H.R. REP. 102-242(I), H.R. REP. 102-242, H.R. Rep. No. 242(I),
102ND Cong., 1ST Sess. 1991, 1991 WL 206794 (Leg.Hist.)

***1** OMNIBUS CRIME CONTROL ACT OF 1991

HOUSE REPORT NO. 102–242(I)

October 7, 1991
[To accompany H.R. 3371]

The Committee on the Judiciary, to whom was referred the bill (H .R. 3371) to control and prevent crime, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.–This Act may be cited as the "Omnibus Crime Control Act of 1991".

(b) Table of Contents.–The following is the table of contents for this Act:

TITLE I–COMMUNITY POLICING; COP ON THE BEAT

TITLE II–DRUG TREATMENT IN FEDERAL PRISONS

TITLE III–SUBSTANCE ABUSE TREATMENT IN STATE PRISONS

TITLE IV–SAFE SCHOOLS

TITLE V–VICTIMS OF CRIME

Subtitle A–Crime Victims Fund

Subtitle B–Restitution

Subtitle C–HIV Testing

TITLE VI–CERTAINTY OF PUNISHMENT FOR YOUNG OFFENDERS

TITLE VII–DRUG TESTING OF ARRESTED INDIVIDUALS

TITLE VIII–DRUG EMERGENCY AREAS ACT OF 1991

TITLE IX–COERCED CONFESSIONS

TITLE X–DNA IDENTIFICATION

TITLE XI–HABEAS CORPUS

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TITLE XII–PROVISIONS RELATING TO POLICE OFFICERS

Subtitle A–Police Accountability

Subtitle B–Retired Public Safety Officer Death Benefit

Subtitle C–Study on Poli ce Officers' Rights

Subtitle D–Law Enforcement Scholarships

Subtitle E–Law Enforcement Family Support

TITLE XIII–FRAUD

TITLE XIV–PROTECTION OF YOUTH

Subtitle A–Crimes Against Children

Subtitle B–Parental Kidnapping

Subtitle C–Sexual Abuse Amendments

Subtitle D–Reporting of Crimes Against Children

TITLE XV–MISCELLANEOUS DRUG CONTROL

TITLE XVI–FAIRNESS IN DEATH SENTENCING ACT OF 1991

TITLE XVII–MISCELLANEOUS CRIME CONTROL

Subtitle A–General

Subtitle B–Motor Vehicle Theft Prevention

Subtitle C–Terrorism: Civil Remedy

Subtitle D–Commission on Crime and Violence

TITLE XVIII–MISCELLANEOUS FUNDING PROVISIONS

Subtitle A–General

Subtitle B–Midnight Basketball

TITLE XIX–MISCELLANEOUS CRIMINAL PROCEDURE AND CORRECTIONS

Subtitle A–Revocation of Probation and Supervised Release

Subtitle B–List of Veniremen

Subtitle C–Immunity

Subtitle D–Clarification of 18 U.S.C. 5032's Requirement That Any Prior Record of a Juvenile Be Produced Before the Commencement of Juvenile Proceedings

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Subtitle E–Petty Offenses

Subtitle F–Optional Venue for Espionage and Related Offenses

Subtitle G–General

TITLE XX–FIREARMS AND RELATED AMENDMENTS

Subtitle A–Firearms and Related Amendments

Subtitle B–Assault Weapons

Subtitle C–Large Capacity Ammunition Feeding Devices

TITLE XXI–SPORTS GAMBLING

TITLE XXII–TECHNICAL CORRECTIONS

TITLE XXIII–DEATH PENALTY PROCEDURES

TITLE XXIV–DEATH PENALTY

***3** TITLE I–COMMUNITY POLICING; COP ON THE BEAT

SEC. 101. SHORT TITLE.

This title may be cited as "The Community Policing; Cop on the Beat Act of 1991".

SEC. 102. COMMUNITY POLICING; COP ON THE BEAT.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended–

(1) by redesignating part P as part Q;

(2) by redesignating section 1601 as section 1701; and

(3) by inserting after part O the following:

"PART P–COMMUNITY POLICING; COP ON THE BEAT GRANTS

"SEC. 1601. GRANT AUTHORIZATION.

"(a) Grant Projects.–The Director of the Bureau of Justice Assistance may make grants to units of general local government and to community groups to establish or expand cooperative efforts between police and a community for the purposes of increasing police presence in the community, including–

"(1) developing innovative neighborhood-oriented policing programs;

"(2) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community;

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"(3) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems;

"(4) developing policies that reorient police emphasis from reacting to crime to preventing crime;

"(5) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level;

"(6) providing training and problem solving for community crime problems;

"(7) providing training in cultural differences for law enforcement officials;

"(8) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness programs;

"(9) developing crime prevention programs in communities which have experienced a recent increase in gang-related violence; and

"(10) developing projects following the model under subsection (b).

"(b) Model Project.–The Director shall develop a written model that informs community members regarding–

"(1) how to identify the existence of a drug or gang house;

"(2) what civil remedies, such as public nuisance violations and civil suits in small claims court, are available; and

"(3) what mediation techniques are available between community members and individuals who have established a drug or gang house in such community.

"SEC. 1602. APPLICATION.

"(a) In General.–(1) To be eligible to receive a grant under this part, a chief executive of a unit of local government, a duly authorized representative of a combination of local governments within a geographic region, or a community group shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) In such application, one office, or agency (public, private, or nonprofit) shall be designated as responsible for the coordination, implementation, administration, accounting, and evaluation of services described in the application.

"(b) General Contents.–Each application under subsection (a) shall include–

"(1) a request for funds available under this part for the purposes described in section 1601;

"(2) a description of the areas and populations to be served by the grant; and

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(c) Comprehensive Plan.–Each application shall include a comprehensive plan which contains–

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***4** "(1) a description of the crime problems within the areas targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant shall be used to fill those gaps;

"(5) a description of the system the applicant shall establish to prevent and reduce crime problems; and

"(6) an evaluation component, including performance standards and quantifiable goals the applicant shall use to determine project progress, and the data the applicant shall collect to measure progress toward meeting project goals.

"SEC. 1603. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) Allocation.–The Director shall allocate not less than 75 percent of the funds available under this part to units of local government or combinations of such units and not more than 20 percent of the funds available under this part to community groups.

"(b) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(c) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and if the recipient can demonstrate significant progress toward achieving the goals of the plan required under section 1602(c).

"(d) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1602 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1604. AWARD OF GRANTS.

"(a) Selection of Recipients.–The Director shall consider the following factors in awarding grants to units of local government or combinations of such units under this part:

"(1) Need and ability.–Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1602(c).

"(2) Community-wide response.–Evidence of the ability to coordinate community-wide response to crime.

"(3) Maintain program.–The ability to maintain a program to control and prevent crime after funding under this part is no longer available.

"(b) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

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"SEC. 1605. REPORTS.

"(a) Report to Director.–Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1602(c).

"(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year that shall contain a detailed statement regarding grant awards, activities of grant recipients, and an evaluation of projects established under this part.

"SEC. 1606. DEFINITIONS.

"For the purposes of this part:

"(1) The term 'community group' means a community-based nonprofit organization that has a primary purpose of crime prevention.

"(2) The term 'Director' means the Director of the Bureau of Justice Assistance.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the matter relating to part P and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***5** SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended–

(1) by redesignating the last 3 paragraphs as paragraphs (7), (8), and (9); and

(2) by adding after paragraph (9) the following:

"(10) There are authorized to be appropriated $150,000,000 to carry out this part for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part P.".

TITLE II–DRUG TREATMENT IN FEDERAL PRISONS

SEC. 201. SHORT TITLE.

This title may be cited as the "Drug Treatment in Federal Prisons Act of 1991".

SEC. 202. DEFINITIONS.

As used in this title–

(1) the term "residential substance abuse treatment" means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population–

(A) directed at the substance abuse problems of the prisoner; and

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(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and

(2) the term "eligible prisoner" means a prisoner who is–

(A) determined by the Bureau of Prisons to have a substance abuse problem; and

(B) willing to participate in a residential substance abuse treatment program.

SEC. 203. IMPLEMENTATION OF SUBSTANCE ABUSE TREATMENT REQUIREMENT.

(a) In General.–In order to carry out the requirement of the last sentence of section 3621(b) of title 18, United States Code, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall provide residential substance abuse treatment–

(1) for not less than 50 percent of eligible prisoners by the end of fiscal year 1993;

(2) for not less than 75 percent of eligible prisoners by the end of fiscal year 1994; and

(3) for all eligible prisoners by the end of fiscal year 1995 and thereafter.

(b) Incentive for Prisoners' Successful Completion of Treatment Program.–Section 3621 of title 18, United States Code, is amended by adding at the end the following:

"(e) Incentive for Prisoners' Successful Completion of Treatment Program.–

"(1) Generally.–Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under subsection (b) of this section, shall remain in the custody of the Bureau for such time (as limited by paragraph (2) of this subsection) and under such conditions, as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for drug abuse and discontinue such conditions on determining that drug abuse has recurred.

"(2) Period of Custody.–The period the prisoner remains in custody after successfully completing a treatment program shall not exceed the prison term the law would otherwise require such prisoner to serve, but may not be less than such term minus one year.".

***6** SEC. 204. REPORT.

The Bureau of Prisons shall transmit to the Congress on January 1, 1993, and on January 1 of each year thereafter, a report. Such report shall contain–

(1) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(2) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

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(3) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this Act.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1991 and each fiscal year thereafter such sums as may be necessary to carry out this title.

TITLE III–SUBSTANCE ABUSE TREATMENT IN STATE PRISONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Substance Abuse Treatment in State Prisons Act of 1991".

SEC. 302. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR PRISONERS.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 102, is amended–

(1) by redesignating part Q as part R;

(2) by redesignating section 1701 as section 1801; and

(3) by inserting after part P the following:

"PART Q–RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR PRISONERS

"SEC. 1701. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance (referred to in this part as the 'Director') may make grants under this part to States, for the use by States for the purpose of developing and implementing residential substance abuse treatment programs within State correctional facilities.

"SEC. 1702. STATE APPLICATIONS.

"(a) In General.–(1) To request a grant under this part the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(3) Such application shall coordinate the design and implementation of treatment programs between State correctional representatives and the State Alcohol and Drug Abuse agency.

"(b) Drug Testing Requirement.–To be eligible to receive funds under this part, a State must agree to implement or continue to require urinalysis or similar testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.

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"(c) Eligibility for Preference With After Care Component.–

"(1) To be eligible for a preference under this part, a State must ensure that individuals who participate in the drug treatment program established or implemented with assistance provided under this part will be provided with aftercare services.

"(2) State aftercare services must involve the coordination of the prison treatment program with other human service and rehabilitation programs, such as educational and job training programs, parole supervision programs, half-way house programs, and participation in self-help and peer group programs, that may aid in the rehabilitation of individuals in the drug treatment program.

"(3) To qualify as an aftercare program, the head of the drug treatment program, in conjunction with State and local authorities and organizations involved ***7** in drug treatment, shall assist in placement of drug treatment program participants with appropriate community drug treatment facilities when such individuals leave prison at the end of a sentence or on parole.

"(d) State Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)–

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 1703. REVIEW OF STATE APPLICATIONS.

"(a) In General.–The Bureau shall make a grant under section 1701 to carry out the projects described in the application submitted under section 1702(a) upon determining that–

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

"(b) Approval.–Each application submitted under section 1702 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) Restriction.–Grant funds received under this part shall not be used for land acquisition or construction projects.

"(d) Disapproval Notice and Reconsideration.–The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

"SEC. 1704. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) Allocation.–Of the total amount appropriated under this part in any fiscal year–

"(1) 0.4 percent shall be allocated to each of the participating States; and

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"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the State prison population of such State bears to the total prison population of all the participating States.

"(b) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1702 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1705. EVALUATION.

"Each State that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in such form and containing such information as the Director may reasonably require.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 102 of this Act, is amended by striking the matter relating to part Q and inserting the following:

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SEC. 303. DEFINITIONS.

Section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)) is amended by adding after paragraph (23) the following:

"(24) The term 'residential substance abuse treatment program' means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population–

"(A) directed at the substance abuse problems of the prisoner; and

"(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems.".

***8** SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by adding after paragraph (10) the following:

"(11) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part Q.".

TITLE IV–SAFE SCHOOLS

SEC. 401. SHORT TITLE.

This title may be cited as the "Safe Schools Act of 1991".

SEC. 402. SAFE SCHOOLS.

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(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 302, is amended–

(1) by redesignating part R as part S;

(2) by redesignating section 1801 as section 1901; and

(3) by inserting after part Q the following:

"PART R–SAFE SCHOOLS ASSISTANCE

"SEC. 1801. GRANT AUTHORIZATION.

"(a) In General.–The Director of the Bureau of Justice Assistance may make grants to local educational agencies for the purpose of providing assistance to such agencies most directly affected by crime and violence.

"(b) Model Project.–The Director shall develop a written safe schools model in a timely fashion and make such model available to any local educational agency that requests such information.

"SEC. 1802. USE OF FUNDS.

"Grants made by the Director under this part shall be used–

"(1) to fund anticrime and safety measures and to develop education and training programs for the prevention of crime, violence, and illegal drugs and alcohol;

"(2) for counseling programs for victims of crime within schools;

"(3) for crime prevention equipment, including metal detectors and video-surveillance devices; and

"(4) for the prevention and reduction of the participation of young individuals in organized crime and drug and gang-related activities in schools.

"SEC. 1803. APPLICATIONS.

"(a) In General.–In order to be eligible to receive a grant under this part for any fiscal year, a local educational agency shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) Requirements.–Each application under subsection (a) shall include–

"(1) a request for funds for the purposes described in section 1802;

"(2) a description of the schools and communities to be served by the grant, including the nature of the crime and violence problems within such schools;

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part; and

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"(4) statistical information in such form and containing such information that the Director may require regarding crime within the schools served by such local educational agency.

"(c) Comprehensive Plan.–Each application shall include a comprehensive plan that shall contain–

"(1) a description of the crime problems within the schools targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant will be used to fill gaps; and

"(5) a description of the system the applicant will establish to prevent and reduce crime problems.

***9** "SEC. 1804. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

"(b) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if–

"(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

"(2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 1803(c).

"SEC. 1805. AWARD OF GRANTS.

"(a) Selection of Recipients.–The Director shall consider the following factors in awarding grants to local educational agencies:

"(1) Crime problem.–The nature and scope of the crime problem in the targeted schools.

"(2) Need and ability.–Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1803(c).

"(3) Population.–The number of students to be served by the plan required under section 1803(c).

"(b) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

"SEC. 1806. REPORTS.

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"(a) Report to Director.–Local educational agencies that receive funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 1803(c).

"(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 1803(b)(4), and an evaluation of programs established under this part.

"SEC. 1807. DEFINITIONS.

"For the purpose of this part:

"(1) The term 'Director' means the Director of the Bureau of Justice Assistance.

"(2) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary and secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary and secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 302 of this Act, is amended by striking the matter relating to part R and inserting the following:

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***10** SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 304 of this Act, is amended by adding after paragraph (11) the following:

"(12) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part R.".

TITLE V–VICTIMS OF CRIME

Subtitle A–Crime Victims Fund

SEC. 501. CRIME VICTIMS FUND.

(a) Elimination of Fund Ceilings and Sunset Provision.–Subsection (c) of section 1402 (42 U.S.C. 10601) of the Victims of Crime Act of 1984 is repealed.

(b) Allocations.–

(1) Generally.–Section 1402(d)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(2)) is amended to read as follows:

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"(2) The Fund shall be available as follows:

"(A) Of the total deposited in the Fund during a particular fiscal year–

"(i) the first $10,000,000 shall be available for grants under section 1404A of this title;

"(ii) the next sums deposited, up to the reserved portion (as described in subparagraph (C)), shall be made available to the judicial branch for administrative costs to carry out the functions of that branch under sections 3611 and 3612 of title 18, United States Code;

"(iii) and of the sums remaining after the allocations under clauses (i) and (ii)–

"(I) 4 percent shall be available for grants under section 1404(c)(1); and
"(II) 96 percent shall be available in equal amounts for grants under section 1403 and 1404(a) of this title.
"(B) The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed $20,000,000.

"(C) The reserved portion referred to in subparagraph (A) is $6,200,000 in each of fiscal years 1992 through 1995 and $3,000,000 in each fiscal year thereafter.".

(2) Conforming cross-reference.–Section 1402(g)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(g)(1)) is amended by striking "(iv)" and inserting "(i)" in lieu thereof.

(c) Amounts Awarded and Unspent.–Section 1402(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(e)) is amended–

(1) in paragraph (1)–

(A) by striking "(1) Except as provided in paragraph (2), any" and inserting "Any";

(B) by striking "succeeding fiscal year" and inserting "two succeeding fiscal years";

(C) by striking "which year" and inserting "which period"; and

(D) by striking "the general fund of the Treasury" and inserting "the Fund"; and

(2) by striking paragraph (2).

SEC. 502. PERCENTAGE CHANGE IN CRIME VICTIM COMPENSATION FORMULA.

Section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "40 percent" and inserting "45 percent".

SEC. 503. ADMINISTRATIVE COSTS FOR CRIME VICTIM COMPENSATION.

(a) Creation of Exception.–The final sentence of section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "A grant" and inserting "Except as provided in paragraph (3), a grant".

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(b) Requirements of Exception.–Section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) is amended by adding at the end the following:

***11** "(3) The Director may permit not more than 5 percent of a grant made under this section to be used for the administration of the crime victim compensation program receiving the grant.".

SEC. 504. RELATIONSHIP OF CRIME VICTIM COMPENSATION TO CERTAIN FEDERAL PROGRAMS.

Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by adding at the end the following:

"(e) Notwithstanding any other provision of law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay, then–

"(1) such crime victim compensation program shall not pay that compensation; and

"(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.".

SEC. 505. USE OF UNSPENT SECTION 1403 MONEY.

Section 1404(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(1)) is amended–

(1) by striking "or for the purpose of grants under section 1403 but not used for that purpose,"; and

(2) by adding at the end the following:

"The Director, in the Director's discretion, may use amounts made available under section 1402(d)(2) for the purposes of grants under section 1403 but not used for that purpose, for grants under this subsection, either in the year such amounts are not so used, or the next year.".

SEC. 506. UNDERSERVED VICTIMS.

Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) In making the certification required by paragraph (2)(B), the chief executive shall give particular attention to children who are victims of violent street crime.".

SEC. 507. GRANTS FOR DEMONSTRATION PROJECTS.

Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)) is amended by inserting "demonstration projects and" before "training".

SEC. 508. ADMINISTRATIVE COSTS FOR CRIME VICTIM ASSISTANCE.

(a) Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(A)) is amended–

(1) in paragraph (1) by inserting ", except as provided in paragraph (7)" after "programs", and

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(2) by adding after the paragraph added by section 506 of this Act the following:

"(7) The Director may permit not more than 5 percent of sums provided under this subsection to be used by the chief executive of each State for the administration of such sums.".

SEC. 509. CHANGE OF DUE DATE FOR REQUIRED REPORT.

Section 1407(g) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(g)) is amended–

(1) by striking "December 31, 1990", and inserting "May 31, 1993"; and

(2) by striking "December 31" the second place it appears and inserting "May 31" in lieu thereof.

SEC. 510. MAINTENANCE OF EFFORT.

Section 1407 of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by adding at the end the following:

"(h) Each entity receiving sums made available under this Act for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.".

SEC. 511. DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS.

Sections 102(b), 103, 104, and 109, and the amendments made by those sections, shall take effect with respect to the first fiscal year that begins after the date of the enactment of this Act for which the Director certifies there are sufficient sums in the Victim Assistance Fund and the Victims Compensation Fund, as of the end of the previous fiscal year, to make the allocations required under such sections and amendments without reducing the then current funding levels of programs supported by such Funds.

***12** Subtitle B–Restitution

SEC. 521. RESTITUTION AMENDMENTS.

(a) Expansion of Restitution.–Section 3663(b) of title 18, United States Code, is amended by striking "and" following the semicolon in paragraph (3), redesignating paragraph (4) as paragraph (5), and adding after paragraph (3) the following:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

(b) Suspension of Federal Benefits.–Subsections (g) and (h) of section 3663 of title 18, United States Code, are redesignated as subsections (h) and (i), respectively, and a new subsection (g) is inserted as follows:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) For purposes of this subsection–

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"(A) the term 'Federal benefits'–

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(B) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

(c) Restitution for Victims of Sex Offenses.–Section 3663(b)(2) of title 18, United States Code, is amended by inserting "or an offense under chapter 109A or chapter 110 of this title" after "an offense resulting in bodily injury to a victim".

Subtitle C–HIV Testing

SEC. 531. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) Chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"S 2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) Testing at Time of Pretrial Release Determination.–In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that followup tests for the virus be performed 6 months and 12 months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) Testing at Later Time.–If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed 6 months and 12 months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) Termination of Testing Requirement.–A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

***13** "(d) Disclosure of Test Results.–The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

"(e) Effect on Penalty.–The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human

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immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.”.

(b) Clerical Amendment.–The section analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

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SEC. 532. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: “, and the cost of up to two tests of the victim for the human immunodeficiency virus during the 12 months following the assault”.

TITLE VI–CERTAINTY OF PUNISHMENT FOR YOUNG OFFENDERS

SEC. 601. SHORT TITLE.

This title may be cited as the “Certainty of Punishment for Young Offenders Act of 1991”.

SEC. 602. CERTAINTY OF PUNISHMENT FOR YOUNG OFFENDERS.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 402 of this Act, is amended–

(1) by redesignating part S as part T;

(2) by redesignating section 1901 as section 2001; and

(3) by inserting after part R the following:

“PART S–ALTERNATIVE PUNISHMENTS FOR YOUNG OFFENDERS

“SEC. 1901. GRANT AUTHORIZATION.

“(a) In General.–The Director of the Bureau of Justice Assistance (referred to in this part as the ‘Director’) may make grants under this part to States, for the use by States and units of local government in the States, for the purpose of developing alternative methods of punishment for young offenders to traditional forms of incarceration and probation.

“(b) Alternative Methods.–The alternative methods of punishment referred to in subsection (a) should ensure certainty of punishment for young offenders and promote reduced recidivism, crime prevention, and assistance to victims, particularly for young offenders who can be punished more effectively in an environment other than a traditional correctional facility, including–

“(1) alternative sanctions that create accountability and certainty of punishment for young offenders;

“(2) boot camp prison programs;

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"(3) technical training and support for the implementation and maintenance of State and local restitution programs for young offenders;

"(4) innovative projects;

"(5) correctional options, such as community-based incarceration, weekend incarceration, and electronic monitoring of offenders;

"(6) community service programs that provide work service placement for young offenders at nonprofit, private organizations and community organizations;

"(7) demonstration restitution projects that are evaluated for effectiveness; and

***14** "(8) innovative methods that address the problems of young offenders convicted of serious substance abuse and gang-related offenses, including technical assistance and training to counsel and treat such offenders.

"SEC. 1902. STATE APPLICATIONS.

"(a) In General.–(1) To request a grant under this part, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(b) State Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)–

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 1903. REVIEW OF STATE APPLICATIONS.

"(a) In General.–The Bureau shall make a grant under section 1901(a) to carry out the projects described in the application submitted by such applicant under section 1902(a) upon determining that–

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

"(b) Approval.–Each application submitted under section 1902 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) Restriction.–Grant funds received under this part shall not be used for land acquisition or construction projects, other than alternative facilities described in section 1901(b) for young offenders.

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"(d) Disapproval Notice and Reconsideration.–The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

"SEC. 1904. LOCAL APPLICATIONS.

"(a) In General.–(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 1902(b).

"(2) Such application shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

"(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

"(4) If such application is approved, the unit of local government is eligible to receive such funds.

"(b) Distribution to Units of Local Government.–A State that receives funds under section 1901 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 45-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

"SEC. 1905. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) State Distribution.–Of the total amount appropriated under this part in any fiscal year–

"(1) 0.4 percent shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of young offenders of such State bears to the number of young offenders in all the participating States.

"(b) Local Distribution.–(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State for the purposes specified under section 1901 that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all ***15** units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified under section 1901.

"(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a State is not eligible to receive funds under section 1901, the Director shall award such funds to units of local government in such State giving priority to the units of local government that the Director considers to have the greatest need.

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"(c) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1902(a) for the fiscal year for which the projects receive assistance under this part.

"SEC. 1906. EVALUATION.

"(a) In General.–(1) Each State and local unit of government that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the National Institute of Justice.

"(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of the State or unit of local government involved.

"(b) Distribution.–The Director shall make available to the public on a timely basis evaluations received under subsection (a).

"(c) Administrative Costs.–A State and local unit of government may use not more than 5 percent of funds it receives under this part to develop an evaluation program under this section.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 402 of this Act, is amended by striking the matter relating to part S and inserting the following:

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SEC. 603. DEFINITION.

Section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)), as amended by section 303 of this Act, is amended by adding after paragraph (24) the following:

"(25) The term 'young offender' means an individual 28 years of age or younger.".

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by adding after paragraph (12) the following:

"(13) There are authorized to be appropriated $200,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part S.".

TITLE VII–DRUG TESTING OF ARRESTED INDIVIDUALS

SEC. 701. DRUG TESTING UPON ARREST.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 602 of this Act, is amended–

(1) by redesignating part T as part U;

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(2) by redesignating section 2001 as section 2101; and

***16** (3) by inserting after part S the following:

"PART T–GRANTS FOR DRUG TESTING UPON ARREST

"SEC. 2001. GRANT AUTHORIZATION.

The Director of the Bureau of Justice Assistance is authorized to make grants under this part to States, for the use by States and units of local government in the States, for the purpose of developing, implementing, or continuing a drug testing project when individuals are arrested and during the pretrial period.

"SEC. 2002. STATE APPLICATIONS.

"(a) General Requirements.–To request a grant under this part the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) Mandatory Assurances.–To be eligible to receive funds under this part, a State must agree to develop or maintain programs of urinalysis or similar drug testing of individuals upon arrest and on a regular basis pending trial for the purpose of making pretrial detention decisions.

"(c) Central Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.)–

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 2003. LOCAL APPLICATIONS.

"(a) In General.–(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 2002(c).

"(2) Such application shall be considered approved, in whole or in part, by the State not later than 90 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

"(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

"(4) If such application is approved, the unit of local government is eligible to receive such funds.'

"(b) Distribution to Units of Local Government.–A State that receives funds under section 2001 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 90 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 90-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

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"SEC. 2004. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) State Distribution.–Of the total amount appropriated under this part in any fiscal year–

"(1) 0.4 percent shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of individuals arrested in such State bears to the number of individuals arrested in all the participating States.

"(b) Local Distribution.–(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified in such State's application.

"(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a State is not eligible to receive funds under section ***17** 2001, the Director shall award such funds to units of local government in such State giving priority to the units of local government that the Director considers to have the greatest need.

"(c) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 2002 for the fiscal year for which the projects receive assistance under this part.

"(d) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

"SEC. 2005. REPORT.

"A State or unit of local government that receives funds under this part shall submit to the Director a report in March of each fiscal year that funds are received under this part regarding the effectiveness of the drug testing project.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 602 of this Act, is amended by striking the matter relating to part T and inserting the following:

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SEC. 702. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 604 of this Act, is amended by adding after paragraph (13) the following:

"(14) There are authorized to be appropriated $100,000,000 for the fiscal years 1992, 1993, and 1994 to carry out the projects under part T.".

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TITLE VIII–DRUG EMERGENCY AREAS ACT OF 1991

SEC. 801. SHORT TITLE.

This title may be cited as the "Drug Emergency Areas Act of 1991".

SEC. 802. DRUG EMERGENCY AREAS.

Subsection (c) of section 1005 of the National Narcotics Leadership Act of 1988 is amended to read as follows:

"(c) Declaration of Drug Emergency Areas.–

"(1) Presidential declaration.–(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

"(B) For the purposes of this subsection, the term 'major drug-related emergency' means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"(2) Procedure for declaration.–(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

"(B) Any request made under subparagraph (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude, that Federal assistance is necessary to assure an effective response to save lives, and to protect property and public health and safety.

***18** "(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

"(D) As part of a request for a declaration by the President under this subsection, and as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall–

"(i) take appropriate action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

"(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

"(iii) submit a detailed plan outlining that government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible

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quantitative goals) and timetables and shall specify how Federal assistance provided under this subsection is intended to achieve such goals.

"(E) The Director shall review any request submitted pursuant to this subsection and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

"(3) Federal monetary assistance.–(A) The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

"(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

"(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

"(D) Any State or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

"(4) Nonmonetary assistance.–In addition to the assistance provided under paragraph (3), the President may–

"(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

"(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

"(5) Issuance of implementing regulations.–Not later than 90 days after the date of the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

"(6) Audit by comptroller general.–Assistance under this subsection shall be subject to annual audit by the Comptroller General.

"(7) Authorization of appropriations.–There are authorized to be appropriated for each of fiscal years 1992, 1993, and 1994, $300,000,000 to carry out this subsection.".

***19** TITLE IX–COERCED CONFESSIONS

SEC. 901. COERCED CONFESSIONS.

The admission into evidence of a coerced confession shall not be considered harmless error. For the purposes of this section, a confession is coerced if it is elicited in violation of the fifth or fourteenth articles of amendment to the Constitution of the United States.

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TITLE X–DNA IDENTIFICATION

SEC. 1001. SHORT TITLE.

This title may be cited as the "DNA Identification Act of 1991".

SEC. 1002. FUNDING TO IMPROVE THE QUALITY AND AVAILABILITY OF DNA ANALYSES FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES.

(a) Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended–

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(22) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as 'DNA') for identification purposes.".

(b) Section 503(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end thereof the following new paragraph:

"(12) If any part of a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that–

"(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 1003 of the DNA Identification Act of 1991;

"(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only–

"(i) to criminal justice agencies for law enforcement identification purposes;

"(ii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

"(iii) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

"(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003 of the DNA Identification Act of 1991.".

(c) For each of the fiscal years 1992 through 1996, there are authorized to be appropriated $10 million for grants to the states for DNA analysis.

SEC. 1003. QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.

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(a) Publication of Quality Assurance and Proficiency Testing Standards.–(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods. The Director shall appoint members of the board from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory directors. The advisory board shall include as members scientists from state and local forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology. The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

***20** (2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) Administration of the Advisory Board.–For administrative purposes, the advisory board appointed under subsection (a) shall be considered an advisory board to the Director of the Federal Bureau of Investigation. Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a). The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

SEC. 1004. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

(a) The Director of the Federal Bureau of Investigation may establish an index of–

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes; and

(3) analyses of DNA samples recovered from unidentified human remains.

(b) Such index may include only information on DNA identification records and DNA analyses that are–

(1) based on analyses performed in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 1003 of the DNA Identification Act of 1991;

(2) prepared by laboratories, and DNA analysts, that undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003 of the DNA Identification Act of 1991; and

(3) maintained by Federal, State, and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only–

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(A) to criminal justice agencies for law enforcement identification purposes;

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(C) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The exchange of records authorized by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

SEC. 1005. FEDERAL BUREAU OF INVESTIGATION.

(a) Proficiency Testing Requirements.–

(1) Generally.–Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003(b). Within one year of the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory. As used in this paragraph, the term "blind external test" means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) Report.–For five years after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committees on ***21** the Judiciary of the House and Senate an annual report on the results of each of the tests referred to in paragraph (1).

(b) Privacy Protection Standards.–

(1) Generally.–Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only–

(A) to criminal justice agencies for law enforcement identification purposes; or

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) Exception.–If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Criminal Penalty.–(1) Whoever–

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) willfully discloses such information in any manner to any person or agency not entitled to receive it;

shall be fined not more than $100,000.

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(2) Whoever, without authorization, willfully obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than $100,000.

SEC. 1006. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Federal Bureau of Investigation $2,000,000 for each of fiscal years 1992 through 1996 to carry out sections 1003, 1004, and 1005 of this Act.

TITLE XI–HABEAS CORPUS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Habeas Corpus Reform Act of 1991".

SEC. 1102. STATUTE OF LIMITATIONS.

Section 2254 of title 28, United States Code, is amended by adding at the end the following:

"(g)(1) In the case of an applicant under sentence of death, any application for habeas corpus relief under this section must be filed in the appropriate district court not later than one year after–

"(A) the date of denial of a writ of certiorari, if a petition for a writ of certiorari to the highest court of the State on direct appeal or unitary review of the conviction and sentence is filed, within the time limits established by law, in the Supreme Court;

"(B) the date of issuance of the mandate of the highest court of the State on direct appeal or unitary review of the conviction and sentence, if a petition for a writ of certiorari is not filed, within the time limits established by law, in the Supreme Court; or

"(C) the date of issuance of the mandate of the Supreme Court, if on a petition for a writ of certiorari the Supreme Court grants the writ, and disposes of the case in a manner that leaves the capital sentence undisturbed.

"(2) The time requirements established by this section shall be tolled–

"(A) during any period in which the State has failed to provide counsel as required in section 2257 of this chapter;

"(B) during the period from the date the applicant files an application for State postconviction relief until final disposition of the application by the State appellate courts, if all filing deadlines are met; and

"(C) during an additional period not to exceed 90 days, if counsel moves for an extension in the district court that would have jurisdiction of a habeas corpus application and makes a showing of good cause.".

SEC. 1103. STAYS OF EXECUTION IN CAPITAL CASES.

Section 2251 of title 28, United States Code, is amended–

(1) by inserting "(a)(1)" before the first paragraph;

(2) by inserting "(2)" before the second paragraph; and

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(3) by adding at the end the following:

***22** "(b) In the case of an individual under sentence of death, a warrant or order setting an execution shall be stayed upon application to any court that would have jurisdiction over an application for habeas corpus under this chapter. The stay shall be contingent upon reasonable diligence by the individual in pursuing relief with respect to such sentence and shall expire if–

"(1) the individual fails to apply for relief under this chapter within the time requirements established by section 2254(g) of this chapter;

"(2) upon completion of district court and court of appeals review under section 2254 of this chapter, the application is denied and–

"(A) the time for filing a petition for a writ of certiorari expires before a petition is filed;

"(B) a timely petition for a writ of certiorari is filed and the Supreme Court denies the petition; or

"(C) a timely petition for certiorari is filed and, upon consideration of the case, the Supreme Court disposes of it in a manner that leaves the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel qualified under section 2257 of this chapter and after being advised of the consequences of the decision, an individual waives the right to pursue relief under this chapter.".

SEC. 1104. LAW APPLICABLE.

(a) In General.–Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"S 2256. Law applicable

"In an action filed under this chapter, the court shall not apply a new rule. For purposes of this section, the term 'new rule' means a clear break from precedent, announced by the Supreme Court of the United States, that could not reasonably have been anticipated at the time the claimant's sentence became final in State court.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding at the end the following:

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SEC. 1105. COUNSEL IN CAPITAL CASES; STATE COURT.

(a) In General.–Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"S 2257. Counsel in capital cases; State court

"(a) A State in which capital punishment may be imposed shall provide legal services to–

"(1) indigents charged with offenses for which capital punishment is sought;

"(2) indigents who have been sentenced to death and who seek appellate, collateral, or unitary review in State court; and

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"(3) indigents who have been sentenced to death and who seek certiorari review of State court judgments in the United States Supreme Court.

"(b) The State shall establish an appointing authority, which shall be–

"(1) a statewide defender organization;

"(2) a resource center; or

"(3) a committee appointed by the highest State court, comprised of members of the bar with substantial experience in, or commitment to, criminal justice.

"(c) The appointing authority shall–

"(1) publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing qualifications and performance of counsel, which shall include–

"(A) knowledge and understanding of pertinent legal authorities regarding issues in capital cases;

"(B) skills in the conduct of negotiations and litigation in capital cases, the investigation of capital cases and the psychiatric history and current condition of capital clients, and the preparation and writing of legal papers in capital cases;

"(C) in the case of counsel appointed for the trial or sentencing stages, 5 years of experience in the representation of criminal clients in felony cases and experience in at least one case in which the death penalty was sought; and

"(D) in the case of counsel appointed for the appellate, postconviction, or unitary review stages, 5 years of experience in the representation of criminal ***23** clients in felony cases at the appellate, postconviction, unitary review, or certiorari stages and experience in at least one case in which the client had been sentenced to death;

"(2) monitor the performance of attorneys appointed and delete from the roster any attorney who fails to meet qualification and performance standards; and

"(3) appoint a defense team, which shall include at least 2 attorneys, to represent a client at the relevant stage of proceedings, promptly upon receiving notice of the need for the appointment from the relevant State court.

"(d) An attorney who is not listed on the roster shall be appointed only on the request of the client concerned and in circumstances in which the attorney requested is able to provide the client with quality legal representation.

"(e) No counsel appointed pursuant to this section to represent a prisoner in State postconviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and counsel expressly request continued representation.

"(f) The ineffectiveness or incompetence of counsel appointed pursuant to this section during State or Federal postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal postconviction proceedings.

"(g) Upon receipt of notice from the appointing authority that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be

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conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual's competency to decline the appointment, and whether the individual has knowingly and intelligently declined it.

"(h) Attorneys appointed from the private bar shall be compensated on an hourly basis and at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases and shall be reimbursed for expenses reasonably incurred in representing the client, including the costs of law clerks, paralegals, investigators, experts, or other support services.

"(i) Support services for staff attorneys of a defender organization or resource center shall be equal to the services listed in subsection (h).

"(j) If a State fails to provide counsel in a proceeding specified in subsection (a), or counsel appointed for such a proceeding fails substantially to meet the qualification standards specified in subsections (c)(1) or (d), or the performance standards established by the appointing authority, the court, in an action under this chapter, shall neither presume findings of fact made in such proceeding to be correct nor decline to consider a claim on the ground that it was not raised in such proceeding at the time or in the manner prescribed by State law.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding at the end the following:

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SEC 1106. SUCCESSIVE FEDERAL PETITIONS.

Section 2244(b) of title 28, United States Code, is amended–

(1) by inserting "(1)" after "(b)";

(2) by inserting ", in the case of an applicant not under sentence of death," after "When"; and

(3) by adding at the end the following:

"(2) In the case of an applicant under sentence of death, a claim presented in a second or successive application, that was not presented in a prior application under this chapter, shall be dismissed unless–

"(A) the applicant shows that–

"(i) the basis of the claim could not have been discovered by the exercise of reasonable diligence before the applicant filed the prior application; or

"(ii) the failure to raise the claim in the prior application was due to action by State officials in violation of the Constitution of the United States; and

"(B) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed, or in the validity of that sentence under Federal law.".

***24** SEC. 1107. CERTIFICATES OF PROBABLE CAUSE.

The third paragraph of section 2253, title 28, United States Code, is amended to read as follows:

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"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause. However, an applicant under sentence of death shall have a right of appeal without a certification of probable cause, except after denial of a second or successive application.".

TITLE XII–PROVISIONS RELATING TO POLICE OFFICERS

Subtitle A–Police Accountability

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Police Accountability Act of 1991".

SEC. 1202. PATTERN OR PRACTICE CASES.

(a) Cause of Action.–

(1) Unlawful conduct.–It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.

(2) Civil action by attorney general.–Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

(3) Civil action by injured person.–Any person injured by a violation of paragraph (1) may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. In any civil action under this paragraph, the court may allow the prevailing plaintiff reasonable attorneys' fees and other litigation fees and costs (including expert's fees). A governmental body shall be liable for such fees and costs to the same extent as a private individual.

(b) Definition.–As used in this section, the term "law enforcement officer" means an official empowered by law to conduct investigations of, to make arrests for, or to detain individuals suspected or convicted of, criminal offenses.

SEC. 1203. DATA ON USE OF EXCESSIVE FORCE.

(a) Attorney General to Collect.–The Attorney General shall, through the victimization surveys conducted by the Bureau of Justice Statistics, acquire data about the use of excessive force by law enforcement officers.

(b) Limitation on Use of Data.–Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.

(c) Annual Summary.–The Attorney General shall publish an annual summary of the data acquired under this section.

Subtitle B–Retired Public Safety Officer Death Benefit

SEC. 1211. RETIRED PUBLIC SAFETY OFFICER DEATH BENEFIT.

(a) Payments.–Section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

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(1) in subsection (a) by inserting after "line of duty" the following "or a retired public safety officer has died as the direct and proximate result of a personal injury sustained while responding to a fire, rescue, or police emergency";

(2) in subsection (b) by inserting after "line of duty" the following "or a retired public safety officer has become permanently and totally disabled as the ***25** direct result of a catastrophic injury sustained while responding to a fire, rescue, or police emergency"; and

(3) in subsections (c), (i), and (j) by inserting after "public safety officer" every place it occurs the following "or a retired public safety officer".

(b) Limitations.–Section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

(1) in paragraph (1) by striking "the public safety officer or by such officer's intention" and inserting "the public safety officer or the retired public safety officer who had the intention";

(2) in paragraph (2) by striking "the public safety officer" and inserting "the public safety officer or the retired public safety officer"; and

(3) in paragraph (3) by striking "the public safety officer" and inserting "the public safety officer or the retired public safety officer".

(c) National Program.–Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting before the period "or retired public safety officers who have died while responding to a fire, rescue, or police emergency".

(d) Definitions.–Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

(1) by striking "and" after paragraph (6);

(2) by inserting "; and" at the end of paragraph (7); and

(3) by adding at the end the following:

"(8) 'retired public safety officer' means a former public safety officer, as defined in paragraph (7), who has served a sufficient period of time in such capacity to become vested in the retirement system of a public agency with which the officer was employed and who retired from such agency in good standing.".

(e) Effective Date.–The amendments made by this section shall apply with respect to death or injuries occurring after the date of the enactment of this section.

Subtitle C–Study on Police Officers' Rights

SEC. 1221. STUDY ON POLICE OFFICERS' RIGHTS.

The Attorney General, through the National Institute of Justice, shall conduct a study of the procedures followed in internal, noncriminal investigations of State and local law enforcement officers to determine if such investigations are conducted fairly and effectively. The study shall examine the adequacy of the rights available to law enforcement officers and members of the public in cases involving the performance of a law enforcement officer, including–

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(1) notice;

(2) conduct of questioning;

(3) counsel;

(4) hearings;

(5) appeal; and

(6) sanctions.

Not later than one year after the date of enactment of this Act, the Attorney General shall submit to the Congress a report on the results of the study, along with findings and recommendations on strategies to guarantee fair and effective internal affairs investigations.

Subtitle D–Law Enforcement Scholarships

SECTION 1231. SHORT TITLE.

This subtitle may be cited as the "Law Enforcement Scholarship Act of 1991".

SEC. 1232. STATEMENT OF PURPOSE.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 791 of this Act, is amended–

(1) by redesignating part U as part V;

(2) by redesignating section 2101 as 2201; and

(3) by inserting after part T the following:

***26** "PART U–LAW ENFORCEMENT SCHOLARSHIPS

"SEC. 2101. PURPOSES.

"It is the purpose of this part to assist States to establish scholarship programs which–

"(1) enhance the recruitment of young individuals to careers in law enforcement;

"(2) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel; and

"(3) provide educational assistance to law enforcement personnel seeking further education;

"SEC. 2102. DEFINITIONS.

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"For purposes of this part–

"(1) the term 'Director' means the Director of the Bureau of Justice Assistance;

"(2) the term 'educational expenses' means expenses that are directly attributable to–

"(A) a course of education leading to the award of an associate degree;

"(B) a course of education leading to the award of a baccalaureate degree; or

"(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies and related expenses;

"(3) the term 'institution of higher education' has the same meaning given such term in section 1401(a) of the Higher Education Act of 1965;

"(4) the term 'law enforcement position' means employment as an officer in a State or local police force, or correctional institution; and

"(5) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2103. ALLOTMENT.

"From amounts appropriated under section 2111, the Director shall allocate–

"(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State; and

"(2) 20 percent of such funds to States on the basis of the State's shortage of law enforcement personnel and the need for assistance under this part.

"SEC. 2104. PROGRAM ESTABLISHED.

"(a) In General.–From amounts available pursuant to section 2103 each State shall pay the Federal share of the cost of awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education.

"(b) Federal Share.–(1) The Federal share of the cost of scholarships under this part shall not exceed 60 percent.

"(2) The non-Federal share of the cost of scholarships under this part shall be supplied from sources other than the Federal Government.

"(c) Lead Agency.–Each State receiving an allotment under section 2103 to conduct a scholarship program in the State in accordance with the provisions of this part shall designate an appropriate State agency to serve as the lead agency in carrying out the provisions of this part.

