allows law enforcement in general to focus on intercepting large drug shipments and major traffickers. This is a change from current practices, where the federal government has been largely responsible for anti-drug efforts. "The law constitutes an important step forward by the Mexican state in its battle against drug dealing," said Public Safety Secretary Eduardo Medina Mora after the measure was approved in both houses of Congress but before Fox exercised his veto.

Among other things, the bill stiffens penalties for selling drugs near schools and empowers state and local law-enforcement officers to detain users to check whether amounts are over the legal limit. "Anyone caught with drugs will be arrested," said Ruiz Massieu, a member of the former governing Partido Revolucionario Institucional (PRI). "Authorities will then determine whether the amounts found on an individual are for personal use and act accordingly."

Deputy Eliana Garcia Navarro, a member of the public-safety committee (Comision de Seguridad Publica), said the Congress consulted many experts as well as state and local officials before proceeding with the bill. "We decided to proceed with the bill after we held these meetings," said Garcia, a member of the center-left Partido de la Revolucion Democratica (PRD). Proponents said the initiative would also help open up jail space now occupied by small-time users and reallocate financial resources to focus on the larger drug-trafficking organizations.

"The proposal is an effort to better combat possession of illegal drugs, as well as drug sale and supply," Ivan del Llano Granados, a professor at the Instituto Nacional de Ciencias Penales (INACIPE), said at a forum in Mexico City in early May. "The reform seeks to determine an exact amount of any drug that would be for personal consumption only." Other participants in the Mexico City forum agreed that the intent of the legislation was to allow the government's anti-drug efforts to place a higher priority on trafficking. "Almost everyone brought in on drug charges is accused of simple possession, because it's easier to get these individuals than to go after the dealers," said Oscar Estrada, another participant in the forum. "It's important to think about whether punishing consumption is the answer."

Even with the strong emphasis on fighting drug trafficking, the law faced strong opposition from the business community, the Catholic Church, and the US government. "We do not agree with any legalization of drugs," said Jesus Marcos Giacomani, president of the Monterrey chapter of the Camara Nacional de Comercio (CANACO). He raised concerns that the legislation would create further turf battles among the drug cartels, which are largely responsible for a wave of violence in northern Mexico and other parts of the country like Acapulco (see SourceMex, 2005-08-10 and 2006-02-08). "This [legislation] would in effect give legitimacy to the drug traffickers and could potentially promote further violence among the cartels." Cardinal Norberto Rivera Carrera, the highest-ranking official in the Mexican Catholic Church, raised some of the same concerns. "Mexico

could become a more violent country," Rivera said in an editorial published in Archdiocese of Mexico City newspaper Desde la Fe.

Rivera acknowledged that some advocates have pushed for a limited legalization of drugs for medical purposes. But he noted that the law allowed drug possession for anyone, regardless of whether a medical need existed. "How do you distinguish between those who need the drug as a result of a medical recommendation and those who obtain the drug by illicit means?" said Rivera.

US government pressured Fox to veto bill

The strongest pressure came from US government officials. Local officials were most vocal in their opposition, while the federal government worked behind the scenes. Law-enforcement officials in California raised concerns that even a small relaxation in drug standards in Mexico would hamper California's efforts to enforce its policies on narcotics. In California, possession of any amount of cocaine, heroin, LSD, Ecstasy, and amphetamines is illegal. Medical marijuana can be used in certain circumstances, but casual use is illegal.

"Legalizing these drugs [in Mexico] is certainly going to have a spillover effect in San Diego," said Damon Mosler, head of narcotics at the San Diego County District Attorney's Office. "It means they'll be importing people who want to do drugs, and exporting those who need the financial wherewithal to continue to do those drugs they've become addicted to." Similar comments came from San Diego District Attorney Bonnie Dumanis. "One has to ask the question: Are the drug lords running the show?" Dumanis told The San Diego Union-Tribune. "More addicts will flood our streets and crime will go up."

US President George W. Bush's administration did not initially comment on the legislation, but administration officials traveled to Mexico City to meet with Mexican officials just before Fox moved to veto the bill. Among those meeting with the Fox government were Karen Tandy, director of the US Drug Enforcement Administration (DEA), and John Walters, head of the Office of National Drug Control Policy (ONDCP). "We urged them to review the legislation to avoid the perception that drug use would be tolerated and to prevent drug tourism," said Judith Bryan, press attache at the US Embassy in Mexico City.

Administration officials denied that the US position had as much influence on the Fox government as reported. "We had the same concerns about this initiative as the Americans," said Foreign Relations Secretary Luis Ernesto Derbez. Still, analysts said there was no doubt that the pressure from the US government was a major factor in Fox's reversal on this issue. "Of course Fox was pressured. He probably thought to himself, 'In the midst of everything going on with immigration reform, I don't need a fight now with the US,'" said Jorge Chabat, an expert on drug trafficking at the Centro de Investigacion y Estudios Economicos (CIDE) in Mexico City.

In exercising his veto power, Fox said he would ask the Congress for major revisions, which likely mean that those provisions that eased penalties for possession would be scrapped while those dealing with sanctions against drug traffickers would be retained. Legislators have vowed to retain most of the provisions in the original initiative, whether this comes in the revised version or whether they decide to override the president's veto.

Some analysts said the situation left Fox in a difficult position, because in the end he was forced to veto a bill that he helped create. The president's changed position reinforced the notion that he is a weak and unskilled president. "He folds. He folds. He folds. That's Fox," said Federico Estevez, a political analyst with the Instituto Tecnológico Autónomo de México (ITAM).

The perceptions about Fox could in the end hurt his party's candidate, Felipe Calderon Hinojosa, in the final weeks of the presidential campaign. Calderon is running a tight race with Andres Manuel Lopez Obrador of the PRD (see SourceMex, 2006-05-03). "Fox fumbled the drug issue. That didn't need to be brought up before the election," said George Grayson, an expert on Mexico at the College of William & Mary in Williamsburg, Virginia. "Fox's office should have put the word out to the president of the Senate judiciary committee that this measure needed further review." (Sources: Milenio Diario, 04/28/06; The San Diego Union-Tribune, 04/29/06; Reuters, 04/28/06, 05/02/06, 05/03/06; Agencia de noticias Procesos, 05/03/06; Associated Press, 04/28/06, 05/01/06, 05/02/06, 05/04/06; The New York Times, 04/29/06, 05/04/06; Reforma, 05/01/06, 05/04/06; Los Angeles Times, The Dallas Morning News, 05/03/06, 05/04/06; The Chicago Tribune, Copley News Service, 05/03/06, 05/04/06; The Financial Times-London, El Economista, Excelsior, USA Today, 05/04/06; La Cronica de Hoy, 05/04/06, 05/05/06; The Herald-Mexico City, 05/05/06; Notimex, 04/25/06, 05/07/06; La Jornada, 05/04/06, 05/05/06, 05/09/06; El Universal, 05/04/06, 05/05/06, 05/08/06, 05/09/06; The Christian Science Monitor, 05/09/06)

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