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"(d) Responsibilities of Director.–The Director shall be responsible for the administration of the program conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, promulgate regulations to implement this part.

"(e) Administrative Expenses.–Each State receiving an allotment under section 2103 may reserve not more than 8 percent of such allotment for administrative expenses.

"(f) Special Rule.–Each State receiving an allotment under section 2103 shall ensure that each scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

"(g) Supplementation of Funding.–Funds received under this part shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

***27** "SEC. 2105. SCHOLARSHIPS.

"(a) Period of Award.–Scholarships awarded under this part shall be for a period of one academic year.

"(b) Use of Scholarships.–Each individual awarded a scholarship under this may use such scholarship for educational expenses at any accredited institution of higher education.

"SEC. 2106. ELIGIBILITY.

"An individual shall be eligible to receive a scholarship under this part if such individual has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

"SEC. 2107. STATE APPLICATION.

"Each State desiring an allotment under section 2103 shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. Each such application shall–

"(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the provisions of this part;

"(2) contain assurances that the State shall advertise the scholarship assistance provided under this part;

"(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the scholarship program under this part;

"(4) contain assurances that the State shall make scholarship payments to institutions of higher education on behalf of individuals receiving financial assistance under this part;

"(5) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

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"(6) contain assurances that the State shall promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in high schools and community colleges.

"SEC. 2108. LOCAL APPLICATION.

"(a) In General.–Each individual desiring a scholarship under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for which financial assistance is sought.

"(b) Priority.–In awarding scholarships under this part, each State shall give priority to applications from individuals who are–

"(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State; and

"(2) pursuing an undergraduate degree.

"SEC. 2109. SCHOLARSHIP AGREEMENT.

"(a) In General.–Each individual receiving a scholarship under this part shall enter into an agreement with the Director.

"(b) Contents.–Each agreement described in subsection (a) shall–

"(1) provide assurances that the individual shall work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

"(2) provide assurances that the individual will repay all of the scholarship assistance awarded under this title in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of the agreement under paragraph (1) are not complied with except where the individual–

"(A) dies;

"(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

"(C) has been discharged in bankruptcy; and

"(3) set forth the terms and conditions under which an individual receiving a scholarship under this part may seek employment in the field of law enforcement in a State other than the State which awarded such individual the scholarship under this part.

***28** "(c) Service Obligation.–(1) Except as provided in paragraph (2), each individual awarded a scholarship under this part shall work in a law enforcement position in the State which awarded such individual the scholarship for a period of one month for each credit hour for which financial assistance is received under this part.

"(2) For purposes of satisfying the requirement specified in paragraph (1), each individual awarded a scholarship under this part shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

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"SEC. 2110. REPORTS TO CONGRESS.

"Not later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate. Such report shall–

"(1) state the number of present and past scholarship recipients under this part, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have serve law enforcement;

"(2) describe the geographic, racial, and gender dispersion of scholarship recipients; and

"(3) describe the progress of the program and make recommendations for changes in the program.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 701 of this Act, is amended by striking the matter relating to part U and inserting the following:

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SEC. 1233. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 702 of this Act, is amended by adding after paragraph (14) the following:

"(15) There are authorized to be appropriated $30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of part U.".

Subtitle E–Law Enforcement Family Support

SEC. 1241. LAW ENFORCEMENT FAMILY SUPPORT.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1232 of this Act is amended–

(1) by redesignating part V as part W;

(2) by redesignating section 2201 as 2301; and

(3) by inserting after part V the following:

"PART V–FAMILY SUPPORT

"SEC. 2201. DUTIES OF DIRECTOR.

"The Director shall–

"(1) establish guidelines and oversee the implementation of family-friendly policies within law enforcement-related offices and divisions in the Department of Justice;

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"(2) study the effects of stress on law enforcement personnel and family well-being and disseminate the findings of such studies to Federal, State, and local law enforcement agencies, related organizations, and other interested parties;

***29** "(3) identify and evaluate model programs that provide support services to law enforcement personnel and families;

"(4) provide technical assistance and training programs to develop stress reduction and family support to State and local law enforcement agencies;

"(5) collect and disseminate information regarding family support, stress reduction, and psychological services to Federal, State, and local law enforcement agencies, law enforcement-related organizations, and other interested entities; and

"(6) determine issues to be researched by the Bureau and by grant recipients.

"SEC. 2202. GENERAL AUTHORIZATION.

"The Director is authorized to make grants to States and local law enforcement agencies to provide family support services to law enforcement personnel.

"SEC. 2203. USES OF FUNDS.

"(a) In General.–A State or local law enforcement agency that receives a grant under this Act shall use amounts provided under the grant to establish or improve training and support programs for law enforcement personnel.

"(b) Required Activities.–A law enforcement agency that receives funds under this Act shall provide at least one of the following services:

"(1) Counseling for law enforcement family members.

"(2) Child care on a 24-hour basis.

"(3) Marital and adolescent support groups.

"(4) Stress reduction programs.

"(5) Stress education for law enforcement recruits and families.

"(c) Optional Activities.–A law enforcement agency that receives funds under this Act may provide the following services:

"(1) Post-shooting debriefing for officers and their spouses.

"(2) Group therapy.

"(3) Hypertension clinics.

"(4) Critical incident response on a 24-hour basis.

"(5) Law enforcement family crisis telephone services on a 24-hour basis.

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"(6) Counseling for law enforcement personnel exposed to the human immunodeficiency virus.

"(7) Counseling for peers.

"(8) Counseling for families of personnel killed in the line of duty.

"(9) Seminars regarding alcohol, drug use, gambling, and overeating.

"SEC. 2204. APPLICATIONS.

"A law enforcement agency desiring to receive a grant under this part shall submit to the Director an application at such time, in such manner, and containing or accompanied by such information as the Director may reasonably require. Such application shall–

"(1) certify that the law enforcement agency shall match all Federal funds with an equal amount of cash or in-kind goods or services from other non-Federal sources;

"(2) include a statement from the highest ranking law enforcement official from the State or locality applying for the grant that attests to the need and intended use of services to be provided with grant funds; and

"(3) assure that the Director or the Comptroller General of the United States shall have access to all records related to the receipt and use of grant funds received under this Act.

"SEC. 2205. AWARD OF GRANTS; LIMITATION.

"(a) Grant Distribution.–In approving grants under this part, the Director shall assure an equitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

"(b) Duration.–The Director may award a grant each fiscal year, not to exceed $100,000 to a State or local law enforcement agency for a period not to exceed 5 years. In any application from a State or local law enforcement agency for a grant to continue a program for the second, third, fourth, or fifth fiscal year following the first fiscal year in which a grant was awarded to such agency, the Director shall review the progress made toward meeting the objectives of the program. The Director may refuse to award a grant if the Director finds sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for reconsideration.

"(c) Limitation.–Not more than 10 percent of grant funds received by a State or a local law enforcement agency may be used for administrative purposes.

***30** "SEC. 2206. DISCRETIONARY RESEARCH GRANTS.

"The Director may reserve 10 percent of funds to award research grants to a State or local law enforcement agency to study issues of importance in the law enforcement field as determined by the Director.

"SEC. 2207. REPORTS.

"(a) Report From Grant Recipients.–A State or local law enforcement agency that receives a grant under this Act shall submit to the Director an annual report that includes–

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"(1) program descriptions;

"(2) the number of staff employed to administer programs;

"(3) the number of individuals who participated in programs; and

"(4) an evaluation of the effectiveness of grant programs.

"(b) Report From Director.–(1) The Director shall submit to the Congress a report not later than March 31 of each fiscal year.

"(2) Such report shall contain–

"(A) a description of the types of projects developed or improved through funds received under this Act;

"(B) a description of exemplary projects and activities developed;

"(C) a designation of the family relationship to the law enforcement personnel of individuals served; and

"(D) the number of individuals served in each location and throughout the country.

"SEC. 2208. DEFINITIONS.

"For purposes of this part–

"(1) the term 'family-friendly policy' means a policy to promote or improve the morale and well being of law enforcement personnel and their families; and

"(2) the term 'law enforcement personnel' means individuals employed by Federal, State, and local law enforcement agencies.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1232 of this Act, is amended by striking the matter relating to part V and inserting the following:

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"PART W–TRANSITION; EFFECTIVE DATE; REPEALS

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SEC. 1242. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1233 of this Act, is amended by adding after paragraph (15) the following:

"(16) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996. Not more than 20 percent of such funds may be used to accomplish the duties of the Director under section 2201 in part V of this Act, including administrative costs, research, and training programs.".

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TITLE XIII–FRAUD

SEC. 1301. MAIL FRAUD.

Section 1341 of title 18, United States Code, is amended–

(1) by inserting "or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier," after "Postal Service,"; and

(2) by inserting "or such carrier" after "causes to be delivered by mail".

***31** SEC. 1302. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.

(a) In General.–Section 1029 of title 18, United States Code, is amended–

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly, and with intent to defraud, effects transactions, with one or more access devices issued to another person, to receive anything of value aggregating $1,000 or more during any one-year period;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of–

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(b) Technical Amendments for Section 1029.–Section 1029 of title 18, United States Code, as amended by subsection (a), is amended–

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e)–

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

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SEC. 1303. CRIMES BY OR AFFECTING PERSONS ENGAGED IN THE BUSINESS OF INSURANCE WHOSE ACTIVITIES AFFECT INTERSTATE COMMERCE.

(a) In General.–Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"S 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

"(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and, with the intent to deceive, knowingly makes any false material statement or report or willfully overvalues any land, property or security–

"(A) in connection with reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

"(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardizes the safety and soundness of an insurer.

"(b)(1) Whoever–

"(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the embezzlement, abstraction, purloining, or willful misappropriation described in paragraph (1) jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years. If the amount or value embezzled, abstracted, ***32** purloined, or willfully misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

"(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to–

"(A) deceive any person about the financial condition or solvency of such business, or

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"(B) to deceive any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years.

"(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

"(e)(1)(A) Whoever has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(B) Whoever is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

"(f) As used in this section–

"(1) the term 'business of insurance' means–

"(A) the writing of insurance, or

"(B) the reinsuring of risks underwritten by insurance companies,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

"(2) the term 'insurer' means a business which is organized as an insurance company under the laws of any State, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his or her capacity as such, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

"(3) the term 'interstate commerce' means–

"(A) commerce within the District of Columbia, or any territory or possession of the United States;

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"(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

"(C) all commerce between points within the same State through any place outside such State; or

"(D) all other commerce over which the United States has jurisdiction; and

***33** "(4) the term 'State' includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"S 1034. Civil penalties and injunctions for violations of section 1033

"(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the insolvency of an insurer which has been placed under the control of a State insurance regulatory agency or official, such penalty shall be remitted to the regulatory official of the insurer's State of domicile for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(b) Clerical Amendment.–The table of sections for chapter 47 of such title is amended by adding at the end the following new item:

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(c) Miscellaneous Amendments to Title 18, United States Code.–(1) Tampering with insurance regulatory proceedings.–Section 1515(a)(1) of title 18, United States Code, is amended–

(A) by striking "or" at the end of subparagraph (B);

(B) by inserting "or" at the end of subparagraph (C); and

(C) by adding at the end thereof the following new subparagraph:

"(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;".

(2) Limitations.–Section 3293 of such title is amended by inserting "1033," after "1014,".

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(3) Obstruction of Criminal Investigations.–Section 1510 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) Whoever–

"(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding directly or indirectly, notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

"(2) As used in paragraph (1), the term 'subpoena for records' means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.".

***34** TITLE XIV–PROTECTION OF YOUTH

Subtitle A–Crimes Against Children

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the "Jacob Wetterling Crimes Against Children Registration Act".

SEC. 1402. ESTABLISHMENT OF PROGRAM.

(a) In General.–

(1) State guidelines.–The Attorney General shall establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being placed on parole, or being placed on supervised release.

(2) Definition.–For purposes of this subsection, the term "criminal offense against a victim who is a minor" includes–

(A) kidnapping of a minor, except by a noncustodial parent;

(B) false imprisonment of a minor, except by a noncustodial parent;

(C) criminal sexual conduct toward a minor;

(D) solicitation of minors to engage in sexual conduct;

(E) use of minors in a sexual performance; or

(F) solicitation of minors to practice prostitution.

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(b) Registration Requirement Upon Release, Parole, or Supervised Release.–An approved State registration program established by this section shall contain the following requirements:

(1) Notification.–If a person who is required to register under this section is released from prison, paroled, or placed on supervised release, a State prison officer shall–

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(C) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(D) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(2) Transfer of information to state and the f.b.i.–The officer shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Identification Division of the Federal Bureau of Investigation.

(3) Annual verification.–On each anniversary of a person's initial registration date during the period in which the person is required to register under this section, the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person. The person shall mail the verification form to the officer within 10 days after receipt of the form. The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed his or her residence address.

(4) Notification of local law enforcement agencies of changes in address.–Any change of address by a person required to register under this section reported to the designated State law enforcement agency shall immediately be reported to the appropriate law enforcement agency having jurisdiction where the person is residing.

(c) Registration for 10 Years.–A person required to register under this section shall continue to comply with this section until 10 years have elapsed since the person was released from imprisonment, or placed on parole or supervised release.

***35** (d) Penalty.–A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in such State. It is the sense of Congress that such penalties should include at least 6 months imprisonment.

(e) Private Data.–The information provided under this section is private data on individuals and may be used for law enforcement purposes and confidential background checks conducted with fingerprints for child care services providers.

SEC. 1403. STATE COMPLIANCE.

(a) Compliance Date.–Each State shall have 3 years from the date of the enactment of this Act in which to implement the provisions of this subtitle.

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(b) Ineligibility for Funds.–The allocation of funds under section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) received by a State not complying with this subtitle 3 years after the date of enactment of this Act shall be reduced by 25 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

Subtitle B–Parental Kidnapping

SEC. 1421. SHORT TITLE.

This title may be cited as the "International Parental Kidnapping Crime Act of 1991".

SEC. 1422. TITLE 18 AMENDMENT.

(a) In General.–Chapter 55 (relating to kidnapping) of title 18, United States Code, is amended by adding at the end the following:

"S 1204. International parental kidnapping

"(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

"(b) As used in this section–

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights', with respect to a child, means the right to physical custody of the child–

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 55 of title 18, United States Code, is amended by adding at the end the following:

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SEC. 1423. STATE COURT PROGRAMS REGARDING INTERSTATE AND INTERNATIONAL PARENTAL CHILD ABDUCTION.

There is authorized to be appropriated $250,000 to carry out under the State Justice Institute Act of 1984 (42 U.S.C. 10701–10713) national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction.

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Subtitle C–Sexual Abuse Amendments

SEC. 1431. SEXUAL ABUSE AMENDMENTS.

(a) Definitions of Sexual Act and Sexual Contact for Victims Under the Age of 16.–Paragraph (2) of section 2245 of title 18, United States Code, is amended–

(1) in subparagraph (B), by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting in lieu thereof "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to ***36** abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

Subtitle D–Reporting of Crimes Against Children

SEC. 1441. SHORT TITLE.

This subtitle may be cited as the "National Child Abuser Identification Act of 1991".

SEC. 1442. DEFINITIONS.

For the purposes of this subtitle–

(1) the term "child" means a person who is a child for the purposes of the criminal child abuse law of a State;

(2) the term "child abuse" means the physical, psychological, or emotional injuring, sexual abuse or exploitation, neglectful treatment, or maltreatment of a child by any person in violation of the criminal child abuse law of a State;

(3) the term "child abuser information" means the following facts concerning a person who has violated the criminal child abuse laws of a State–

(A) name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, and a brief description of the crime or crimes committed by the offender; and

(B) any other information that the Federal Bureau of Investigation determines may be useful in identifying child abusers;

(4) the term "criminal child abuse law of a State" means the law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(5) the term "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific; and

(6) the term "State criminal history information repository" means a division or office of a State that acts as a central repository for criminal child abuse information.

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SEC. 1443. PURPOSES.

The purposes of this subtitle are–

(1) to establish a national system through which current, accurate information concerning persons who have committed crimes of child abuse can be obtained from a centralized source;

(2) to assist in the prevention of second incidents of child abuse by providing information about persons who have been convicted of a crime of child abuse to governmental agencies authorized to receive criminal history information; and

(3) to understand the problem of child abuse in the United States by providing statistical data to the Department of Justice, the National Center on Child Abuse and Neglect, the Congress, and other interested parties.

SEC. 1444. REPORTING BY THE STATES.

(a) In General.–A State criminal history information repository shall report child abuser information to the Federal Bureau of Investigation.

(b) Guidelines.–(1) The Attorney General shall establish guidelines for the reporting of child abuser information, including procedures for carrying out the purposes of this subtitle.

(2) The guidelines established under paragraph (1) shall require that the State shall ensure that reports of all convictions under the criminal child abuse law of the State are maintained by a State criminal history information repository and reported to the Federal Bureau of Investigation.

(c) Annual Summary.–The Attorney General shall publish an annual statistical summary of the child abuser information reported under this subtitle.

SEC. 1445. CONDITION ON GRANTS.

Compliance with section 1444 shall be a condition to the receipt by a State of any grant, cooperative agreement, or other assistance under–

(1) section 1404 of the Victims of Crime Act (42 U.S.C. 10603); and

(2) the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.).

***37** TITLE XV–MISCELLANEOUS DRUG CONTROL

SEC. 1501. ANABOLIC STEROIDS PENALTIES.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended by inserting after subsection (a) the following:

"(b)(1) Whoever, being a physical trainer or adviser to an individual, endeavors to persuade or induce that individual to possess or use anabolic steroids in violation of subsection (a), shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both. If such individual has not attained the age of 18 years, the maximum imprisonment shall be 5 years.

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"(2) As used in this subsection, the term 'physical trainer or adviser' means any professional or amateur coach, manager, trainer, instructor, or other such person, who provides any athletic or physical instruction, training, advice, assistance, or other such service to any person.".

SEC. 1502. DRUG-FREE PUBLIC HOUSING.

(a) Public Housing.–

(1) In general.–Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended–

(A) so that the heading reads as follows "distribution or manufacturing in or near schools and colleges, or public housing"; and

(B) by striking "or a playground" each place it appears and inserting "a playground, or a public housing project".

(2) The item relating to section 419 in the table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting ", or public housing" after "colleges".

(b) Determination of Boundaries and Posting of Signs.–Section 5124 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11903) is amended–

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) with respect only to public housing, the determination by the public housing agency (in consultation with appropriate officials of the applicable local government and law enforcement agencies) of the geographical boundaries of the real property comprising public housing projects of the agency and the posting of signs identifying the property of the projects as drug-free zones.".

(c) Notification.–

(1) In general.–The Secretary of Housing and Urban Development shall require each public housing agency to post notices regarding the penalty imposed by the amendment made by subsection (a)(1) in common areas and at other appropriate locations in public housing projects of the agency. The notices shall contain statements–

(A) of the offenses to which the treble penalty (under the amendment made by subsection (a)(1)) applies;

(B) of the date on which the treble penalty takes effect; and

(C) that the treble penalty applies to offenses committed on the property comprising the public housing projects of the agency.

(2) Definitions.–For purposes of this subsection, the terms "project", "public housing", and "public housing agency" have the meaning given the terms in section 3(b) of the United States Housing Act of 1937.

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SEC. 1503. APPORTIONMENT OF NARCOTIC RAW MATERIAL IMPORTS.

(a) Generally.–The Attorney General may–

(1) for calendar year 1992, reserve not more than 40 percent for Turkey and 30 percent for India; and

(2) for calendar year 1993, reserve not more than 40 percent for Turkey and 20 percent for India;

of the total narcotic raw materials imports if the Attorney General determines that these materials are in adequate supply and are priced competitively with other authorized suppliers.

(b) Definition.–As used in this section, the term "narcotic raw materials" means crude opium, poppy straw, or concentrate of poppy straw.

SEC. 1504. ENHANCEMENT OF PENALTIES FOR DRUG TRAFFICKING IN PRISONS.

Section 1791 of title 18, United States Code, is amended–

***38** (1) in subsection (c), by inserting before "Any" the following new sentence: "Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such controlled substance.";

(2) in subsection (d)(1)(A), by inserting after "a firearm or destructive device" the words "or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection";

(3) in subsection (d)(1)(B), by inserting before "ammunition," the following: "marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection,";

(4) in subsection (d)(1)(C), by inserting "methamphetamine, its salts, isomers, and salts of its isomers," after "a narcotic drug,"; and

(5) in subsection (d)(1)(D), by inserting "(A), (B), or" before "(C)".

SEC. 1505. DRUG TESTING OF FEDERAL OFFENDERS ON POST-CONVICTION RELEASE.

(a) Drug Testing Program.–(1) Chapter 229 of title 18, United States Code, is amended by adding at the end the following:

"S 3608. Drug testing of Federal offenders on post-conviction release

"The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of Federal offenders on post-conviction release. The program shall include such standards and guidelines as the Director may determine necessary to ensure the reliability and accuracy of the drug testing programs. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

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(2) The table of sections at the beginning of chapter 229 of title 18, United States Code, is amended by adding at the end the following:

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(b) Drug Testing Condition for Probation.–

(1) Section 3563(a) of title 18, United States Code, is amended–

(A) in paragraph (2), by striking out "and";

(B) in paragraph (3), by striking out the period and inserting "; and"; and

(C) by adding after paragraph (3) the following:

"(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of the controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. In addition, the Court may decline to impose this condition for any individual defendant, if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant. A defendant who tests positive may be detained pending verification of a drug test result.".

(2) Drug testing for supervised release.–Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court), for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(3) Drug testing in connection with parole.–Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(c) Revocation of Parole.–Section 4214(f) of title 18, United States Code, is amended by inserting after "substance" the following: ", or who unlawfully uses a ***39** controlled substance or refuses to cooperate in drug testing imposed as a condition of parole,".

SEC. 1506. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

TITLE XVI–FAIRNESS IN DEATH SENTENCING ACT OF 1991

SEC. 1601. SHORT TITLE.

This Act may be cited as the "Fairness in Death Sentencing Act of 1991".

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SEC. 1602. AMENDMENT TO TITLE 28.

(a) Procedure.–Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177–RACIALLY DISCRIMINATORY CAPITAL SENTENCING

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"S 3501. Prohibition against the execution of a sentence of death imposed on the basis of race

"(a) In General.–No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race.

"(b) Inference of Race as the Basis of Death Sentence.–An inference that race was the basis of a death sentence is established if valid evidence is presented demonstrating that, at the time the death sentence was imposed, race was a statistically significant factor in decisions to seek or to impose the sentence of death in the jurisdiction in question.

"(c) Relevant Evidence.–Evidence relevant to establish an inference that race was the basis of a death sentence may include evidence that death sentences were, at the time pertinent under subsection (b), being imposed significantly more frequently in the jurisdiction in question–

"(1) upon persons of one race than upon persons of another race; or

"(2) as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.

"(d) Validity of Evidence Presented to Establish an Inference.–If statistical evidence is presented to establish an inference that race was the basis of a sentence of death, the court shall determine the validity of the evidence and if it provides a basis for the inference. Such evidence must take into account, to the extent it is compiled and publicly made available, evidence of the statutory aggravating factors of the crimes involved, and shall include comparisons of similar cases involving persons of different races.

"(e) Rebuttal.–If an inference that race was the basis of a death sentence is established under subsection (b), the death sentence may not be carried out unless the government rebuts the inference by a preponderance of the evidence. The government cannot rely on mere assertions that it did not intend to discriminate or that the cases fit the statutory criteria for imposition of the death penalty.

"S 3502. Access to data on death eligible cases

"Data collected by public officials concerning factors relevant to the imposition of the death sentence shall be made publicly available.

"S 3503. Enforcement of the chapter

"In any proceeding brought under section 2254, the evidence of a prima facie case supporting a claim under this chapter may be presented in an evidentiary hearing and need not be set forth in the petition. Notwithstanding section 2254, no determination

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on the merits of a factual issue made by a State court pertinent to any claim under section 2921 shall be presumed to be correct unless–

"(1) the State is in compliance with section 2922;

***40** "(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim; and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

"S 3504. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 3501 of this title.".

(b) Amendment to Table of Chapters.–The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

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SEC. 1603. ACTIONS BEFORE ENACTMENT.

No person shall be barred from raising any claim under section 3501 of title 28, United States Code, as added by this Act, on the ground of having failed to raise or to prosecute the same or a similar claim before the enactment of the Act, nor by reason of any adjudication rendered before that enactment.

TITLE XVII–MISCELLANEOUS CRIME CONTROL

Subtitle A–General

SEC. 1701. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.

(a) Chapter 41 Amendment.–Chapter 41 of title 18, United States Code, is amended–

(1) by adding at the end the following:

"S 880. Receiving the proceeds of extortion

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than three years, or both."; and

(2) in the table of sections, by adding at the end the following item:

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(b) Section 1202 Amendment.–Section 1202 of title 18, United States Code, is amended–

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(1) by designating the existing matter as subsection "(a)"; and

(2) by adding at the end the following:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten years, or both.

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.".

SEC. 1702. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.

Section 2114 of title 18, United States Code, is amended–

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten years, or both.".

SEC. 1703. CRIMINAL STREET GANGS.

(a) In General.–Title 18, United States Code, is amended by inserting after chapter 25 the following:

***41** "CHAPTER 26–CRIMINAL STREET GANGS

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"S 521. Criminal street gangs

"(a) Whoever, under the circumstances described in subsection (c) of this section, commits an offense described in subsection (b) of this section, shall, in addition to any other sentence authorized by law, be sentenced to a term of imprisonment of not more than 10 years and may also be fined under this title. Such sentence of imprisonment shall run consecutively to any other sentence imposed.

"(b) The offenses referred to in subsection (a) of this section are–

"(1) any Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act);

"(2) any Federal felony crime of violence;

"(3) any felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act or the Maritime Drug Law Enforcement Act; or

"(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

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"(c) The circumstances referred to in subsection (a) of this section are that the offense described in subsection (b) was committed as a member of, on behalf of, or in association with a criminal street gang and that person has been convicted, within the past 5 years for–

"(1) any offense listed in subsection (b) of this section;

"(2) any State offense–

"(A) involving a controlled substance (as defined in section 102 of the Controlled Substances Act); or

"(B) that is a crime of violence;

for which the maximum penalty is more than 1 year's imprisonment; or

"(3) any Federal or State offense that involves the theft or destruction of property for which the maximum penalty is more than 1 year's imprisonment; or

"(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

"(d) For purposes of this section–

"(1) the term 'criminal street gang' means any group, club, organization, or association of 5 or more persons–

"(A) whose members engage or have engaged within the past 5 years, in a continuing series of violations of any offense treated in subsection (b); and

"(B) whose activities affect interstate or foreign commerce; and

"(2) the term 'conviction' includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency involving a violent or controlled substances felony.".

(b) Clerical Amendment.–The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 25 the following:

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SEC. 1704. UNDERCOVER OPERATIONS.

(a) In General.–Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"S 21. Stolen or counterfeit nature of property for certain crimes defined

"(a) Wherever in this title it is an element of an offense that–

"(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

"(2) the defendant knew that the property was of such character;

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such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

"(b) For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following:

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***42** SEC. 1705. INCREASED PENALTIES FOR DRUG-DEALING IN "DRUG-FREE" ZONES.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended–

(1) in subsection (a), by striking "one year" and inserting "3 years"; and

(2) in subsection (b), by striking "three years" each place it appears and inserting "5 years".

SEC. 1706. F.B.I. ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) Required Certification.–Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) Required Certification.–The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may–

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that–

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that–

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with–

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"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) Report to Judiciary Committees.–Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

SEC. 1707. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) Section 241.–Section 241 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in".

(b) Section 242.–Section 242 of title 18, United States Code, is amended–

(1) by striking "inhabitant of" and inserting "person in"; and

(2) by striking "such inhabitant" and inserting "such person".

SEC. 1708. INCREASED PENALTY FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting in lieu thereof "and thereafter performs or attempts to perform (1) any of the acts specified in paragraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (2) any of the acts specified in paragraph (2) shall be fined under this title or imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life".

SEC. 1709. MISUSE OF INITIALS "DEA".

Section 709 of title 18, United States Code, is amended by inserting the following before the paragraph beginning "Shall be punished": "Whoever, except with the written permission of the Administrator of the Drug Enforcement Administration, knowingly uses the words 'Drug Enforcement Administration' or the initials 'DEA' ***43** or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by the Drug Enforcement Administration;".

SEC. 1710. DEFINITION OF SAVINGS AND LOAN ASSOCIATION IN BANK ROBBERY STATUTE.

Section 2113 of title 18, United States Code, is amended by adding at the end the following:

"(h) As used in this section, the term 'savings and loan association' means (1) any Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), having accounts

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insured by the Federal Deposit Insurance Corporation, and (2) any corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) which is operating under the laws of the United States.”.

SEC. 1711. CONFORMING DEFINITION OF “1-YEAR PERIOD” IN 18 U.S.C. 1516.

Section 1516(b) of title 18, United States Code, is amended–

(1) by inserting “(1)” before “the term”; and

(2) by inserting before the period the following: “ and (2) the term ‘in any 1 year period’ has the meaning given to the term ‘in any one-year period’ in section 666 of this title.”.

SEC. 1712. DEFINITION OF LIVESTOCK.

Section 2311 of title 18, United States Code, is amended by inserting after the second paragraph relating to the definition of “cattle” the following:

“‘Livestock’ means any domestic animals raised for home use, consumption, or profit, such as horses, pigs, goats, fowl, sheep, and cattle, or the carcasses thereof;”.

SEC. 1713. FOREIGN MURDER OF UNITED STATES NATIONALS.

(a) In General.–Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new section:

“S 1118. Foreign murder of United States nationals

“(a) Whoever, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113 of this title.

“(b) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same act or omission.

“(c) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the act or omission took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this subsection is not subject to judicial review.

“(d) In the course of the enforcement of this section and notwithstanding any other provision of law, the Attorney General may request assistance from any Federal, State, local, or foreign agency, including the Army, Navy, and Air Force.

“(e) As used in this section, the term ‘national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).”.

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(b) Conforming Amendment.–Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1118".

(c) Clerical Amendment.–The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

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SEC. 1714. NATIONAL BASELINE STUDY ON CAMPUS SEXUAL ASSAULT.

(a) In General.–The Attorney General shall, by contract with an appropriate entity, provide for a national base study to research the incidence of campus sexual assault and explore the adequacy of college and university policies and practices in protecting victims' legal rights, as well as the public interest in prosecuting criminals and preventing future crimes.

***44** (b) Components of the Report.–The report described in subsection (a) shall include an analysis of–

(1) the number of reported (and estimated number of unreported) allegations of sexual assault occurring on college and university campuses, and to whom the allegations are reported–campus authorities, sexual assault victim service entities, or local criminal authorities;

(2) the number of campus sexual assault allegations reported to campus authorities which are reported to criminal authorities;

(3) the percentage of campus sexual assault allegations compared to noncampus sexual assault allegations which result in eventual criminal prosecution;

(4) State laws or regulations pertaining specifically to campus sexual assaults;

(5) the adequacy of campus policies and practices in protecting the legal rights and interests of sexual assault victims and the accused, including consideration of–

(A) practices which might discourage the reporting of sexual assaults to local criminal authorities, or result in any form of obstruction of justice, and thus undermine the public interest in prosecuting perpetrators of sexual assault; and

(B) the ability of campus disciplinary hearings to properly address allegations of sexual assault;

(6) whether colleges and universities take adequate measures to ensure victims are free of unwanted contact with alleged assailants;

(7) why colleges and universities are sued in civil court regarding sexual assaults, the resolution of these cases, and measures that can be taken to prevent future lawsuits;

(8) the different ways in which colleges and universities respond to allegations of sexual assault, including an assessment of which programs work the best;

(9) recommendations to redress concerns raised in this report; and

(10) any other issues or questions the Attorney General deems appropriate to this study.

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(c) Authorization.–There shall be authorized $200,000 to fund the competitive grant or grants to conduct this study, which shall be awarded to persons or organizations with expertise in the legal aspects of campus violence.

SEC. 1715. GANG INVESTIGATION COORDINATION AND INFORMATION COLLECTION.

(a) Coordination.–The Attorney General (or his designee), in consultation with the Secretary of the Treasury (or his designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) Data Collection.–The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) Report.–The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) to be submitted to the President and Congress by July 1, 1992.

(d) Authorization of Funds.–There are authorized to be appropriated for fiscal year 1992 such sums as may be necessary to carry out this section.

SEC. 1716. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

SEC. 1717. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code (relating to the adoption of State laws for areas within Federal jurisdiction), is amended by inserting after "title" in subsection (a) the phrase "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, Territory, Possession, or District", and by inserting the following new subsection (c) at the end thereof:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Territory, Possession, or District, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Territory, Possession, or District it would lie within if the boundaries of such State, Territory, Possession, or District were extended seaward to the outer limit of the territorial sea of the United States.".

***45** SEC. 1718. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

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SEC. 1719. CRIMINAL PENALTY FOR FAILURE TO OBEY ORDER TO LAND.

(a) In General.–Chapter 109 of title 18, United States Code, is amended by adding at the end the following new section:

"S 2237. Order to land

"(a)(1) A pilot or operator of an aircraft that has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, who intentionally fails to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act, or section 1956 or 1957 of this title (relating to money laundering), shall be fined under this title, or imprisoned not more than three years, or both.

"(2) The Secretary of the Treasury and the Secretary of Transportation, in consultation with the Attorney General, shall make rules governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot or operator of an aircraft.

"(3) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 or another law the Customs Service enforces or administers, or the authority of a Federal law enforcement officer under a law of the United States to order an aircraft to land.

"(b) A foreign nation may consent or waive objection to the United States enforcing the laws of the United States by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

"(c) For purposes of this section–

"(1) the term 'aircraft subject to the jurisdiction of the United States' includes–

"(A) an aircraft located over the United States or the customs waters of the United States;

"(B) an aircraft located in the airspace of a foreign nation, when that nation consents to United States enforcement of United States law; and

"(C) over the high seas, an aircraft without nationality, an aircraft of the United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the United States enforcement of United States law; and

"(2) the term 'Federal law enforcement officer' has the same meaning that term has in section 115 of this title.

"(d) An aircraft that is used in violation of this section is liable in rem for a fine imposed under this section.

"(e) An aircraft that is used in violation of this section may be seized and forfeited. The laws relating to seizure and forfeiture for violation of the customs laws, including available defenses such as innocent owner provisions, apply to aircraft seized or forfeited under this section.

"(f) The Secretary of the Treasury and the Secretary of Transportation may delegate Federal law enforcement officer seizure and forfeiture responsibilities under this section to other law enforcement officers.".

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(b) Clerical Amendment.–The table of sections at the beginning of chapter 109 of title 18, United States Code, is amended by adding at the end the following new item:

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SEC. 1720. CODIFICATION OF EXCEPTION TO EXCLUSIONARY RULE.

Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States if the evidence was obtained in reasonable reliance on a search warrant issued by a detached and neutral magistrate even though the warrant is ultimately determined to be invalid, unless–

***46** (1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

(2) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

(3) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid.

SEC. 1721. ADDITION OF ATTEMPTED ROBBERY, KIDNAPPING, SMUGGLING, AND PROPERTY DAMAGE OFFENSES TO ELIMINATE INCONSISTENCIES AND GAPS IN COVERAGE.

(a)(1) Section 2111 of title 18, United States Code, is amended by inserting "or attempts to take" after "takes".

(2) Section 2112 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(3) Section 2114 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(b) Section 1201(d) of title 18, United States Code, is amended by striking "Whoever attempts to violate subsection (a)(4) or (a)(5)" and inserting "Whoever attempts to violate subsection (a)".

(c) Section 545 of title 18, United States Code, is amended by inserting "or attempts to smuggle or clandestinely introduce" after "smuggles, or clandestinely introduces".

(d)(1) Section 1361 of title 18, United States Code, is amended–

(A) by inserting "or attempts to commit any of the foregoing offenses" before "shall be punished", and

(B) by inserting "or attempted damage" after "damage" each place it appears.

(2) Section 1362 of title 18, United States Code, is amended by inserting "or attempts willfully or maliciously to injure or destroy" after "willfully or maliciously injures or destroys".

(3) Section 1366 of title 18, United States Code, is amended–

(A) by inserting "or attempts to damage" after "damages" each place it appears;

(B) by inserting "or attempts to cause" after "causes"; and

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(C) by inserting "or would if the attempted offense had been completed have exceeded" after "exceeds" each place it appears.

SEC. 1722. CLARIFYING AMENDMENT REGARDING SCOPE OF PROHIBITION AGAINST GAMBLING ON SHIPS IN INTERNATIONAL WATERS.

The first paragraph of section 1081 of title 18, United States Code, is amended by adding at the end the following: "Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986).".

SEC. 1723. BINDOVER SYSTEM FOR CERTAIN VIOLENT JUVENILES.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751), as amended by section 1002, is amended–

(1) in paragraph (21) by striking "and" at the end;

(2) in paragraph (22) by striking the period at the end and inserting "; and"; and

(3) inserting after paragraph (22) the following:

"(23) programs which address the need for effective bindover systems for the prosecution of violent 16- and 17-year olds in courts with jurisdiction over adults for the crimes of–

"(A) murder in the first degree;

"(B) murder in the second degree;

"(C) attempted murder;

"(D) armed robbery when armed with a firearm;

"(E) aggravated battery or assault when armed with a firearm;

"(F) criminal sexual penetration when armed with a firearm; and

"(G) drive-by shootings as described in section 922(u) of title 18, United States Code.".

SEC. 1724. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

***47** "S 2245. Penalties for subsequent offenses

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"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) The table of sections for chapter 109A of title 18, United States Code, is amended by–

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

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Subtitle B–Motor Vehicle Theft Prevention

SEC. 1731. SHORT TITLE.

This title may be cited as the "Motor Vehicle Theft Prevention Act".

SEC. 1732. MOTOR VEHICLE THEFT PREVENTION PROGRAM.

(a) Establishment of Program.–Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"S 160. Motor vehicle theft prevention program

"(a) In General.–Not later than 180 days after the date of enactment of this section, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the 'program') under which–

"(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner–

"(A) states that the vehicle is not normally operated under certain specified conditions; and

"(B) agrees to–

"(i) display program decals or devices on the owner's vehicle; and

"(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions; and

"(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

"(b) Uniform Decal or Device Designs.–

"(1) In general.–The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

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"(2) Type of design.–The uniform design shall–

"(A) be highly visible; and

"(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

"(c) Voluntary Consent Form.–The voluntary consent form used to enroll in the program shall–

"(1) clearly state that participation in the program is voluntary;

"(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

"(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

"(4) include any additional information that the Attorney General may reasonably require.

"(d) Specified Conditions Under Which Stops May Be Authorized.–

***48** "(1) In general.–The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may include–

"(A) the operation of the vehicle during certain hours of the day; or

"(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

"(2) More than one set of conditions.–The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

"(3) No new conditions without consent.–After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

"(4) Limited participation by states and localities.–A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

"(e) Motor Vehicles for Hire.–

"(1) Notification to lessees.–Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

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"(2) Type of notice.–The notice required by this subsection shall–

"(A) be in writing;

"(B) be in a prominent format to be determined by the Attorney General; and

"(C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

"(3) Fine for failure to provide notice.–Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed $5,000.

"(f) Participating State or Locality.–A State or locality may participate in the program by filing an agreement to comply with the terms and conditions of the program with the Attorney General.

"(g) Notification of Police.–As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

"(h) Regulations.–The Attorney General shall promulgate regulations to implement this section.

"(i) Authorization of Appropriations.–There are authorized such sums as are necessary to carry out this section.".

(b) Amendment to Chapter Analysis.–The analysis for chapter 1 of title 23, United States Code, is amended by adding after the item for section 159 the following:

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SEC. 1733. ALTERING OR REMOVING MOTOR VEHICLE IDENTIFICATION NUMBERS.

(a) Basic Offense.–Subsection (a) of section 511 of title 18, United States Code, is amended to read as follows:

"(a) Whoever, with intent to further the theft of a vehicle, knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, or a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, shall be fined under this title or imprisoned not more than five years, or both.".

(b) Excepted Persons.–Paragraph (2) of section 511(b) of title 18, United States Code, is amended by–

(1) striking "and" after the semicolon in subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting "; and"; and

***49** (3) adding at the end thereof the following:

"(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by–

"(i) the owner or his authorized agent;

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"(ii) applicable State or local law; or

"(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.".

(c) Definition.–Section 511 of title 18, United States Code, is amended by adding at the end thereof the following:

"(d) For purposes of subsection (a) of this section, the term 'tampers with' includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility.".

(d) Unauthorized Application of a Decal or Device.–

(1) In general.–Chapter 25 of title 18, United States Code, is amended by adding after section 511 the following new section:

"S 511A. Unauthorized application of theft prevention decal or device

"(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed $1,000.

"(b) For purposes of this section, the term 'theft prevention decal or device' means a decal or other device designed in accordance with a uniform design for such devices developed pursuant to the Motor Vehicle Theft Prevention Act.".

(2) Clerical amendment.–The table of sections at the beginning of chapter 25 of title 18, United States Code, is amended by adding immediately after the item for section 511 the following:

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Subtitle C–Terrorism: Civil Remedy

SEC. 1734. SHORT TITLE.

This subtitle may be cited as the "Antiterrorism Act of 1991".

SEC. 1735. TERRORISM.

(a) Terrorism.–Chapter 113A of title 18, United States Code, as amended by subsection (d) of this section, is amended–

(1) in section 2331 by striking subsection (d) and redesignating subsection (e) as subsection (d);

(2) by redesignating section 2331 as 2332, and striking the heading for section 2332 as so redesignated and inserting the following:

"S 2332. Criminal penalties";

(3) by inserting before section 2332 as so redesignated the following:

"S 2331. Definitions

"As used in this chapter–

"(1) the term 'international terrorism' means activities that–

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"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended–

"(i) to intimidate or coerce a civilian population;
"(ii) to influence the policy of a government by intimidation or coercion; or
"(iii) to affect the conduct of a government by assassination or kidnapping; and
"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(2) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

***50** "(3) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property; and

"(4) the term 'act of war' means any act occurring in the course of–

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin.";

(4) by adding immediately after section 2332 as redesignated the following new sections:

"S 2333. Civil remedies

"(a) Action and Jurisdiction.–Any national of the United States injured in his person, property, or business by reason of an act of international terrorism, or his estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he sustains and the cost of the suit, including attorney's fees.

"(b) Estopped Under United States Law.–A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 1472 (i), (k), (l), (n), or (r) of title 49 App. shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) Estopped Under Foreign Law.–A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"S 2334. Jurisdiction and venue

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"(a) General Venue.–Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) Special Maritime or Territorial Jurisdiction.–If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) Service on Witnesses.–A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

"(d) Convenience of the Forum.–The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless–

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

"S 2335. Limitation of actions

"(a) In General.–Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years from the date the cause of action accrued.

"(b) Calculation of Period.–The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of his whereabouts, shall not be reckoned within this period of limitation.

"S 2336. Other limitations

"No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

"S 2337. Suits against Government officials

"No action shall be maintained under section 2333 of this title against–

***51** "(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his official capacity or under color of legal authority.

"S 2338. Exclusive Federal jurisdiction

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter."; and

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(5) by amending the table of sections at the beginning of the chapter to read as follows:

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(b) Table of Contents.–The table of chapters at the beginning of part 1, title 18, United States Code, is amended by striking:

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and inserting in lieu thereof:

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(c) Effective Date.–This title and the amendments made by this title shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

(d) Conforming Repeal of Prior Chapter 113A.–The amendments made by section 132 of Public Law 101–519, the Military Construction Appropriations Act, 1991, are repealed, effective April 10, 1991.

Subtitle D–Commission on Crime and Violence

SEC. 1741. ESTABLISHMENT OF COMMISSION ON CRIME AND VIOLENCE.

There is established a commission to be known as the "National Commission on Crime and Violence in America". The Commission shall be composed of 22 members, appointed as follows:

(1) 6 persons by the President;

(2) 8 persons by the Speaker of the House of Representatives, two of whom shall be appointed on the recommendation of the minority leader; and

(3) 8 persons by the President pro tempore of the Senate, six of whom shall be appointed on the recommendation of the majority leader of the Senate and two of whom shall be appointed on the recommendation of the minority leader of the Senate.

SEC. 1742. PURPOSE.

The purposes of the Commission are as follows:

(1) To develop a comprehensive and effective crime control plan which will serve as a "blueprint" for action in the 1990's. The report shall include an estimated cost for implementing any recommendations made by the Commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control plan.

(4) To recommend improvements in the coordination of local, State, Federal, and international border crime control efforts.

(5) To make a comprehensive study of the economic and social factors lending to or contributing to crime and specific proposals for legislative and administrative actions to reduce crime and the elements that contribute to it.

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(6) To recommend means of targeting finite correctional facility space and resources to the most serious and violent offenders, with the goal of achieving the most cost-effective possible crime control and protection of the community and ***52** public safety, with particular emphasis on examining the issue of possible disproportionate incarceration rates among black males and any other minority group disproportionately represented in State and Federal correctional populations, and to consider increased use of alternatives to incarceration which offer a reasonable prospect of equal or better crime control at equal or less cost.

SEC. 1743. COMMISSION MEMBERS.

(a) Chairperson.–The President shall designate a chairperson from among the members of the Commission.

(b) Composition of Membership.–The Commission members will represent a cross section of professions that include law enforcement, prosecution, criminal defense, judges, corrections, education, medicine, welfare and social services, victims of crime, elected officials from State, local and Federal Government that equally represent both political parties, and representatives of any other discipline with professional expertise in drug or crime reduction.

SEC. 1744. ADMINISTRATIVE PROVISIONS.

(a) Federal Agency Support.–All Federal agencies shall provide such support and assistance as may be necessary for the Commission to carry out its functions.

(b) Executive Director and Staff.–The President is authorized to appoint and compensate an executive director. Subject to such regulations as the Commission may prescribe, staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) Detailed Federal Employees.–Upon the request of the chairperson, the heads of executive and military departments are authorized to detail employees to work with the executive director without regard to the provisions of section 3341 of title 5, United States Code.

(d) Temporary and Intermittent Employees.–Subject to rules prescribed by the Commission, the chairperson may procure temporary and intermittent services under section 3108(b) of title 5, United States Code, but at a rate of base pay not to exceed the annual rate of base pay for GS-18 of the General Schedule.

SEC. 1745. REPORT.

The Commission shall submit a final report to the President and the Congress not later than one year after the appointment of the Chairperson. The report shall include the findings and recommendations of the Commission as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1746. TERMINATION.

The Commission shall terminate 30 days after submitting the report required under section 1745.

TITLE XVIII–MISCELLANEOUS FUNDING PROVISIONS

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Subtitle A–General

SEC. 1801. AUTHORIZATION FOR DRUG ENFORCEMENT AGENCY.

There is authorized to be appropriated for fiscal year 1992, for the Drug Enforcement Administration, $100,500,000, which shall include–

(1) not to exceed $45,000,000 to hire, equip and train not less than 350 agents and necessary support personnel to expand DEA investigations and operations against drug trafficking organizations in rural areas; and

(2) not to exceed $25,000,000 to expand DEA State and Local Task Forces, including payment of state and local overtime, equipment and personnel costs; and

(3) not to exceed $5,000,000 to hire, equip and train not less than 50 special agents and necessary support personnel to investigate violations of the Controlled Substances Act relating to anabolic steroids.

***53** SEC. 1802. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (7) as redesignated by section 103 of this Act and inserting the following:

"(7) There are authorized to be appropriated such sums as may be necessary for fiscal year 1991 and $200,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out chapter B of subpart 2 of part E of this title.".

SEC. 1803. AVAILABILITY OF THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND FOR CERTAIN BLOCK GRANTS.

Section 524(c) of title 28, United States Code is amended by adding at the end the following:

"(12)(A) In addition to the purposes otherwise provided for in this subsection, the Fund shall be available for the purpose of providing additional amounts for block grants under subpart I of part B of title XIX of the Public Health Service Act.

"(B) Amounts made available under subparagraph (A)–

"(i) may be transferred only from excess unobligated amounts in the Fund and only to the extent that, as determined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1); and

"(ii) shall, with respect to each fiscal year, equal 25 percent of the total of such excess amounts for that fiscal year.

"(C) Amounts made available under this paragraph for block grants referred to subparagraph (A) shall be used to supplement, rather than replace, amounts that would be otherwise available for such block grants.".

SEC. 1804. LIMITATION ON GRANT DISTRIBUTION.

(a) Amendment.–Section 510(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760(b)) is amended by inserting "non-Federal" after "with".

(b) Effective Date.–The amendment made by subsection (a) shall take effect on October 1, 1991.

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SEC. 1805. AUTHORIZATION FOR BORDER PATROL PERSONNEL.

There are authorized to be appropriated for fiscal year 1992 for the Immigration and Naturalization Service, $45,000,000, to be further allocated as follows:

(1) $25,000,000 to hire, train, and equip no fewer than 500 full-time equivalent border patrol officer positions.

(2) $20,000,000 to hire, train, and equip no fewer than 400 full-time equivalent Immigration and Naturalization Service criminal investigators dedicated to drug trafficking by illegal aliens and to deportations of criminal aliens.

SEC. 1806. FEDERAL SHARE.

Section 504(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3754(a)) is amended by striking "not–" and all that follows through "per centum;" the last place it appears, and inserting the following: "not for any fiscal year be expended for more than 75 percent".

SEC. 1807. DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.

Subsection (c) of section 5122 of the Drug-Free Schools and Communities Act of 1986, as amended by section 1504(3) of Public Law 101–647, is amended by inserting "or local governments that work cooperatively with local educational agencies" after "for grants to local educational agencies".

SEC. 1821. DOMESTIC VIOLENCE GRANTS.

(a) In General.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1241, is amended–

(1) by redesignating part W as part X;

(2) by redesignating section 2301 as section 2401; and

(3) by inserting after part Y the following:

"PART W–DOMESTIC VIOLENCE INTERVENTION

"SEC. 2301. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance may make grants to 10 States for the purpose of assisting States in implementing a civil and criminal response to domestic violence.

"SEC. 2302. USE OF FUNDS.

"Grants made by the Director under this part shall be used–

***54** "(1) to encourage increased prosecutions for domestic violence crimes;

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"(2) to report more accurately the incidences of domestic violence;

"(3) to facilitate arrests and aggressive prosecution policies; and

"(4) to provide legal advocacy services for victims of domestic violence.

"SEC. 2303. APPLICATIONS.

"(a) In General.–In order to be eligible to receive a grant under this part for any fiscal year, a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) Requirements.–Each application under subsection (a) shall include–

"(1) a request for funds for the purposes described in section 2302;

"(2) a description of the programs already in place to combat domestic violence;

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part; and

"(4) statistical information, if available, in such form and containing such information that the Director may require regarding domestic violence within that State.

"(c) Comprehensive Plan.–Each application shall include a comprehensive plan that shall contain–

"(1) a description of the domestic violence problem within the State targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the State to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant will be used to fill gaps; and

"(5) a description of the system the applicant will establish to prevent and reduce domestic violence.

"SEC. 2304. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) State Maximum.–No State shall receive more than $2,500,000 under this part for any fiscal year.

"(b) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

"(c) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if–

"(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

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"(2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 2303(c).

"SEC. 2305. AWARD OF GRANTS.

"The Director shall consider the following factors in awarding grants to States and shall give preference to those State which have–

"(1) a law or policy that requires the arrest of a person who police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated a civil protection order;

"(2) a law or policy that discourages dual arrests;

"(3) laws or statewide prosecution policies that authorize and encourage prosecutors to pursue domestic violence cases in which a criminal case can be proved, including proceeding without the active involvement of the victim if necessary;

"(4) statewide guidelines for judges that–

"(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;

"(B) require any history of abuse against a child or against a parent to be considered when making child custody determinations; and

"(C) require judicial training on domestic violence and related civil and criminal court issues;

"(5) policies that provide for the coordination of court and legal victim advocacy services; and

***55** "(6) policies that make existing remedies to domestic violence easily available to victims of domestic violence, including elimination of court fees, and the provision for simple court forms.

"SEC. 2306. REPORTS.

"(a) Report to Director.–Each State that receives funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 2103(c).

"(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 2103(b)(4), and an evaluation of programs established under this part.

"SEC. 2307. DEFINITIONS.

"For the purpose of this part:

"(1) The term 'Director' means the Director of the Bureau of Justice Assistance.

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"(2) The term 'domestic violence' means any act or threatened act of violence, including any forceful detention of an individual, which–

"(A) results or threatens to result in physical injury; and

"(B) is committed by an individual against another individual (including an elderly individual) to whom such individual is or was related by blood or marriage or otherwise legally related or with whom such individual is or was lawfully residing.".

(b) Conforming Amendment.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1241 of this Act, is amended by striking the matter relating to part W and inserting the following:

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SEC. 1822. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 1242 of this Act, is amended by adding after paragraph (16) the following:

"(17) There are authorized to be appropriated $25,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 to carry out the projects under part U.".

Subtitle B–Midnight Basketball

SEC. 1831. GRANTS FOR MIDNIGHT BASKETBALL LEAGUE ANTICRIME PROGRAMS.

(a) Authority.–The Attorney General of the United States, in consultation with the Secretary of Housing and Urban Development, shall make grants, to the extent that amounts are approved in appropriations Acts under subsection (m) to–

(1) eligible entities to assist such entities in carrying out midnight basketball league programs meeting the requirements of subsection (d); and

(2) eligible advisory entities to provide technical assistance to eligible entities in establishing and operating such midnight basketball league programs.

(b) Eligible Entities.–

(1) In general.–Subject to paragraph (2), grants under subsection (a)(1) may be made only to the following eligible entities:

(A) Entities eligible under section 520(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a(b)) for a grant under section 520(a) of such Act.

(B) Nonprofit organizations providing crime prevention, employment counseling, job training, or other educational services.

***56** (C) Nonprofit organizations providing federally-assisted low-income housing.

(2) Prohibition on second grants.–A grant under subsection (a)(1) may not be made to an eligible entity if the entity has previously received a grant under such subsection, except that the Attorney General may exempt an eligible advisory entity from the prohibition under this paragraph in extraordinary circumstances.

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(c) Use of Grant Amounts.–Any eligible entity that receives a grant under subsection (a)(1) may use such amounts only–

(1) to establish or carry out a midnight basketball league program under subsection (d);

(2) for salaries for administrators and staff of the program;

(3) for other administrative costs of the program, except that not more than 5 percent of the grant amount may be used for such administrative costs; and

(4) for costs of training and assistance provided under subsection (d)(9).

(d) Program Requirements.–Each eligible entity receiving a grant under subsection (a)(1) shall establish a midnight basketball league program as follows:

(1) The program shall establish a basketball league of not less than 8 teams having 10 players each.

(2) Not less than 50 percent of the players in the basketball league shall be residents of federally assisted low-income housing.

(3) The program shall be designed to serve primarily youths and young adults from a neighborhood or community whose population has not less than 2 of the following characteristics (in comparison with national averages):

(A) A substantial problem regarding use or sale of illegal drugs.

(B) A high incidence of crimes committed by youths or young adults.

(C) A high incidence of persons infected with the human immunodeficiency virus or sexually transmitted diseases.

(D) A high incidence of pregnancy or a high birth rate, among adolescents.

(E) A high unemployment rate for youths and young adults.

(F) A high rate of high school drop-outs.

(4) The program shall require each player in the league to attend employment counseling, job training, and other educational classes provided under the program, which shall be held immediately following the conclusion of league basketball games at or near the site of the games.

(5) The program shall serve only youths and young adults who demonstrate a need for such counseling, training, and education provided by the program, in accordance with criteria for demonstrating need, which shall be established by the Attorney General in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee.

(6) Basketball games of the league shall be held between the hours of 10:00 p.m. and 2:00 a.m. at a location in the neighborhood or community served by the program.

(7) The program shall obtain sponsors for each team in the basketball league. Sponsors shall be private individuals or businesses in the neighborhood or community served by the program who make financial contributions to the program and

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participate in or supplement the employment, job training, and educational services provided to the players under the program with additional training or educational opportunities.

(8) The program shall comply with any criteria established by the Attorney General in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee established under subsection (i).

(9) Administrators or organizers of the program shall receive training and technical assistance provided by eligible advisory entities receiving grants under subsection (h).

(e) Grant Amount Limitations.–

(1) Private contributions.–The Attorney General, in consultation with the Secretary of Housing and Urban Development, may not make a grant under subsection (a)(1) to an eligible entity that applies for a grant under subsection (f) unless the applicant entity certifies to the Attorney General and the Secretary that the entity will supplement the grant amounts with amounts of funds from non-Federal sources, as follows:

(A) In each of the first 2 years that amounts from the grant are disbursed (under paragraph (4)), an amount sufficient to provide not less than 35 percent of the cost of carrying out the midnight basketball league program.

***57** (B) In each of the last 3 years that amounts from the grant are disbursed, an amount sufficient to provide not less than 50 percent of the cost of carrying out the midnight basketball league program.

(2) Non-federal funds.–For purposes of this subsection, the term "funds from non-Federal sources" includes amounts from nonprofit organizations, public housing agencies, States, units of general local government, and Indian housing authorities, private contributions, any salary paid to staff (other than from grant amounts under subsection (a)(1)) to carry out the program of the eligible entity, in-kind contributions to carry out the program (as determined by the Attorney General, in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee), the value of any donated material, equipment, or building, the value of any lease on a building, the value of any utilities provided, and the value of any time and services contributed by volunteers to carry out the program of the eligible entity.

(3) Prohibition on substitution of funds.–Grant amounts under subsection (a)(1) and amounts provided by States and units of general local government to supplement grant amounts may not be used to replace other public funds previously used, or designated for use, under this section.

(4) Maximum and minimum grant amounts.–The Attorney General, in consultation with the Secretary of Housing and Urban Development, may not make a grant under subsection (a)(1) to any single eligible entity in an amount less than $50,000 or exceeding $125,000.

(5) Disbursement.–Amounts provided under a grant under subsection (a)(1) shall be disbursed to the eligible entity receiving the grant over the 5-year period beginning on the date that the entity is selected to receive the grant, as follows:

(A) In each of the first 2 years of such 5-year period, 23 percent of the total grant amount shall be disbursed to the entity.

(B) In each of the last 3 years of such 5-year period, 18 percent of the total grant amount shall be disbursed to the entity.

(f) Applications.–To be eligible to receive a grant under subsection (a)(1), an eligible entity shall submit to the Attorney General an application in the form and manner required by the Attorney General (after consultation the Secretary of Housing and Urban Development and with the Advisory Committee), which shall include–

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(1) a description of the midnight basketball league program to be carried out by the entity, including a description of the employment counseling, job training, and other educational services to be provided;

(2) letters of agreement from service providers to provide training and counseling services required under subsection (d) and a description of such service providers;

(3) letters of agreement providing for facilities for basketball games and counseling, training, and educational services required under subsection (d) and a description of the facilities;

(4) a list of persons and businesses from the community served by the program who have expressed interest in sponsoring, or have made commitments to sponsor, a team in the midnight basketball league; and

(5) evidence that the neighborhood or community served by the program meets the requirements of subsection (d)(3).

(g) Selection.–The Attorney General, in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee, shall select eligible entities that have submitted applications under subsection (f) to receive grants under subsection (a)(1). The Attorney General, in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee, shall establish criteria for selection of applicants to receive such grants. The criteria shall include a preference for selection of eligible entities carrying out midnight basketball league programs in suburban and rural areas.

(h) Technical Assistance Grants.–Technical assistance grants under subsection (a)(2) shall be made as follows:

(1) Eligible advisory entities.–Technical assistance grants may be made only to entities that–

(A) are experienced and have expertise in establishing, operating, or administering successful and effective programs for midnight basketball and employment, job training, and educational services similar to the programs under subsection (d); and

(B) have provided technical assistance to other entities regarding establishment and operation of such programs.

***58** (2) Use.–Amounts received under technical assistance grants shall be used to establish centers for providing technical assistance to entities receiving grants under subsection (a)(1) of this section and section 520(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a(a)) regarding establishment, operation, and administration of effective and successful midnight basketball league programs under this subsection.

(3) Number and amount.–To the extent that amounts are provided in appropriations Acts under subsection (m)(2) in each fiscal year, the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make technical assistance grants under subsection (a)(2). In each fiscal year that such amounts are available the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make 2 such grants, as follows:

(A) One grant shall be made to an eligible advisory entity for development of midnight basketball league programs in public housing projects.

(B) One grant shall be made to an eligible advisory entity for development of midnight basketball league programs in suburban or rural areas.

Each grant shall be in an amount not exceeding $50,000.

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(i) Advisory Committee.–The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall appoint an Advisory Committee to assist in providing grants under this subsection. The Advisory Committee shall be composed of not more than 7 members, as follows:

(1) Not fewer than 2 individuals who are involved in managing or administering midnight basketball programs that the Secretary determines have been successful and effective. Such individuals may not be involved in a program assisted under this subsection or a member or employee of an eligible advisory entity that receives a technical assistance grant under subsection (a)(2).

(2) A representative of the Office for Substance Abuse Prevention of the Public Health Service, Department of Health and Human Services, who is involved in administering the grant program for prevention, treatment, and rehabilitation model projects for high risk youth under section 509A of the Public Health Service Act (42 U.S.C. 290aa–8), who shall be selected by the Secretary of Health and Human Services.

(3) A representative of the Department of Education, who shall be selected by the Secretary of Education.

(4) A representative of the Department of Health and Human Services, who shall be selected by the Secretary of Health and Human Services from among officers and employees of the Department involved in issues relating to high-risk youth.

(j) Reports.–The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall require each eligible entity receiving a grant under subsection (a)(1) and each eligible advisory entity receiving a grant under subsection (a)(2) to submit for each year in which grant amounts are received by the entity, a report describing the activities carried out with such amounts.

(k) Study.–To the extent amounts are provided under appropriation Acts pursuant to subsection (m)(3), the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make a grant to one entity qualified to carry out a study under this subsection. The entity shall use such grant amounts to carry out a scientific study of the effectiveness of midnight basketball league programs under subsection (d) of eligible entities receiving grants under subsection (a)(1). The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall require such entity to submit a report describing the study and any conclusions and recommendations resulting from the study to the Congress and the Attorney General and the Secretary not later than the expiration of the 2-year period beginning on the date that the grant under this subsection is made.

(l) Definitions.–For purposes of this section:

(1) The term “Advisory Committee” means the Advisory Committee established under subsection (i).

(2) The term “eligible advisory entity” means an entity meeting the requirements under subsection (h)(1).

(3) The term “eligible entity” means an entity described under subsection (b)(1).

(4) The term “federally assisted low-income housing” has the meaning given the term in section 5126 of the Public and Assisted Housing Drug Elimination Act of 1990.

***59** (m) Authorization of Appropriations.–There are authorized to be appropriated–

(1) for grants under subsection (a)(1), $2,500,000 in each of fiscal years 1992 and 1993;

(2) for technical assistance grants under subsection (a)(2), $100,000 in each of fiscal years 1992 and 1993; and

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(3) for a study grant under subsection (k), $250,000 in fiscal year 1992.

TITLE XIX–MISCELLANEOUS CRIMINAL PROCEDURE AND CORRECTIONS

Subtitle A–Revocation of Probation and Supervised Release

SEC. 1901. IMPOSITION OF SENTENCE.

Section 3553(a)(4) of title 18, United States Code, is amended to read as follows:

"(4) the kinds of sentence and the sentencing range established for–

"(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or

"(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;".

SEC. 1902. TECHNICAL AMENDMENT TO MANDATORY CONDITIONS OF PROBATION.

Section 3563(a)(3) of title 18, United States Code, is amended by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance".

SEC. 1903. REVOCATION OF PROBATION.

(a) In General.–Section 3565(a) of title 18, United States Code, is amended–

(1) in paragraph (2) by striking "impose any other sentence that was available under subchapter A at the time of the initial sentencing" and inserting "resentence the defendant under subchapter A"; and

(2) by striking the last sentence.

(b) Mandatory Revocation.–Section 3565(b) of title 18, United States Code, is amended to read as follows:

"(b) Mandatory Revocation for Possession of Controlled Substance or Firearm or Refusal to Cooperate in Drug Testing.–If the defendant–

"(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4);

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.".

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SEC. 1904. SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3583 of title 18, United States Code, is amended–

(1) in subsection (d), by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance";

(2) in subsection (e)–

(A) by striking "person" each place such term appears in such subsection and inserting "defendant"; and

(B) by amending paragraph (3) to read as follows:

"(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is ***60** revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or"; and

(3) by striking subsection (g) and inserting the following:

"(g) Mandatory Revocation for Possession of Controlled Substance or Firearm or for Refusal to Cooperate with Drug Testing.–If the defendant–

"(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

"(h) Supervised Release Following Revocation.–When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

"(i) Delayed Revocation.–The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably

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necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.”.

Subtitle B–List of Veniremen

SEC. 1911. LIST OF VENIREMEN.

Section 3432 of title 18, United States Code, is amended to read as follows:

“S 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

“(a) A person charged with treason or other capital offense shall, a reasonable time before commencement of trial, be furnished with–

“(1) a copy of the indictment;

“(2) a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment and at the sentencing hearing, stating the place of abode of each venireman and witness;

“(3) the relevant written or recorded statements of such witnesses, relevant portions of memoranda containing reports of their statements, and copies of documents and opportunity to examine tangible objects that the government intends to use in the trial or sentencing hearing; and

“(4) such other reports, statements, or information as the court may order.

“(b) The list of veniremen and the name and address of a witness or other information identifying a witness need not be furnished under this section if the court finds by the preponderance of the evidence that providing the list or the name or address may jeopardize the life or safety of any person.”.

Subtitle C–Immunity

SEC. 1921. IMMUNITY.

Section 6003(b) of title 18, United States Code, is amended–

(1) by striking “or” before “Deputy Assistant Attorney General” and inserting a comma; and

(2) by inserting “or one other officer or employee of the Criminal Division designated by the Attorney General” after “Deputy Assistant Attorney General”.

***61** Subtitle D–Clarification of 18 U.S.C. 5032's Requirement That Any Prior Record of a Juvenile Be Produced Before the Commencement of Juvenile Proceedings

SEC. 1931. CLARIFICATION OF 18 U.S.C. 5032's REQUIREMENT THAT ANY PRIOR RECORD OF A JUVENILE BE PRODUCED BEFORE THE COMMENCEMENT OF JUVENILE PROCEEDINGS.

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Section 5032 of title 18, United States Code, is amended by striking "Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until" and inserting "A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until".

Subtitle E–Petty Offenses

SEC. 1941. AUTHORIZATION OF PROBATION FOR PETTY OFFENSES IN CERTAIN CASES.

Section 3561(a)(3) of title 18, United States Code, is amended by adding at the end: "However, this paragraph does not preclude the imposition of a sentence to a term of probation for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.".

SEC. 1942. TRIAL BY A MAGISTRATE IN PETTY OFFENSE CASES.

Section 3401 of title 18, United States Code, is amended in subsection (b) by adding "other than a petty offense" after "misdemeanor".

SEC. 1943. CONFORMING AUTHORITY FOR MAGISTRATES TO REVOKE SUPERVISED RELEASE IN ADDITION TO PROBATION IN MISDEMEANOR CASES IN WHICH THE MAGISTRATE IMPOSED SENTENCE.

Section 3401(d) of title 18, United States Code, is amended by adding at the end the following: "A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release.".

Subtitle F–Optional Venue for Espionage and Related Offenses

SEC. 1944. OPTIONAL VENUE FOR ESPIONAGE AND RELATED OFFENSES.

(a) In General.–Chapter 211 of title 18, United States Code, is amended by inserting:

"S 3239. Optional venue for espionage and related offenses.

"The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of–

"(1) section 793, 794, 798, or section 1030(a)(1) of this title;

"(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

"(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783 (b) or (c));

may be in the District of Columbia or in any other district authorized by law.".

(b) Clerical Amendment.–The item relating to section 3239 in the table of sections at the beginning of chapter 211 of title 18, United States Code, is amended to read as follows:

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Subtitle G–General

SEC. 1951. ENHANCED PENALTIES FOR CERTAIN OFFENSES.

(a) Section 1705(b).–Section 206(b) of the International Economic Emergency Powers Act (50 U.S.C. 1705(b)) is amended by striking "$50,000" and inserting"$1,000,000".

***62** (b) Section 1705(a).–Section 206(a) of the International Economic Emergency Powers Act (50 U.S.C. 1705(a)) is amended by striking "$10,000" and inserting "$1,000,000".

(c) Section 1541.–Section 1541 of title 18, United States Code, is amended–

(1) by striking "$500" and inserting "$250,000"; and

(2) by striking "one year" and inserting "five years".

(d) Chapter 75.–Sections 1542, 1543, 1544 and 1546 of title 18, United States Code, are each amended–

(1) by striking"$2,000" each place it appears and inserting "$250,000"; and

(2) by striking "five years" each place it appears and inserting "ten years".

(e) Section 1545.–Section 1545 of title 18, United States Code, is amended–

(1) by striking "$2,000" and inserting "$250,000"; and

(2) by striking "three years" and inserting "ten years".

SEC. 1952. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

SEC. 1953. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) In General.–Chapter 213 of title 18, United States Code, is amended by inserting after section 3285 the following:

"S 3286. Extension of statute of limitations for certain terrorism offenses

"Notwithstanding the provisions of section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902 (i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572 (i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.".

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(b) Clerical Amendment.–The table of sections at the beginning of chapter 213 is amended by inserting below the item for:

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the following:

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SEC. 1954. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by–

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting in lieu thereof "; and";

(3) inserting after subdivision (a)(1)(C) the following:

"(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting in lieu thereof "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before "or the attorney for the Government."; and

(6) adding at the end the following:

"(f) Definitions.–For purposes of this rule–

"(1) 'victim' means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by–

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

***63** "(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

"(2) 'crime of violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.".

SEC. 1955. CRIMINAL HISTORY RECORD INFORMATION FOR THE ENFORCEMENT OF LAWS RELATING TO GAMING.

A State gaming enforcement office located within a State Attorney General's office may obtain from the Interstate Identification Index of the FBI criminal history record information for licensing purposes through an authorized criminal justice agency.

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SEC. 1956. PRISON IMPACT ASSESSMENTS.

(a) In General.–Chapter 303 of title 18, United States Code, is amended by adding at the end the following new section:

"S 4047. Prison impact assessments

"(a) Any submission of legislation by the Judicial or Executive branch which could increase or decrease the number of persons incarcerated or in Federal penal institutions shall be accompanied by a prison impact statement, as defined in subsection (b) of this section.

"(b) The Attorney General shall, in consultation with the Sentencing Commission and the Administrative Office of the United States Courts, prepare and furnish prison impact assessments under subsection (c) of this section, and in response to requests from Congress for information relating to a pending measure or matter that might affect the number of defendants processed through the Federal criminal justice system. A prison impact assessment on pending legislation must be supplied within 7 days of any request. A prison impact assessment shall include–

"(1) projections of the impact on prison, probation, and post prison supervision populations;

"(2) an estimate of the fiscal impact of such population changes on Federal expenditures, including those for construction and operation of correctional facilities for the current fiscal year and 5 succeeding fiscal years;

"(3) an analysis of any other significant factor affecting the cost of the measure and its impact on the operations of components of the criminal justice system; and

"(4) a statement of the methodologies and assumptions utilized in preparing the assessment.

"(c) The Attorney General shall prepare and transmit to the Congress, by March 1 of each year, a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 303 is amended by adding at the end the following new item:

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SEC. 1957. INTERSTATE ENFORCEMENT OF PROTECTION ORDERS.

(a) Full Faith and Credit Given to Protection Orders.–Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another State (the enforcing State) and enforced as if it were the order of the enforcing State.

(b) Protection Order.–A protection order issued by a State court is consistent with the terms of this section if–

(1) such court has jurisdiction over the parties and matter under the law of such State; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

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(c) Cross or Counter Petition.–A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if–

***64** (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

(d) Definitions.–As used in this section–

(1) the term "spouse or intimate partner" includes–

(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

(2) the term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner; and

(3) the term "State" includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States.

SEC. 1958. SPECIAL RULE FOR CERTAIN HABEAS CORPUS PETITIONS RELATING TO DEATH SENTENCES.

(a) In General.–Any existing race bias claim, whether or not previously raised or determined, unless determined on the merits in a Federal habeas corpus proceeding, may be raised in a proceeding commenced under chapter 153 of title 28, United States Code, not later than 1 year after the date of the enactment of this Act and shall be determined on the merits. In determining the merits of that claim, the law in effect at the time of the determination shall apply.

(b) Definition.–As used in this subsection, the term "existing race bias claim" means a claim of race discrimination, or bias on the basis of race–

(1) made by a person seeking relief with respect to a sentence of death imposed before the date of the enactment of this Act; and

(2) based on a Supreme Court decision announced before such date of enactment.

SEC. 1959. NATIONAL INSTITUTE OF JUSTICE STUDY.

(a) Feasibility Study.–The National Institute of Justice shall study the feasibility of establishing a clearinghouse to provide information to interested persons to facilitate the transfer of prisoners in State correctional institutions to other such

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correctional institutions, pursuant to the Interstate Corrections Compact or other applicable interstate compact, for the purpose of allowing prisoners to serve their prison sentences at correctional institutions in close proximity to their families.

(b) Report to Congress.–The National Institute of Justice shall, not later than 1 year after the date of the enactment of this Act, submit to the Committees on the Judiciary of the House of Representatives and the Senate a report containing the results of the study conducted under subsection (a), together with any recommendations the Institute may have on establishing a clearinghouse described in such subsection.

(c) Definition.–For purposes of this section, the term "State" includes the District of Columbia and any territory or possession of the United States.

SEC. 1960. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 6 peremptory challenges".

***65** TITLE XX–FIREARMS AND RELATED AMENDMENTS

Subtitle A–Firearms and Related Amendments

SEC. 2001. ENHANCED PENALTY FOR USE OF A SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.

(a) In General.–Section 924(c)(1) of title 18, United States Code, is amended by striking "and if the firearm is a short-barreled rifle, short-barreled shotgun" and inserting "if the firearm is a semiautomatic firearm, a short-barreled rifle, or a short-barreled shotgun,".

(b) Semiautomatic Firearm.–Section 921(a) of such title is amended by adding at the end the following:

"(29) The term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 2002. INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY.

Section 844(h) of title 18, United States Code, is amended by striking "ten" and inserting "twenty".

SEC. 2003. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(i) Whoever, with the intent to engage in or to promote conduct which–

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

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"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3) of this section);

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than ten years, fined under this title, or both.".

SEC. 2004. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES.

(a) Firearms.–Section 924 of title 18, United States Code, is amended by adding after the subsection added by section 2003 of this Act the following:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.".

(b) Explosives.–Section 844 of such title is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.".

SEC. 2005. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended–

(1) in paragraph (1)(B), by striking "(a)(6),"; and

(2) in paragraph (2), by inserting "(a)(6)," after "subsection".

SEC. 2006. EXTENSION OF STATUTE OF LIMITATIONS FOR NATIONAL FIREARMS ACT OFFENSES.

(a) In General.–Section 6531 of the Internal Revenue Code of 1986 (relating to periods of limitation of criminal prosecutions) is amended in the matter preceding paragraph (1) by inserting "5 years for offenses described in section 5861 (relating to firearms), and" before "6 years".

(b) Effective Date.–The amendment made by this section shall apply to offenses committed after the date of the enactment of this Act.

SEC. 2007. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by inserting after and below the end the following:

***66** "(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under

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this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within sixty days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that–

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 2008. SUMMARY FORFEITURE OF UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.

(a) In General.–Subsection (a) of section 5872 of the Internal Revenue Code of 1986 (relating to forfeitures) is amended by adding at the end the following new paragraph:

"(2) Summary forfeiture of unregistered firearms.–

"(A) In general.–Notwithstanding paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

"(B) Rights of innocent owners.–Within 1 year after any summary forfeiture made pursuant to subparagraph (A), the owner of the property seized (including any person having an interest in the property) may make application to the Secretary for reimbursement of the value of the property. The Secretary shall make an allowance to the claimant not exceeding the value of the property so forfeited, if the claimant establishes to the satisfaction of the Secretary that–

"(i) the property has not been involved or used in a violation of law, or

"(ii) any unlawful involvement or use of the property had been without the claimant's consent, knowledge, or willful blindness.".

(b) Clerical Amendment.–Subsection (a) of section 5872 of such Code is amended–

(1) by inserting "(1) In general.–" after the subsection caption, and

(2) by indenting paragraph (1) of such subsection in the same manner as paragraph (2) of such subsection.

(c) Effective Date.–The amendments made by this section shall apply to unregistered firearms after the date of the enactment of this Act.

SEC. 2009. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

Section 924 of title 18, United States Code, is amended–

(1) in subsection (c)(1), by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."; and

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(2) in subsection (e)(1), by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

SEC. 2010. ENHANCED PENALTIES FOR USE OF A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended by inserting "or during and in relation to any felony punishable under chapter 25" after "United States,".

SEC. 2011. MANDATORY PENALTIES FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

(a) 1 Prior Conviction.–Section 924(a)(2) of title 18, United States Code, is amended by inserting ", and if the violation is of section 922(g)(1) by a person who has a previous conviction for a violent felony or a serious drug offense (as defined in subsections (e)(2) (A) and (B) of this section), a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years" before the period.

***67** (b) 2 Prior Convictions.–Section 924 of such title is amended by adding after the subsections added by sections 2003 and 2004(a) of this Act the following:

"(k)(1) Notwithstanding subsection (a)(2) of this section, any person who violates section 922(g) and has 2 previous convictions by any court referred to in section 922(g)(1) for a violent felony (as defined in subsection (e)(2)(B) of this section) or a serious drug offense (as defined in subsection (e)(2)(A) of this section) committed on occasions different from one another shall be fined as provided in this title, imprisoned not less than 10 years and not more than 20 years, or both.

"(2) Notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).".

SEC. 2012. REPORTING OF MULTIPLE FIREARMS SALES.

Section 923(g)(3) of title 18, United States Code, is amended–

(1) by striking "five consecutive business" and inserting "thirty consecutive"; and

(2) by adding at the end the following: "Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the date that the multiple sale or disposition occurs.".

SEC. 2013. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended–

(1) in paragraph (7)(C), by striking "and";

(2) in paragraph (8)(C), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

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"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms.".

SEC. 2014. PROHIBITION AGAINST CONSPIRACY TO VIOLATE FEDERAL FIREARMS OR EXPLOSIVES LAWS.

(a) Firearms.–Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), and 2011(b) of this Act the following:

"(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

(b) Explosives.–Section 844 of such title is amended by adding after the subsection added by section 2004(b) of this Act the following:

"(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 2015. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) Firearms.–Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), 2011(b), and 2014(a) of this Act the following:

"(m) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

(b) Explosives.–Section 844 of such title is amended by adding after the subsections added by sections 2004(b) and 2014(b) of this Act the following:

"(m) Whoever steals any explosive material from a licensed importer, licensed manufacturer, licensed dealer, or permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 2016. PROHIBITION AGAINST DISPOSING OF EXPLOSIVES TO PROHIBITED PERSONS.

Section 842(d) of title 18, United States Code, is amended by striking "licensee" and inserting "person".

SEC. 2017. COMPLIANCE WITH STATE AND LOCAL FIREARMS LICENSING LAWS REQUIRED BEFORE ISSUANCE OF FEDERAL LICENSE TO DEAL IN FIREARMS.

(a) In General.–Section 923(d)(1) of title 18, United States Code, is amended–

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following:

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"(F) in the case of an application for a license to engage in the business of dealing in firearms–

***68** "(i) the applicant has complied with all requirements imposed on persons desiring to engage in such a business by the State and political subdivision thereof in which the applicant conducts or intends to conduct such business; and

"(ii) the application includes a written statement which–

"(I) is signed by the chief of police of the locality, or the sheriff of the county, in which the applicant conducts or intends to conduct such business, the head of the State police of such State, or any official designated by the Secretary; and

"(II) certifies that the information available to the signer of the statement does not indicate that the applicant is ineligible to obtain such a license under the law of such State and locality.".

(b) Effective Date.–The amendment made by subsection (a) shall apply to applications for a license that is issued on or after the date of the enactment of this Act.

SEC. 2018. INCREASED PENALTY FOR INTERSTATE GUN TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), 2011(b), 2014(a), and 2015(a) of this Act the following:

"(n) Whoever, with the intent to engage in conduct which constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.".

SEC. 2019. PROHIBITION AGAINST TRANSACTIONS INVOLVING STOLEN FIREARMS WHICH HAVE MOVED IN INTERSTATE OR FOREIGN COMMERCE.

Section 922(j) of title 18, United States Code, is amended to read as follows:

"(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.".

SEC. 2020. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

Subtitle B–Assault Weapons

SEC. 2021. PROHIBITION AGAINST POSSESSION AND TRANSFER OF ASSAULT WEAPONS.

(a) Prohibition.–Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(s)(1) It shall be unlawful for any person to possess an assault weapon, unless–

"(A) the weapon was lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30); or

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"(B) the weapon was lawfully transferred to the person after the effective date of this subsection.

"(2) It shall be unlawful for any person to transfer an assault weapon, unless–

"(A) the weapon was lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30); and

"(B) the transfer is in accordance with regulations prescribed by the Secretary.".

(b) Assault Weapon Defined.–Section 921(a) of such title is amended by adding after the paragraph added by section 2001(b) of this Act the following:

"(30)(A) The term 'assault weapon' means any of the following weapons, or a copy thereof:

"(i) Action Arms Israeli Military Industries UZI and Galil.

"(ii) Auto Ordnance 27A1 Thompson, 27A5 Thompson, and M1 Thompson.

"(iii) Beretta AR–70 (SC–70).

"(iv) Colt AR–15 and CAR–15.

"(v) Fabrique Nationale FN/FAL, FN/LAR, and FNC.

"(vi) INTRATEC TEC–9.

"(vii) MAC 10 and 11.

"(viii) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs.

***69** "(ix) Springfield BM59, SAR48, and G3SA.

"(x) Steyr AUG.

"(xi) Street Sweeper and Striker 12.

"(xii) All Ruger Mini-14 models with folding stocks.

"(xiii) Armscorp FAL.

"(B) The term 'copy' means, with respect to a weapon specified in subparagraph (A), a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified.".

(c) Authority of the Secretary of the Treasury To Recommend Modifications to the List of Assault Weapons.–

(1) In general.–Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

"S 931. Recommendation of modifications to the list of assault weapons

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"From time to time, the Secretary, in consultation with the Attorney General, may recommend to the Congress that certain weapons be added to, or removed from, the list set forth in section 921(a)(30).".

(2) Clerical amendment.–The table of sections at the beginning of chapter 44 of such title is amended by adding at the end the following:

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(d) Penalties.–

(1) Unlawful possession or transfer of assault weapon.–Section 924(a)(1)(B) of such title is amended by striking "or (q)" and inserting "(r), or (s)".

(2) Enhanced penalty for possession or use of assault weapon during crime of violence or drug trafficking crime.–Section 924(c)(1) of such title, as amended by section 2001(a) of this Act, is amended by inserting "an assault weapon," after "semiautomatic firearm,".

(e) Regulations Governing Transfer of Assault Weapons.–

(1) Regulations.–Section 926 of such title is amended by adding at the end the following:

"(d) Within 60 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations governing the transfer of assault weapons, which shall allow such a transfer to proceed within 30 days after the Secretary receives such documentation as the Secretary may require to be submitted with respect to the transfer, and shall include provisions for determining whether the transferee is a person described in section 922(g).".

(2) Penalty for violation of regulations.–Section 924(a) of such title is amended–

(A) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(B) by adding at the end the following:

"(5) Whoever, in violation of a regulation issued under section 926(d), transfers an assault weapon that has been lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30) shall be fined not more than $500.".

Subtitle C–Large Capacity Ammunition Feeding Devices

SEC. 2031. PROHIBITION AGAINST POSSESSION OR TRANSFER OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) Prohibition.–Section 922 of title 18, United States Code, is amended by adding after the subsection added by section 2021(a) of this Act the following:

"(t)(1) It shall be unlawful for any person to possess or transfer any large capacity ammunition feeding device.

"(2) Paragraph (1) shall not apply to any otherwise lawful possession or otherwise lawful transfer of a large capacity ammunition feeding device that was lawfully possessed before the date of the enactment of this subsection.".

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(b) Large Capacity Ammunition Feeding Device Defined.–Section 921(a) of such title is amended by adding after the paragraphs added by sections 2001(b) and 2021(b) of this Act the following:

"(31)(A) Except as provided in subparagraph (B), the term 'large capacity ammunition feeding device' means–

***70** "(i) a detachable magazine, belt, drum, feed strip, or similar device which has, or which can be readily restored or converted to have, a capacity of more than 7 rounds of ammunition; and

"(ii) any part or combination of parts, designed or intended to convert a detachable magazine, belt, drum, feed strip, or similar device into a device described in clause (i).

"(B) The term 'large capacity ammunition feeding device' does not include any attached tubular device designed to accept and capable of operating with only .22 rimfire caliber ammunition.".

(c) Penalty.–Section 924(a)(1)(B) of such title, as amended by section 2021(d)(1) of this Act, is amended by striking "or (s)" and inserting "(s), or (t)".

(d) Regulations.–Section 926 of such title is amended by adding after the subsection added by section 2021(e)(1) of this Act the following:

"(e) The Secretary shall promulgate regulations requiring manufacturers of large capacity ammunition feeding devices to stamp each such device manufactured after the date of the enactment of this subsection with a permanent distinguishing mark selected in accordance with regulations.".

TITLE XXI–SPORTS GAMBLING

SEC. 2101. SHORT TITLE.

This title may be referred to as the "Professional and Amateur Sports Protection Act".

SEC. 2102. PROFESSIONAL AND AMATEUR SPORTS PROTECTION.

(a) In General.–Part VI of title 28 of the United States Code is amended by adding at the end the following:

"CHAPTER 178–PROFESSIONAL AND AMATEUR SPORTS PROTECTION

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"S 3701. Definitions

"For purposes of this chapter–

"(1) the term 'amateur sports organization' means–

"(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more amateur athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

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"(2) the term 'governmental entity' means a State, a political subdivision of a State, or an entity or organization that has governmental authority over a geographical area that is under the authority of the Government of the United States,

"(3) the term 'professional sports organization' means–

"(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more professional athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

"(4) the term 'person' has the meaning given such term in section 1 of title 1, and

"(5) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

"S 3702. Unlawful sports gambling

"It shall be unlawful for–

"(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law, or

***71** "(2) a person to sponsor, operate, advertise, or promote, pursuant to the law of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

"S 3703. Injunctions

"A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

"S 3704. Applicability

"Section 3702 shall not apply to–

"(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a governmental entity, to the extent that the particular scheme was in operation in the period beginning September 1, 1989, and ending August 31, 1990, in such governmental entity pursuant to the law of any governmental entity;

"(2) a commercial casino gaming scheme in operation in a gambling establishment (as defined in section 1081 of title 18), to the extent that the particular commercial casino gaming scheme is–

"(A) described in paragraph (1) with respect to a governmental entity, and

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"(B) in operation not later than 2 years after the effective date of this chapter, in a governmental entity in which commercial casino gaming was in operation in such an establishment throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation, or

"(3) parimutuel animal racing.".

(b) Clerical Amendments.–The table of chapters for part VI of title 28, United States Code, is amended–

(1) by amending the item relating to chapter 176 to read as follows:

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and

(2) by adding at the end the following:

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TITLE XXII–TECHNICAL CORRECTIONS

SEC. 2201. AMENDMENTS RELATING TO FEDERAL FINANCIAL ASSISTANCE FOR LAW ENFORCEMENT.

(a) Testing Certain Sex Offenders for Human Immune Deficiency Virus.–(1) Section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) is amended–

(1) in subsection (a) by striking "Of" and inserting "Subject to subsection (f), of",

(2) in subsection (c) by striking "subsections (b) and (c)" and inserting "subsection (b)",

(3) in subsection (e) by striking "or (e)" and inserting "or (f)",

(4) in subsection (f)(1)–

(A) in subparagraph (A)–

(i) by striking ", taking into consideration subsection (e) but", and
(ii) by striking "this subsection," and inserting "this subsection", and
(B) in subparagraph (B) by striking "amount" and inserting "funds".

(b) Correctional Options Grants.–(1) Section 515(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

(A) by striking "subsection (a) (1) and (2)" and inserting "paragraphs (1) and (2) of subsection (a)", and

(B) in paragraph (2) by striking "States" and inserting "public agencies".

(2) Section 516 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

***72** (A) in subsection (a) by striking "for section" each place it appears and inserting "shall be used to make grants under section", and

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(B) in subsection (b) by striking "section 515(a)(1) or (a)(3)" and inserting "paragraph (1) or (3) of section 515(a)".

(3) Section 1001(a)(5) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(5)) is amended by inserting "(other than chapter B of subpart 2)" after "and E".

(c) Denial or Termination of Grant.–Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by striking "M" and inserting "M,".

(d) Definitions.–Section 901(a)(21) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(21)) is amended by adding a semicolon at the end.

(e) Authorization of Appropriations.–Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended in paragraph (3) by striking "and N" and inserting "N, O, P, Q, R, S, T, U, V, and W".

(f) Public Safety Officers Disability Benefits.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended–

(1) in section 1201–

(A) in subsection (a) by striking "subsection (g)" and inserting "subsection (h),", and

(B) in subsection (b)–

(i) by striking "subsection (g)" and inserting "subsection (h)",
(ii) by striking "personal", and
(iii) in the first proviso by striking "section" and inserting "subsection", and
(2) in section 1204(3) by striking "who was responding to a fire, rescue or police emergency".

(g) Headings.–(1) The heading for part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797) is amended to read as follows:

"PART M–REGIONAL INFORMATION SHARING SYSTEMS".

(2) The heading for part O of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797) is amended to read as follows:

"PART O–RURAL DRUG ENFORCEMENT".

(h) Table of Contents.–The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

(1) in the item relating to section 501 by striking "Drug Control and System Improvement Grant" and inserting "drug control and system improvement grant",

(2) in the item relating to section 1403 by striking "Application" and inserting "Applications", and

(3) in the items relating to part O by redesignating sections 1401 and 1402 as sections 1501 and 1502, respectively.

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(i) Other Technical Amendments.–Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended–

(1) in section 202(c)(2)(E) by striking "crime,," and inserting "crime,",

(2) in section 302(c)(19) by striking a period at the end and inserting a semicolon,

(3) in section 602(a)(1) by striking "chapter 315" and inserting "chapter 319",

(4) in section 603(a)(6) by striking "605" and inserting "606",

(5) in section 605 by striking "this section" and inserting "this part",

(6) in section 606(b) by striking "and Statistics" and inserting "Statistics",

(7) in section 801(b)–

(A) by striking "parts D," and inserting "parts",

(B) by striking "part D" each place it appears and inserting "subpart 1 of part E",

(C) by striking "403(a)" and inserting "501", and

(D) by striking "403" and inserting "503",

(8) in the first sentence of section 802(b) by striking "part D," and inserting "subpart 1 of part E or under part",

(9) in the second sentence of section 804(b) by striking "Prevention or" and inserting "Prevention, or",

(10) in section 808 by striking "408, 1308," and inserting "507",

(11) in section 809(c)(2)(H) by striking "805" and inserting "804",

***73** (12) in section 811(e) by striking "Law Enforcement Assistance Administration" and inserting "Bureau of Justice Assistance",

(13) in section 901(a)(3) by striking "and," and inserting ", and",

(14) in section 1001(c) by striking "parts" and inserting "part".

(j) Conforming Amendment to Other Law.–Section 4351(b) of title 18, United States Code, is amended by striking "Administrator of the Law Enforcement Assistance Administration" and inserting "Director of the Bureau of Justice Assistance".

SEC. 2202. GENERAL TITLE 18 CORRECTIONS.

(a) Section 1031.–Section 1031(g)(2) of title 18, United States Code, is amended by striking "a government" and inserting "a Government".

(b) Section 208.–Section 208(c)(1) of title 18, United States Code, is amended by striking "Banks" and inserting "banks".

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(c) Section 1007.–The heading for section 1007 of title 18, United States Code, is amended by striking "Transactions" and inserting "transactions" in lieu thereof.

(d) Section 1014.–Section 1014 of title 18, United States Code, is amended by striking the comma which follows a comma.

(e) Elimination of Obsolete Cross Reference.–Section 3293 of title 18, United States Code, is amended by striking "1008,".

(f) Elimination of Duplicate Subsection Designation.–Section 1031 of title 18, United States Code, is amended by redesignating the second subsection (g) as subsection (h).

(g) Clerical Amendment to Part I Table of Chapters.–The item relating to chapter 33 in the table of chapters for part I of title 18, United States Code, is amended by striking "701" and inserting "700".

SEC. 2203. CORRECTIONS OF ERRONEOUS CROSS REFERENCES AND MISDESIGNATIONS.

(a) Section 1791(b) of title 18, United States Code, is amended by striking "(c)" wherever it appears and inserting in lieu thereof "(d)".

(b) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207–51; 21 U.S.C. 857)" and inserting in lieu thereof "section 422 of the Controlled Substances Act (21 U.S.C. 863)".

(c) Section 2703(d) of title 18, United States Code, is amended by striking "section 3126(2)(A)" and inserting in lieu thereof "section 3127(2)(A)".

(d) Section 666(d) of title 18, United States Code, is amended–

(1) by redesignating the 4th paragraph relating to the definition of the term "State" as paragraph (5);

(2) by striking "and" at the end of paragraph (3); and

(3) by striking the period at the end of paragraph (4) and inserting "; and".

(e) Section 4247(h) of title 18, United States Code, is amended by striking "subsection (e) of section 4241, 4243, 4244, 4245, or 4246," and inserting in lieu thereof "subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243,".

(f) Section 408(b)(2)(A) of the Controlled Substances Act (21 U.S.C. 848(b)(2)(A)) is amended by striking "subsection (d)(1)" and inserting in lieu thereof "subsection (c)(1)".

(g)(1) Section 994(h) of title 28, United States Code, is amended by striking "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" each place it appears and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

(2) Section 924(e) of title 18, United States Code, is amended by striking "the first section or section 3 of Public Law 96–350 (21 U.S.C. 955a et seq.)" and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

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(h) Section 2596(d) of the Crime Control Act of 1990 is amended, effective retroactively to the date of enactment of such Act, by striking "951(c)(1)" and inserting in lieu thereof "951(c)(2)".

SEC. 2204. REPEAL OF OBSOLETE PROVISIONS IN TITLE 18.

Title 18, United States Code, is amended–

(1) in section 212, by striking "or of any National Agricultural Credit Corporation," and by striking "or National Agricultural Credit Corporations,";

(2) in section 213, by striking "or examiner of National Agricultural Credit Corporations";

(3) in section 709, by striking the seventh and thirteenth paragraphs;

(4) in section 711, by striking the second paragraph;

(5) by striking section 754, and amending the table of sections for chapter 35 by striking the item relating to section 754;

***74** (6) in sections 657 and 1006, by striking "Reconstruction Finance Corporation,", and by striking "Farmers' Home Corporation,";

(7) in section 658, by striking "Farmers' Home Corporation,";

(8) in section 1013, by striking ", or by any National Agricultural Credit Corporation";

(9) in section 1160, by striking "white person" and inserting "non-Indian";

(10) in section 1698, by striking the second paragraph;

(11) by striking sections 1904 and 1908, and amending the table of sections for chapter 93 by striking the items relating to such sections;

(12) in section 1909, by inserting "or" before "farm credit examiner" and by striking "or an examiner of National Agricultural Credit Corporations,";

(13) by striking sections 2157 and 2391, and amending the table of sections for chapters 105 and 115, respectively, by striking the items relating to such sections;

(14) in section 2257 by striking the subsections (f) and (g) that were enacted by Public Law 100–690;

(15) in section 3113, by striking the third paragraph; and

(16) in section 3281, by striking "except for offenses barred by the provisions of law existing on August 4, 1939".

SEC. 2205. CORRECTION OF DRAFTING ERROR IN THE FOREIGN CORRUPT PRACTICES ACT.

Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2) is amended, in subsection (a)(3), by striking "issuer" and inserting in lieu thereof "domestic concern".

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SEC. 2206. ELIMINATION OF REDUNDANT PENALTY PROVISION IN 18 U.S.C. 1116.

Section 1116(a) of title 18, United States Code, is amended by striking ", and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

SEC. 2207. ELIMINATION OF REDUNDANT PENALTY.

Section 1864(c) of title 18, United States Code, is amended by striking "(b) (3), (4), or (5)" and inserting in lieu thereof "(b)(5)".

SEC. 2208. CORRECTIONS OF MISSPELLINGS AND GRAMMATICAL ERRORS.

Title 18, United States Code, is amended–

(1) in section 513(c)(4), by striking "association or persons" and inserting in lieu thereof "association of persons";

(2) in section 1956(e), by striking "Evironmental" and inserting in lieu thereof "Environmental";

(3) in section 3125, by striking the quotation marks in paragraph (a)(2), and by striking "provider for" and inserting in lieu thereof "provider of" in subsection (d); and

(4) in section 3731, by striking "order of a district courts" and inserting in lieu thereof "order of a district court" in the second undesignated paragraph.

TITLE XXIII–DEATH PENALTY PROCEDURES

SEC. 2301. DEATH PENALTY PROCEDURES.

(a) Title 18 Amendment.–Title 18, United States Code, is amended by adding the following new chapter after chapter 227:

"CHAPTER 228–DEATH PENALTY PROCEDURES

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"S 3591.Sentence of death

"A defendant who has been found guilty of–

"(1) an offense described in section 794 or section 2381 of this title;

"(2) an offense described in section 1751(c)(2) of this title;

***75** "(3) an offense referred to in section 408(c)(1) of the Controlled Substances Act, committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) of that section or twice the gross receipts described in subsection (b)(2)(B) of that section;

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"(4) an offense constituting a felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Law Enforcement Act where the defendant knowingly or intentionally causes the death of another individual in the course of the violation or from the use of the controlled substance involved in the violation;

"(5) an offense under section 922(u) of this title (relating to drive-by shooting);

"(6) an offense under section 36, 2280, 2281, 2332, 2339, or 2340A of this title, or section 902(i) or 902(n) of the Federal Aviation Act of 1958 in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under this chapter, intentionally, knowingly, or with reckless disregard for human life, caused the death of another individual; or

"(7) any other offense–

"(A) for which a sentence of death is provided by law; and

"(B) in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under this chapter, intentionally or knowingly caused the death of another individual,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified. However, no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"S 3592.Factors to be considered in determining whether a sentence of death is justified

"(a) Mitigating Factors.–In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) Mental capacity.–The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) Duress.–The defendant was under duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) Participation in offense minor.–The defendant's participation in the offense was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) Foreseeability.–The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) Youth.–The defendant was youthful, although not under the age of 18.

"(6) Prior record.–The defendant did not have a significant prior criminal record.

"(7) Mental or emotional disturbance.–The defendant committed the offense under severe mental or emotional disturbance.

"(8) Punishment of others equally culpable.–Another defendant or defendants, equally culpable in the crime, will not be punished by death.

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"(9) Consent of victim.–The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) Aggravating Factors for Espionage and Treason.–In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

"(1) Previous espionage or treason conviction.–The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) Risk of substantial danger to national security.–In the commission of the offense the defendant knowingly created a grave risk to the national security.

***76** "(3) Risk of death to another.–In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(c) Aggravating Factors for Homicide and for Attempted Murder of the President.–In determining whether a sentence of death is justified for an offense described in section 3591(2) or (5) through (7), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

"(1) Conduct occurred during commission of specified crimes.–The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)), unless the above-listed offense is the offense for which the death penalty is being sought.

"(2) Involvement of firearm or previous conviction of violent felony involving firearm.–The defendant–

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of a firearm, as defined in section 921 of this title, against another person.

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"(3) Previous conviction of offense for which a sentence of death or life imprisonment was authorized.–The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) Previous conviction of other serious offenses.–The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) Grave risk of death to additional persons.–The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) Heinous, cruel or depraved manner of commission.–The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) Procurement of offense by payment.–The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, unless this is an element of the offense.

"(8) Commission of the offense for pecuniary gain.–The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value, unless this is an element of the offense.

"(9) Substantial planning and premeditation.–The defendant committed the offense after substantial planning and premeditation.

***77** "(10) Vulnerability of victim.–The victim was particularly vulnerable due to old age, youth, or infirmity, and the defendant was or should have been aware of that old age, youth, or infirmity.

"(11) Type of victim.–The defendant committed the offense against–

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons–

"(i) while such public servant was engaged in the performance of his official duties;
"(ii) because of the performance of such public servant's official duties; or
"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or

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Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(d) Aggravating Factors for Drug Offense Death Penalty.–In determining whether a sentence of death is justified for an offense described in section 3591 (3) or (4), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist–

"(1) Previous conviction of offense for which a sentence of death or life imprisonment was authorized.–The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) Previous conviction of other serious offenses.–The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) Previous serious drug felony conviction.–The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) Use of firearm.–In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) Distribution to persons under twenty-one.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

***78** "(6) Distribution near schools.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) Using minors in trafficking.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) Lethal adulterant.–The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

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"S 3593. Special hearing to determine whether a sentence of death is justified

"(a) Notice by the Government.–Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court shall permit the attorney for the Government to amend the notice upon a showing of good cause a reasonable time before the sentencing phase of the trial begins.

"(b) Hearing Before a Court or Jury.–When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted–

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if–

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) Proof of Mitigating and Aggravating Factors.–At the hearing, information may be presented as to–

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the

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Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to ***79** the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) Return of Special Findings.–The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) Return of a Finding Concerning a Sentence of Death.–If, in the case of–

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (2) or (5)–(7), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591 (3) or (4), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it is never required to impose a death sentence and that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) Special Precaution to Assure Against Discrimination.–In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

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"S 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"S 3595. Review of a sentence of death

"(a) Appeal.–In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

***80** "(b) Review.–The court of appeals shall review the entire record in the case, including–

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) Decision and Disposition.–

"(1) If the court of appeals determines that–

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for appeal or reflected in the record;

it shall affirm the sentence, provided that if any reviewing court determines that any aggravating factor was not supported by the evidence or is not a proper aggravating factor, the sentence shall be affirmed if the court finds that a remaining aggravating factor found to exist is one allowed under section 3592 and that the remaining aggravating factor or factors found to exist substantially outweigh any mitigating factors found to exist.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"S 3596. Implementation of a sentence of death

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"(a) In General.–A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) Special Bars To Execution.–A sentence of death shall not be carried out upon a woman while she is pregnant, or upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability–

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

"(c) Employees May Decline To Participate.–No employee of any State department of corrections, the Federal Bureau of Prisons, the United States Marshals Service, or the United States Department of Justice, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section or to participate in the prosecution or appeal of any capital case if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"S 3596A. Special provisions for Indian country

"Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

***81** "S 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"S 3598. Appointment of counsel

"(a) Representation of Indigent Defendants.–Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant or applicant against whom a sentence of death may be sought, or on whom a sentence of death has been imposed, for an offense against the United States, and for any defendant or applicant seeking to vacate or set aside a death sentence in a proceeding under section 2254 or 2255 of title 28, United States Code, where the defendant or applicant is or becomes financially unable to obtain adequate representation or investigative, expert, or other

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reasonably necessary services. Such a defendant or applicant shall be entitled to appointment of counsel and the furnishing of such other services in accordance with subsections (b) through (g).

"(b) Representation Before Finality of Judgment.–A defendant or applicant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. Each counsel so appointed shall continue to represent the defendant or applicant through every subsequent stage of available judicial proceedings, unless replaced by the court with similarly qualified counsel.

"(c) Representation After Finality of Judgment.–When a judgment of a Federal court imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant or applicant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order–

"(1) appointing one or more counsel to represent the defendant or applicant upon a finding that the defendant or applicant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel;

"(2) finding, after a hearing if necessary, that the defendant or applicant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the defendant or applicant is financially able to obtain adequate representation.

"(d) Standards for Competence of Counsel.–In relation to a defendant or applicant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to practice in the court of appeals for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant or applicant, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation.

"(e) Applicability of Criminal Justice Act.–Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) Ancillary Services.–Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant or applicant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's or applicant's attorneys to obtain such services on behalf of the defendant or applicant and shall order the payment of fees and expenses therefore, under subsection (g). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

"(g) Rate of compensation.–Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under ***82** this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (f), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of subsections (b) through (f).

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"(h) Claims of Ineffectiveness of Counsel.–The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"S 3599. Collateral Attack on Judgment Imposing Sentence of Death

"(a) Time for Making Section 2255 Motion.–In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within one year of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) Stay of Execution.–The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if–

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) Finality of the Decision on Review.–If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless–

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed or in the validity of the sentence under Federal law.".

(b) Clerical Amendment.–The table of chapters for part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

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(c) Voir Dire.–Rule 24(a) of the Federal Rules of Criminal Procedure is amended by adding at the end thereof the following: "In death penalty cases, the court shall permit the defendant or his attorney and the attorney for the Government to conduct direct, oral examination of any of the prospective jurors.".

***83** TITLE XXIV–DEATH PENALTY

SEC. 2401. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1991".

SEC. 2402. DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18, United States Code, is amended by striking "to the death penalty" and all that follows through the end of the section, and inserting "to imprisonment for life. If the death results from an intentional killing, the defendant may be sentenced to the death penalty.".

SEC. 2403. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

SEC. 2404. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 2405. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking "as provided in section 34 of this title".

SEC. 2406. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking "as provided in section 34 of this title".

SEC. 2407. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

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SEC. 2408. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18 of the United States Code is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life".

SEC. 2409. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code, as amended by section 1713 of this Act, is amended–

(1) by adding at the end thereof the following:

"S 1119.Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) For purposes of this section–

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death."; and

(2) by adding at the end of the table of sections at the beginning of such chapter the following:

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***84** SEC. 2410. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 2411. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 2412. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows to the period at the end of the paragraph.

SEC. 2413. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

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"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished–

"(1) by imprisonment for any term of years or for life, or

"(2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in serious bodily injury to the President (as defined in section 1365 of this title) or comes dangerously close to causing the death of the President.".

SEC. 2414. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 2415. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;".

SEC. 2416. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows before the period at the end of that second to last paragraph.

SEC. 2417. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 2418. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18, United States Code, as so redesignated by section 1735 of this Act, is amended to read as follows:

"(1) if the killing is murder as defined in section 1111(a) of this title, or if the killing is the result of conduct that constitutes a reckless disregard of human life, be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 2419. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

(a) In General.–Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473), is amended by striking subsection (c).

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(b) Clerical Amendment.–The table of contents for the Federal Aviation Act of 1958 is amended by striking the item relating to subsection (c) of section 903.

SEC. 2420. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18 of the United States Code is amended by striking "a fine of not more than $1,000,000 and imprisonment for life;" and inserting in lieu thereof "by death or imprisonment for life, or a fine of not more than $1,000,000, or both;".

***85** SEC. 2421. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended–

(1) by designating the current text as subsection (a);

(2) by striking "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b).";

(3) by adding at the end the following:

"(b) The punishment for an offense under this section is–

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years."; and

(4) in subsection (a), as designated by this section, by striking "commissioner" each place it appears and inserting in lieu thereof "magistrate judge".

SEC. 2422. PROHIBITION OF KILLINGS IN RETALIATION AGAINST WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended–

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for–

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; shall be punished as provided in paragraph (2).

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"(2) The punishment for an offense under this subsection is–

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years.".

SEC. 2423. DEATH PENALTY FOR THE MURDER OF FEDERAL LAW ENFORCEMENT OFFICIALS.

Section 1114 of title 18, United States Code, is amended by striking "punished as provided under sections 1111 and 1112 of this title," and inserting "punished, in the case of murder, by a sentence of death or life imprisonment as provided under section 1111 of this title, or, in the case of manslaughter, a sentence as provided under section 1112 of this title,".

SEC. 2424. DEATH PENALTY FOR THE MURDER OF PERSONS AIDING FEDERAL LAW ENFORCEMENT OFFICIALS.

(a) In General.–Chapter 51 of title 18, United States Code, as amended by section 2409 of this Act, is amended by adding at the end the following:

"S 1120. Killing persons aiding Federal investigations

"Whoever intentionally kills–

"(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation–

"(A) while the victim is engaged in the performance of official duties;

"(B) because of the performance of the victim's official duties; or

"(C) because of the victim's status as a public servant; or

"(2) any person assisting a Federal criminal investigation, while the assistance is being rendered and because of it,

shall be punished as provided in sections 1111 and 1112 of title 18, United States Code. Whoever attempts to commit such a killing shall be punished as provided in section 1113.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

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***86** SEC. 2425. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended by–

(1) striking paragraph (3); and

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(2) redesignating paragraph (4) as paragraph (3).

SEC. 2426. TORTURE.

(a) In General.–Part I of title 18, United States Code, is amended by inserting after chapter 113A the following:

"CHAPTER 113B–TORTURE

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"S 2340. Definitions

"As used in this chapter–

"(1) the term 'torture' means an act committed by a person, acting under color of law, specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within the custody or physical control of the actor;

"(2) the term 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from–

"(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

"(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

"(C) the threat of imminent death; or

"(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

"(3) the term 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958.

"S 2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if–

"(1) the alleged offender is a national of the United States; or

"(2) the alleged offender is present in the United States, without regard to the nationality of the victim or the alleged offender.

"S 2340B. Exclusive remedies

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"Nothing in this chapter precludes the application of State or local laws on the same subject, nor shall anything in this chapter create any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) Clerical Amendment.–The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113B the following new item:

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SEC. 2427. WEAPONS OF MASS DESTRUCTION.

(a) Offense.–Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

"S 2339. Use of weapons of mass destruction

"(a) Whoever uses, or attempts or conspires to use, a weapon of mass destruction against–

"(1) a national of the United States while such national is outside of the United States;

"(2) any person within the United States; or

***87** "(3) any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) For purposes of this section–

"(1) 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) 'weapon of mass destruction' means–

"(A) any destructive device as defined in section 921 of this title;

"(B) poison gas;

"(C) any weapon involving a disease organism; or

"(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(b) Clerical Amendment.–The table of sections at the beginning of chapter 113A of title 18, United States Code, is amended by adding at the end the following:

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SEC. 2428. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended–

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(1) by redesignating subsections (c), (d), (e), (f) and (g) as subsections (d), (e), (f), (g), and (h) respectively;

(2) in subsection (a), by striking "(c)" and inserting "(d)"; and

(3) inserting after subsection (b) the following:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall–

"(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113 of this title.".

SEC. 2429. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) Conspiracy Against Rights.–Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) Deprivation of Rights Under Color of Law.–Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) Federally Protected Activities.–Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) Damage to Religious Property; Obstruction of the Free Exercise of Religious Rights.–Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

SEC. 2430. INTENTIONALLY KILLING A FEDERAL WITNESS IN THE WITNESS PROTECTION PROGRAM.

Section 1512 of title 18, United States Code, is amended–

(1) by inserting after subsection (c) the following:

"(d) Whoever violates this section by intentionally killing an individual provided protection under section 3521 of this title shall be subject to the death penalty."; and

(2) by redesignating subsections (d) through (h) as subsections (e) through (i).

SEC. 2431. DRIVE-BY SHOOTINGS.

(a) In General.–Section 922 of title 18, United States Code, is amended by adding after the subsections added by sections 2021(a) and 2031(a) of this Act the following:

"(u) It shall be unlawful for any person knowingly–

"(1) to discharge a firearm from within a motor vehicle; and

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"(2) thereby create a grave risk to human life.".

(b) Penalty.–Section 924(a) of such title is amended by adding after the paragraph added by section 2021(e)(2)(B) of this Act the following:

***88** "(6) Whoever knowingly violates section 922(u) shall be fined under this title or imprisoned not more than 25 years, or both, and if death results from conduct prohibited by that section, shall be punished by death or imprisonment for life or any term of years.".

SEC. 2432. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 3371 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

H.R. 3371, the "Omnibus Crime Control Act of 1991," is a comprehensive legislative response to the many facets of criminal activity in our society. The Committee has moved forward with this legislative initiative in order to fulfill a responsibility that has its roots in the Preamble to the Constitution and its call to "establish justice *** insure domestic tranquility *** [and] promote the general welfare." No force is more damaging to our Nation's system of justice, more disruptive of the domestic tranquility that the Founders sought, more harmful to the "general welfare" they wished to promote, than acts of criminal violence. People who live in fear of physical harm, of drugs corrupting their neighborhoods and schools, of a criminal justice system that does not operate efficiently and evenhandedly, cannot truly be said to be free.

Crime's corrosive effects are not confined exclusively to the physical violence that places life and limb in jeopardy. Our Nation's entire financial structure is predicted on trust and confidence in the soundness and integrity of the transactions and participants that make up the system. White collar crime erodes those pillars of trust and impedes our Nation's ability to operate efficiently at home and compete vigorously abroad.

In assembling the legislative components of H.R. 3371, the Committee was mindful of its dual responsibility: first, to fulfill its duty at the Federal level to counter criminal activity, and second, to respect and promote the fundamental role of the states and local governments in the functioning of our criminal justice system. In practical terms, it is impossible for the Federal government to assume the law enforcement role in every community across the Nation. Historically, day-to-day responsibility for operation of the Nation's criminal justice system has rested with those units of government that are closest to the people. H.R. 3371 reflects that historical relationship while giving impetus to certain initiatives and policy decisions that must start at the Federal level is the fight against crime is to be waged efficiently and vigorously.

As ordered reported by the Committee on the Judiciary, H.R. 3371 represents a Federal response to criminal activity in our Nation in the following areas:

Title I–Community Policing; Cop on the Beat

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Title II–Drug Treatment in Federal Prisons

Title III–Substance Abuse Treatment in State Prisons

***89** Title IV–Safe Schools

Title V–Victims of Crime

Subtitle A–Crime Victims Fund

Subtitle B–Restitution

Subtitle C–HIV Testing

Title VI–Certainty of punishment for Young Offenders

Title VII–Drug Testing of Arrested Individuals

Title VIII–Drug Emergency Areas act of 1991

Title IX–Coerced Confessions

Title X–DNA Identification

Title XI–Habeas Corpus

Title XII–Provisions Relating To Police Officers

Subtitle A–Police Accountability

Subtitle B–Retired Public Safety Officer Death Benefit

Subtitle C–Study on Police Officers' Rights

Subtitle D–Law Enforcement Scholarships

Subtitle E–Law Enforcement Family Support

Title XIII–Fraud

Title XIV–Protection of Youth

Subtitle A–Crimes Against Children

Subtitle B–Parental Kidnapping

Subtitle C–Sexual Abuse Amendments

Subtitle D–Reporting of Crimes Against Children

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Title XV–Miscellaneous Drug Control

Title XVI–Fairness in Death Sentencing Act of 1991

Title XVII–Miscellaneous Crime Control

Subtitle A–General

Subtitle B–Motor Vehicle Theft Prevention

Subtitle C–Terrorism: Civil Remedy

Subtitle D–Commission on Crime and Violence

Title XVIII–Miscellaneous Funding Provisions

Subtitle A–General

Subtitle B–Midnight Basketball

Title XIX–Miscellaneous Criminal Procedure and Correction

Subtitle A–Revocation of Probation and Supervised Release

Subtitle B–List of Veniremen

Subtitle C–Immunity

Subtitle D–Juvenile Record

Subtitle E–Petty Offenses

Subtitle F–Optional Venue for Espionage and Related Offenses

Subtitle G–General

Title XX–Firearms and Related Amendments

Subtitle A–Firearms and Related Amendments

Subtitle B–Assault Weapons

Subtitle C–Large Capacity Ammunition Feeding Devices

Title XXI–Sports Gambling

Title XXII–Technical Corrections

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Title XXIII–Death Penalty Procedures

Title XXIV–Death Penalty

***90** HEARINGS

H.R. 3371 is the product of the Committee's wide-ranging and on-going oversight of the Federal government's role in the Nation's criminal justice system. Specifically, during the first session of the 102d Congress, the Committee's subcommittees held the following hearings on matters that became components of H.R. 3371:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

COMMITTEE VOTE

On September 26, 1991, a reporting quorum being present, the Committee on the judiciary ordered H.R. 3371 reported to the full House by voice vote.

***91** DISCUSSION AND SECTION-BY-SECTION ANALYSIS

TITLE I–COMMUNITY POLICING: COP ON THE BEAT

PURPOSE

Title I is the first of several initiatives designed to help law enforcement prevent crimes before they occur rather than merely react to them after the fact. The title makes Federal assistance and leadership available to State and local law enforcement authorities in their efforts to put more cops back on the beat, thereby increasing police presence on the streets and helping to develop stronger, more effective working partnerships between police and the communities they serve.

BACKGROUND

Decades ago police officers routinely walked familiar and regular beats and in the process developed relationship of trust with the community residents that allowed them to solve problems before they developed into criminal activity. With the technological advances represented by roving, radio-based police patrol cars and 911 systems, these links between the police and the community began to deteriorate. Police were no longer able to anticipate and prevent crime by use of community-oriented, problem solving techniques. Instead, they were forced to speed from one crime scene to another and merely take reports after the fact–long after the offender was gone. In addition, most police officers spend too much time taking reports and processing cases and not enough time on the streets fighting crime.

In recent years police departments all over the country have begun exploring ways of putting the cop back on the beat as part of a movement known as community-oriented or problem-oriented or problem-solving policing. This method of policing requires new and different approaches, techniques and training. These efforts serve to strengthen the relationship between the people and the police, thus increasing accountability on both sides. The program authorized by this title will provide needed leadership and funding to local governments and community groups to augment their efforts to provide this community-based policing. It will encourage police departments to reorient their emphasis from reacting to crime to preventing crime.

The $150 million authorized under this Bureau of Justice Assistance Grant program will be available to help State and local police departments and local community groups develop innovative, neighborhood-oriented policing programs. This will include training in community and problem-solving policing techniques. It will also be available to provide new technologies that will reduce the amount of time police officers spend processing cases, filling out forms and taking reports and provide

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more time for the real police work of community patrol, problem solving and crime prevention. BJA is also directed to develop model programs to help communities deal with gangs and drug houses.

This program was the result of careful study by the Subcommittee on Crime and Criminal Justice. This review culminated in a ***92** hearing held on July 10, 1991, that explored the need for and success of some of these community policing programs across the country. Testimony was taken from Lee Brown, Commissioner of the New York City Police Department, who is widely considered to be one of the originators of the community policing theory as well as one of its biggest proponents. He has recently begun to put the idea into practice in the New York City Police Department. The Subcommittee also heard testimony from police and citizen representatives from Tucson, Arizona; Aurora, Colorado; and New York, New York about successful techniques being utilized in these areas. Two other experts in the field, Dr. Robert Trojanowicz, Director of the National Center for Community Policing and School of Criminal Justice at Michigan State University; and Mr. John Eck, Director of Research at the Police Executive Research Forum, also testified in support of the initiative.

This title was reported favorably by the Subcommittee on Crime and Criminal Justice as Title V of its subcommittee print on July 31, 1991, by a vote of 13–0. During Committee markup an amendment was offered by Rep. Dan Glickman (D-Kansas) and adopted by voice vote that would make funds available under this program for the development of crime prevention programs in communities that have experienced increases in gang-related violence.

SECTION-BY-SECTION ANALYSIS

Section 1010

Short Title: The Community Policing; Cop on the Beat Act of 1991.

Section 102

This section amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 by redesignating Part P as Part Q and Section 1601 as Section 1701; and by inserting a new Part P, which will contain the provisions discussed below.

Section 1601 of Part P will authorize a program of grants to local governments and community groups for the purposes of developing neighborhood-oriented policing programs, providing new technologies to reduce the amount of time officers spend on paperwork, purchasing equipment to improve communications between officers and the community, creating decentralized police substations throughout the community, providing training in cultural differences for law enforcement officials, developing model projects for informing community members about how to eliminate drugs and gangs in their neighborhoods, and developing other community-based crime prevention techniques and policies.

Section 1602 will provide for local governments or combinations of local governments to make applications for grants to the Director of the Bureau of Justice Assistance (the "Director"). Such application will be required to describe the projects for which funding is sought and shall designate a public or private agency to be responsible for carrying out those projects. Applications will also be required to contain assurances that any Federal grants made under this part will not supplant non-Federal funds that would otherwise be spent for the financed activities.

***93** Section 1603 requires that no less than 75 percent of the funds available for grants under this part be allocated to local governments, and that no more than 20 percent of the available funds be allocated to community groups. This section also mandates that no more than 5 percent of the funds available under this part shall be used for the purposes of administration, technical assistance, and evaluation, and that the Federal share of projects funded by grants under this part shall not exceed 75 percent will at least 25% coming from non-Federal sources. This section also provides that a grant under this part may be renewed for up to 2 additional years.

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Section 1604 establishes criteria of need, ability, and geographic distribution for the Director to consider in awarding grants. Section 1605 will require grant recipients to submit annual reports to the Director describing the progress achieved with the assistance of the grants. This section also requires the Director to submit to Congress an annual report containing a detailed statement of grant awards and an evaluation of funded projects. Section 1606 defines certain terms and effects certain conforming amendments.

Section 103

This section authorizes to be appropriated $150 million for each of the fiscal years 1992, 1993, and 1994 for the cop on the beat/community policing grant program.

TITLE II–DRUG TREATMENT IN FEDERAL PRISONS

Title II is another provision aimed at taking steps to prevent future crimes. It will ensure that by 1995 every Federal prisoner who has a substance abuse problem and who is willing to undergo a treatment program will have the opportunity to receive treatment. It will make available to every eligible Federal prisoner a program intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills in order to solve the prisoner's substance abuse and related problems. Offenders with substance abuse problems have an extraordinarily high rate of recidivism. Treating these problems will reduce the tendency of the current prison population to commit crimes after their release, will help ease future prison overcrowding, and will permit prisoners to make a successful return to the community as productive citizens.

BACKGROUND

Drug treatment for prisoners is a powerful tool for reducing recidivism and for easing prison overcrowding. But despite Bureau of Prisons studies showing that 47 percent of Federal inmates have moderate to serious substance abuse problems, residential treatment programs are available to only 6 percent of these inmates. There is an immense gap between what could be done to prevent crime with drug treatment and what is now being done by the Bureau of Prisons.

H.R. 548, the Federal Prison Substance Abuse Availability Act of 1991, was introduced by Congressman Charles Schumer, Chairman of the Subcommittee on Crime and Criminal Justice, on January ***94** 16, 1991, to address this critically important problem. The provisions of Title II are largely derived from H.R. 548.

The Subcommittee on Crime and Criminal Justice held a hearing on June 6, 1991, to consider H.R. 548. The testimony at that hearing demonstrated that substance abuse is a major cause of the tremendous growth in the Federal prison population over the past decade. Michael J. Quinlan, Director of the Federal Bureau of Prisons, testified at the hearing an estimated 30,000 of the 62,000 Federal inmates have substance abuse problems. Without treatment, studies indicate as many as 75 percent of these individuals will return to drug use within three months of release from prison, and about half will return to jail within three years. In contrast, the comprehensive Stay'N Out program at New York's Arthur Kill Correctional Facility has found that 78 percent of those inmates who undergo the full residential substance abuse treatment are still out of prison three years after release.

Based upon the evidence presented at the hearing, it became clear that an incentive to participate in these rigorous treatment programs was essential. For that reason, a provision was included in this title authorizing the Bureau of Prisons to reduce by up to one year the sentences of inmates completing a residential substance abuse program. Three graduates of the Stay'N Out program testified at the hearing. They testified that prisoners induced by the prospect of an incentive to enter a substance abuse program often find in the program the support and resolve they need to overcome their drug problems. Residential substance abuse programs are rigorous, 24-hour-a-day experiences requiring a great deal of work, effort, and commitment from the inmate.

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The Committee determined that a modest, appropriate incentive is necessary to ensure a high level of productive participation in the program. Other witnesses at the hearing included Dr. Doug Lipton, Narcotic and Drug Research, Inc.; Jerry Vigdal, Director, Office of Drug Programs, Wisconsin Department of Corrections; and Robert Anderson, Director, Criminal Justice Programs, National Association of State Alcohol and Drug Abuse Directors, Inc.

This title was also Title II of the subcommittee print reported by the Subcommittee on Crime and Criminal Justice on July 31, 1991, by a vote of 13–0.

SECTION-BY-SECTION ANALYSIS

Section 201

Short title: Drug Treatment in Federal Prisons Act of 1991.

Section 202

Section 202 defines residential substance abuse treatment as a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population.

Section 203

This section requires the Bureau of Prisons (the "BOP") to provide appropriate substance abuse treatment to at least 50 percent of willing prisoners with substance abuse problems by the end of ***95** fiscal year 1993, to provide treatment to at least 75 percent of eligible prisoners by the end of fiscal year 1994, and to provide treatment for all eligible prisoners by the end of fiscal year 1995 and thereafter. It provides an incentive to prisoners for successful completion of a treatment program by authorizing the BOP to modify the conditions of confinement of successful participants or to shorten, by up to one year, the term of a prisoner who has successfully completed a treatment program. This section also provides for the periodic drug testing of prisoners, while they remain in the custody of BOP, who have completed a treatment program and have had their confinement conditions modified.

Section 204

This section requires the BOP to report to the Congress annually concerning its substance abuse treatment programs.

Section 205

This section authorizes the appropriation of funds necessary to carry out this title for fiscal year 1991 and each fiscal year thereafter.

TITLE III–SUBSTANCE ABUSE TREATMENT IN STATE PRISONS

PURPOSE

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Title III is a program of grants to States to assist in the development of residential correctional substance abuse treatment programs. These programs, by helping prisoners to defeat their substance abuse problems, will reduce recidivism, ease prison overcrowding, and assist in the rehabilitation of offenders.

BACKGROUND

The hearing held on June 6, 1991, by the Subcommittee on Crime and Criminal Justice revealed that State prisons, like their Federal counterparts, have experienced a rapid rise in inmate population caused, in large part, by substance abuse. The Bureau of Justice Statistics estimates that 50 to 66 percent of inmates nationwide regularly use controlled substances. Yet State correctional authorities, lacking the resources to deal with their overcrowded prison systems, offer drug treatment to only about 11 percent of prisoner. The States are in dire need of Federal funding for cost-effective, crime-reducing treatment programs. Title III would provide $100 million for State correctional systems to use in implementing long-term (9 to 12 months), residential substance abuse treatment programs.

The intent of the Committee is that "substance abuse" should be understood to include alcohol and multiple substance abuse as well as drug abuse, although the emphasis is expected to be upon drug abuse. The Committee also intends that the treatment offered by States to their substance-abusing prisoner population be by qualified treatment providers and standards be utilized to ensure the quality of treatment provided. A drug treatment program established ***96** or implemented with assistance provided under this title should be designed to provide individualized treatment based on an initial evaluation and assessment and should include, but not be limited to, the following services: education services, individual and group counseling, self-help and peer group activities, long-term residential treatment services including therapeutic communities and follow-up and aftercare. The Committee recognizes the value of community-based aftercare and encourages the establishment of this vital treatment component. The committee also intends that funds under this program be made available, to the extent consistent with other requirements of the program, for drug treatment of incarcerated women (including incarcerated pregnant women) as well as incarcerated juveniles. Finally, the Committee urges State corrections officials to coordinate their efforts with the designated single State agency responsible for drug and alcohol prevention and treatment.

This title was also Title III of the subcommittee print reported by the Subcommittee on Crime and Criminal Justice on July 31, 1991.

At Committee markup an amendment, offered by Rep. Mike Synar (D-Oklahoma), was adopted by voice vote that changed the funding formula from general population-based to one based upon numbers of prisoners in each state. Another amendment was adopted that was offered by Rep. William Hughes (D-New Jersey) that would create an eligibility for a preference for State applicants whose programs contain aftercare components. Inclusion of an aftercare component is to be understood as a potential, not an automatic preference.

SECTION-BY-SECTION ANALYSIS

Section 301

Short title: Substance Abuse Treatment in State Prisons Act of 1991.

Section 302

This section amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 by redesignating Part Q as Part R and section 1701 as 1801; and by inserting a new Part Q that will contain the following provisions:

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Section 1701 will authorize the Director of the Bureau of Justice Assistance (the "Director") to make grants to States for the purpose of developing residential substance abuse treatment programs within State correctional facilities.

Section 1702 will provide for States to make applications for grants to the Director. Such application must include assurances that Federal funds received under this part will be used to supplement, not supplant, non-Federal funds, and must demonstrate that the State will require urinalysis or similar testing of individuals who are participating in or have been graduated from correctional residential substance abuse treatment programs. This section also includes an eligibility for a preference for applications that include aftercare components.

Section 1703 will provide that a grant shall be made upon a finding by the Director that a State's application is consistent with the ***97** requirements of this Part. This section further requires that no grant funds may be used for land acquisition or construction projects.

Section 1704 will allocate the total amount of funds appropriated under this Part in any fiscal year. It will provide for the allocation of 0.4 percent of this amount to each of the participating States, and for the allocation of the remaining funds among the participating States according to their prisoner populations. This section further provides that the Federal share of a grant may not exceed 75 percent of the total costs of the projects described in the application submitted by the State.

Section 1705 will require that each recipient State and local government submit to the Director an annual evaluation of its grant-funded projects. This section also makes a conforming amendment to the table of contents of the Omnibus Crime Control and Safe Streets Act of 1968.

Section 303

This section amends section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 by adding a new paragraph (24), which defines residential substance abuse as a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population.

Section 304

This section authorizes an appropriation of $100 million for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this Part.

TITLE IV–SAFE SCHOOLS

PURPOSE

Title IV is an effort to guarantee the safety of the Nation's children in their classrooms and on their school grounds. It is another in the series of initiatives designed to prevent crimes before they occur and protect young people before they are victimized. The program is intended to make schools safe environments for learning and to reduce drug- and gang-related activity in schools. It will furnish grants to those local educational authorities most severely challenged by the rising amount of crime and violence that is disrupting their schools. These grants will fund programs aimed at reducing this crime and at aiding its victims. The goal is to draw the line on crime at the classroom door.

BACKGROUND

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It is universally agreed that nothing is more important than the safety of our Nation's schoolchildren. There are approximately 40.5 million elementary and secondary students in the Nation's schools today. They are taught by 2.3 million teachers. Parents of these children, and the families of these teachers, deserve to know that they are safe. Unfortunately, parents everywhere are becoming increasingly worried about the safety of their children in school. Too ***98** often these fears are justified; for many children, school is a place of fear rather than a safe haven for learning.

Crime and terror in schools is a harsh condition facing children, teachers and parents at all educational levels: elementary schools, middle schools and high schools. Crimes in schools include drug dealing among students or between adults and students, weapons violations, murders, assaults, aggravated assaults, sexual assaults, thefts, robberies and destruction of property offenses. Many crimes are gang-related. It is estimated that almost 3 million attempted or completed crimes take place in schools or on school property every year–that is 16,000 each day or one every six seconds. These include approximately 60,000 aggravated assaults, 300,000 simple assaults and 70,000 weapons offenses. Experts estimate that every day almost 135,000 youths enter school carrying guns. A recent poll indicated that 41 percent of male 8th and 10th graders had access to a handgun and that 39 percent reported being threatened with violence at school. Polls also show students are afraid of being victimized and that this fear impacts upon their ability to learn.

Gunfights are replacing fist fights and drive-by shooting drills are replacing fire drills on many school campuses. Some parents have even taken to sending their children to school wearing bullet-proof vests and carrying bullet-proof school bags and clip boards. Superintendents and security officials from the largest urban school districts listed weapons in the schools as among their top five concerns in a survey conducted by the National School Safety Center in 1988. Students bring a variety of weapons to schools, ranging from guns and knives to explosive devices. Between July 1, 1987, and June 30, 1988, California school officials confiscated 8,539 weapons including 789 guns, 4,408 knives and 2,216 explosives.

The problem of drugs and violence in schools is not limited to the inner cities. School violence often erupts where and when it is least expected, such as in Cokeville, Wyoming, where two people with a bomb held the entire school hostage for hours, and Stockton, California, where a man with an assault weapon killed and injured students and staff. Small school districts experience problems with weapons similar to schools in large cities. For example, in Duvall County, Florida, and Nashville, Tennessee, incidents of weapons in schools tripled between 1986 and 1987.

A number of school districts and individual schools are taking steps to both prevent and deal with incidents of crime in the schools. These measures often include physical facilities such as safer school design, metal detectors, safety doors, video surveillance equipment and the like. Many schools have established security offices and employ professional security personnel. Other utilize parents and other adults to monitor hallways and restrict access to schools to those with legitimate business. Some schools prepare for disaster with crisis intervention plans and bullet and drive-by shooting drills. It is important for schools to become more aware of school crime, deal with criminal behavior as crimes rather than as disciplinary matters and increase cooperation with local police departments and prosecutors offices. Many schools have also adopted anti-violence and anti-drug curricula. Some have student mediation programs as well as victim and counselling services for both students and teachers.

***99** The Federal Government should be exercising leadership and making resources available so more schools can utilize these measures. The grant program established in this title is intended to make funds, models and demonstration programs available to explore and implement these and other crime prevention and crime control techniques in the nation's public elementary, middle and secondary schools.

On July 16, 1991, the Subcommittee on Crime and Criminal Justice held a hearing to examine the issue. The information discussed above was the result of that hearing and review. Witnesses included several victims of school crime including Eric Taylor, a young man shot and injured in this school in Stockton, California, and his mother, Janet Taylor; Max Excell and his daughter Celeste who were held hostage by a couple with a bomb in an elementary school in Cokeville, Wyoming; and Judith Sherman, a special education teacher who was robbed and slashed with a knife in her school in New York, New York. Examples of some approaches to school crime were offered by Detective Jehru Brown of the Washington, D.C., Metropolitan

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Police Department (he was accompanied by Linda Johnson, A Washington, D.C. resident who described drug use in the public schools); Linda Lausell of the Victims' Service Agency of New York City and Patricia Baker a student mediator in that program; Charles Posner and Patricia Gatling, Assistant District Attorneys in Kings County, New York, who discussed a school anti-crime program run by that office; and John Calhoun of the National Crime Prevention Council accompanied by Michael Watts, a Washington, D.C. student who described the extent of the crime problem in Schools. Finally, the Subcommittee heard from a panel of experts in school crime including Ronald Stephens, Director of the National School Safety Center; Peter Blauvelt, Director of Security for the Prince George's County Maryland School System; and Ed Muir, Director of School Safety for the United Federation of Teachers (he was accompanied by June Feder, Coordinator of UFT's Victim Support Program).

This title was Title VI of the subcommittee print that was marked up and reported on July 31, 1991, by a vote of 13–0.

SECTION-BY-SECTION ANALYSIS

Section 401

Short Title: The Safe Schools Act of 1991.

Section 402

This section amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 by redesignating Part R as Part S, and section 1801 as section 1901; and inserting a new Part R, which will contain the following provisions:

Section 1801 authorizes a program of grants to local educational agencies for the purposes of providing assistance to such agencies most directly affected by crime and violence. This Section requires the Director of the Bureau of Justice Assistance (the “Director”) to develop a written safe schools model.

Section 1802 mandates that grants made under this Part shall be used to fund school safety and anticrime measures, for counseling ***100** programs for victims of crime, for crime prevention equipment, and for the prevention and reduction of the participation of young individuals in organized crime and drug- and gang-related activities in schools.

Section 1803 provides for local educational agencies to make application for grants to the Director of the Bureau of Justice Assistance. Such application will be required to describe the schools to be served by the grant, to include a comprehensive plan for addressing these schools' crime problems, and to contain assurances that any Federal grants made under this Part will not supplant non-Federal funds that would otherwise be spent for the financed activities. It will also require statistical information regarding crime within the relevant schools in such form as the Director shall specify.

Section 1804 mandates that no more than 5 percent of the funds available under this part shall be used for the purposes of administration and technical assistance. This section will further provide that a grant under this part may be renewed for up to 2 additional years.

Section 1805 will establish criteria of need, ability, population, and geographic distribution for the Director to consider in awarding grants.

Section 1806 will require grant recipients to submit to the Director annual reports describing the progress achieved with the assistance of the grants. This section will also require the Director to submit to Congress an annual report containing a detailed statement of grant awards and an evaluation of funded projects.

Section 1807 defines certain terms and effects certain conforming amendments.

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Section 403

This section authorizes to be appropriated for the grant program $100 million for each of the fiscal years 1992, 1993, and 1994.

TITLE V–VICTIMS OF CRIME

PURPOSE

Title V amends the Victims of Crime Act of 1984 as amended to eliminate the existing cap and sunset provisions, change the formula to more efficiently distribute resources to crime victims assistance and compensation programs, and provide for steady increases in the amount of funds available to such programs.

SECTION-BY-SECTION ANALYSIS

SUBTITLE A–CRIME VICTIMS FUND

Section 501

Section 501 amends the Victims of Crime Act of 1984 as amended (the "1984 Act") to eliminate the sunset provision of fiscal year 1994 for deposits made in the Crime Victims Fund (the "Fund"), and removes the fund ceiling of $152,200,000 through fiscal year ***101** 1994. It also alters the formula governing the Fund by providing that, for fiscal years 1992 and 1995, the first $10,000,000 deposited in the Fund will be allocated by the Secretary of Health and Human Services for grants under section 4(d) of the Child Abuse Prevention and Treatment Act, the next $6,200,000 will be made available to the Judicial Branch for certain administrative costs, and the remaining funds deposited in the Fund be allocated as follows: four percent for training and technical assistance programs and services for victims of Federal crimes; 48 percent to crime victims compensation programs; and 48 percent to crime victim assistance programs. After fiscal year 1994, the distribution formula remains the same, with the exception that Judicial Branch administrative costs are to be reduced to $3,000,000 in each fiscal year thereafter.

It is the intent of the Committee that the funds allocated to the Judicial Branch be used for operations and computers for the U.S. Courts Fine Center in Raleigh, North Carolina, and other pilot districts. Increased funds are provided for the first four fiscal years for one-time purchases of computer and data processing equipment. The Committee intends that all funds allocated to the Judicial Branch be distributed as early as practicable to facilitate the Judiciary's budget planning.

Section 501 also authorizes the Director of the Office of Victims of Crime (the "Director") to set aside a reserve fund for those years in which deposits in the Fund are less than in the previous years so as to minimize the impact on grant recipients of uneven funding. Only funds in excess of 110 percent of deposits from the previous year may be retained in this reserve fund, and in no case can the reserve fund exceed $20,000,000.

Section 502

Section 502 amends the 1984 Act to increase the Federal share of victim compensation programs from 40 percent to 45 percent of the amounts awarded by each program during the preceding fiscal year. This increase is intended to ensure that compensation program payments do not decrease as a result of increased allowable administrative costs under section 503.

Section 503

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Section 503 amends the 1984 Act to allow the Director to permit compensation programs to use up to five percent of their grants for administrative costs.

Section 504

Section 504 amends the 1984 Act to provide that victim compensation not be considered as funds that a Federal or federally financed State or local program would otherwise pay. It is the intent of the Committee that compensation programs funded under this Act be available as "funds of last resort," and thus not supplant Medicaid, Veterans Administration, CHAMPUS Indian Health Service, or other similarly available funds.

***102** Section 505

Section 505 amends the 1984 Act by allowing he Director to use unspent compensation funds for assistance programs in either the year such funds are not spent or in the following year. It is the Committee's intent that this change will speed the distribution of funds to assistance programs in a given year. Under the 1984 Act, such payments can only be made in the current fiscal year after compensation grants are made. Thus, assistance grants may not become available until midway or later through the fiscal year. By allowing the Director to use previous year unspent compensation funds, assistance payments can commence at the beginning of the fiscal year.

Section 506

Section 506 amends the 1984 Act to require that State crime victim assistance administrators give particular attention to children who are victims of violent street crime.

Section 507

Section 507 amends the 1984 Act to explicitly allow the Director to make grants for demonstration projects as well as for training and technical assistance.

Section 508

Section 508 amends the 1984 Act to allow the State administrator of victim assistance programs to use up to five percent of the assistance grant for administrative costs.

Section 509

Section 509 amends the 1984 Act to make biannual reports due on May 31. Under the 1984 Act, reports are due on December 31. However, States typically do not provide the Office of Victims of Crime with the required information until several months into the calendar year.

Section 510

Section 510 amends the 1984 Act to require grantees to certify that no grant funds will be used to supplant available State and local funds, but rather would supplement those otherwise available funds.

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Section 511

Section 511 delays the implementation of sections 501(b), 502, 503, and 508 until such time that the Director certifies that sufficient funds are in the Fund to ensure that allocations made under those sections do not reduce the funding levels of the programs supported by the Fund. The provisions subject to this triggered implementation are those which affect the distribution of funds. The Committee estimates that such a certification can be made when the total deposit in the Fund equals approximately $155,000,000, depending on the amount of allowable administrative costs.

***103** SUBTITLE B–RESTITUTION

Section 521

This section amends section 3663 of title 18 to permit the court to include, in any order of restitution, reimbursement to the victim for child care, transportation, and other costs incurred in the participation in the investigation or prosecution of the offense against the victim. This section also gives the court discretionary authority to suspend the eligibility for certain Federal benefits of a defendant who is delinquent in restitution payments.

This section also amends section 3663 of title 18 to authorize courts to order restitution to victims of sexual assault.

SUBTITLE C–HIV TESTING

Section 531

This section adds a new section 2247 to title 18 to provide for HIV testing and penalty enhancement in sexual abuse cases. Under this section, a person charged with committing a sexual assault will be required to submit to testing for the human immunodeficiency virus, unless a judicial officer determines that the defendant's conduct created no risk of transmission of the virus. The section requires testing within twenty-four hours of arraignment, and follow-up testing six months and twelve months after arraignment, unless the defendant is acquitted or the charges against him or her are dismissed. The results of the defendant's tests will be provided to the defendant, the court, the prosecutor, and the victim. This section further directs the Sentencing Commission to include in its sentencing guidelines an enhancement for sexual assault offenders who know or have reasons to know they are HIV-infected and who engage in conduct creating a risk of transmission of the virus.

Section 532

This section amends section 503 of the Victims' Rights and Restitution Act of 1990 to direct any department conducting an investigation of a sexual assault to pay for the victim to have up to two tests for the human immunodeficiency virus within the twelve months following the assault.

TITLE VI–CERTAINTY OF PUNISHMENT FOR YOUNG CRIME OFFENDERS

PURPOSE

Title VI is a program intended to assist the States in developing alternatives to traditional modes of probation and incarceration for juvenile and young offenders (up to age 28). Such alternatives would enable probation and correctional systems to provide certainty of punishment for youthful offenders in forms designed to have a greater impact on certain young offenders than mere probation would. It would also allow overburdened corrections departments to punish young, non-violent offenders in

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settings other than ***104** traditional incarceration where appropriate and consistent with the demands of public safety. This program would provide critical financial assistance to develop and test correctional options including, for example, community-based incarceration, weekend incarceration, boot-camp prisons, intensive probation, electronic monitoring, home confinement, vocational and educational options, restitution programs and other punishments targeted selectively at young offenders.

BACKGROUND

Title VI is the result of a review by the Subcommittee on Crime and Criminal Justice that highlighted the need for alternatives to traditional modes of probation and incarceration which will both ensure that juvenile and young offenders receive punishment for their crimes and reduce the rate at which these youths return to criminal activity after their release. The review highlighted an extremely serious problem in the Nation's correctional systems. This crisis is reflected in the overpopulation of correctional systems (there are an estimated 1 million inmates nationwide, more than double the prison population of a decade ago) as well as in the recidivism rates of these systems, rates which are as high as 60 percent.

Because prisons are already overflowing, many youthful violators receive unrestricted probation or suspended sentences for their first offenses–and sometimes even for second and third offenses. This lack of meaningful and effective punishment reinforces criminal behavior and leads to recidivism and lack of respect for the criminal justice system. Yet with average prison construction costs of up to $40,000 per inmate, States simply cannot afford to produce enough traditional prison cells to guarantee that young criminals are punished for their transgressions.

At the same time, when youthful offenders are imprisoned, the testimony at the hearings indicated that correctional systems often simply warehouse these individuals at incredible costs ranging from $43 to $113 per inmate per day, then release them to society as more adept and perhaps more savage criminals. There is a desperate need for a range of punishments that can be used as stronger alternatives to simple probation for the youthful offender. Such punishments would send the message that crime will not be permitted. They would also offer the opportunity for early intervention that can turn the offender from being a career criminal. States across the country have begun to formulate these types of programs, including community service, restitution, intensive supervision, home detention, work programs, and military-style boot camps. Hampered by a lack of resources, however, the States have been unable to develop these ideas fully, or to implement them on a scale commensurate with the enormous need for them. Title VI would address this crisis by providing $200 million for grants to States to aid in the development of such alternative sanctions.

The Subcommittee held a hearing on this issue on June 26, 1991. Testimony was heard from Derrick Thomas, a member of the Kansas City Chiefs football team, who successfully participated in one such program as a juvenile. Mr. Robert Weaver, a representative ***105** of that program, the American Marine Institute, described a number of correctional options run by his organization. Judge Bryant Culpepper from Macon, Georgia and David Jordan of the Georgia Department of Corrections described the range of options available in the Georgia system. Juvenile restitution programs were described by Richard Rhyme of the Youth Restitution Program in Madison, Wisconsin; Judge Albert Kramer of Quincy, Massachusetts; and Peter Schneider of the Pacific Institute for Research and Evaluation. Commissioner Helen Corrothers of the United States Sentencing Commission and an expert on correctional options also testified. Michael Quinlan of the Untied States Bureau of Prisons submitted a written statement.

This title was Title IV of the Subcommittee print. At Committee markup of H.R. 3371, an amendment was adopted that limits the Federal share of expenses under this program to 75 percent. Another amendment changed the funding formula from state population based to based upon ratios of young offender populations.

SECTION-BY-SECTION ANALYSIS

Section 601

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Short Title: Certainty of Punishment for Young Crime Offenders Act of 1991.

Section 602

This section amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 by adding redesignating Part S as Part T, and section 1901 as 2001; and, inserting a new Part S, which will contain the following provisions.

Section 1901 will authorize a program of grants to States and local governments for the purpose of developing alternative methods of punishment to traditional forms of incarceration and probation. Such methods, which are to be targeted at young offenders, include boot camps, community-based incarceration, electronic monitoring, restitution projects, and other innovative methods.

Section 1902 will provide for States to make application to the Director of the Bureau of Justice Assistance (the "Director") for grants, and require each such application to contain assurances that any Federal funds received by the State will not supplant non-Federal funds that would otherwise be spent for the purposes of this Title.

Section 1903 will provide for review of grant applications by the Director.

Section 1904 will provide for the distribution of grant funds received by States to local governments.

Section 1905 will establish the allocation of grant funds among States, and within each recipient State between the State and its local governments. The formula for dividing grants among States will be as follows: 0.4 percent of the funds appropriated in any fiscal year shall be allocated to each participating State, with the remaining funds to be allocated among the participating States according to their populations of young offenders. Each recipient State will then be required to distribute to local governments a portion of the funds it receives. This distribution must be proportionate ***106** to the ratio of funds spent on criminal justice by local governments in the State in the fiscal year preceding the distribution to the total amount of funds spent in that year on criminal justice by the State and its local governments combined.

This section further provides that the Federal share of a project financed by a grant made pursuant to this Part may not exceed 75 percent of the total cost of the project.

Section 1906 requires each recipient State and local government to submit to the Director an annual evaluation of the projects funded by grants made pursuant to this Part. This section also limits the amount of a grant that can be spent on producing such evaluations to 5 percent.

Section 603

This section amends S 303 of the Omnibus Crime Control and Safe Streets Act of 1968 by defining "young offender" as an individual 28 year of age or younger.

Section 604

This section authorizes to be appropriated for the grant program $200 million for each of the fiscal years 1992, 1993, and 1994.

TITLE VII–DRUG TESTING OF ARRESTED INDIVIDUALS

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PURPOSE

This title creates a grant program that will assist States in developing, implementing and maintaining programs for voluntary drug-testing of arrested individuals prior to arraignment and while on pre-trial release. This program provides Federal leadership and resources to help States design such drug testing programs.

BACKGROUND

The link between drug abuse and crime is clear. A substantial number of arrested individuals have substance abuse problems. Whether or not a criminal defendant is a substance abuser is an important factor for the court to consider when making decisions about pre-trial release conditions. Drug testing is also an important monitoring tool for defendants in the community on pre-trial release to ensure that they are complying with the conditions of that release. It will help ensure that defendants do not commit additional crimes while on release and that they appear for scheduled court dates. It also helps identify individuals with substance abuse problems so that they can be directed toward appropriate treatment programs.

The impetus for this title is the successful drug-testing program in place in Washington, DC. That program, run by the Pre-trial Services Agency, tests arrested individuals and makes the information available to the court before arraignment or presentment to assist the court and counsel in making judgments regarding appropriate conditions of pre-trial release. Under this program criminal defendants are asked if they would be willing to submit to drug testing. They are advised that they have the right to refuse but ***107** PTSA reports an amazingly low declination rate of 2 percent. The results of the test are included in the report prepared for the court. This report also includes other information about the defendant such as name, address, family, employment and prior criminal record. Based on this information, as well as input from counsel, that court makes its decision regarding pretrial release conditions and may order periodic drug testing and treatment as a condition of that release.

This title authorizes a $100 million grant program to assist States in establishing similar drug-testing programs. Recipients have the freedom to adopt voluntary programs that suit the needs of their particular areas and criminal justice systems. These programs may, for example, limit the application of the drug testing to certain individuals charged with certain crimes or where substance abuse is otherwise indicated. It is not the Committee's intent that these programs be of a mandatory nature, or for all arrested individuals.

This program was adopted by the Subcommittee on Crime and Criminal Justice at its markup on July 31, 1991. It was offered as an amendment by Rep. Peter Hoagland (D–Nebraska). The Committee adopted an amendment to base the funding formula on ratios of arrested individuals rather than on populations of the States. Another amendment limits the Federal share of the program's expenses to 75 percent.

SECTION-BY-SECTION ANALYSIS

Section 701

This section amends the Omnibus Crime Control and Safe Streets Act of 1968 by redesignating Part T as Part U, and section 2001 as 2101; and, inserting a new Part T which will contain the following provisions:

Section 2001 authorizes the Director of the Bureau of Justice Assistance (the “Director”) to make grants to States for the purpose of developing, implementing, or continuing programs to drug test persons arrested or awaiting trial.

Section 2002 provides for State chief executives to make applications to the Director in order to receive Federal funds under this section. Each such application should demonstrate that the State administers or plans to administer drug testing on persons awaiting trial and to provide the results to magistrates or judges for their consideration when making pretrial detention decisions.

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Section 2003 provides for the distribution of grant monies to localities within a State.

Section 2004 establishes the following formula for the allocation of grants among States: Each participating State shall receive 0.4 percent of the total amount available during a given fiscal year with the remaining funds divided among the participating States according to their relative numbers of arrested individuals. This section further provides that each participating State must distribute a portion of the funds it receives to local governments. Of the funds that a State receives, it must allocate to local governments a proportion of funds commensurate with local governments' share of the total expenditures on criminal justice spent by the State and ***108** all the jurisdictions within it. Funds not so reserved for the use of local governments may be used by the State.

If a State does not use or is not eligible for some or all of the funds available to it, then the Director shall distribute those funds to localities within the respective State, giving priority to local governments with the greatest need.

Section 2005 directs State and local governments which receive Federal funds for drug testing to submit an annual report to the Director.

Section 702

This section authorizes the appropriation of $100 million annually through 1994 for the purpose of State and local drug testing of persons who have been arrested but not yet tried.

TITLE VIII–DRUG EMERGENCY AREAS ACT OF 1991

PURPOSE

Title VIII will allow the President to declare States and localities which have been temporarily overwhelmed by drug trafficking to be “Drug-Related Emergency Areas” (DREA's) and make them eligible for Federal assistance.

BACKGROUND

States and localities that have been particularly hard hit by drugs and drug-related crime cannot effectively deal with the effects on their own. They rightfully look to the Federal government for leadership and financial assistance in their enforcement efforts. This title helps to provide that assistance by giving the President increased authority to declare an area a drug emergency area and provide the Federal resources needed to respond to that emergency.

SECTION-BY-SECTION ANALYSIS

Section 801

This section gives this title the short title of the “Drug Emergency Areas Act of 1991.”

Section 802

This section amends subsection (c) of the National Narcotics Leadership Act of 1988 to include provisions for the declaration of Drug Emergency Areas (“DREAs”).

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Subsection (1) of subsection (c) authorizes the President to declare that a State or part of a State is experiencing a major drug-related emergency and thereby to invoke the provisions of the Act. It also defines a major drug-related emergency as one which exceeds the law-enforcement capacity of State and local resources and threatens lives, property or public health and safety.

Subsection (2) of subsection (c) provides for State and local governments to request that the areas under their jurisdiction be declared DREA's. Such a request must be based on a written finding that the emergency is so severe that Federal assistance is necessary ***109** to protect lives, property and public health and safety. Since drug emergencies in rural areas may be of a smaller magnitude and yet still outstrip the resources of local governments, this subsection directs the President not to exclude from consideration applications from areas which are not highly populated areas.

Under this Subsection, State and local governments must furnish to the President information about the amount of State and local resources which have been or are being committed to alleviating a particular drug-related emergency. To qualify for funds, State and local governments must take certain actions: they must describe the State and local resources which have been or will be devoted to the emergency, they must agree to the cost sharing requirements of the Act, and they must submit short- and long-term plans which specify the amount of Federal assistance requested and specify goals to be reached as a result of such assistance.

Subsection (3) authorizes the President the power to grant up to $50 million per drug-related emergency to State or local governments. The Federal government may not expend more than three times as many funds as State and local governments spend to address the same drug-related emergency. No drug-related emergency may exist for more than one year, except that this period may be extended up to 180 additional days at the President's discretion. States must, when it is appropriate to do so, evenly divide the federal monies which they receive between supply interdiction and demand reduction efforts.

Subsection (4) authorizes the President to devote the resources of Federal agencies to local drug-related emergencies in addition to whatever other Federal assistance is otherwise allowable under the provisions of this act.

Subsection (5) requires the Director to issue appropriate regulations pursuant to this Act within 90 days of its enactment.

Subsection (6) subjects the provision of assistance under this subsection to audit by the Comptroller General.

Subsection (7) authorizes the appropriation of $300 million each year for Fiscal Years 1992, 1993 and 1994 to carry out this Act.

TITLE IX–COERCED CONFESSIONS

PURPOSE

This title reinstates the law in effect prior to the Supreme Court's decision in Arizona v. Fulminante, No. 89–839, slip op. (S. Ct. Mar. 26, 1991), as its relates to the effect of the admission at trial of a coerced confession. Under this title, the admission of a coerced confession in a state or federal trial shall never be considered harmless error and will require automatic reversal of a conviction, and possible retrial without the use of the confession.

BACKGROUND

In a consistent line of cases beginning decades ago, the Supreme Court maintained the longstanding proposition that the admission of a coerced confession shall never be a harmless error. See, e.g., Rose v. Clark, 478 U.S. 570 (1986); ***110** Chapman

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v. California, 386 U.S. 18 (1967); Haynes v. Washington, 373 U.S. 503 (1963); Payne v. Arkansas, 356 U.S. 560 (1958); Lyons v. Oklahoma, 322 U.S. 596 (1944).

In Chapman v. California, 386 U.S. 18 (1967), the Supreme Court held that the harmless error rule can be applied to certain constitutional violations. At the same time, however, the Supreme Court recognized that "there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." Id. At that time the Supreme Court recognized only three of these fundamental constitutional errors: denial of the right to counsel, an unbiased judge, and the admission of a coerced confession.

Since Chapman, the Supreme Court has found several additional constitutional violations which are not subject to harmless error analysis. In Fulminante, however, the Supreme Court reversed this longstanding principle and, for the first time, applied harmless error analysis to the admission of a coerced confession.

The Committee believes that principles of stare decisis, deterrence of a coerced confession.

The Committee believes that principles of stare decisis, deterrence of police misconduct and fundamental fairness require return to the appropriate rule in effect prior to Fulminante. The Committee believes that the admission of a coerced confession, perhaps the most damaging and most inculpatory evidence available to the prosecution, is such a fundamental error that it would be impossible to say that the jury ignored the confession and convicted the defendant on other evidence. In addition, this section will not result in any unjustified benefit for the defendant, who must stand for retrial, without the use of the confession, if the prosecution wishes to continue the case. Finally, this section, like prior law, will aid in deterring police coercion and prosecutorial abuse by reinstating an unalterable sanction on such conduct.

SECTION-BY-SECTION ANALYSIS

Section 901 reverses the Fulminante case by declaring that the admission of a coerced confession can never be harmless error. The section does not affect the determination of whether a confession is coerced or voluntary; it addresses only the effect of the admission of a confession which was coerced.

A coerced confession is defined as one which is elicited in violation of the fifth or fourteenth amendments. This definition has two purposes. First, it applies the section both to the admission of a coerced confession in federal court, which violates the fifth amendment, and in state court, which violates the fourteenth amendment.

Second, the definition intends to limit the type of confession which triggers the section to one which is coerced, that is, an involuntary confession elicited in circumstances which violate the Due Process Clause of the fifth or fourteenth amendments. Through this definition, the section fully reinstates prior law, but does not go beyond it. The Committee does not intend to apply the section to confessions which are elicited, and then admitted, in violation of the sixth amendment right to counsel. See Milton v. Wainright, 407 U.S. 371 (1972). Nor does the Committee intend to apply the section ***111** to the admission of a voluntary confession which followed another violation of the fifth or fourteenth amendment, such as a violation of Miranda v. Arizona, 384 U.S. 436 (1966). See Fulminante, slip op. at 11 & n.6.

TITLE X–DNA IDENTIFICATION

PURPOSE

Title X is the DNA Identification Act of 1991. Its purpose is to promote the use of DNA identification technology for law enforcement purposes, in accordance with appropriate quality control and privacy standards. The Act authorizes federal

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funding for State and local governments to establish or improve DNA forensic capabilities; requires grant recipients and the FBI laboratory to adhere to minimum quality control, proficiency testing and privacy standards; requires the FBI to establish a forensic DNA advisory policy board to provide the FBI with advice from a range of DNA experts, including scientists from outside the forensic field; and authorizes the FBI to establish a national index of DNA profiles of convicted offenders, pursuant to minimum quality control, proficiency testing and privacy standards.

BACKGROUND

Deoxyribonucleic acid (DNA) carries the genetic code of each human being. Since each person's DNA is unique, the DNA found in blood, skin tissue and semen offers law enforcement a means of identifying murderers, rapists, and other violent criminals. The recognition of DNA's value to law enforcement is quite recent, however. The first law enforcement use of DNA was in England in 1986. The first use in the United States was in Florida in 1987.

Forensic DNA technology has evolved rapidly and continues to evolve. Law enforcement agencies are now developing second and third generation techniques.

To be reliable, DNA tests must be properly performed and interpreted. Several courts have rejected DNA evidence because of reliability concerns and others have criticized laboratory procedures in cases before them. Last year the congressional Office of Technology Assessment issued a report concluding: “Standards are necessary if high-quality DNA forensic analysis is to be ensured, and the situation demands immediate attention.” [1]

The forensic community has developed a consensus that DNA laboratories should adhere to a comprehensive quality control program including proficiency testing. the Federal Bureau of Investigation (FBI) has convened a technical working group on DNA analysis methods (TWGDAM), which has developed a set of quality control guidelines. The American Society of Crime Laboratory Directors (ASCLD) has also taken a strong position in support of quality assurance, proficiency testing and accreditation of DNA laboratories. ***112** However, compliance with the FBI protocols and the ASCLD program is strictly voluntary.

State and local law enforcement agencies are rapidly developing their own DNA testing laboratories and looking to the federal government for potential financial support.

The FBI is designing a nationwide databank that would index DNA “profiles” of convicted offenders, based on DNA samples taken by state law enforcement and correctional authorities. If DNA in blood or semen recovered from a crime scene could be matched against the databanked DNA of prior offenders, a suspect could be identified where traditional methods had failed. However, as the OTA report noted, given the very nature of DNA, “proposals to store a person's genetic information in a national network evoke several concerns about privacy.” [2]

The purpose of the DNA Identification Act of 1991 is to address these various issues of funding, standards, quality control and privacy.

The Subcommittee on civil and Constitutional Rights held hearing on the forensic application of DNA on March 22, 1989 and June 13, 1991, focusing on reliability and privacy issues. Title X was originally introduced in the 102d Congress as H.R. 3088, which was reported favorably by the subcommittee on Civil and Constitutional Rights on July 31, 1991. The Judiciary Committee adopted an amendment to the title by voice vote.

Quality control and reliability concerns

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As with any technology, a laboratory's failure to work carefully when analyzing DNA can produce errors or questionable results. While DNA evidence has been accepted in numerous cases, it has often been accepted without a concerted challenge by defense experts and consequently without careful judicial scrutiny. [3] Where there has been a careful scrutiny, the results have been mixed. DNA evidence has been rejected by several courts, and even courts accepting the evidence have raised questions about data quality or about the reliability of the probabilities associated with matches.

In State v. Schwartz, [4] the Minnesota Supreme Court, while finding that the science underlying DNA testing had gained wide acceptance, concluded that the particular test results at issue were inadmissible because the laboratory did not follow appropriate quality control procedures and did not make its experimental studies available.

In the New York State murder trial of People v. Castro, [5] a 12-week pretrial hearing was held, with extensive testimony from molecular biologists and genetic experts. The court concluded that the theories underlying DNA testing were valid, but the performance of the particular tests in the case was so flawed that the evidence could not be admitted.

In United States v. Yee, while admitting the DNA evidence after six weeks of pretrial hearings, the federal magistrate criticized ***113** what he called "the remarkably poor quality of the FBI's work and infidelity to important scientific principles." [6]

In Commonwealth v. Curnin, [7] the Massachusetts Supreme Court reversed a conviction based on DNA evidence, holding that there was no demonstrated general acceptance or inherent rationality in the process by which the laboratory calculated the accuracy of the test results. The court stated that future cases should focus not only on the soundness and general acceptance of the particular testing process for forensic use of DNA, but also on the proper implementation of the process in the specific case.

In United States v. Porter, [8] after an extensive hearing, a superior court judge held that DNA tests were inadmissible in the District of Columbia because the government had failed to demonstrate general acceptance of its methodology for calculating the probability of a DNA match.

An expert panel on forensic DNA appointed by the New York State director of criminal justice concluded, "Questions about the quality of the work being done by the private laboratories have not been satisfactorily answered, and the laboratories' adherence to accepted scientific procedures has not been demonstrated."

DNA quality control/quality assurance standards

Forensic laboratories operate under a system of self-regulation that has long been the subject of data quality concerns. While those concerns are important background when evaluating forensic application of DNA, certain factors make DNA a special case requiring legislated standards immediately:

(1) DNA offers the promise of unique identification, something previously available only with fingerprints;

(2) DNA has gained general acceptance as a forensic identifier in far less time than any other technology;

(3) the technology has evolved rapidly and continues to evolve, putting even more pressure on scientists and the criminal justice system to evaluate its reliability;

(4) the federal government, through the FBI, is promoting the rapid adoption of DNA identification; and

(5) nationwide databanking requires consistent application of a single protocol and raises serious privacy concerns.

The OTA study on DNA concluded, "Instituting quality assurance mechanisms should proceed without delay." [9]

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The New York DNA panel endorsed the creation of national standards: "The creation of national standards would enable one State to search the databases of every other jurisdiction. Further, by establishing national standards against which to measure laboratories' performances, the important goal of ensuring that appropriate quality controls are observed by laboratories would be furthered."

***114** Noted privacy expert Alan Westin concludes, "Both government and private laboratories DNA analysis for forensic use should meet designated quality standards and be subject to periodic inspections." [10]

Proficiency testing

There is widespread agreement that an external proficiency testing program for labs performing DNA analysis for criminal cases would give greater assurance of reliability.

The FBI's TWGDAM guidelines are clear on the desirability of proficiency testing: "Participation in a proficiency testing program is a critical element of a successful QA [quality assurance] program and is an essential requirement for any laboratory performing forensic DNA analysis."

The TWGDAM guidelines specifically endorse blind testing: "Ideally, blind proficiency test specimens should be presented to the testing laboratory through a second agency. *** The blind proficiency test serves to evaluate all aspects of the laboratory examination procedure, including evidence handling, examination/testing and reporting. It is highly desirable that the DNA laboratory participate in a blind proficiency test program. *** [11]

The New York panel also recommended blind proficiency testing: "Another way, used by the forensic as well as the clinical and medical communities, to ensure quality control is to insist that each laboratory performing such tests be evaluated periodically by proficiency testing techniques–preferably blind proficiency testing techniques. *** These tests should be blind, that is, the laboratory should not know whether the samples were test samples or actual forensic case samples." [12]

The American Society of Crime Laboratory Directors/Laboratory Accreditation Board has developed a DNA Accreditation Program that includes, for those submitting to the voluntary accreditation process, mandatory participation in a semi-annual proficiency testing program administered by a contractor meeting rigid specifications.

Lifecodes, one of the pioneers in foreign application of DNA, strongly endorsed proficiency testing in a testimony submitted for the June 13, 1991 hearing of the Subcommittee on Civil and Constitutional Rights: "[W]e at Lifecodes believe that art proficiency testing is key. *** Labs should be subject to continual proficiency tests, both blind and open. Individuals should be tested quarterly."

Databanking and privacy

The advent of DNA typing in the courtroom has been followed by proposals to establish a national databank of previously analyzed samples which could be searched for a match in somewhat the same way that latent fingerprints are searched against a computer database. At least 11 States have enacted laws requiring blood samples from convicted criminals for this purpose. For example, California requires two blood and two saliva samples from each convicted sex offender.

***115** These States plan to establish in-state databanks of DNA profiles and also to submit copies of their test results to the FBI to establish a national databank. However, the State laws requiring that DNA samples be taken from convicted offenders vary widely in the attention they give to privacy.

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Under the national database concept now being developed by the FBI, the FBI would set up a computer file to store and match DNA profiles submitted by the states. The FBI is also developing designees for data bases on unknown subjects (DNA drawn from blood or semen in cases where there are no active suspects, to be used in an effort to link serial crimes by the same perpetrator) and missing persons and unidentified dead persons to assist in identification.

Proposals to establish DNA data bases raise several privacy concerns. For example, can the test results be used for purposes other than identification? Will the tests be accessible to non-law enforcement agencies or private parties?

The New York DNA panel concluded, "Substantial privacy concerns must be overcome before a DNA databank should be established." The panel recommended, "Use of a databank for other than law enforcement suspect identification purposes should be expressly prohibited and subject the abuser to criminal penalties." [13]

SECTION-BY-SECTION ANALYSIS

Section 1001 is the short title, the "DNA Identification Act of 1991."

Section 1002

Subsection 1002(a) amends the Omnibus Crime Control and Safe Streets Act to authorize grants to State and local agencies to develop or improve DNA testing capabilities in their forensic laboratories.

Subsection 1002(b) requires that any state receiving Federal funding for a DNA laboratory must certify that the laboratory is complying with the DNA quality assurance guidelines issued pursuant to the Act, that DNA samples obtained by the DNA analyses performed at such laboratory will be maintained in accordance with specified privacy standards, and that the laboratory and each analyst performing DNA analyes will undergo external proficiency testing at intervals not be exceed 180 days.

Section 1003 requires the FBI Director to appoint an advisory board on DNA quality assurance methods. The board shall develop and recommend to the Director standards for quality assurance, including standards for proficiency testing. (Recognizing that proficiency testing is one component of a quality assurance program, the Act nonetheless addresses it as a separate item in light of its importance.) The board is expected to keep itself familiar with the implementation of the standards adopted by the FBI Director and shall recommend changes in those standards whenever appropriate. As new forms of DNA forensic analysis emerge, the board shall develop recommended quality assurance standards.

***116** While the board is designated a board on DNA quality assurance methods, the board may also advise the Director on other scientific and policy questions relating to forensic applications of DNA. In particular, it would be appropriate for the board to address the population genetics issues that have been raised and recommend research to resolve those issues.

The Committee expects that the board established pursuant to section 1002 will subsume the existing TWGDAM, which may become a subcommittee of the board focusing on technical issues. However, the Act also allows the FBI to continue the TWGDAM as a separate, informal body.

Based on the recommendations of the Board, the FBI Director shall issue, and revise from time to time as appropriate, standards for quality assurance and proficiency testing. Until the board is functional and has made its recommendations and the Director has acted upon them, the TWGDAM guidelines for a quality assurance program for DNA analysis published in April 1991 and any amendments thereto shall be considered the Director's standards for purposes of this Act.

Under the Act, the FBI is not responsible for administering a proficiency testing program for other laboratories. Laboratories required to undergo external proficiency testing under the Act–as a condition of receipt of Federal funds or of submitting their

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data to the Federal index–will be able to contract for proficiency testing with entities that offer DNA proficiency testing products meeting the standards issued under this Act. At least one DNA proficiency testing package is currently available at a modest cost.

Section 1004 authorizes the FBI to establish an index of DNA profiles of convicted offenders, subject to quality assurance, proficiency testing and privacy requirements.

Section 1004 allows the indexing of anlyses prepared by public or private laboratories. The Committee is aware that at least one State intends to contract out its DNA profiling requirements to a private laboratory. Results of tests performed by a private laboratory under contract with a State or local law enforcement agency may be indexed in the national database if that laboratory, in its work for the law enforcement agency, complies with the minimum data quality standards established under this Act.

The FBI will have to assure itself that Laboratories submitting data to the Federal index are complying with the quality assurance, proficiency testing and privacy standards established under the Act. However, it is not intended and not expected that the FBI would use its management of the national DNA index to impose on laboratories submitting data for the index standards that are arbitrary or inconsistent with the guidelines established pursuant to this Act.

Section 1005 requires the FBI to adhere in its DNA forensic work to minimum quality assurance, proficiency testing and privacy standards. In one respect, the proficiency testing requirements for the FBI go beyond those required of other laboratories: the FBI must undergo periodic blind external proficiency tests. The definition of "blind" is drawn from the TWGDAM guidelines.

Section 1005 states that DNA analyses peformed by a Federal law enforcement agency may be used only for law enforcement ***117** purposes. It does not preclude an agency such as the FBI from performing DNA analyses for humanitarian purposes. Analyses performed for humanitarian purposes would not be subject to the privacy restrictions of this Act, although they should still be handled with sensitivity to privacy interests.

Section 1005 also establishes criminal penalties, based on the Privacy Act, for misuse of DNA information indexed in a Federal database.

TITLE XI–HABEAS CORPUS

PURPOSE

Title XI of the bill encompasses the Habeas Corpus Revision Act of 1991 (hereinafter referred to as "the Act"). This Act addresses the various problems that have arisen with respect to the Federal courts' longstanding jurisdiction to entertain habeas corpus petitions from State prisoners, particularly prisoners under sentence of death.

The Committee believes that habeas corpus reform legislation is needed for a number of reasons. The credibility of the criminal justice system, especially in capital cases, has been tested by unnecessary delays, a seeming lack of finality of State criminal proceedings, and serious deficiencies in the provision of competent counsel to indigent defendants in death penalty cases.

Title XI responds to the criticisms voiced with respect to the habeas corpus proposals considered in the 101st Congress by striking a balance between competing points of view. It reflects various recommendations made by, among others, the Judicial Conference of the United States and its ad hoc subcommittee, the Powell Committee, the American Bar Association, distinguished Federal and State judges, legal scholars, the National District Attorneys Association, the National Association of Attorneys General, and other practitioners.

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The Act reforms current procedures and practices in order to streamline Federal litigation, promote finality, ensure competent counsel in capital cases, foster Federal adjudication of the merits of petitions and avoid wasteful litigation over arcane procedural issues, and ensure that habeas corpus petitioners have one, and only one, fair opportunity to present their Federal claims to the Federal courts. Specifically, the Act posits at the outset that the Federal courts' basic jurisdiction in habeas corpus should be preserved. It establishes a statutory time period within which death row petitioners must file Federal petitions, provides for an automatic stay of execution to permit the Federal courts to consider claims in capital cases and to avoid eleventh hour petitions to stay executions, prohibits virtually all second and successive habeas corpus applications in capital cases, removes the current requirement that prisoners under sentence of death obtain a certificate of probably cause in order to appeal from an unfavorable judgment, specifies the law to be applied in habeas corpus cases, and requires the States to provide competent counsel to indigent prisoners at all stages of capital litigation in State court.

***118** These reforms of the Federal habeas corpus laws will return the focus of State capital litigation to the State courts, where it properly belongs.

BACKGROUND

In recent years, the Congress has been urged to reform the Federal habeas corpus laws to make the process more efficient, promote finality, and ensure fairness. In the past, attention has focused primarily on habeas corpus in the context of State capital cases. During this Congress, however, revision efforts have been directed at both capital and non-capital cases.

For a detailed description of the legislative history of previous habeas corpus revision efforts, and of the recommendations of the Judicial Conference of the United States, the American Bar Association, and other interested groups, see H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 111.

Statement of legislation actions

To consider the various proposals to reform habeas corpus, the House Judiciary Committee Subcommittee on Civil and Constitutional Rights held a series of hearings on the issue.

On May 22, 1991, the Subcommittee held a hearing which focused primarily on the issue of counsel in State death penalty cases. It heard testimony from the Honorable Rosemary Barkett of the Florida Supreme Court; Joe Giarrusso, a former local, State, and Federal prosecutor and court official in Louisiana; Bryan Stevenson, Executive Director of the Alabama Capital Representation Resource Center; Stephen Kinnard, a partner with the law firm of Jones, Day, Reavis & Pogue and a volunteer lawyer in capital cases; Marvin White, Jr., a Mississippi Assistant Attorney General, and President of the Association of Government Attorneys in Capital Litigation; and Susan Boleyn, a Georgia Senior Assistant Attorney General.

On June 27, 1991, the Subcommittee held its second hearing. The primary subject was access to the Federal courts for habeas corpus petitioners. Specifically, the witnesses testified about a proposal to preclude the Federal courts from hearing habeas corpus claims if the State courts have “fully and fairly adjudicated” those claims, and about a line of United States Supreme Court cases beginning with Teaque v. Lane, decided in march 1989. It heard testimony from the Honorable Gilbert Merritt, Chief Judge of the United States Court of Appeals for the Sixth Circuit; Andrew McBride, Associate Deputy Attorney General, United States Department of Justice; Professor Larry W. Yackle of the Boston University School of Law; Dan Lungren, Attorney General of the State of California; and David Bruck, Chief Attorney, South Carolina Office of Appellate Defense. The Subcommittee also heard from two victims of crime, Dorothea Morefield and John Collins. Mr. Collins is the Eastern Regional Director of Citizens for Law and Order.

On July 17, 1991, the Subcommittee held is last hearing, taking testimony from the Honorable Christine Durham of the Utah Supreme Court; John J. Curtin, Jr., then President of the American Bar Association, accompanied by James S. Liebman, Vice Dean and ***119** Professor of law, Columbia University School of Law; and Dane Gillette, a California Deputy Attorney General.

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On September 16, 1991, with a quorum being present, the Subcommittee held a markup on a committee print of the Habeas Corpus Reform Act of 1991 and favorably reported it by a recorded vote of 5–3.

On September 23, 1991, the Committee on the Judiciary, with a quorum being present, considered title XI of H.R. 3371, which incorporated the provisions of the Act. Representative Bill McCollum, on behalf of Representative Henry Hyde, offered a substitute to the title that contained the provisions of the habeas corpus section of S. 1241, the crime bill passed by the Senate in July 1991. The substitute was defeated by a roll-call vote of 23–11. See discussion of the substitute infra.

The "full and fair adjudication" standard

The Hyde substitute rejected by the Committee is based on an Administration proposal, contained in H.R. 1400 and S. 1241, passed by the Senate, that seeks to prohibit Federal courts from reviewing State court determinations of Federal constitutional claims when those claims have been "fully and fairly adjudicated" by a State court. [1]

The "full and fair adjudication" standard appears on its face to contemplate a "process model" for Federal habeas corpus. This process model, proposed almost 30 years ago by Professor Paul Bator, [2] prohibits the Federal courts from routinely reexamining the outcomes the State courts reach regarding Federal claims. Rather, the Federal courts would appraise the process by which the State courts arrive at their results. The Federal courts would themselves address the merits only if the State courts fail to adjudicate Federal claims in a procedurally acceptable fashion.

In other words, the apparent effect of the Hyde proposal is to strip the Federal courts of their jurisdiction to examine Federal constitutional claims so long as the State court proceeding was procedurally adequate. The Federal courts would be powerless to correct substantive wrong State court decisions.

Thus, the amendment goes well beyond the current law mandate that Federal courts shall accord a presumption of correctness to findings of fact by the State courts. [3] Instead, it provides that an "application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings." [4]

Congress has rejected this proposal before, and the Committee rejects it now, because of overwhelming testimony that, if adopted, the proposal would effectively eliminate Federal habeas corpus as a postconviction remedy for State prisoners. [5] Chief Judge Merritt, for example, predicted that adoption of this standard would "be thought of in the future as a drastic mistake, a sort of 'Gulf of ***120** Tonkin for crime' type of mistake." [6] Indeed, the "full and fair adjudication" standard has been condemned as the standard used in the infamous Leo Frank case. [7] As ABA President John Curtin explained it:

> In 1915, the Supreme Court denied habeas corpus relief to Leo M. Frank, a Jewish man convicted and sentenced to die for raping and killing a young Christian woman in Atlanta. The record before the Court left it no choice but to assume, as Justice Holmes wrote in dissent, that Mr. Frank's trial in the local Georgia court was "dominated" by an antisemitic "mob" *** [which] prevented an eyewitness to the murder from coming forward and establishing that Mr. Frank was innocent*** Finding that Mr. Frank had the opportunity to, and did, appeal his "mob domination" claim to the Supreme Court of Georgia, and that the Georgia high court, "upon a full review, decided [his] allegations *** to be unfounded," the Supreme Court majority concluded that Mr. Frank's constitutional claim could not be relitigated in habeas corpus proceedings, regardless of its merit. The "full review" language that sent Leo M. Frank to his death is the prototype for the "full and fair adjudication" language through which the Administration intends to codify the holding of Frank–along with Frank's lamentable outcome. [8]

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Eight years later, after Frank's lynching, the Supreme Court rejected the standard used in the Frank case in favor of full Federal review of constitutional claims. [9] This current standard; the Hyde amendment would eviscerate it.

Definition of "full and fair adjudication"

Some proponents of the "full and fair adjudication" standard have responded that the Hyde amendment would not confine habeas corpus review to the consideration of State procedural adequacy. Instead, Federal courts reviewing State court judgments would be able to exercise an element of substantive judgment: the Federal courts would be free to award relief on the merits if the results reached in State court overstep the bounds of reason. For example, the Justice Department, through the testimony of Associate Deputy Attorney General McBride this Congress, appeared to endorse a 1983 Senate report accompanying a similar proposal. [10] That report described the following standard as follows:

> ***121** A State adjudication would not be full and fair in the intended sense if the determination arrived at did not meet a minimum standard of reasonableness. Specifically, the determination must reflect a reasonable interpretation of Federal law, a reasonable view of the facts in light of the evidence presented to the State court, and a reasonable disposition in light of the facts found and the rule of law applied. [11]

Yet the Justice Department's proposed definition of "full and fair adjudication" standard has been inconsistent. At the time the standard was actually proposed in 1983, then-Attorney General William French Smith stated that the intent was to "repeal" the Federal courts' jurisdiction to review the "legal and mixed legal-factual determinations of State courts." [12]

Another proponent of the "full and fair adjudication" standard in this Congress, California Attorney General Dan Lungren, proposed at least three possible definitions. [13]

Because the proponents of this standard are not agreed on its meaning, the Committee cannot be persuaded by any of these suggested definitions.

Even if the Committee were to adopt the definition proposed in the Senate report and suggested by Mr. McBride, the Federal courts at the very least would be precluded from granting relief unless the State courts were not merely wrong, but were unreasonably wrong. It would create, in the words of Justice Durham,

> a whole new layer of litigation, a whole new set of review that will have to be undertaken to decide whether the State courts have simply erroneously interpreted the Federal Constitution or have grossly or unreasonably interpreted [it]. We've not had that jurisprudence before; we don't need it. [14]

The Committee concludes that in a bill meant to expedite and streamline habeas corpus litigation, a provision that creates additional uncertainty and which is likely to generate only more delays makes little sense.

In addition, a "reasonableness" test for State court judgments would exacerbate the friction that occasionally arises between the Federal and State courts under the current system. In another context, Professor Yackle warned that if the Federal courts are asked to judge the reasonableness of State court judgments, they will become little more than "sanity" commissions, "charged to determine whether the State courts, in rejecting a meritorious constitutional claim, took leave of their senses." [15] A system of that kind would produce more friction, not less.

***122** The Committee is concerned, moreover, that the Federal courts might be prevented entirely from reviewing Federal claims. Witnesses, including Justices Durham and Barkett and ABA President John Curtin, testified that the "full and fair adjudication" formulation is a term of art in the law of Federal jurisdiction, with an accepted usage and meaning that would bring about this unfortunate result.

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Professor Yackle cited three other areas in which the standard is used in the law governing Federal courts. First, in the habeas corpus context itself, the Supreme Court in Stone v. Powell [16] has invoked this standard for cases in which prisoners claim they were convicted on the basis of evidence seized in violation of the fourth amendment.

While the Court's use of the "full and fair" formulation in Stone v. Powell may not match perfectly the way the term is used in the Hyde amendment, the Justice Department has apparently conceded that the standard in the Hyde amendment would effectively extend Stone to all constitutional claims. [17]

Professor Yackle noted that:

> What the Justice Department does not say, however, is that in the wake of Stone the federal courts' ability to enforce the fourth amendment through habeas corpus has dried up and died. It is no more. If Stone is extended by the enactment of H.R. 1400, the same fate would befall all constitutional claims.
>
> The Supreme Court itself recognizes that Stone's "full and fair" adjudication standard has had this drastic effect on fourth amendment claims in habeas. Respecting other claims in habeas, however, the Court has repeatedly rejected a similar approach. [18]

Second, the "full and fair" standard has been used in a line of abstention cases flowing from Younger v. Harris. [19] The Supreme Court has said that the Federal courts must decline jurisdiction to decide Federal constitutional questions if there are pending State court proceedings on those issues and if the State courts will provide the litigant with a "full and fair" opportunity to litigate the claims.

Again according to Professor Yackle,

> You will look in vain for cases in which state-court proceedings were found sufficiently lacking as to fail the "full and fair" adjudication standard in the onger context. By contrast, the books are filled with decisions in which the federal courts have abstained on Younger grounds when it was extremely unlikely that the litigant concern could get a genuinely fair hearing on a federal issue in state court.
>
> [E]veryone***in academic circles *** is agreed: The purpose and effect of abstention in favor of "full and fair" opportunities to litigate federal claims in pending ***123** state proceedings is to prevent the federal courts from exercising their longstanding jurisdiction to adjudicate cases "arising under" federal law. [20]

Third, the "full and fair" adjudication standard is the conventional test for "issue preclusion," the rule that prevents a losing party in a lawsuit from filing a second suit in another court, rather than appealing the unfavorable judgment, in hopes of achieving a more favorable result.

There are very narrow exceptions to this general rule. The primary exception is that the second court can hear a collateral attack when the first trial court failed to adjudicate "fully and fairly." This has been held to mean that the initial proceedings were so deeply flawed that they lacked all integrity and were not entitled to respect as judicial judgments at all.

Similarly, Congress has imposed this standard for cases in which a dissatisfied party in a State court lawsuit later files another action in a Federal district court, seeking to relitigate unfavorable results, even as to constitutional questions. The "full-faith-and-credit" statute [21] requires the Federal courts to apply the preclusion rule that the relevant State court would have applied if the collateral suit had been filed in a second State court. Federal courts are barred from hearing the second suit if the first one was "full and fair."

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The Supreme Court has defined this "full and fair" standard extremely narrowly: unless the State court proceeding was so unfair that it independently violated the due process clause, the Federal court may not hear the second suit. [22]

Professor Yackle has described the standard to mean that:

> [T]he proceedings in which that first constitutional contention were considered by the state courts amounted to yet another violation of federal rights. This is an extremely rigid standard, to say the least. No serious observer would suggest that the state courts are so hopelessly incompetent that they very often fail to provide "full and fair" adjudication by this definition. The point, rather, is that if this is the test, erroneous state judgments will routinely be left standing.

Professor Yackle's view of the extremely narrow definition of the "full and fair adjudication" standard is joined by the approximately 400 law professors from around the country who signed his letter warning the Committee that adoption of this standard "will largely abolish the Federal courts' current and longstanding authority to enforce the Bill of Rights in [the habeas corpus] context." [23]

Other witnesses before the Subcommittee cautioned that, if this standard is written into the habeas corpus statutes, the courts might well give it its longstanding and conventional meaning without ***124** parsing the legislative history for a different, unfamiliar definition. As Justice Scalia wrote in West Virginia Univ. Hosp. v. Casey:

> The best evidence of [congressional] purpose is the statutory text adopted by both Houses of Congress and submitted to the President. Where that contains a phase that is unambiguous–that has a clearly accepted meaning in both legislative and judicial practice–we do not permit it to be expanded or contracted by the statement of individual legislators or committees*** [24]

If the Supreme Court were to take this approach to the "full and fair adjudication" standard, the result might well be the effective elimination of habeas corpus as a postconviction remedy.

The substitute offered in Committee by Mr. Hyde did not define the term "full and fair adjudication." Given the Supreme Court's current approach to statutory construction, evidenced by the West Virginia Hospital case, the Committee believes that attempting to define the term in the legislative history is a dangerous course.

It is the Committee's obligation clearly to tell the courts what the law is. For this reason alone, the Committee finds that the "full and fair adjudication" standard is unacceptable.

Need for Federal review

Witness after witness before the Subcommittee rejected the "full and fair adjudication standard" and testified to the need for full Federal review of Federal claims. The American Bar Association, for example, submitted a report showing that the rate of reversible constitutional error in State capital convictions and sentences that underwent Federal habeas corpus review between 1976–1991 was 40 percent. [25] A separate study by Kent S. Scheidegger, covering a shorter period and looking only at the Eleventh Circuit, likewise found a 39.4 percent reversal rate. [26]

Professor James Liebman, the author of the ABA study, noted that in at least 14 cases decided during the time period that he studied, the State courts rejected claims from petitioners convicted of murder who were later granted relief by the Federal courts. Moreover, in many of those cases, retrial free of constitutional error resulted in findings that the defendant was innocent of murder or, at least, that the death penalty was inappropriate.

According to Professor Liebman:

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In many of those cases the constitutional violation was a fabrication, a knowing, intentional fabrication of evidence by a prosecutor; for example, telling the court, telling the jurors, telling the defense that the victim was so badly mangled that you could not identify her, when in fact she could be identified[. A]nd her parents, once they *** ***125** identified [her], said these two men did not commit the crime even though they got the death penalty for it; her former boyfriend did it. When that came out in habeas corpus, the former boyfriend was put in the dock and these two gentleman were released from prison.

So it's not just Leo Frank in 1915; it's people in the 1980s who are being convicted unconstitutionally and when they're innocent. Those are the kinds of violations that have been and need to be proved before a case gets into the 40 percent [of cases in which constitutional violations are found]. [27]

Similarly, Justice Barkett testified that by May, 1991, the United States Court of Appeals for the Eleventh Circuit had reversed half of the year's affirmances of death penalty cases by the Florida Supreme Court.

She explained that State Supreme Court Justices welcome Federal review for a number of reasons. First, State courts have a substantial capital caseload, covering a myriad of issues other than Federal constitutional claims. Federal habeas courts, by contrast, specialize in the determination of constitutional claims. Second, describing the high reversal rate, Justice Barkett hastened to clarify that:

these are reversals of a court that *** works conscientiously and assiduously to correctly and fairly resolve these death cases. They are reversals in a State that I am proud to say has one of the best public defender structures in the Nation. Therefore, I must be compelled to question what errors are made in those States where not even an adequate structure for legal representation of indigent defendants exists. [28]

Third, the criminal justice system faces a “fiscal crisis of major proportions” that further overburdens the system.

Justice Barkett concluded that:

I find it very difficult in this climate and for all of these reasons to be comfortable with curtailing the Federal courts' authority to hear constitutional claims in Federal habeas petitions.

I do not believe that in this country we can allow people to die without giving them an opportunity to at least have the merits of their Federal constitutional claims heard and decided by some court, especially the Federal court, which after all is, and should be, the final arbiter of Federal law. Tying the hands of the Federal courts in these matters of life and death may serve the interests of finality of judgment, but it does so, it seems to me, at the expense of violating due process. It also ignores the realities of problems ***126** in State courts where overburdened and elected judges are responsible for maintaining a system to satisfy the needs and the immediate desires of the public. Federal judges, I point out, are protected by life tenure whereas State judges are not. [29]

Justice Durham echoed Justice Barkett's testimony:

I come before you as a State judge with a great deal of experience in criminal and capital cases. State courts miss things. They make mistakes. There are a number of reasons for the mistakes we make. The chief reason is that the lawyering in criminal cases, and in particular in capital cases, it often inadequate on both sides *** In our State, as in many others, we don't have any provisions for representation of *** criminal litigants on collateral review. So, if the lawyering process in the trial and the direct appeal has been inadequate, the only person to tell us about it is the pro se prisoner himself. Mistakes remain invisible to us under that system.

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Another reason we need Federal habeas corpus review, State courts are structurally less likely to systematically vindicate Federal rights. In the State courts we sit for election or retention. We are subject to regular performance evaluation by the lawyer and the appointing authorities in our States *** We are very often, because of the kinds of duties we undertake, close to the political processes *** Yes, it is true that State judges are individually and personally as capable as Federal judges are of interpreting and enforcing the Federal Constitution, but institutionally and structurally we're different. We are vulnerable. Therefore, the Bill of Rights will be vulnerable if it is left solely in our keeping *** Denying review of rightful Federal questions in the Federal courts *** is not necessary, and, particularly, I would like to emphasize from my perspective as a State court judge, is not necessary to vindicate values relating to federalism. [30]

David Bruck cited a recent example of the pressures Justices Barkett and Durham described:

[I]t is an undeniable fact that [California Chief Judge Malcolm Lucas] sits where he sits because his predecessor was swept from office in an election campaign the based on unpopular decisions which she made in death penalty cases. Now it would be a very inept justice who obtained his position on that basis who was not aware of the fact that how popular or unpopular his or her decisions might be has to do with how long that person is going to keep their job***This is why Federal judges have life tenure***. [31]

***127** While urging the continuation of Federal review to protect against State court judges who take into account improper considerations such as race and politics when deciding Federal constitutional claims, Mr. Bruck noted that State judges who consider such claims on their merits are the norm and therefore have "nothing to fear from Federal review." [32]

Finally, any standard that would leave the determination of Federal constitutional rights to each State would:

result in a patchwork quilt of constitutional protections. The same time-honored and timeless guarantees found in our Bill of Rights could soon mean one thing in one State, another in a second, and perhaps nothing a third. Our national motto, E Pluribus Unum–out of many, one–might be stood on its head, for out of one Constitution could spring many interpretations. For these reasons federal courts must be available to enforce and ensure uniform federal rights from coast to coast." [33]

Addressing the "full and fair adjudication" standard in a speech last year, Chief Justice Rehnquist said:

My own view is that, while this approach might commend itself some years hence, it does not do so at the present time. *** If the present scope of federal habeas corpus can be retained without the delay and other faults contained in it, I think it should be. [34]

More recently, the Judicial Conference of the United States rejected the "full and fair adjudication standard." [35] The Conference has been joined by current and former chief justices and associate justices of state supreme courts across the country, [36] and by a myriad of state and local bar associations. [37]

CONCLUSION

Under longstanding interpretations of the 1867 Habeas Corpus Act, the Federal courts have examined constitutional claims in habeas corpus in light of prior State court judgments–according those State judgments "the weight that federal practice gives to the conclusion of a court of last resort of another jurisdiction***." [38] The Committee believes that this is the appropriate ***128** standard. State court judgments are entitled to due deference in the Federal courts, but they cannot preclude independent federal judgment regarding the meaning of the constitution.

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This title therefore accepts the recommendation of Chief Justice Rehnquist and of the Judicial Conference. The "full and fair adjudication" standard would unjustifiably restrict the fundamental scope of Federal habeas corpus and must be rejected. Reforms are needed, but those reforms should concentrate on expediting and streamlining the processing of cases in Federal court.

SECTION-BY-SECTION ANALYSIS

Section 1101 (Short Title)

Section 1101 provides that this Act may be cited as the "Habeas Corpus Reform Act of 1991."

Section 1102 (Statute of Limitations)

Currently, there is no fixed time period within which petitions for Federal habeas corpus relief must be filed. This section would establish a one-year statute of limitations for death penalty habeas corpus cases, allow an extension of 90 days for "good cause," run the limitations period from the conclusion of direct appeal, and toll the period while prisoners are pursuing postconviction relief in State court–but not while they seek review in the United States Supreme Court after the denial of State postconviction relief. [39]

This section adopts the recommendations of the American Bar Association and the Powell Committee that prisoners in death penalty cases should be required to file applications for habeas corpus relief within a fixed time period. The section differs from the Powell Committee's recommendations in only two respects. First, the Powell Committee proposed that the limitations period be 180 days, with a possible 60-day extension. The ABA has explained that, given the complexity and time demands of capital cases, at least one year is required to recruit lawyers willing to handle death penalty cases in Federal court and to allow those attorneys to reschedule other work in order to prepare habeas petitions.

The Committee believes that the key is to establish some fixed time period within which petitions must be filed; whether that period is six months or one year is less important. The Criminal Law Committee of the National Association of Attorneys General recommends that a "reasonable time limitation" be established for habeas corpus cases generally. Both the ABA and the National District Attorneys Assocation have recommended a one-year period in capital cases, and this section adopts that standard.

Second, the Powell Committee recommended that a statute of limitations be established only if a State chooses to invoke a proposed special new system for capital cases by appointing counsel for postconviction proceedings in State court. Consistent with the optional format, the Powell Committee proposed to run the statute of limitations from the date that counsel is appointed for the State postconviction stage.

***129** This section follows the amendment to the Powell Committee report adopted by the full Judicial Conference, namely that all death penalty States should be required to provide competent counsel at all stages of capital litigation. Because, under the Judicial Conference's plan, the appointment of counsel for State postconviction proceedings does not trigger the application of the statute of limitations, it makes sense to start the limitations period running as soon as the appellate courts have rendered their decision–but then to toll for any delay in the appointment of new counsel.

The tolling provisions in this section are consistent with those in the Powell Committee report. The section rejects the ABA's recommendation that the statute be tolled not only while prisoners seek postconviction relief in State court, but also while they seek certiorari review in the Supreme Court of the United States after the State courts have denied relief in State postconviction proceedings and during the time required for motions for rehearing. This will expedite the process while ensuring that prisoners have access to appropriate review.

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Section 1103 (Stays of Execution)

This section on automatic stays of execution in death penalty cases adopts recommendations made by both the Powell Committee and the ABA. It provides that an automatic stay will be available upon request, so that emergency, or "eleventh hour," proceedings to allow the completion of judicial proceedings on a petitioner's Federal claims will not be necessary. [40]

Section 1104 (Law Applicable)

This section clarifies the meaning of a "new rule" of law for purposes of Teague v. Lane [41] and subsequent decisions, particularly Butler v. McKellar. [42] It specifies that such "new rules" are inapplicable in actions under Chapter 153 of title 28, United States Code, which governs Federal habeas corpus. In other words, this section prohibits the retroactive application of genuine changes in the law that the State courts could not reasonably have anticipated when they decided the case. The Committee believes it is contrary to legitimate State interests in finality to allow the Federal courts to create new rules "after the fact" and to upset State court decisions on that basis. This section therefore prohibits the Federal courts from doing so in all habeas corpus cases. [43]

This section thus answers the question of whether and when changes in the law, announced after a petitoner's sentence becomes final at the conclusion of direct review, should apply when the petitioner seeks habeas corpus relief in Federal court. Some witnesses before the Subcommittee argued that the Federal courts should enforce the law as it exists when they consider a claim and that to do otherwise is to permit a petitioner to be imprisoned or executed in violation of the Constitution. As ABA President John Curtin noted, Teague "makes the arbitrary matter of timing the critical determinant ***130** in deciding whether a person will be executed based on procedures which, in fact, have been declared unconstitutional." [44] Other witnesses insisted that State criminal judgments and sentences should not ordinarily be upset by the Federal courts on the basis of changes in the law that the State courts could not have anticipated. The proper balance between these positions emerged as one of the most controversial matters before the Committee last Congress.

The relevant provision of the bill reported by the Committee last Congress both redefined the term "new rule of law" and reenacted the standards used prior to Teague to determine when a "new rule" should be applied "retroactively." Critics found that bill objectionable on both counts. The definition of "new rules" was thought by some to be unnecessarily elaborate and rigid; the standards for determining "retroactivity" were thought by some to be insufficiently stringent. To meet these concerns, this section in this Congress's bill is substantially different from last Congress's bill.

First, this section abandons the definition of "new rules" in last Congress's proposal in favor of a much simpler and straightforward description borrowed from recent relevant Supreme Court opinions. [45] Justice John Harlan, whose widely admired discussions of the "retroactivity" issue form the basis for the Court's approach in Teague, clearly stated that the State courts must respect the general principles of constitutional law applicable to a case and that they cannot meet their responsibilities merely by following Supreme Court decisions in identical cases. [46] Certainly, the State courts are expected fairly to apply the general principles established by precedent to analogous cases. The State courts do that routinely. What they cannot do, and what they cannot fairly be expected to do, is to anticipate what the Court has called a "clear break" from precedent. Accordingly, this section rejects the definiton of a "new rule" suggested in Butler, namely that a rule is "new" if, at the time the State courts considered a petitioner's claim, the claim was susceptible to debate among reasonable minds. The Committee report last year explains the implications of such an open-ended standard. [47]

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This section adopts the forthright, common-sense meaning assigned to a "new rule" in Teague itself and other recent decisions.[48] A "new rule" is a "clear break" from precedent, a genuine change in the law that could not reasonably have been anticipated when a case was before the State courts.

This standard not only will protect State interests in finality, it will, as Justice Durham noted, expedite Federal proceedings by decreasing litigation over when new rules are retroactively applicable.[49]

***131** Second, this section rejects any standards for determining when "new rules" can be applied in Federal habeas corpus. Prior to Teague, the Supreme Court had held that changes in the law could be applied retroactively in habeas corpus if they enhanced the accuracy of criminal judgments and did not unduly upset State reliance interests.[50] Teague and subsequent cases narrowed this standard. In Teague, the Court held that a "new rule" can be applied in habeas corpus only if it: (1) places the petitioner's conduct "beyond the power of the lawmaking authority to proscribe," or (2) goes fundamentally to the reliability of the fact-finding process such that, without it, "the likelihood of an accurate conviction is seriously diminished."[51]

This section rejects both sets of exceptions and, indeed, allows no exceptions at all. It prohibits all "new rule" claims–even those that Teague itself would permit. In order to prevent the Federal courts from upsetting State judgments on the basis of genuine changes in the law that the State courts could not have anticipated, and to protect State court judgments rendered before a genuine change in the law, this section provides flatly that such "new rules" will never apply in habeas corpus.

This section thus differs substantially from the bill reported by the Committee in the 101st Congress. That bill would have overruled Teague and subsequent cases and reestablished the analysis used by the Court prior to Teague. It would have permitted petitioners in a variety of circumstances to rely on changes in the law and thus permitted Federal courts to upset State court judgments.

In essence, this section adopts the position long advocated by Justice Harlan and by the Justice Department: habeas corpus is a collateral procedure in which prisoners need not be given the benefits of changes in the law since their convictions and sentences were approved on direct review.[52] In fact, it is narrower than Justice Harlan's position. While Justice Harlan would have allowed some "clear breaks" from precedent to apply in habeas corpus, this section allows no exceptions.

In sum, this section defines "new rules" of law in its longstanding and common-sense way, and provides that such "new rules" shall not apply in Federal habeas corpus. As a result, no State criminal conviction or judgment will be upset in Federal habeas corpus on the basis of a genuine change in the law that the State courts could not have anticipated.

Section 1105 (Counsel in Capital Cases)

This section adopts the Judicial Conference and American Bar Association recommendations that death penalty States should appoint competent counsel for all stages of capital litigation, not just the postconviction stage. The section provides for an appointing authority and gives the States various options for the kind of authority they wish to use. The appointing authority has responsibility for establishing qualifications and standards for counsel, selecting lawyers to represent indigent clients, and monitoring their performance. ***132** The ABA has explained that because capital cases are complex and time-consuming, more than a single attorney should be appointed in these cases. Accordingly, this section calls for the appointment of a defense "team." The baseline standards for attorney qualifications and performance, compensation, and reimbursement are streamlined versions of more detailed recommendations from ABA. This section is therefore significantly less detailed and rigid than was the bill reported by the Committee last year, which was criticized by some as too burdensome.

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The Committee notes that systems similar to that set forth in this section are already in place in Ohio, Kentucky, and California, and are working well. [53] They are cost-effective, and more than a sufficient number of lawyers have qualified. Moreover, they have improved the quality of justice in, and have expedited the processing of, capital cases.

It is clear that in death penalty cases, defendants do not have adequate legal representation. [54] This situation raises serious issues regarding those defendants' rights under the sixth amendment and the due process clause. It also explains the often needless delays in capital cases that are sapping the public's confidence in the criminal justice system. Witnesses before the Subcommittee testified that providing competent trial counsel will enhance the integrity and perceived fairness of the death penalty process and, by cutting down on otherwise needless appeals, retrials, resentencings, and habeas corpus petitions, will protect the finality of State court judgments. [55]

According to Justice Barkett:

> the provision of knowledgeable trial counsel would restore the trial as the main event in the criminal process. Competent, effective trial counsel would recognize and raise constitutional issues in the trial court, so that they could be aired and resolved at that level. As a result, there would be fewer ineffective assistance of counsel claims to be raised in post-conviction litigation and there would be fewer reversals and retrials, which are frequently to blame for prolonging the process *** Furthermore, I note that it's highly unfair as well for the families and friends of the victims to bear the cost of protracted litigation that often results from ineffective representation. [56]

***133** Bryan Stevenson explained that ineffective defense lawyers in capital cases are the inevitable result of a State's failure to adequately compensate them.

> If your limit on compensation *** is $1000, and you're going to be paid $20 an hour, how do you prepare for a capital case in 50 hours? You don't. So you either have to make the judgment that you can only do 50 hours of work, whatever that involves, or you accept the fact that you're going to lose money. That's simply not fair to them, to say that we're going to have you take away the money that you give to your family and your support and your business and dedicate it to this indigent defendant, but everybody else in the process–the prosecutor, the judge, the administrator–everybody else in the process gets paid full salary." [57]

The Hyde amendment gave States an option to appoint counsel, but only at the State postconviction stage, not at trial. It provided no competency standards. Ensuring counsel only at the postconviction stage is, as Joe Giarrusso described it, "too little, too late." It is at the trial stage that errors requiring retrials and resentencings are made. Incompetent trial counsel prevent defendants, through the procedural default doctrine, from raising legitimate issues, and waste valuable court time by forcing Federal courts to reconstruct trial records. [58]

The section establishes a single enforcement mechanism: in cases in which a State fails to provide counsel in a State proceeding, or fails to provide counsel substantially meeting the qualification or performance standards required by this section, the Federal courts will not accord the findings of fact made in the State proceeding the ordinary presumption of correctness authorized by 28 U.S.C. S 2254(d), and will not refuse to consider a claim of procedural default in the relevant proceeding. This is the enforcement mechanism recommended by the Judicial Conference and the American Bar Association. The Committee believes that it is an entirely appropriate mechanism because, in the absence of competent, knowledgeable, and fairly compensated counsel, petitioners are unable to participate in the State court's attempts to find facts accurately and are unable to comply with appropriate State rules regarding the presentation of Federal claims to the State courts. [59]

Section 1106 (Successive Petitions)

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This section, in virtually any situation, bars multiple petitions from the same prisoner under a sentence of death. It tracks the relevant Powell Committee proposal, adding only the recommendation of the full Judicial Conference that claims going to the validity of a death sentence, as well as claims going to guilt or innocence, should be permitted, [60] provided that the prisoner meets other stringent requirements as well. See discussion infra.

***134** Justice Anthony Kennedy's opinion for the Supreme Court in McCleskey v. Zant [61] has already narrowed the law governing successive petitions by incorporating the rules previously developed for cases on procedural default in State court. Under McCleskey, a prisoner cannot file a second Federal petition without showing 1) "cause" for failing to raise his or her claim in a prior application and "prejudice" flowing from the violation that went uncorrected because the claim was not raised the first time, or 2) that a "miscarriage of justice" would result from the Federal court's failure to entertain the claim in a successive petition. According to Justice Kennedy, a miscarriage of justice would occur if the violation "caused the conviction of an innocent person." [62]

This section is more stringent than McCleskey. Subparagraph (A) codifies some, but not all, of the ways the Court has held that "cause" can be established. Further, under subsection (B), the prisoner must assert a claim going to guilt or to the validity of his or her death sentence and, in addition, must show what amounts to "cause."

Section 1107 (Certificates of Probable Cause)

This section adopts the recommendation of the Powell Committee that prisoners under sentence of death should not be required to obtain a certificate of probable cause in order to appeal from the denial of relief at the district court level, except in successive petition cases. Since certificates are issued routinely in death penalty cases, the certification process now wastes valuable judicial resources.

CONCLUSION

As ABA President John Curtin testified:

> A system that would take life must first give justice. The paramount requirement of a civilized system of justice is that a sentence of death not be carried out until it has been subjected to full, fair, and deliberate scrutiny. Unique among all legal decisions, the decision to execute the defendant cannot be corrected after it has been carried out. [63]

In a manner consistent with justice, the Act will expedite death penalty proceedings and ensure that every petitioner will have one, and only one, fair opportunity to present his or her claims to a Federal court. The Act thus return the focus of capital litigation to the States courts, where it belongs.

***135** TITLE XII–PROVISIONS RELATING TO POLICE OFFICERS

SUBTITLE A–POLICE ACCOUNTABILITY

PURPOSE

Subtitle A is the Police Accountability Act of 1991. It grants standing to the United States Attorney General and, in certain circumstances, to private parties to obtain civil injunctive relief against governmental authorities that engage in patterns or practices of unconstitutional or unlawful conduct by law enforcement officers. It also requires the Attorney General, through the surveys of the Bureau of Justice Statistics, to collect data about the incidence of police use of excessive force.

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BACKGROUND

On March 3, 1991 motorist Rodney King was apprehended by members of the Los Angeles Police Department (LAPD) after a high speed chase. While twenty-one other officers stood by, three LAPD officers and a sergeant administered 56 baton blows, six kicks to the head and body, and two shocks from a Taser electric stun gun. The incident was captured on videotape by a citizen. President Bush rightly called the beating "sickening."

Unfortunately, the Rodney King incident is not an aberration. The Independent Commission on the Los Angeles Police Department, created to examine the incident and headed by former Deputy Attorney General and Deputy Secretary of State Warren Christopher, concluded in its July 1991 report that "there is a significant number of officers in the LAPD who repetitively use excessive force against the public." Moreover, as the Commission found, the conduct of these officers was well known to police department management, who condoned the behavior through a pattern of lax supervision and inadequate investigation of complaints.

As Professor James Fyfe, a 16-year veteran of the New York City Police Department and one of the nation's leading experts on police use of force, testified before the Subcommittee on Civil and Constitutional Rights, the King incident "was no aberration. ... [T]here exists in LAPD a culture in which officers who choose to be brutal and abusive are left to do so without fear of interference."

It is apparent, moreover, that the problem is not limited to Los Angeles. Police chiefs from 10 major cities convened soon after the King incident and emphasized that "the problem of excessive force in American policing is real." The same point was stressed by Hubert Williams, President of the Police Foundation and former Chief of Police for Newark, New Jersey: "Police use of excessive force is a significant problem in this country, particularly in our inner cities" District of Columbia police officer Ronald Hampton, director of national affairs for the National Black Police Association, testified before the Subcommittee that his organization has complained for years that minority residents "were disrespected, disregarded, [and] physically and verbally abused" by police. The Flint, Michigan ombudsman, who reported that citizen complaints about police conduct to his office were up 10 percent in 1990, after ***136** a 25 percent increase in 1989, wrote to the Subcommittee that the experience of his office led him to believe that the Los Angeles beating "was not an isolated incident."

The Subcommittee on Civil and Constitutional Rights held two days of hearings on police brutality after the King incident and received written submissions regarding alleged police misconduct from across the country. Many of the complaints involved individual incidents. Many, however, also presented systemic issues–particular policies or practices that were reflected in a pattern of misconduct. Among the matters brought to the Subcommittee's attention:

The Civil Rights Division of the Massachusetts Attorney General's office found that in 1989–90 Boston police officers routinely conducted unconstitutional, harassing stops and searches of minority individuals, including requiring youths to submit to strip searches in public.

In New York City, bystanders who complain about police actions are arrested and "run through the system," according to affidavits compiled by the New York Civil Liberties Union. The Police Department admitted that a 1977 order prohibiting such arrests was "mistakenly" revoked in 1980.

A lawsuit against the town of Reynoldsburg, Ohio discovered that a special unit within the police department called itself the S.N.A.T. squad, for "Special Nigger Arrest Team."

The Los Angeles Police Department directed officers to use an illegal king-fu device known as the nun-chuk to inflict pain on passive demonstrators in an effort to force them to comply with police orders.

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Policing is difficult, dangerous work. Most police officers do not abuse the authority granted them. To the contrary, the majority of police officers in America are dedicated men and women who strive to uphold the ideals of the Constitution. Under growing stresses, they make an enormous contribution to public safety and deserve the nation's gratitude. Incidents of restraint in the face of provocation certainly outnumber incidents of brutality. Faced, however, with evidence that the problem of excessive force is a serious one, police departments, local authorities and the Federal Government have a responsibility to strengthen their responses.

Current Federal legal authority and Justice Department policy

Police brutality is a violation of the U.S. Constitution, and under sections 241 and 242 of title 18 it is a federal crime. However, the Federal response to police misconduct has been limited. The Assistant Attorney General in charge of the Civil Rights Division testified that the U.S. Justice Department follows a “back-stop” policy, deferring to local authorities. Statistics provided to the Subcommittee on Civil and Constitutional Rights by the Justice Department show that the Justice Department prosecutes on average 50 police officers a year. This represents a fraction of the 3,000 criminal civil rights cases, most of them involving law enforcement officers, that the Justice Department investigates yearly.

Moreover, the cases investigated by the Department represent only a fraction of the allegations of police misconduct reported to local authorities, most of which are never reported to Federal officials. The Justice Department provided to the Subcommittee statistics ***137** showing that the FBI had investigated 720 criminal civil rights matters in the Central District of California, which encompasses Los Angeles, between 1982 and March 1991. Of those 720 cases investigated in a nine year period, 72 involved the Los Angeles Police Department and 186 involved the Los Angeles County Sheriff's Office. Yet, the Los Angeles Police Misconduct Referral Service received 652 complaints against the LAPD in 1988 alone and 616 in 1990. Of the 720 Federal investigations, only four resulted in indictments against police officers. Yet, during just a 3 year period, 1987–1990, the LA County Sheriff's Office lost or settled 56 civil lawsuits involving the use of excessive force, paying out $8.5 million in damages, and the LAPD paid out $18.8 million in damages for police brutality cases.

Pattern or practice authority

The Justice Department currently lacks the authority to address systemic patterns or practices of police misconduct. The Justice Department can only prosecute individual police officers, whom juries are often reluctant to convict. If an officer was poorly trained, or was acting pursuant to an official policy, it is difficult to obtain a conviction, and Justice has no authority to sue the police department itself to correct the underlying policy.

In 1980, the Third Circuit Court of Appeals held in United States v. City of Philadelphia, 644 F. 2d 187 (3d Cir. 1980), that the United States does not have implied statutory or cnstitutional authority to sue a local government or its officials to enjoin violations of citizens' constitutional rights by police officers.

This represents a serious and outdated gap in the federal scheme for protecting constitutional rights. The Attorney General has pattern or practice authority under eight civil rights statutes, including those governing voting, housing, employment, education, public accommodations and access to public facilities. The Justice Department can sue a city or county over its voter registration practices or its educational policies. It can sue private and public employers, including police departments, over patterns of employment discrimination. The Justice Department can seek injunctive relief under the Civil Rights of Institutionalized Persons Act against a jail or prison that tolerates guards beating inmates. But it cannot sue to change the policy of a police department that tolerates officers beating citizens on the street.

While a private citizen injured by police misconduct can sue for money damages, he or she cannot sue for injunctive relief, absent a showing of likely future harm, under the Supreme Court decision in Los Angeles v. Lyons, 461 U.S. 95 (1983). The case involved a resident of Los Angeles who had been choked unconscious by a police officer following a routine traffic stop. Unlike other cities, Los Angeles did not limit the use of chokeholds to situations where the officer's life was in danger. From

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1975 to 1982, 15 people died as a result of LAPD chokeholds. The Supreme Court ruled that the plaintiff had no standing to seek an injunction restricting the use of chokeholds because he could not demonstrate that he himself was likely to be choked again. If choked again, the Court allowed, he could sue for damages again. But neither he nor anyone else could sue to bring the LAPD's policy on use of the chokehold in line with practices accepted in most other cities.

***138** The Police Accountability Act would close this gap in the law, authorizing the Attorney General and private parties to sue for injunctive relief against abusive police practices. The Committee expects that the Department of Justice will be diligent in exercising its new authority. But the Committee believes that private standing is necessary, especially in situations where the Department of Justice does not act. To ensure that the issues being litigated are not hypothetical, and to provide a court with the benefit of a factual context, the Act requires that a private citizen seeking injunctive relief have been injured by the challenged practice.

The Act creates an enforceable right to be free of patterns of police brutality. In adopting the provision granting individuals the standing to sue, Congress is exercising its authority to create legal rights, the invasion of which creates standing even where the plaintiff would not have had standing in the absence of the statute. Warth v. Seldin, 422 U.S. 490 (1975).

The Act does not increase the responsibilities of police departments or impose any new standards of conduct on police officers. The standards of conduct under the Act are the same as those under the Constitution, presently enforced in damage actions under section 1983. The Act merely provides another tool for a court to use, after a police department is held responsible for a pattern or practice of misconduct that violates the Constitution or laws of the United States.

Because the Act imposes no new standard of conduct on law enforcement agencies, it should not increase the amount of litigation against police departments. Individuals aggrieved by the use of excessive force already can and do sue under 42 U.S.C. 1983 for monetary damages. With adoption of this section, such persons will be able to seek injunctive relief as well, if their injury is the product of a pattern or practice of misconduct.

This provision may in fact decrease the number of lawsuits against police departments. Currently, changes in a police department's policy are prompted by successive criminal cases or damage actions; the cumulative weight of convictions or adverse monetary judgments may lead the police leadership to conclude that change is necessary. This is an inefficient way to enforce the Constitution and is not always effective. Some police departments have shown they are willing to absorb millions of dollars of damage payments per year without changing their policies. If there is a pattern of abuse, this section can bring it to an end with a single legal action.

Pattern or practice authority is needed because the Federal Government's criminal authority to prosecute police brutality is not adequate to address patterns or practices such as the lack of training or the routine use of deadly techniques like chokeholds, or the absence of a monitoring and disciplinary system. Two cases illustrate both the need for this authority and how it will work.

In Mason County, Washington, in the nine month period between June 1985 and March 1986, citizens in four separate incidents were beaten by police officers following traffic stops. A federal jury returned civil verdicts against all of the deputy sheriffs involved in the incidents and against the county, awarding a total of $853,000 in damages and costs. The Ninth Circuit affirmed, tracing the incidents to the lack of training provided by the sheriff's department, ***139** which it described as "woefully inadequate, if it can be said to have existed at all." Davis v. Mason County, 927 F.2d 1473, 1482 (9th Cir. 1991). Yet while the lack of training was established and was found to rise to the level of a constitutional violation, the courts were powerless to correct it. In formulating a remedy, the courts would have had to look no further than the Washington State statute on police training standards, which Mason County has ignored.

Another federal case, against the Goldsboro, North Carolina police department, resulted in a $220,000 payment to the father of a young black man who was strangled to death by city police officers. The officers involved in the incident had been involved in several prior incidents involving use of excessive force, yet there had been disciplinary action taken against them. One expert

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witness, the former chief of police for Boston and St. Louis County, testified that the City of Goldsboro had an "official policy of not investigating incidents [involving deadly force]." Again, the court had no authority to order remedies for the glaring deficiencies the case has highlighted. Swann v. Goldsboro, No. 90–59–CIV–5–D (E.D.N.C.).

The Police Accountability Act as originally introduced and reported out of the Subcommittee on Civil and Constitutional Rights contained a section on criminal liability against police officers. That section was stricken by an amendment during full Committee consideration.

SECTION-BY-SECTION ANALYSIS

Section 1201 is the short title: Police Accountability Act of 1991.

Section 1202 creates a cause of action and standing for pattern or practice cases.

Subsection 1202(a)(1) provides that it shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States.

Subsection 1202(a)(2) provides that the Attorney General may in a civil action obtain appropriate equitable and declaratory relief to eliminate a pattern or practice that violates subsection 1202(a)(1).

Subsection 1202(a)(3) provides that a person injured by a pattern or practice that violates subseciton 1202(a)(1) may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Section 1202(b) defines law enforcement officers. The term includes state, local and Federal officials.

Section 1203 requires the Attorney General to collect data about the use of excessive force by law enforcement officers. The data will not identify individuals. It will be published annually in statistical form.

***140** SUBTITLE B–RETIRED PUBLIC SAFETY OFFICER DEATH BENEFIT

PURPOSE AND BACKGROUND

This subtitle extends the Public Safety Officers Benefits Act to inlcude the families of retired officers who are killed or permanently disabled while responding to fire, rescue or police emergencies. The Public Safety Officers Death Benefits program, first enacted in the 94th Congress, recognized a Federal responsibility for public safety offices killed in the line of duty. It was amended in the 101st Congress to include the families of officers permanently disabled in the line of duty. This subtitle would make the families of retired officers so killed or disabled eligible for the $100,000 lump sum benefit provided by the act. Because of their specialized training and experience, it is important to encourage retired public safety officers to respond to emergencies they witness. If they are killed or disabled as a result of rendering aid or assistance to crime victims or other people in need, their families shuld be provided with the same benefits they would have received if the officer had been killed while still on active duty. This is happily an infrequent, but not unheard of occurence. In New York City as of the date of markup, more retired police officers were killed rendering aid than were active officers.

SECTION-BY-SECTION ANALYSIS

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Section 1211 amends Section 1201 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide for the payment of public safety officer benefits to retired public safety officers if such officer is killed or permanently disabled while rendering aid in a fire, rescue or police emergency.

SUBTITLE C–STUDY ON POLICE OFFICERS' RIGHTS

PURPOSE AND BACKGROUND

This subtitle was the result of an amendment offered by Rep. Mike Synar (D-Oklahoma) as Committee markup. It was offered in response to an amendment by Rep. Tom Campbell (R-Calif.) that would have established a Federal "Police Officers Bill of Rights." This Bill of Rights would have given State and local police officers who do not have similar local protections, certain procedural and substantive rights and protections during the course of administrative, non-criminal investigations that could result in disciplinary actions. More than 20 States have such bills of rights for their police as a result of either State statute or collective bargaining agreements. The Synar amendment requires that the Attorney General conduct a study of the issue and report to the Congress no later than one year after enactment.

The Committee substituted the Synar amendment for the Campbell amendment by a vote of 24–10 and then adopted the Campbell amendment, as amended by the Synar amendment, by a vote of 27 to 7. The Committee believed a study and the legislative hearing process would identify the nature and scope of the problem and put the Committee and the Congress in a better position to assess the original proposal.

***141** SECTION-BY-SECTION ANALYSIS

Section 1221 requires that the Attorney General, through the National Institute of Justice, conduct a study of the procedures followed in internal, non-criminal investigations of State and local law enforcement officers to determine if such investigations are conducted fairly. The study should determine the adequacy of rights of law enforcement officers as well as members of the public in cases involving the performance of police officers and shall include notice, conduct of questioning, counsel, hearings appeal and sanctions. The report of the study along with findings and recommendations must be submitted to Congress no later than one year after the date of enactment.

SUBTITLE D–LAW ENFORCEMENT SCHOLARSHIPS

PURPOSE

In order to better prepare America's law enforcement officers for their increasingly complex duties, this subtitle authorizes the Department of Justice's Bureau of Justice Assistance to provide participating States with funds to award scholarships for a period of one academic year to officers seeking to further their professional education.

Officers who have served at least two years would be eligible for the scholarships. Recipients would be obligated to continue law enforcement service for a period of one additional month for each credit hour of financial assistance, with a minimum obligation of six months and a maximum obligation of two years.

BACKGROUND

While over 65 percent of America's police officers have some college credit, only 22.6 percent completed a Bachelor's degree. Yet more educated officers communicate better with the public, are more skillful decision-makers and are the subject of fewer complaints. Moreover, a new technologies, the war against drugs, and a more complicated society all require more sophisticated, well-educated and effective police officers.

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The Law Enforcement Scholarships Act of 1991 was introduced in the 102d Congress as H.R. 323 by Rep. Edward Feighan (D-Ohio), who offered this subtitle as an amendment at Committee markup. This subtitle is essentially similar to Title VI of H.R. 5269 which was passed by the House in the 101st Congress.

SECTION-BY-SECTION ANALYSIS

Section 1231

This section gives the short title of the Act: "Law Enforcement Scholarship Act of 1991."

Section 1232

This section provided a statement of purpose and explains where the Act is to be inserted into Title 42 of the United States Code. This section defines the terms used in the Act and explains how ***142** money allocated under the Act is to be divided among the participating States.

This section establishes a program of scholarships to be awarded to law enforcement officers seeking further education. The Federal share of the cost of such scholarships shall not exceed 60 percent. In order to participate, States must designate an appropriate "lead agency" to implement the Act.

Participating States must insure that scholarship recipient enjoy the same compensation, benefits and rights available to non-participating officers of like rank and tenure. States may only use funds allocated under the Act of supplement existing law enforcement recruitment and education efforts, not to supplant them.

This section provides that scholarships awarded under the Act may be used to pay for one academic year of educational expenses at any accredited institution of higher education. It provides that to be eligible, officers must have served for at least two years prior to seeking the scholarship.

This section lists the information required of states who wish to participate in the programs created from under this Act. The section outlines the procedure for officers applying for scholarships and sets some of the criteria that states shall use when considering these applications.

This section also establishes the agreements entered into by recipients and the Bureau of Justice Assistance. Recipients must continue their law enforcement service for at least one additional month per credit earned under this Act, from a minimum of 6 months to a maximum of 2 years.

Finally, this section requires the Bureau of Justice to submit annual reports on the programs established under this Act.

Section 1233

This section authorizes appropriations of $30 million a year for the fiscal years 1992 through 1996.

SUBTITLE E–LAW ENFORCEMENT FAMILY SUPPORT

PURPOSE

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This Subtitle is intended to further efforts to ensure that the nation's police forces are adequately prepared to protect the public safety. It will provide grants to State and local law enforcement agencies to enable these agencies to prepare their officers to handle the severe stresses attendant to law enforcement careers. The grants will also help agencies to equip the families of officers to maintain unity and to provide crucial support to those serving on the front lines of law enforcement. This Subtitle will also provide for the Bureau of Justice Assistance to act as a clearinghouse for information and research on the distinctive problems faced by law enforcement families and for creative solutions to these challenges. It is the intent of the Committee that the Bureau give these responsibilities, as well as the grant program, its full attention and priority in an effective and timely manner.

***143** BACKGROUND

This subtitle is a response to the testimony of witnesses at a recent hearing of the Select Committee on Children, Youth, and Families. These witnesses testified that police officers experience serious job-related stress resulting in marital tension, violence, communication breakdown, burnout, depression, alcoholism, and even suicide. They also testified that state and local law enforcement agencies lack the resources to help officers and their families deal with these problems and to develop innovative responses to the stresses involved in law enforcement. This Subtitle will make available to police officers and their families the resources needed to ease the pressures involved in police work and to reduce family stress and violence. The subtitle was offered as an amendment at Committee markup by Rep. Patricia Schroeder (D-Colo.)

SECTION-BY-SECTION ANALYSIS

Section 1241

This Section amends title I of the Omnibus Crime Control and Safe Streets of 1968 (42 U.S.C. 3711 et seq.) by adding a new Part V, which will authorize the Director of the Bureau of Justice Assistance (referred to in the bill as “Director”) to make grants to State and local law enforcement agencies to provide family support to law enforcement personnel. Grants will be awarded upon the application of a state or local law enforcement agency describing the intended services to be provided with grant funds and the need for such services in the ares served by the applying agency. A grant to a particular agency may not exceed $100,000 annually and may continue for a period not longer than five years. In addition, this section mandates that the Director shall ensure an equitable geographic distribution of grant funds. This Section also permits the Director to reserve up to 10 percent of the funds available for grants under this section for research grants to study issues of importance in the law enforcement field.

Agencies receiving grants under this section will be required to provide at least one of the following services: counseling for law enforcement family members; 24-hour child care; marital and adolescent support groups; stress reduction programs; stress reduction for law enforcement recruits and their families. Recipient agencies will also be required to certify that they will match all federal grants funds with an equal amount of non-federally provided cash or in-kind support for the funded programs, and to report annually to the Director on the effectiveness of the funded programs. This section further provides that no more than 10 percent of the funds provided in any grant may be used for administrative purposes.

In addition to disbursing grants, the Director will also be required under this Section to establish guidelines within the Department of Justice for promoting family unity and support, to identify and evaluate model family support programs, to develop technical assistance and training programs, and to collect and disseminate information on police stress and family support.

***144** Section 1242

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This Section authorizes to be appropriated $5 million in each of fiscal years 1992 through 1996 for the Director to carry out his responsibilities under the new Part V of the Omnibus Crime Control and Safe Streets of 1968. This Section requires that at least 80 percent of these funds be disbursed as grants.

TITLE XIII–FRAUD

SECTION-BY-SECTION ANALYSIS

Section 1301

Section 1301 amends 18 U.S.C. S 1341 by extending this section's penalties for the enumerated acts of mail fraud to such acts effectuated by means of private or commercial interstate carriers.

Section 1302

Section 1302 amends 18 U.S.C. S 1029, which provides penalties for producing, using, or trafficking in counterfeit or unauthorized devices which give access to various systems for the disbursement of funds or other things of value. The amendment extends the list of punishable offenses set out in section 1029(a) to include transactions undertaken with an access device issued to another person if i) such transactions are knowingly effected with the intent of defraud, and ii) result in the receipt of anything aggregating $1,000 or more in value over a one-year period.

The amendment also extends the list of punishable offenses to include knowingly, and with the intent to defraud, offering an access device, or selling information or an application to obtain an access device, without the authorization of the issuer of the device. Further, the amendment makes punishable knowingly, and with intent to defraud, arranging for another person to present access device transaction records for payment to a credit card system member or its agent without the authorization of the credit card system member or its agent.

Finally, in addition to technical changes, the amendment defines in subsection (e) the term “credit card system member” to mean a financial institution that is a member of a credit card system, including a financial institution that is the sole credit system member affiliated with a particular credit card issuer.

Section 1303–Crimes By or Affecting Persons Engaged in the Business of Insurance whose Activities Affect Interstate Commerce

PURPOSE

Section 1303 makes defrauding, looting, or plundering an insurance company a Federal felony. It is designed as a strong enforcement tool to bring an end to criminal fraud in the business of insurance, providing a strong Federal deterrent to such wrongdoing in this field in general and to complex insurance fraud schemes in particular.

***145** BACKGROUND

Almost since revolutionary times, insurance has played a distinctive and indispensable role in American society, thanks in large part to the high quality of the workers in that industry who have served the public so well. Nonetheless, State and Federal law enforcement officials have determined that insider insurance fraud is fast becoming the number one white collar crime in America today. The Committee believes that the rigors of the current financial service marketplace on honest companies are tough enough; they must not be damaged further from within by the fraudulent acts.

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Under present laws, all too often the perpetrators of fraud and deceptive practices in the insurance field not only are able to carry out their schemes with impunity, but–equally troubling–they move on to another insurance company to inflict still more harm to the good name of insurance. Insurance fraud frequently involves complex “paper trails”, and applicable statutes of limitations often expire before a criminal investigation for insurance fraud can be completed. Because of their five-year statutes of limitations, Federal mail and wire fraud statutes have largely proven ineffective in dealing with the problems. It is clear that current criminal statutes and penalties are inadequate to deal with the fraudulent activity in this industry, and a specific Federal criminal statute is necessary. particularly in the wake of the crisis in the savings and loan industry and the increasing number of bank failures, the Federal Government cannot simply sit by and watch another financial industry in this country be destroyed from within.

In coordination with the Committee on Energy and Commerce, the National Association of Insurance Commissioners, state officials, and other associated with the insurance industry, and following over three years of hearings conducted by the Energy and Commerce Committee's Subcommittee on Oversight and Investigations, a legislative proposal was developed. On August 1, 1991, Congressman Brooks, Chairman of the Committee on the Judiciary, and Congressman Dingell, Chairman of the Committee on Energy and Commerce, introduced H.R. 3171, the Insurance Fraud Prevention Act of 1991. The provisions of Section 1303 are derived from that proposal.

Section 1303 was included as a part of H.R. 3371, the Omnibus Crime Control Act of 1991, which was marked up and reported by the Committee by voice vote on September 26, 1991. Section 1303 was reported by the Committee, unamended.

SECTION-BY-SECTION ANALYSIS

Section 1303

Section 1303 amends Chapter 47 of title 18 by adding two new sections, Section 1033 and Section 1034.

Section 1033 allows Federal prosecution if a person, with the intent to deceive, knowingly files a false statement or property valuation with an insurance regulator; embezzles or misappropriates funds or property worth $5,000 or more from an insurance company; makes false entries or statements regarding the financial condition of an insurance company so as to deceive any individual ***146** or regulator regarding the financial condition or solvency of that company; or, obstructs the investigations of insurance regulators. In addition, prosecution lies against whoever after conviction under this section willfully works in the insurance field without a waiver from government authorities, as well as whoever in the business of insurance willfully permits such participation.

If the amount or value of a violation under this section does not exceed $5,000, the punishment is a fine or imprisonment of not more than one year, or both. If the violation jeopardizes the safety and soundness of an insurer, the term of imprisonment shall be not more than 15 years. Otherwise, the punishment for an offense under this section is a fine or imprisonment for not more than 10 years, or both. Anyone convicted of an offense under this section (or who has been convicted of any criminal felony involving dishonesty or a breach of trust) who willfully engages in the business of insurance without a waiver by an appropriate insurance regulator is subject to a fine or imprisonment of not more than 5 years, or both. Anyone who willfully permits such a person's participation in the industry is subject to the same penalties as is that person.

Section 1034 permits the Attorney General to bring civil actions and to seek injunctions against violators. The civil penalty shall be not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense contributed to an insurer's insolvency, the penalties will be remitted for the benefit of the policyholders, claimants, and creditors of that insurer. Section 1304 also defines the terms “business of insurance”, “insurer”, “interstate commerce”, and “State”.

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Section 1303 also makes miscellaneous conforming amendments to title 18 with regard to insurance, prohibiting tampering with insurance regulatory proceedings and prohibiting obstruction of criminal investigations.

TITLE XIV–PROTECTION OF YOUTH

SUBTITLE A–CRIMES AGAINST CHILDREN

SECTION-BY-SECTION ANALYSIS

Section 1401

Short title: Jacob Wetterling Crimes Against Children Registration Act.

Section 1402

Section 1402 directs the Attorney General to establish guidelines for State programs requiring individuals convicted of certain crimes against a minor to maintain registration of a current address with State law enforcement officials for ten years after his or her completion of a term of imprisonment or from the initiation of a term of parole or supervised release. Persons who must register are those convicted of kidnapping a minor, except by a non-custodial parent; false imprisonment of a minor, except by a non-custodial parent; criminal sexual conduct toward a minor; solicitation of ***147** minors to engage in sexual conduct; use of minors in a sexual performance; and solicitation of minors to practice prostitution.

Under the approved State registration programs, State prison officials must notify those convicted of these crimes that they have a duty to register and to report in writing any change of address to the appropriate authority within ten days of moving. In addition, State officials must obtain fingerprints and a photograph from the person convicted, if they do not already have these; and, ensure that the individual has read and signed a form stating that the duty of the person to register has been explained. Within three days State prison officials must forward this information to the appropriate State law enforcement agency, which must enter it into the State law enforcement system and notify the appropriate law enforcement agency with jurisdiction in the locality where the individual lives. The State law enforcement agency must also send conviction data and fingerprints to the Identification Division of the Federal Bureau of Investigation.

On each anniversary of the initial registration date during the ten-year period, the appropriate State law enforcement agency must mail a verification form to the registered address of the individual. This form must be signed and returned within 10 days of receipt to avoid violation of the registration provisions, unless the person has not changed his or her address. Knowing failure to register or to keep such registration current shall be punishable by criminal penalties set by the State.

The registration data is private data on individuals and may be used for law enforcement purposes. Confidential background checks using fingerprints may be conducted for child care services providers.

Section 1403

Section 1403 provides that each State has three years from the date of enactment of these provisions to implement a registration program that conforms to the requirements of the law. If a State does not initiate a registration program within this time, the funds it receives under section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3756, will be cut by 25 percent and the unallocated funds distributed to States that are in compliance with these provisions.

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SUBTITLE B–PARENTAL KIDNAPPING

PURPOSE

Subtitle B makes kidnapping of child from his or her custodial parent, and then removing the child from the United States, a Federal felony.

BACKGROUND

More than 300 children are taken to live in foreign countries each year by a parent that does not have legal custody of the child. The State Department has recorded over 2,800 of these cases since 1975, but many experts believe that this figure is low. The actual number of cases may be closer to 10,000. The rate at which such kidnappings are increasing also provides cause for action. Since ***148** May of 1983, the number of cases known to the State Department has jumped 84 percent. Both the parent deprived of custody and the abducted child suffer from the kidnapping. Some child psychologists believe that the trauma associated with an abduction of this kind, and the subsequent deprivation of one parent's love, is one of the most horrendous forms of child abuse.

Although the majority of the States punish this type of kidnapping as a felony, the Federal Government does not. The absence of Federal legislation denies the victim parent Federal assistance and allows the abductor to escape federal prosecution.

Federal legislation is needed for at least four reasons. First, creating a Federal felony for this type of kidnapping should deter at least some parents contemplating abduction. Currently, the abducting parent can flee to safe havens around the world knowing that the U.S. will not pursue them.

Second, making these kidnappings a Federal crime allows the U.S. to request extradition of the kidnapping parent from those countries with which we have extradition treaties.

Third, Federal legislation strengthens the hand of the State Department when asking a foreign government to intervene and assist in the return of a child by arming U.S. Ambassadors with Federal warrants.

Finally, this legislation sends a strong message to the international community that the U.S. views child abduction as a serious crime that we will not tolerate.

In 1987, the U.S. State Department was little more than a legal referral service for parents whose children had been abducted. At that time the State Department would conduct a “whereabouts and welfare search,” and provide a list of attorneys working in the country to which the child had been taken. Victim parents could expect no additional help from the U.S. Government.

As the result of cooperation with a Congress increasingly sensitive to the cries of victim parents for help, the State Department implemented a number of significant improvements in the way it handles international parental child abduction cases. First, the Department established a unit within the consular affairs office to coordinate and direct action on these cases. Second, the Department assigned one person in each U.S. Mission around the world to be responsible for actively working on behalf of American parents to get these children back. This person maintains a list of the cases in the country. Further, every U.S. ambassador has been instructed to use every legal and diplomatic avenue available to achieve the return of abducted children.

In 1988, Congress passed implementing legislation for the Hague Convention on International Parental Child Abduction. As a result of this convention, the signatories will recognize the custody decrees of the other signatories, thereby facilitating the return of abducted children. Most countries, however, are not signatories to the convention, leaving individual countries to take whatever unilateral action they can to return abducted children.

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***149** SECTION-BY-SECTION ANALYSIS

Section 1421

Short title: International Parental Kidnapping Crime Act of 1991.

Section 1422

Section 1422 amends Chapter 55 of title 18 of the United States Code, which governs kidnapping, by adding at the end a new section, S 1204 (to be codified at 18 U.S.C. S 1204), entitled "International Parental Kidnapping." This new section 1204 provides for the imposition of title 18 fines and/or a prison term of not more than three years on anyone who removes a child from the United States, or retains in a foreign country a visiting child who should return to the United States, with the intent of obstructing the lawful exercise of parental rights. Section 1204(b)(2) defines "parental rights" as the right to the physical custody of a child, whether that right is held solely or jointly, and whether the right is held by operation of law, a court order, or a legally binding agreement of the parties. These "parental rights" are to be determined by reference to State law, in accordance with the Hague Convention on the Civil Aspects of International Parental Child Abduction. Section 1204(c) makes clear that nothing in this section is to be construed as detracting from any of the provisions of that Convention. Section 1204(b)(1) defines a "child" as a person who is under the age of 16.

Section 1423

Section 803 appropriates $250,000 for national, regional, and in-State training and educational programs dealing with the criminal and civil aspects of interstate and international child abduction by parents to be administered through the State Justice Institute Act of 1984.

SUBTITLE C–SEXUAL ABUSE AMENDMENTS

Section 1431

This Section amends section 2245 of title 18 to broaden the definition of "sexual act" for purposes of the Federal prohibition against sexual assault committed in the special maritime and territorial jurisdiction of the United States. The new definition of sexual act will include the intentional touching, not through the clothing, of the genitalia of someone under 16 with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. This form of molestation can be as detrimental to a child as the conduct currently covered by the term sexual act. In addition, there is a gender-based imbalance in the definitions of sexual act and sexual contact, inasmuch as penetration is much more likely to occur with female rather than male victims. This section corrects the imbalance by making all direct genital touching of children under age 16, with the requisite intent, a sexual act.

***150** SUBTITLE D–REPORTING CRIMES AGAINST CHILDREN

PURPOSE

This measure creates a program though which current, accurate information concerning persons who have committed crimes of child abuse can be obtained from a centralized source. The provision requires that each State report all convictions under its criminal child abuse law to the Federal Bureau of Investigation. This gives day care centers, schools and other child care groups the ability to have fingerprint background checks performed on potential employees by governmental agencies authorized by law to conduct such checks.

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BACKGROUND

This legislation recognizes that child molesters look for jobs around children. Required reporting of convictions should help prevent second incidents of child abuse by providing information on prior convictions on those who seek to teach or care for children, particularly young children. Although this won't stop every instance of child sexual abuse in schools and child care facilities, the number of second offenses of this type that could be prevented is significant.

A study of persons imprisoned for sexual abuse of a child found that 74 percent had one or more prior convictions for a sexual offense against a child. According to a National Institute of Mental Health study, the typical offender is male and molests an average of 117 youngsters, most of whom do not report the offense. Those who attack young boys molest an average of 281 children, and overall, the average is 75 sex crimes for each offender. The American Humane Association estimates that there are between 100,000 and 500,000 cases of sexual abuse against children each year. Of the 2.4 million child abuse reports filed in 1989, 380 thousands involved sexual abuse. Over half of these children were sexually abused before the age of seven, and 84 percent before the age of 12.

SECTION-BY-SECTION ANALYSIS

Section 1441

Short title: National Child Abuser Identification Act of 1991.

Section 1442

Section 1442 defines the terms used in these provisions. The term “child” is defined to include anyone protected under State laws establishing criminal penalties for child abuse by any person. Such state laws are termed “criminal child abuse laws,” and the term “State” is deemed to include the District of Columbia and the current U.S. territories and possessions. The term “child abuse” encompasses both physical and psychological injury to a child that violates a state criminal child abuse law.

Specific information such as name, social security number, age, race, sex, birth date, height, weight, hair and eye color, fingerprints and a description of the crimes committed are included in the term “child abuser information,” along with any other information ***151** that the FBI determines useful in identifying child abusers. The central State division or office at which information on criminal child abuse is kept is termed the “State criminal history information repository.”

Section 1443

Section 1443 sets out the purposes of these provisions. These purposes include the establishment of a centralized source of information regarding convicted child abusers; the prevention of repeat violations by child abusers; and, the collection of statistical information of child abuse that will assist in the understanding of this problem.

Section 1444

This section sets out the parameters of the State reporting programs. Under guidelines to be established by the Attorney General, States participating in the program must maintain records of all criminal child abuse convictions and report these to the FBI. Based on these reports, the Attorney General will publish a statistical summary of child abuse crimes annually.

Section 1445

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Under this section, States must comply with these provisions in order to receive grants or other assistance available through section 1404 of the Victims of Crime Act, 42 U.S.C. S 10603 or the Child Abuse Prevention and Treatment Act, 42 U.S.C. S 5101 et seq.

TITLE XV–MISCELLANEOUS DRUG CONTROL

PURPOSE AND BACKGROUND

Section 1501. Anabolic Steroids Penalties

Section 1501 would create a new Federal criminal offense and impose penalties upon coaches, trainers or other athletic or physical instructors who endeavor to persuade or induce an individual to whom they are providing such service to possess or use anabolic steroids. This section was offered as an amendment to the Subcommittee print by Rep. William Hughes and had passed the House in the 101st Congress as part of Title III of H.R. 5269. Other parts of that title added anabolic steroids to Schedule III of the Controlled Substances Act.

Anabolic steroids are synthetic derivatives of testosterone or are substances designed to mimic the anabolic properties of that hormone. Anabolic steroids are being abused at an alarming rate, primarily but by no means exclusively by high school, college and professional athletes in an effort to enhance athletic performance or body image. Use among young people is common. Abuse of these substances can cause an array of physical and psychological damage. The black market for illegal steroids is estimated to be between $300 and $400 million. A particularly disturbing aspect of the steroid problem is the fact that many young athletes are abusing these steroids at the suggestion of and with the encouragement ***152** of their coaches, trainers, and athletic instructors. Such mentors are the very people young athletes should be able to rely upon to help guard their health and well-being. In order to address this situation, this section creates felony penalties for coaches, trainers and athletic instructors who persuade or encourage athletes to illegally possess or use anabolic steroids.

SECTION-BY-SECTION ANALYSIS

Section 1501

Section 1501 amends section 404 of the Controlled Substances Act, 21 U.S.C. S 844, which sets out the penalties for unlawful possession of a controlled substance. The amendment adds a subsection (b) which imposes specific penalties on coaches, physical trainers or advisors who promote the use of anabolic steroids. The applicable penalties are fines under title 18, imprisonment for not than two years, or both. If the victim is under the age of 18, the maximum possible term of imprisonment is increased to five years. The amendment defines “physical trainer or advisor” essentially as anyone who provides athletic or physical instruction of any kind on either a professional or amateur basis.

Section 1502. Drug-Free Public Housing

Section 1502(a) amends 21 U.S.C. S 860 (Section 419 of the Controlled Substances Act) by extending its enhanced penalties provisions regarding controlled substances offenses within public housing.

Section 1502(b) amends 42 U.S.C. S 11903 (Section 5124 of the Public and Assisted Housing Drug Elimination Act of 1990), to provide for determination of the boundaries of public housing and the posting of notices.

Section 1502(c) directs the Secretary of Housing and Urban Development to require that public housing agencies notify people that the treble penalty provisions of the Controlled Substances Act have been extended to public housing projects.

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This notification is to consist of notices posted in the common areas and wherever else needed in the public housing projects administered by the agencies. The notices must identify the offenses to which the treble penalty provisions apply and the date on which these penalties take effect, and state that the treble penalties apply to offenses committed on the property of the public housing project. The terms “project,” “public housing,” and “public housing agency” are given the meanings set out in section 3(b) of the United States Housing Act of 1937.

Section 1503. Apportionment of Narcotic Raw Materials Imports

Section 1503 authorizes the Attorney General, in calendar year 1992, to reserve not more than 40 percent of the United States' total narcotic raw material imports to products originating in Turkey and not more than 30 percent to products originating in India. In calendar year 1993 the Attorney General may reserve not more than 40 percent for Turkey and not more than 20 percent for India. The Attorney General may make these reservations if he determines that these materials are in adequate supply and are ***153** priced competitively with other authorized suppliers. No change in present law or practice is intended in regard to these determinations regarding supply and price. The products covered by the amendment are crude opium, poppy straw, and concentrate of poppy straw.

Section 1504. Enhanced Penalties for Drug Trafficking in Prisons

This section makes changes in and additions to the penalties for drug trafficking in prisions.

Section 1505. Drug Testing of Offenders on Post-Conviction Release

This Section adds a new section 3608 to title 18 directing the Administrative Office of the United States Courts to develop a program of drug testing of Federal offenders on post-conviction release. This program is a response to the extraordinarily high recidivism rates of those offenders who are substance abusers. The program expands to the entire Federal system a program of post-release testing similar to a pilot program that was begun in eight judicial districts in 1988. To implement this program, this Section amends sections 3563, 3583, and 4209 of title 18 to require that Federal offenders on probation, parole, or supervised release submit to periodic drug testing, unless the court determines at the time of sentencing or later that the offender is unlikely to engage in future substance abuse. This Section also amends sections 3565, 3583, and 4214 of title 18 to require that a court finding a defendant on probation, parole, or supervised release to have unlawfully used a controlled substance or to have refused to cooperate in drug testing must revoke the defendant's probation, parole, or supervised release and sentence the defendant to a term of imprisonment.

Section 1506. Drug Distribution to Pregnant Women

This section amends section 859 of title 21 to provide enhanced penalties for the distribution of a controlled substance to a pregnant woman. A first offense under this section would subject the offender to twice the maximum penalty that would otherwise be available under the statute prohibiting distribution of controlled substances, as well as to twice the term of supervised release otherwise available. A second offense would subject the offender to three times the maximum penalty otherwise available, and to three times the otherwise-applicable term of supervised release. This section also imposes a mandatory minimum sentence of one year's imprisonment for both first and second offenses. These amendments will make the penalty for distribution of controlled substances to a pregnant woman identical to the penalty for distribution of controlled substances to a person under the age of twenty-one.

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TITLE XVI–FAIRNESS IN DEATH SENTENCING

PURPOSE

Title XVI is the Fairness in Death Sentencing Act. The Act makes it unlawful to carry out a sentence of death imposed on the basis of the race of the defendant or victim. To prove the influence ***154** of race in a particular case, the Act allows courts to consider evidence showing a consistent pattern of racially discriminatory death sentencing in the jurisdiction that imposed the death sentence in cases similar to the one under challenge, taking into account the nature of the offenses being compared, the prior records of the offenders, and other statutorily appropriate non-racial characteristics. A person may invoke the Act to challenge a death sentence, but not the underlying conviction. The only remedy for a successful challenge under the Act is a resentencing under a non-discriminatory scheme.

BACKGROUND

The Fourteenth Amendment's guarantee of equality under the law is tested most profoundly by whether a legal system tolerates race playing a role in determining who is put to death in carrying out a criminal sentence. Today in America the death penalty is being administered in some jurisdictions in a pattern that evidences a significant risk that the race of the defendant or of the victim influences the imposition of this ultimate penalty. The persistent racial patterns reflected in the implementation of the death penalty in some parts of the nation require Congress to adopt remedial legislation that will counteract the lingering effects of racial bias and enforce the constitutional guarantee of equal justice for all.

In 1972, in Furman v. Georgia, 408 U.S. 238, the Supreme Court held that the death penalty as then applied was unconstitutional. The Court held that under procedures then in effect the death penalty was being imposed in an arbitrary and capricious manner. Three of the Justices who joined the Court's per curiam ruling in separate opinions based their reasoning in part on the racial disparities that historically and in recent times characterized the imposition of the death penalty.

A number of States responded to Furman by adopting “guided discretion” statutes, which require jurors to focus on specific aggravating and mitigating circumstances in choosing from the many homicides the few cases that will receive the death penalty. In 1976, in Gregg v Georgia, 428 U.S. 153, the Supreme Court held that such statutes offered the possibility of eliminating bias and whim from capital sentencing. “Absent facts to the contrary,” Justice White observed, prosecutors must be presumed to exercise their charging duties properly.

Fifteen years after Gregg, the facts are in, and it is clear that the guided discretion statutes have failed in their objective of eliminating bias from capital sentencing. Recent evidence overwhelmingly and consistently demonstrates that death sentencing decisions are still influenced by race.

Evidence of race discrimination in capital sentencing

Nationwide statistics on death row composition are of little value in measuring one way or the other the effect of race on death sentencing. When individual States and jurisdictions within States are studied, and comparable cases are compared, some disturbing patterns are clearly established.

***155** There is a compelling evidence from certain jurisdictions that the race of the defendant is the primary factor governing the imposition of the death sentence. In these limited number of jurisdictions, black defendants are far more likely than white defendants to receive the death sentence for comparable crimes. For example:

> In the Ocmulgee Judicial District in Georgia, the district attorney has sought the death penalty in 29 cases since taking office in 1974; in 23 of the 29 cases, the defendant was black. In those black defendant cases, the DA used 90 percent of his peremptory strikes to keep blacks off the juries.

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In Georgia's Middle Judicial District, the death penalty has been imposed 9 times–7 times against black defendants.

There is also consistent evidence that the race of the victim strongly influences the imposition of the death sentence. A body of evidence based on sentences imposed since 1972 demonstrates that in a number of jurisdictions a defendant whose victim is white is far more likely to receive the death sentence than a defendant whose victim is black:

A study by Professor David Baldus of the University of Iowa of over 2500 homicide cases in Georgia, which controlled for 230 non-racial factors, found that a person accused of murdering a white was 4.3 times more likely to be sentenced to death than a person accused of murdering a black.

Although fewer than 40 percent of Georgia homicide cases involve white victims, 87 percent of all cases in which a death sentence has been imposed involve white victims. In one Georgia judicial district, where 65 percent of murder victims are black, 85 percent of the death sentences sought have been in white victim cases.

A study by Samuel Gross and Robert Mauro published in 1984 in the Stanford Law Review found significant disparities in sentencing according to the victim's race in eight states. For example, the study found that defendants in Florida convicted of killing whites were eight times more likely to receive the death sentence than those convicted of murdering blacks. In Bay County, Florida, while blacks comprise 40 percent of murder victims, all 17 cases where the death penalty was sought between 1975 and 1987 involved white victims.

In February 1990, the General Accounting Office confirmed the validity of these and similar findings in a review of 28 studies, constituting 23 data sets. The GAO found "a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty after the Furman decision." The GAO found that in 82 percent of the studies, "those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods and analytic techniques."

McCleskey v. Kemp

Warren McCleskey was a black man sentenced to death in Fulton County, Georgia for the 1978 murder of a white policeman during the course of a robbery. (In 17 cases of murder of a police officer in Fulton County in 1973 to 1980, the death penalty was imposed in only one other case.) McCleskey, relying on the statistical study of Georgia homicide cases by Prof. Baldus, alleged that his ***156** death sentence violated the equal protection clause of the 14th Amendment.

In 1987, the Supreme Court ruled in McCleskey v. Kemp, 481 U.S. 279, that courts could not accept evidence of discriminatory death sentencing patterns to prove the purposeful racial discrimination necessary to make out a claim under the Fourteenth Amendment. The Court held that someone challenging a death sentence had to prove that the prosecutor, judge or jury in his particular case consciously intended to discriminate on the basis of race. It held that the results of the decisions by prosecutors, judges and juries over the course of many cases could not prove such intentional discrimination.

At the close of the majority opinion in McCleskey, Justice Powell stated that arguments about the persistent pattern of racially discriminatory death sentencing were "best presented to the legislative bodies," which could develop appropriate responses.

Fairness in Death Sentencing Act

The Fairness in Death Sentencing Act responds to the McCleskey Court's invitation through the exercise of Congress's enforcement power under Section 5 of the Fourteenth Amendment. The Act would make it unlawful to carry out a sentence of death imposed on the basis of the race of the defendant or victim, and it would allow persons under sentence of death to challenge their sentences (but not their convictions) by using evidence that shows a pattern of racially discriminatory death

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sentencing, comparing similar cases and taking into account the brutality of the offenses, the prior records of the offenders or other statutorily appropriate non-racial characteristics.

The Act is a civil rights measure and adopts evidentiary procedures similar to those employed against racial discrimination in other civil rights laws. It is based on the realization that prosecutors, judges and jurors will rarely if ever admit that they were purposefully discriminatory in seeking or imposing the death penalty in a particular case. The Act allows the use of statistical evidence to establish a prima facie case of racial discrimination. Once a person shows that the imposition of the death sentence in the relevant jurisdiction is influenced by the race of defendant or victim, the burden shifts to the state.

The Act imposes a substantial burden on a person seeking to invoke its protections. First, the death penalty defendant must compile and analyze the data showing a pattern of racial disparity in the jurisdiction where he was sentenced and at the time he was sentenced. He must show that the disparity is significant. He must show that his own case fits the pattern of racially discriminatory sentencing.

At any point in the process, the government can stop the challenge by showing that the defendant's statistics are invalid as being incomplete or as failing to account for relevant factors. Or the government can show that the defendant's case does not fit the pattern of discriminatory sentences, by showing, for example, that the facts of the case fall into a category of highly aggravated cases where death is imposed regardless of race.

This orderly mechanism for proving racial discrimination in death sentencing is the same mechanism adopted in other civil ***157** rights laws. It is the same approach the Supreme Court itself has used in judging other claims of racial discrimination in the criminal justice system.

The Act will not abolish the death penalty. Nor will it force prosecutors to "relitigate every death penalty case," as some opponents have claimed. States will be free to carry out all their death sentences unless a significant racially discriminatory pattern can be shown. States will have an opportunity to challenge the adequacy of the prima facie case itself–including the sufficiency of the data and the quality and results of the statistical analysis used to support it–as well as an opportunity to rebut any prima facie case by showing that any apparently racial pattern is explained by non-racial factors. Even if a State cannot explain a particular racial pattern, it can continue to carry out any sentences that do not fit within the pattern, i.e., sentences imposed in cases which reveal no racially-based pattern of sentencing. The Act prohibits only the execution of those deaths sentences that are the product of racial bias.

The Act will not lead to death sentencing quotas. Rather, the purpose of the Act is to eliminate race from the decision whether to seek the death penalty. It encourages prosecutors (a) to develop non-racial standards for deciding when to seek death and (b) to apply those standards uniformly and consistently. A State cannot comply with the Act by adopting racial quotas; in fact, such quotas would violate the Act. If a prosecutor sought the death sentence on the basis of race, rather than on the basis of the circumstances of the crimes and the backgrounds of the defendants, the evidentiary principles established by the Act would reveal the discriminatory pattern, since the Act defines impermissible racial discrimination as a pattern of sentencing disparities that exists after accounting for non-racial factors.

Use of statistics in proving race discrimination

Statistical analyses are generally accepted as reliably measuring the influence of racial discrimination in complex decisionmaking processes. The Fairness in Death Sentencing Act is consistent with other civil rights laws under which a prima facie case of racial discrimination is established through the use of statistical evidence showing a significant racially discriminatory effect.

Clearly, few people today would admit an intent to discriminate. Therefore, the Supreme Court has usually recognized that the existence of illegal discrimination can be established by showing that the results of decisionmaking process are discriminatory.

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In the criminal justice area, for example, the Supreme Court has held that a black criminal defendant can establish a prima facie case of discrimination in the jury composition process by showing a substantial statistical disparity between the percentage of blacks in the population and the percentage of blacks in the pool from which his grand jury or trial jury was selected. Castaneda v. Partida, 430 U.S. 482 (1977). The Supreme Court has also granted relief when the result of the prosecutor's decisions to strike jurors peremptorily was the disproportionate elimination of black jurors and the prosecutor could not provide adequate non-racial reasons for the peremptory strikes. Boston v. Kentucky, 476 U.S. 79 (1986).

***158** Where the Court has rejected evidence of discriminatory impact, Congress has exercised its enforcement authority by statutorily prohibiting unexplained and unjustified racial disparities. For example, when the Supreme Court ruled in City of Mobile v. Bolden, 446 U.S. 55 (1980), that the Voting Rights Act and the Fifteenth Amendment required a showing of discriminatory intent, Congress amended the Act to allow plaintiffs to base a showing of discrimination on evidence of discriminatory impact.

The Congress has the power under the 14th Amendment to take remedial measures that eliminate not only overt race discrimination but also practices that entail a significant risk that persons of different races are being treated differently. The exercise of Congress' "safeguarding" role is especially appropriate where the death penalty is involved, for there "is a qualitative difference between death and any other permissible form of punishment," and hence, "a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Zant v. Stephens, 462 U.S. 862, 884–85 (1983).

How States can respond to the act

States will not be barred by the Act from using the death penalty, because, with little difficulty, they can change their capital sentencing practices to eliminate any significant pattern of racial discrimination.

The main source of disparity appears to be prosecutorial decisions, the area where meaningful change can be achieved most readily. Under guided discretion statutes, prosecutors still have wide discretion in deciding when to seek the death penalty. Thus, for example, States could provide clearer guidance to prosecutors, through statutory change or other directive, to focus prosecutors on the most highly aggravated cases, where there is little evidence of racial discrimination. As Justice Stevens pointed out in his dissent in McCleskey, "One of the lessons of the Baldus study is that there exist certain categories of extremely serious crimes for which prosecutors consistently seek, and juries consistently impose, the death penalty without regard to the race of the victim or the race of the offender. If Georgia were to narrow the class of death-eligible defendants to those categories, the danger of arbitrary and discriminatory imposition of the death sentence would be significantly decreased if not eradicated." 481 U.S. at 367.

Another mechanism that could provide protection against racial discrimination is the proportionality review that most State supreme courts are required to conduct in each capital case in order to determine whether the sentence is proportionate to the penalties imposed in other cases. Many supreme courts only look to other cases in which the death sentence was imposed. The proportionality review would be much more likely to identify and correct racial bias if the reviewing court considered not only cases in which death was imposed but also death eligible cases in which a life sentence was imposed. In addition, states could allow private, individualized (as opposed to en masse) voir dire of prospective jurors to inquire into potential racial bias.

History of title XVI

Legislation responding to the McCleskey Court's invitation was first introduced in the 100th Congress at H.R. 4442, entitled the ***159** Racial Justice Act. That bill was reintroduced in the 101st Congress as H.R. 2466. A substantially modified bill was introduced on April 25, 1990 as H.R. 4618. After further changes at subcommittee and full committee and on the Floor, H.R. 4618 was adopted by the House as Title XVIII of H.R. 5269, the Comprehensive Crime Control Act, but was dropped

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by the conference committee. The language reported by the Committee this year is identical to the language adopted by the House in 1990.

SECTION-BY-SECTION ANALYSIS

Section 1601–Short Title

The short title of Title XVI is the "Fairness in Death Sentencing Act of 1991."

Section 1602–Amendment to Title 28

Section 1602 adds at the end of Part VI of Title 28, United States Code, a new chapter 177, "Racially Discriminatory Capital Sentencing," as follows:

Subsection 2921(a) provides that no person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race. The Act does not purport to bar governmental entities from imposing death sentence. It prohibits carrying out any sentence that was based on racial considerations, as demonstrated by evidence of an unexplained racially discriminatory pattern.

Subsection 2921(b) provides that an inference that a sentence of death was based on race is established if valid evidence is presented demonstrating that, at the time the death sentence was imposed, race was statistically a significant factor in decisions to seek or impose the death sentence in the jurisdiction in question.

Subsection 2921(c) provides that evidence to establish an inference that race was the basis of a death sentence may include evidence that death sentences in the relevant jurisdiction and at the relevant time were being imposed significantly more frequently (1) upon persons of the defendant's race than upon persons of another race; or (2) as punishment for capital offenses against persons of the race of the victim in the defendant's case than as punishment for capital offenses against persons of another race. (Capital offenses are offenses that are eligible for the death penalty under the law of the relevant jurisdiction.)

Subsection 2921(d) provides that the court must evaluate the validity of the evidence presented to establish the inference and must determine if it provides a basis for the inference. The evidence offered to support the inference must take into account, to the extent that it is compiled and publicly available, evidence of the statutory aggravating factors involved in the crimes on which the statistical showing is based, and it must compare similar cases. Indeed, the death penalty defendant's case will usually consist of a statistical analysis that accounts for numerous relevant and statutorily valid variables. It shall not be necessary to show discriminatory motive, intent, or purpose on the part of an individual or institution.

The Government may challenge the sufficiency of the statistical and other evidence offered in support of the inference and seek to ***160** show that there is no racial disparity in death sentencing in the relevant jurisdiction. The government may seek to show that the defendant's statistics are incorrect or misleading or that they fail to account for important independent variables. If the Government does this, or if the court concludes on its own that the defendant's statistics do not establish a significant racial disparity, then the defendant will have failed to raise an inference of discrimination and the claim will be dismissed. Under such circumstances, the State will have no burden to prove anything in rebuttal, because the defendant will have failed in his burden of establishing an inference of discrimination. From their experience in employment discrimination cases under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e to 2000e-17, the courts will readily be able to determine whether an inference of discrimination has been established.

To establish the inference, any disparity must be "significant." The courts have developed standards for determining what is a significant racial disparity that proves impermissible discrimination. See, e.g., Hunter v. Underwood, 471 U.S. 222 (1985); Castaneda v. Partida, 430 U.S. 482 (1977); Turner v. Fouche, 396 U.S. 346 (1970). Under section 2921, the disparity must

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be “significant” even after taking into account the impact of such pertinent, non-racial variable as the statuory aggravating circumstances.

Under section 2921(e), once an inference of discrimination has been satisfactorily established, the burden shifts to the State. The death sentence still can be carried out if the State can show that pertinent non-racial factors explain the observable racial disparities or that the particular sentence does not fall within any racially discriminatory pattern or if the state can otherwise rebut the inference.

The Government may rebut the inference by showing, for example, that the particular case falls in a category of highly aggravated cases where there is no discriminatory imposition of the death sentence. Or the Government may show that subsequent to the time covered by the defendant's evidence, the state changed its practices and had eliminated any racial disparity by the time the defendant was sentenced. The State may also show that in the governmental subdivision where the decision to indict and charge the defendant was made, there is no racial pattern.

The Government, however, cannot meet its burden on merge general assertions that its officials did not discriminate or that they properly performed their official duties. Nor can the state meet its burden by showing that the defendant was properly found guilty of a crime for which the State's laws permit imposition of the death sentence. Rather, the State may demonstrate that the defendant's statisfics are invalid or that there is no significant pattern or, if a signficant pattern of disparities is established, that permissible racially netutral explain the pattern or that the case deos not fit the pattern.

Section 2922 requires the states to make publicly available records collected by public officials on death-eligible cases. The section imposes no data collection responsibilities on the states. It simply requires them to make available the records they otherwise keep.

***161** Section 2923 provides that a determination on the merits of a factual issue made by a state court considering a claim under the Act shall be presumed correct in any proceeding under section 2254 of Title 28 if (1) the state is in compliance with the data disclosure requirements of section 2922; (2) the determination was made in a proceeding in which the person asserting the claim was afforded rights to the appointment of counsel and the furnishing of investigative, expert and other serivces necessary for the adequate development of the claim; and (3) the determination is one which is otherwise entitled to be presumed correct under section 2254.

Under the Act, a defendant could raise a challenge to death sentence in the State courts, when appropriate under State law, and could raise the issue in one, and only one, round of Federal habeas corpus proceedings following the enactment of the Act.

The Act creates a federal substantive right, over whose enforcement the state and federal courts have concurrent subject matter jurisdiction. In the case of the Federal courts, the right may be asserted pursuant to any available jurisdictional statute, e.g., S S 1331, 1343(a)(3) or 2254 of title 28, with the petitioner required to follow whatever procedural pre-requisites may exist in that statute. If the death penalty defendant pursues the remedy by way of habeas corpus proceedings, S 2923 governs the acceptance of prior State court factual findings.

Section 2923 also provides that the evidence supporting a claim under the Act in a proceeding under section 2254 of Title 28 need not be set forth in the petition but rather may be presented in an evidentiary hearing.

Section 2924 makes if clear that the Act does not affect in one way or the other the lawfulness of any sentence of death that does not violate the Act.

Section 1603. Actions Before Enactment

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This section provides that no person shall be barred from raising a claim under the act on the ground of having failed to raise or to prosecute the same or a similar claim before enactment of the act or by reason of any adjudication rendered before its enactment. A claim under this act in a criminal case that comes to trial after the date of enactment would be subject to the ordinary rules governing the presentation of claims, and in such a case a claim under this act would normally be combined with other grounds of challenge to the conviction and sentence, both on direct appeal and in State and Federal habeas. Nothing in this act gives a defendant in a criminal case that comes to trial after the date of enactment the right to pursue a separate appeal or habeas petition raising only a claim under this act.

***162** TITLE XVII–MISCELLANEOUS CRIME CONTROL

SUBTITLE A–GENERAL

Section 1701. Receiving the Proceeds of Extortion or Kidnapping

Section 1701 amends 18 U.S.C. ch. 41, which sets out offenses and penalties related to extortion and threats, by adding a new section at the end, section 880 (to be codified at 18 U.S.C. S 880). The new section 880 makes it a punishable offense to receive, possess, conceal or dispose of any money or property known to have been obtained by means of extortion or threats otherwise punishable under chapter 41 by imprisonment for more than one year. This offense is punishable by fines under title 18 and/or imprisonment for not more than three years.

Section 1701 also amends 18 U.S.C. S 1202, which provides penalties for receiving, possessing, or disposing of any money or other property known to have been delivered as a ransom in connection with a kidnapping punishable under 18 U.S.C. S 1201. The amendment designates the current provision of section 1202 as subsection (a) and adds a new subsection (b). The new subsection (b) provides for a fine under title 18 and/or imprisonment for not more than 10 years for transporting, transmitting, or transferring in interstate or foreign commerce the proceeds of a kidnapping punishable under State law by imprisonment for more than one year. The new subsection also imposes this same penalty on anyone who, knowing such proceeds to have been obtained illegally, receives, possesses, conceals or disposes of them after these proceeds have crossed State lines or the U.S. border.

Section 1702. Receiving the Proceeds of a Postal Robbery

Section 1702 amends 18 U.S.C. S 2114, which provides penalties of the assault or robbery of anyone who is lawfully in charge of the U.S. mail or other money or property of the United States. The amendment designates the current provision of section 2114 as subsection (a) and adds a new subsection (b). The new subsection (b) imposes a fine under title 18 and/or imprisonment for not more than 10 years on anyone who receives, possesses, conceals or disposes of any money or other property knowing that these have been obtained in violation of the proscriptions of this section against postal robbery.

Section 1703. Criminal Street Gangs

PURPOSE AND BACKGROUND

This section is intended to provide help in combatting violent and drug-trafficking street gangs by creating a Federal prosecutorial tool designed to reach the activities of members of criminal street gangs. Gangs have spread havoc throughout the country. They regularly engage in drug trafficking, violence and firearms related offenses. This section creates a new Federal offense for those gang members who commit any of a series of Federal offenses as a member of, on behalf of, or in association with a criminal ***163** street gang if that gang member has one or more listed prior Federal or State convictions.

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SECTION-BY-SECTION ANALYSIS

Section 1703 amends title 18 of the United States Code by adding chapter 26, section 521, (to be codified at 18 U.S.C. S 521), imposing additional penalties for certain crimes committed in connection with gang activity. Subsection (a) of section 521 makes the additional penalty a term of imprisonment not to exceed 10 years, and/or fines under title 18. The prison term is to run consecutively to any other term imposed for the underlying crimes.

Subsection 521(b) sets out the crimes for which additional penalties may be imposed. These are: any Federal felony involving a controlled substance (as defined by section 102 of the Controlled Substances Act); any Federal felony crime of violence; any felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act or the Maritime Drug Law Enforcement Act; or participation in a conspiracy to commit any of these offenses.

As described in subsection 521(c), additional penalties for these offenses may be imposed only if these offenses are committed as a member of, on behalf of, or in association with a criminal street gang and the defendant has been convicted within the past five years of any of the following: Any offense listed in subsection 521(b); and State offense involving a controlled substance or a crime of violence for which the penalty is more than one year's imprisonment; any Federal or State offense that involves the destruction of property for which the maximum penalty is more than one year's imprisonment; or participation in a conspiracy to commit any of these offenses.

For purposes of section 521(c), a “conviction” includes convictions or findings of juvenile delinquency under State or Federal law for acts involving a violent felony or felony controlled substances violations. The Committee intends that any use of State juvenile records for purposes of proving prior convictions under this section be consistent with the laws of the State or States regarding access to and use of such records.

Subsection 521(d) defines a “criminal street gang” as any group, club, organization, or association of five or more persons whose members have engaged in a continuing series of violation of any of the offenses listed in subsection 521(b) and whose activities affect interstate or foreign commerce.

Section 1704. Undercover Operations

Section 1704 amends Chapter 1 of title 18 by adding at the end a new section 21, to be codified at 18 U.S.C. S 21. The new section 21 addresses offenses under title 18 in which two of the elements of the offense are (i) that the property at issue has been embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated, and (ii) that the defendant knew the property was of such character. Under section 21, the defendant's knowledge may be established by proof that the defendant believed such to be the case after learning this by means of an official representation ***164** by a Federal law enforcement officer, as defined in section 115, or by someone under the direction of a Federal officer.

This section is intended to ensure that the scope of the statute extends to situations where the property was not actually stolen but was represented by law enforcement officials during the course of a sting operation as stolen, and was in fact believed by the defendant to be stolen.

Section 1705. Penalties for Drug Dealing in Drug Free Zones

This section amends section 419 of the Controlled Substances Act (21 U.S.C. 860) to increase the mandatory minimum penalty for distributing, possessing with the intent to distribute, or manufacturing a controlled substance in certain statutorily designated drug-free zones. These zones include the areas within 1,000 feet of a school or a playground, and the areas within 100 feet of a youth center, a public swimming pool, or a video arcade facility. This section increases the mandatory minimum penalty for substance abuse distribution offenses within these zones for one year for a first offense and three years for a second

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offense to three years for a first offense and five years for a second offense. These mandatory minimum sentences are not applicable if other statutory provisions impose higher mandatory minimum sentences.

Section 1706. FBI Access to Telephone Subscriber Information

PURPOSE

This section amends S 2709 of the Electronic Communications Privacy Act (ECPA), 18 U.S.C. S 2709, to require that a wire or electronic communication service provider give the FBI access, without a court order or subpoena, to information identifying certain telephone subscribers for use in foreign counterintelligence and international terrorism investigations.

BACKGROUND

In adopting ECPA in 1986, Congress established certain privacy protections for subscriber records and other information held by telephone companies and other electronic communication service providers. Congress provided that the government could obtain a subscriber's transactional records or other information from a telephone company without the subscriber's permission only pursuant to a subpoena, search warrant or court order where there is reason to believe that the information is relevant to a legitimate law enforcement inquiry. 18 U.S.C. 2703.

Congress created a limited exception to this rule for use in counterintelligence and international terrorism cases. In 18 U.S.C. 2709, Congress gave the FBI authority to compel production of identifying information and toll records with a so-called "national security letter," signed by an FBI official without judicial review and without relevance to a criminal investigation, where the subscriber is believed to be a foreign power or agent of a foreign power, as defined in the Foreign Intelligence Surveillance Act. ("Foreign power" includes international terrorist groups.)

The FBI has concluded that the authority in S 2709 is, in one specific respect, too narrow. To illustrate the problem, the Bureau ***165** cites the case of a former employee of the U.S. government who called a foreign embassy and offered to provide sensitive U.S. government information. The conversation was monitored, but the former employee did not identify himself. The former employee subsequently met with representatives of the foreign nation and compromised highly sensitive information about U.S. intelligence capabilities. The FBI argues that if it had been able to trace the number from which the first call offering information was placed, it might have been able to identify the former employee sooner or prevent the loss of information.

However, under S S 2703 and 2709 as they were adopted in 1986, the FBI could not, without a subpoena or court order, obtain the identity of a subscriber, unless there was a reason to believe that the subscriber was a foreign power or agent of a foreign power. In the case described above, the FBI did not have reason to believe that the caller was a foreign agent. Instead, the caller appeared to be a possible volunteer to be an agent, and therefore did not meet the S 2709 standard.

In response to this limitation, the FBI asked Congress to expand the reach of S 2709, to allow the FBI certification to require phone companies to identify not only suspected agents of foreign powers but also persons who have been in contact with foreign powers or suspected agents of foreign powers. As originally proposed by the FBI, the amendment would have applied to any caller to a foreign diplomatic establishment and any caller to official foreign visitors such as scholars from government universities abroad. This was deemed by the Committee to be too broad.

Exempt from the judicial scrutiny normally required for compulsory process, the national security letter is an extraordinary device. New applications are disfavored. However, after careful study, the Committee concluded that a narrow change in S 2709 to meet the FBI's focused and demonstrated needs was justified. The provision reported by the Committee is a modification of the language originally proposed by the FBI. It allows access where: (1) there is a contact with a suspected intelligence officer or a suspected terrorist, or (2) the circumstances of the conversation indicate, as they did in the case described above, that it may involve spying or an offer of information.

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In addition to covering a future case like the one described above, this new authority would allow the FBI to identify subscribers in the following types of cases, cited by the FBI in justifying its need for this amendment:

(1) Persons whose phone numbers were listed in an address book seized from a suspected terrorist;

(2) All persons who call an embassy and ask to speak with a suspected intelligence officer; and

(3) All callers to the home of a suspected intelligence officer or the apartment of a suspected terrorist.

Section 2709 as enacted in 1986 used the phrase "subscriber information and toll billing records information" to describe the information that the FBI could obtain. Instead of "subscriber information," the amendment here uses more specific terms: "names, address, length of service." As used in this section, toll billing records consist of information maintained by a wire or electronic ***166** communication service provider identifying the telephone numbers called from a particular phone or attributable to a particular account for which a communication service provider might charge a service fee. The Committee intends, and the FBI agrees, that the authority to obtain subscriber information and toll billing records under S 2709 does not require communications service providers to create records which they do not maintain in the ordinary course of business.

Section 1706(b) strengthens Congressional oversight of the exercise of this authority by amending S 2709(e) to add a requirement that the FBI report on its use of the authority to both House and Senate Judiciary Committees as well as both Intelligence Committees. It is the Committee's intent regarding this section that the FBI should, without identifying the subjects of pending investigations, inform the committees, as part of this report, of the facts and circumstances that are the basis for obtaining information concerning any domestic political organization or groups under S 2709.

Under S 2703(e), wire or electronic communication service providers who provide information in response to a "court order, warrant, subpoena or certification under this chapter" are protected from liability for such disclosure. The certification signed by the Director or the Director's designee under the S 2709(b) is a certification for purposes of S 2703(e).

SECTION-BY-SECTION ANALYSIS

Section 1706(a) amends 18 U.S.C. S 2709 by striking subsection (b) and inserting in lieu thereof a new subsection containing two paragraphs.

Paragraph (1) of the new S 2709(b) re-enacts the existing authority for FBI access to the name, address, length of service and toll billing records of a person or entity when the Director or the Director's designee certifies in writing to the wire or electronic communication service provider to which the request is made that–(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act.

Paragraph (2) of the new S 2709(b) authorizes the FBI Director or the Director's designee to obtain the name, address and length of service of a person or entity if the Director or the Director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that–(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there is reason to believe that communications facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with (i) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States or (ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication ***167** concerned international terrorism or clandestine intelligence activities.

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Section 1706(b) adds the House and Senate Judiciary Committees to the oversight provision in S 2709(e).

Section 1707. Extension of Protection of Civil Rights Statutes

Section 1707 amends 18 U.S.C. 241 and 242 by removing the requirement that the victim of the punishable acts be an "inhabitant of" or "such inhabitant" of the relevant State, Territory or District and instead requiring only that the victim be "such person" or a "person in" the relevant location. These statutes penalize conspiracies by private persons or acts done under the color of law that deprive any person of a right, privilege, or immunity secured by the Constitution or otherwise hinder the free exercise of such rights.

Section 1708. Increased Penalty for Travel Act Crimes Involving Violence

This section amends the penalties provided in 18 U.S.C. S 1952(a) for interstate and foreign travel or transportation in furtherance of an unlawful activity. Formerly, all the offenses listed in the statute carried a maximum penalty of five years in prison or a $10 thousand fine. The section now provides for a title 18 fine or a maximum five year prison sentence, or both, for interstate or foreign travel to distribute the proceeds of an unlawful activity or to organize an unlawful activity. The section raises the maximum penalty for interstate or foreign travel to commit a crime of violence in furtherance of an unlawful activity to a title 18 fine and/or a 20 year prison sentence. If death results from the violent crime, a prison term of any number of years, including life, must be imposed.

Section 1709. Misuse of Initials "DEA"

This section amends section 709 of title 18 to prohibit the use, without written permission from the Administrator of the Drug Enforcement Administration, of the words "Drug Enforcement Administration" or the initials "DEA" in advertising, pamphlets, films, plays, other such publications etc., in a manner calculated to convey endorsement by the DEA. Current law already prohibits such misuses of the names of several other federal agencies.

Section 1710. Definition of Savings and Loan Association in Bank Robbery Statute

This section amends 18 U.S.C. S 2113, which addresses bank robbery and incidental crimes, by adding a new subsection (h) at the end. The new subsection defines the term "savings and loan association" to mean any federally chartered savings association or state chartered savings association insured by the Federal Deposit Insurance Corporation and any corporation under a certain provision of the Federal Deposit Insurance Act operating under the laws of the United States.

Section 1711. Conforming Definition

This section makes a technical correction to 18 U.S.C. S 1516, which imposes penalties for the obstruction of certain Federal ***168** audits, in order to clarify that the phrase "in any one year period" has the same meaning given to this phrase in 18 U.S.C. S 666. Section 666 imposes penalties for the theft or misuse of funds belonging to an organization that receives Federal funds.

Section 1712. Definition of Livestock

This section adds a definition for the term "livestock" to 18 U.S.C. S 2311. This section contains definitions for chapter 113 of title 18 of the U.S. Code, which relates to offenses involving stolen property. In 1984 the two offenses relating to stolen cattle were broadened by replacing the term "cattle" with "livestock," but the term "cattle" was left in the definition section and no definition of livestock was added. Note that the new definition of livestock includes carcasses, since the livestock may be slaughtered after theft and before interstate transfer.

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Section 1713. Foreign Murder of United States Nationals

This section adds a new section 1118 to title 18 to make it a Federal offense for a United States national to kill or attempt to kill another United States national abroad. This provision will close a loophole in Federal law that allows Americans who kill other Americans overseas to escape prosecution in the United States. The United States currently has extraterritorial jurisdiction, regardless of extradition treaties, over acts of international terrorism or violent crimes committed against federal officials. This Section will expand this extraterritorial jurisdiction to include certain murders and attempted murders by Americans against other Americans. Prosecution will be limited to cases in which the alleged murderer resides in the United States and in which the Attorney General, in consultation with the Secretary of State, certifies that the country where the crime occurred lacks the lawful ability to secure the return of the alleged murderer. The penalties are cross referenced to the penalties provided in 18 U.S.C. Sections 1111 and 1112 which, in later sections of this bill, are amended to authorize the death penalty in cases of first-degree murder. The Committee intends that the section that authorizes the Attorney General to request assistance from various Federal, State and local agencies, including the military, should be read to mean that the request could be made notwithstanding any other provision of law but that the response by the requested agency or department must be otherwise lawful.

Section 1714. National Baseline Study on Campus Sexual Assault

This section directs the Attorney General to contract for a national study of the incidence of campus sexual assault and the adequacy of college and university policies and practices aimed at preventing such assaults. This Section authorizes the appropriation of $200,000 for the study.

Section 1715. Gang Investigation Coordination and Information Collection

This section responds to the Committee's concern that the absence of a national strategy for the coordination of gang-related investigations by federal law enforcement agencies is contributing to ***169** "turf fights" that can hamper the Federal anti-gang effort, leading to duplication of effort and other inefficiencies. The Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms both have significant responsibilities in relation to criminal gangs, and each has been aggressively pursuing gang-related investigations. Other agencies have important roles as well. This section provides that the Attorney General or his designee and the Secretary of the Treasury or his designee shall develop a national strategy for coordination of these efforts and shall report such strategy to the Congress by July 1, 1992. The joint task force approach, involving Federal agencies in a cooperative relationship with State and local authorities, should be a key feature of the strategy. Information sharing efforts should be designed to ensure against the dissemination of unverified, unreliable or inaccurate information. The Committee does not intend to imply that one agency or department rather than another would be most suited to perform the lead role in this area. Rather, the purpose of this section is to ensure that the efforts of all agencies be coordinated and be consistent with a national strategy.

Sections 1716, 1717 and 1718. Territorial Sea Extension

These sections clarify the jurisdiction of the United States over territorial waters and foreign ships. Section 1716 declares that the territorial sea of the United States, extending twelve nautical miles outward from United States base coastline, is part of the United States and is subject to its sovereignty and its criminal jurisdiction. This provision codifies Presidential Proclamation 5928 of December 27, 1988, and is consistent with customary international law. Section 1717 amends section 13 of title 18 to provide, for purposes of Federal criminal jurisdiction over crimes committed in territorial waters, or in the airspace above or the seabed below such waters, that the area of the State, district, or territory adjacent to such waters, airspace, or seabed shall be constructively extended to include the location of the offense. Section 1718 amends section 7 of title 18 to provide for United States special maritime and territorial jurisdiction over offenses committed by or against United States nationals on foreign

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vessels having a scheduled departure from or arrival in the United States, to the extent permitted by international law. United States law enforcement officials have experienced consistent legal difficulties in attempting to prosecute crimes committed on international cruise ships. This provision will clarify the jurisdictional basis of such prosecutions and aid law enforcement.

Section 1719. Penalty for Failure to Obey Order to Land

This section adds a new section 2237 to title 18 to prohibit the pilot of an aircraft from intentionally disobeying a Federal law enforcement officer's order to land the pilot's aircraft. Violation of this section will be punishable by a fine or by imprisonment for not more than three years. In addition, an aircraft that is used in violation of this section will be subject to seizure, fine in rem, and forfeiture, subject to the ability of the owner to prove his or her innocence of the aircraft's unlawful use. This section will be applicable to all aircraft located over the United States or its custom waters, ***170** to aircraft located in the airspace of a foreign nation if that nation consents to United States enforcement, and to aircraft located over the high seas if they are of United States registry, without nationality, or registered in a foreign nation that has consented to United States.

Section 1720. Codification of an Exception to the Exclusionary Rule

PURPOSE

Section 1720 of the Act codifies the exception to the exclusionary rule set forth by the United States Supreme Court in United States v. Leon. [1]

BACKGROUND

The Fourth Amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable case, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Along with the other nine amendments that comprise the bill of Rights, the adoption of the Fourth Amendment made possible the ratification of the constitution. [2] The Fourth Amendment confers a right, but does not indicate how a violation of that right is to be sanctioned. Nevertheless, for over 75 years the requirements of the Fourth Amendment have been enforced in Federal courts by means of the exclusionary rule, which prohibits the admission at a criminal trial of evidence obtained in violation of the Fourth Amendment. [3] For nearly 30 years the Constitution has been interpreted to require that the State courts enforce the Fourth Amendment in the same manner as the Federal courts. [4]

The exclusionary rule does not prohibit every use of evidence seized in violation of the Fourth Amendment. The rule, for example, does not apply to a grand jury proceeding, [5] a civil proceeding to collect taxes, [6] or a deporation proceeding, [7] and the rule does not preclude the use of illegally-obtained evidence for impeachment purposes at trial. [8]

***171** The exclusionary rule has several purposes, the principle purpose being general deterrence of unreasonable searches and seizures. Thus, the Supreme Court has indicated that "the rule is calculated to prevent, not to repair. Its purpose is to deter–to compel respect for the constitutional guaranty in the only effectively available way–by removing the incentive to disregard it." [9] A second purpose of the exclusionary rule is to insure the integrity of the judicial system. As the Supreme Court has stated:

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Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur. [10]

Another purpose is to reassure the public that the Government will not benefit from lawless behavior. [11]

The exclusionary rule may sometimes exclude evidence that is so crucial to the prosecution's case that a person who is guilty goes free–although, as Justice Stewart observed, the excluded evidence in many instances "would not have been obtained had the police officer complied with the commands of the fourth amendment in the first place." [12] Statistics indicate, however, that guilty persons go free because of the exclusionary rule only infrequently. [13]

A GAO study of cases handled by 38 United States Attorneys' offices, for example, reports that in only 1.3 percent of the cases was evidence excluded as a result of a Fourth Amendment motion. [14] In over half of the cases where evidence was excluded, moreover, the defendant was convicted despite the exclusion. [15] The evidence also ***172** indicates that only a small percentage of cases are not prosecuted because of a violation of the Fourth Amendment. [16]

It cannot be denied that there are costs that result from the exclusionary rule. Those costs, however, flow from the Fourth Amendment itself. As Justice Stewart observed:

The exlusionary rule places no limitations on the actions of the police. The fourth amendment does. The inevitable result of the Constitution's prohibition against unreasonable searches and seizures and its requirement that no warrant shall issue but upon probable cause is that police officers who obey its strictures will catch fewer criminals. That is not a political outcome impressed upon an unwilling citizenry by unbeknighted judges. It is the price the framers anticipated and were willing to pay to ensure the sanctity of the person, the home, and property against unrestricted governmental power. [17]

The exclusionary rule has a salutary impact on police techniques and skill. The situation when the Supreme Court extended the exclusionary rule to State courts was described as follows by a former New York City deputy police commissioner:

The Mapp case was a shock to us. We had to reorganize our thinking, frankly. Before this, nobody bothered to take out search warrants. Although the U.S. Constitution requires warrants in most cases, the U.S. Supreme Court had ruled that evidence obtained without a warrant–illegally if you will–was admissible in State courts. So the feeling was, why bother? [18]

After the exclusionary rule was extended to State courts as a matter of Federal law, the use of search warrants significantly increased, efforts to educate police officers about the law of search and seizure were stepped-up, and liaison between police and prosecutors increased. [19]

There are no alternatives to the exclusionary rule that are as effective. The Supreme Court has indicated that "other remedies have been worthless and futile". [20] An alternative to the exclusionary rule should do two things.

[First,] if constitutional rights are to be anything more than pious pronouncements, then some measurable consequence must be attached to their violations. It would be intolerable ***173** if the guarantee against unreasonable search and seizure could be violated without practice consequence. [Second,] it is likewise imperative to have a practical procedure by which courts can review alleged violations of constitutional rights and articulate the meaning of those rights. The advantage of the

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exclusionary rule–entirely apart from any direct deterrent effect–is that it provides an occasion for judicial review, and it gives credibility to the constitutional guarantees. [21]

There is no reason to do away with the exclusionary rule. The rule is the most effective way to ensure that the Fourth Amendment is not, in Justice Holmes' phrase, "a form of words", [22] and the rule provides this assurance at only a slight cost. [23] As one commentator on the exclusionary rule has observed,

> The critics [of the exclusionary rule] forget that neither the rule nor the fourth amendment exists to protect the criminal in whose case the rule is applied. Both exist to protect society–all those citizens who never break laws more serious than those prohibiting overtime parking *** [T]he guilty defendant is freed to protect the rest of us from unlawful police invasions of our security and to maintain the integrity of our constitution. [24]

The Committee has determined, however, that an exception to the exclusionary rule should be codified. It is the "good faith" exception for searches and seizures conducted pursuant to a warrant set out by the Supreme Court in United States v. Leon. [25] The benefit of this "good faith" exception is that the exception creates an incentive to use a warrant. This amendment was offered by Representative George Sangmeister as a substitute to a broader exception contained in an amendment offered by Representative Bill McCollum.

The broader exception would have covered a search and seizure carried out without a warrant if the "search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment." The Committee rejected this broader exception in part to maintain the incentive to use a warrant when conducting a search and seizure. Such an exception, moreover, would be difficult to apply, requiring the judge to determine what constitutes a reasonable mistake of law. The pivotal finding required–the reasonableness of the officer–would in practice mean that "appellate courts defer to trials courts and trials courts defer to the police." [26] Finally, the Committee acted because a "good faith" exception for nonwarrant situations

> ***174** would be perceived and treated by the police as a license to engage in the same conduct in the future. That is, the risk in such tampering with the exclusionary rule is that police officers may feel that they have been unleashed and consequently may govern their future conduct by what passed the good faith test in court on a particular occasion rather than on traditional Fourth Amendment standards of probable cause, exigent circumstances, and the like. [27]

On September 24, 1991 with a quorum being present, the Committee adopted the Sangmeister substitute by a roll-call vote of 19–15, and adopted the McCollum amendment as amended by a voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1720 of the bill provides that evidence obtained by a search and seizure that violates the Fourth Amendment cannot be excluded from a proceeding in Federal court for that reason if the evidence was obtained in reasonable reliance on a search warrant issued by a detached and neutral magistrate even if the warrant is ultimately determined to be invalid. There are three exceptions to this general rule: (1) the judicial officer who issued the warrant was materially misled by an affidavit that the affiant knew was false (or where the affiant was reckless about its falsity), (2) the affidavit upon which the warrant was based was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (3) the warrant was so deficient that the executing officers could not reasonably assume the warrant to be valid. [28]

Section 1721. Additional Attempt Offenses

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This section amends sections 545, 1201, 1361, 1362, 1366, 2111, 2112, and 2114 of title 18 to make unlawful the following offenses: attempt smuggling of goods into the United States with intent to defraud; attempted kidnapping in which the victim is transported in interstate or foreign commerce; attempted kidnapping within special aircraft or maritime and territorial jurisdiction of the United States; attempted damaging of property belonging to the United States or being manufactured for the United States; attempted damaging of communications lines or facilities owned by the United States or used by the United States for defense purposes; attempted damaging of an energy facility; attempted robbery within the special maritime and territorial jurisdiction of the United States; attempted robbery of personal property belonging to the United States; and attempted robbery of mail matter, money, or other property belonging to the United States.

***175** Section 1722. Clarifying Amendment Regarding Scope of Prohibition Against Gambling on Ships in International Waters

PURPOSE

Section 1722 clarifies an uncertainty in the criminal law prohibiting the operation of gambling ships by amending section 1081 of 18 U.S.C.

BACKGROUND

Section 1081 was enacted in 1948 in response to a concern raised by one of the West Coast States. At that time, there was large-scale commercial gambling on ships hovering in international waters off the shore of that State, in defiance of the State's statute prohibiting gambling. Citizens of that State were ferried to and from the gambling ships by "water taxis"; thus, the gambling ship itself never entered U.S. waters and could not be reached by Federal or State authorities under traditional jurisdictional means.

In response, Congress enacted the 1948 law, making it a crime for any U.S. citizen or other person subject to the jurisdiction of the United States to operate such a gambling ship. The 1948 law also made it a crime to ferry passengers between U.S. territory and such a gambling ship.

Because ships which actually dock at U.S. ports are subject to a wide variety of customs, labor, and other Federal and State regulatory and enforcement powers, these ships have traditionally received much different treatment under the law. As a result, many ships on cruises beginning in or traveling to U.S. ports have long provided gambling activities for their passengers. Some of these cruises are between a U.S. port and a foreign port; others are day cruises which depart from and return to the same U.S. port. Generally, because most States prohibit such gambling within their jurisdiction, the gambling activities must take place beyond U.S. territorial waters.

As part of the Omnibus Budget Reconciliation Act of 1989, Congress imposed a $3-per-passenger tax on commercial passenger voyages. The tax was directed to be imposed not only on all overnight passenger voyages leaving from or terminating at a U.S. port, but also, in addition, single-day passenger voyages "transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States." Congress thus gave particular recognition to gambling on passenger ships on voyages to or from U.S. ports–including specifically single-day voyages returning to their point of origin–as lawful commerce.

Some confusion has recently arisen over whether the gambling on cruise ships which the Federal Government is now routinely taxing–as specifically provided for in the 1989 budget law–might technically be prohibited under the statutory language of the 1948 criminal law. To correct this confusion, section 1722 amends the 1948 criminal law to clarify that it does not cover ships on voyages covered by the 1989 tax law. The Committee intends thereby to help make sure Federal anti-gambling laws are clear and to remove any confusion regarding what constitutes a violation.

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***176** SECTION-BY-SECTION ANALYSIS

Section 1722 amends the definition of "gambling ship" in section 1081 of title 18 of the United States Code to clarify that the term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a "covered voyage," as "covered voyage" is defined in section 4472 of the Internal Revenue Code of 1986. This reconciles the two statutes to make clear that the gambling voyages taxed as lawful commerce under Federal tax law are not prohibited under Federal criminal law.

Section 1723. Bindover System for Certain Violent Juveniles

This section amends section 501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) to add a new purpose to be furthered by the Director of the Bureau of Justice Assistance in his disbursement of grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. This section authorizes the Director to award grants to fund programs addressing the need for effective bindover systems for the prosecution of violent persons who are 16 or 17 years of age. Such systems would provide for the prosecution in courts with jurisdiction over adults of certain minors accused of homicides, armed robberies, assaults and rapes, and drive-by shootings.

Section 1724. Increased Penalties for Recidivist Sex Offenders

This section adds a new section 2245 to title 18. This new section will enhance the penalties for second and subsequent violations of sexual assault prohibitions by subjecting repeat offenders to twice the term of imprisonment authorized for an initial offense.

SUBTITLE B–MOTOR VEHICLE THEFT PREVENTION

PURPOSE

This legislation requires the Attorney General to develop a national, voluntary, motor vehicle theft prevention program. This program gives participating State and local law enforcement officials the authority to stop participating motor vehicles during certain hours on the presumption that they have been stolen, with no further probable cause for stopping the vehicle necessary. No such authority is given to Federal law enforcement officers.

Under the program the Attorney General would prescribe a uniform, highly visible decal to identify participating vehicles, the removal of which in furtherance of a theft is subject to criminal penalties.

BACKGROUND

Auto theft in the United States is big business, accounting for more than half of the value of all property crimes nationwide. More than 1.6 million cars are stolen annually, at a cost to Americans of some $8 billion. Of these, an estimated 200,000 are stolen for shipment to Mexico and other overseas markets. The magnitude of crime is demonstrated further by the statistic that a car is stolen every twenty seconds.

***177** The array of locks and security devices that American car owners have employed to stymie auto thieves have not deterred these criminals. Once a car is stolen, the police have little means of tracing the vehicle if it has been refitted with new license tags or altered in other ways. Moreover, although the police have ready cause to stop "joy riders" who are recklessly driving stolen cars or who may be under the influence of substances that impair their driving ability, the police do not have similar cause to stop cars carefully piloted by professional auto thieves.

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The decal program provides the police with cause to stop a car stolen by a professional auto thief while, for example, the car is parked for the night. Under the program, police may stop a car that is being driven under circumstances that are abnormal for the owner, as indicated by the decal. Once the car is stopped, the officer may take reasonable steps to determine whether the car is in fact being driven by the owner, or with the owner's permission. The power to stop a car that is being driven under suspicious circumstances thus adds a significant new dimension to the efforts of law enforcement authorities and car owners to work together to prevent auto theft and recover stolen vehicles. The Committee notes that this is intended to be a State and local law enforcement program and that Federal law enforcement officials are not authorized to stop cars under the authority of this subtitle.

SECTION-BY-SECTION ANALYSIS

Section 1731

Short title: Motor Vehicle Theft Prevention Act.

Section 1732

Section 1732 amends Chapter 1 of title 23 of the United States Code by adding at the end a new section, S 160 (to be codified at 23 U.S.C. S 160), entitled "Motor vehicle theft prevention program."

Section 160(a) directs the Attorney General, in cooperation with the States, to develop a voluntary national motor vehicle theft prevention program within 180 days of the enactment of this section into law. Section 160(h) authorizes the Attorney General to promulgate implementing regulations and Section 160(i) authorizes such sums as are necessary to carry out the program. Under Section 160(f) a State or locality may participate in the program by filing with the Attorney General an agreement to comply with the program's terms and conditions, and by agreeing to familiarize law enforcement officials with the program and the conditions under which motor vehicles may be stopped.

Under the program as outlined in Section 160(a)(1), the owner of a motor vehicle voluntarily would be able to sign a consent form provided by a participating State or locality setting out certain specified conditions under which the vehicle is not normally operated by the owner. In addition, by means of a separate consent form for each set of conditions (see section 160(d)(2)), the vehicle owner would agree to display on the vehicle the program decals or devices appropriate to that set of conditions; and, to permit law enforcement officials in any State to stop the vehicle when it is being operated under the conditions listed in the consent form and thereupon ***178** to take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

Section 160(a)(2) provides further that, under the program, participating States and localities would authorize their law enforcement officials to stop motor vehicles displaying program decals or devices when these vehicles are being operated under the specified conditions to which the decals or devices relate. State and local authorities would also be authorized to take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

Section 160(b) directs that the program include decals or devices of uniform design for each set of conditions (see section 160(d)(2)) under which a vehicle may be stopped. These decals or devices must be highly visible and state explicitly that the vehicle on which they are displayed may be stopped under the specified conditions without further grounds for a reasonable suspicion that the vehicle is being operated unlawfully.

Section 160(c) directs that the voluntary consent form used to enroll vehicle owners in the program state clearly i) that the program is voluntary, ii) that participation in the program means that law enforcement officials may stop the vehicle if it is being operated under the specified conditions and attempt to discern whether it is being operated by the owner or with the

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consent of the owner, even if these officials have no other basis for believing that the vehicle is being operated unlawfully, and iii) that the vehicle is not normally operated under the conditions specified in the consent form and that operation of the vehicle under those conditions provides sufficient grounds for a law enforcement officer to believe that the vehicle is not being operated by or with the consent of the owner. Within reason, the Attorney General may require that additional information be included on the consent form.

Section 160(d) directs the Attorney General to promulgate rules establishing the conditions under which participating vehicles may be stopped. These conditions may include the operation of the vehicle during certain hours of the day or under any other circumstances that could create a reasonable suspicion that the vehicle is not being operated by the owner. The Attorney General may establish more than one set of conditions, but a separate consent form and distinct program decals or devices must be developed for each set of conditions. Program decals or devices may be distinguished by color. After the program has begun, the conditions indicated by a particular decal or device may not be expanded without the consent of the owner. In addition, a State or locality may participate in the program even if it does not adopt all of the sets of conditions specified by the Attorney General.

Section 160(e) pertains to motor vehicles for hire. This section directs that anyone who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle that has been enrolled in the program must notify the renter or lessor about the program before transferring possession of the vehicle. Notice must be in writing and, in a format to be prescribed by the Attorney General, explain that the motor vehicle may be stopped by law enforcement officials on no other grounds than that the vehicle is being operated under the specified conditions set out in the program ***179** consent form. This section makes failure to notify punishable by a fine not to exceed $5,000.

Section 1733

Section 1733(a) amends subsection (a) of section 511 of title 18 of the United States Code (18 U.S.C. S 511(a)), which penalizes the alteration or removal of vehicle identification numbers incident to the theft of the vehicle, to include decals or devices affixed to a motor vehicle as part of the Motor Vehicle Theft Prevention Act. Under the amended Section 511(a), anyone who knowingly removes, obliterates, tampers with, or alters a program decal or device with the intent to further the theft of the vehicle may be subject to fines under title 18 and/or imprisonment of not more than five years. By adding a new subsection D to 18 U.S.C. S 511(b)(2), Section 1733(b) excepts from these strictures the owner of the vehicle, or anyone authorized by the owner or his agent, applicable State law, or the program regulations as promulgated by the Attorney General.

Section 1733(c) further amends 18 U.S.C. S 511 by adding at the end a new subsection (d), which defines the term "tampers with" to include covering a program decal or device so that it will not be seen.

Section 1733(d) further amends chapter 25 of title 18 of the United States Code by adding a new section 511A after 18 U.S.C. S 511. The new section 511A, entitled "Unauthorized application of theft prevention decal or device," imposes a fine of not more than $1,000 on anyone who affixes an unauthorized program decal or device, or a replica of a program decal or device, to a motor vehicle.

SUBTITLE C–TERRORISM: CIVIL REMEDY

PURPOSE

In order to help the families of victims of terrorism recover some of the relief they are due, this section would provide a civil cause of action by providing for extra-territorial jurisdiction over terrorists' acts against U.S. nationals.

BACKGROUND

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While Congress has provided substantial criminal penalties for terrorism against U.S. Nationals, victims of terrorism face daunting legal hurdles in pursuing civil claims against terrorists.

The case of the Klinghoffer family is instructive. Leon Klinghoffer, a passenger on the cruise ship Achille Lauro, was executed and thrown overboard during a 1985 terrorist attack. His widow, Marilyn Klinghoffer, and family took their case to court in their home State of New York.

The court's jurisdiction was premised on unique circumstances: the attack violated certain Admiralty laws, and the organization involved (the Palestinian Liberation Organization) had assets and carried on activities in New York. Such unique circumstances, however, are not commonly found, and jurisdiction thus is often difficult to assert. The Antiterrorism Act of 1991 is designed to fill this gap in American law.

***180** The Antiterrorism Act of 1991 was introduced in the 102d Congress as H.R. 2222 by Rep. Edward Feighan (D-Ohio) who offered this section as an amendment at Committee markup.

SECTION-BY-SECTION ANALYSIS

Section 1734

This section gives the short title as: Antiterrorism Act of 1991.

Section 1735

This section inserts the Act into Title 18 of the United States Code (as 18 U.S.C. 2332 through 2338) and defines the terms used in the Act.

This section establishes a civil remedy for the estate, survivors or heirs of U.S. Nationals injured in their person, property, or business by acts of international terrorism. A final criminal judgment or decree in favor of any country shall estop the civil defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this subtitle.

This section also explains how proper jurisdiction and venue are to be determined for suits brought under this Act. Jurisdiction exists wherever any plaintiff resides; or where any defendant resides, is served, or has an agent. The same rules govern actions based on terrorist acts committed within the maritime and territorial jurisdiction of the United States.

Process may be served upon defendants and witnesses where any defendant resides, is served or has an agent. Cases may only be dismissed on the groups of forum non conveniens if (1) the action can be maintained in a foreign court with full subject-matter and personal jurisdiction; (2) the foreign court is significantly more convenient and appropriate; and (3) the available remedies are substantially similar to U.S. remedies.

This section provides a four-year statute of limitations for actions brought under this title. This time period does not accrue while the defendant is absent from the United States or other countries where similar suits could be filed, or when the defendant's whereabouts are canceled.

This section specifies that this title shall not be used to bring actions for injury or loss by reason of an act of war. This section further provides that this title shall not be used to bring actions against the United States, a foreign country, or the agents thereof acting in their official capacity.

This section grants exclusive jurisdiction to Federal courts for actions brought under this title. All provisions of the Act shall apply to any pending case or cause of action that arose on or after four years before this Act's enactment.

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SUBTITLE D–COMMISSION ON CRIME AND VIOLENCE

SECTION-BY-SECTION ANALYSIS

Subtitle D would establish a National Commission on Crime and Violence in America.

The Commission will have a total of 22 members: 6 appointed by the President, 8 by the Speaker, and 8 by the Senate Majority ***181** Leader. Two of the Speaker's appointees are to be recommended by the House Minority Leader and two of the Senate Majority Leader's appointees are to be recommended by the Senate Minority Leader; thus, counting the President's appointees, the Republicans have 10 appointees and the Democrats have 12. In addition, the President is to designate the Commission's Chairperson. The Commissioners must represent a cross-section of the professions, organizations and governmental bodies interested and experienced in the prevention and punishment of crime and drug abuse.

The Commission is responsible for developing a comprehensive crime control plan for action in the 1990s which includes the estimated cost of implementing the recommendations. In addition, the Commission is to call attention to successful crime prevention and crime control programs and look beyond the traditional criminal justice community for ideas; recommend improvements in efforts to control crime on our international borders; study the economic and social factors contributing to crime as well as specific proposals to reduce crime; recommend means of maximizing the use of finite correctional resources and examine the possible disproportional representation of black males and other minorities in the state and Federal prison populations; and, consider the increased use of alternatives to incarceration which offer a reasonable prospect of equal or better crime control at an equal or reduced cost.

The Commission is required to submit its report to the President an Congress no later than one after the appointment of the Chairperson and will terminate 30 days after submitting its report.

TITLE XVIII–MISCELLANEOUS FUNDING PROVISIONS

SUBTITLE A–GENERAL

Section 1801. Authorization for DEA

Section 1801 authorizes $100,500,000 to the Drug Enforcement Administration for fiscal year 1992. Not more than $45 million of these funds are to be spent on hiring, equipping and training no fewer than 350 agents and support personnel for the purpose of expanding DEA operations against drug trafficking organizations in rural areas. Not more than $25 million is to be spent to expand DEA State and Local Task Forces, including costs related to state and local overtime, equipment and personnel. Not more than $5 million is to be spent to hire, equip and train no fewer than 50 special agents and support personnel to investigate violations of the Controlled Substances Act with respect to anabolic steroids.

Section 1802. Authorization of Appropriations

This section authorizes that $200,000,000 be appropriated for each of fiscal years 1992, 1993 and 1994 for Chapter B of Subpart 2 of Part E of Section 1001 (a) of the Omnibus Crime Control and Safe Streets Acts of 1968 (42 U.S.C. 3793(a)). This program was Title XVIII of the Crime Control Act of 1990 (P.L. 101–647), the Correctional Options Incentives Amendments.

***182** Section 1803. Availability of Asset Forfeiture Fund

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This section would allow 25 percent of the excess funds accumulated at the end of each fiscal year to go to drug prevention programs from the Department of Justice forfeiture fund. At the present rate of forfeitures, that would be about $37 million a year.

It should be emphasized that this is only residual money left over at the end of the fiscal year and under this section a small portion of this forfeited drug money will go for drug prevention and rehabilitation programs from the Department of Justice forfeiture fund. This amount will be determined prior to the deposit of excess funds deposited into the special forfeiture fund set up by section 6073 of Public Law 100–690 (21 U.S.C. 1509).

This section is essentially a complement to a provision in the Senate Crime Bill, S. 1241. In section 4917 of that bill it authorized $30 million to be provided to drug prevention programs from excess amounts accumulated in the Customs forfeiture fund at the end of each fiscal year.

Section 1804. Limitation on Grant Distribution

This amendment was added at the Subcommittee markup to stop a practice by the Bureau of Justice Assistance (BJA) of the Department of Justice in regard to the discretionary fund of the Byrne Memorial Drug Control and Systems Improvement Act. This $50 million program was set up to assist State, county, local and private agencies to combat the effects of drugs and violent crimes by developing and implementing innovative programs. The BJA has increasingly used this fund to fund other DOJ agencies, leaving comparatively little left for the supposed primary beneficiaries of the program. In an investigation by the Government Operations Subcommittee on Government Information, Justice and Agriculture, the DOJ's own Inspector General criticized this practice in the following manner:

> In fiscal year 1989 and 1990, BJA discretionary grant funds totaling $20.7 million were transferred to other [Justice Department] bureaus, although no statutory authority existed for such transfers. Furthermore ... funds totalling about $1.2 million were transferred, again absent statutory authority, to other DOJ components ... such transfers constitute [a] violation of 42 U.S.C. 3766a.

In an independent Inspector General report in January 1991, the I.G. noted the following increase in percentage grants to DOJ agencies:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

In 1991, roughly 34.2 percent was transferred to other DOJ agencies.

In this time of budget crisis, State and local agencies can barely fund existing operations much less attempt to develop and experiment with innovative ideas. The discretionary program was set up for that purpose. Unfortunately, the BJA is increasingly using the ***183** fund to frustrate that purpose. This amendment will return these funds to their original purpose by eliminating self-dealing by the Department of Justice with itself or other Federal agencies.

Section 1805. Authorization for Border Patrol Personnel

This section authorizes that $45 million be appropriated for fiscal year 1992 for the Immigration and Naturalization Service to be allocated as follows: $25 million to hire, train and equip no fewer than 500 full-time border patrol agents and $20 million to hire, train and equip no fewer than 400 INS criminal investigators to handle drug trafficking by aliens.

Section 1806. Federal Share

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This section locks in the Federal-State ratio of funding under Section 504(a) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 at 75 percent to 25 percent. This formula had been scheduled to change to 50 percent each but was extended at 75 percent to 25 percent for another year by the Crime Control Act of 1990. This section makes the formula permanent.

Section 1807. Drug Abuse Resistance Education Programs

SECTION-BY-SECTION ANALYSIS

This section amends the Drug Free Schools and Communities Act to allow local governments (and the law enforcement agencies under their control) to receive Drug Abuse Resistance Education Programs ("DARE") grants to help prevent drug abuse among young people.

The change is necessary because an amendment to the Drug Free Schools and Communities Act included in the Crime Control Act of 1990 significantly restricts the use of funds allocated to the states under the Drug Free Schools and Communities Block Grant.

Last year's amendment required that eligible applicants for the DARE funds be limited to local education agencies ("in consortium with entities that have experience in assisting school districts to provide instruction to students in grades kindergarten through six to recognize and resist pressures that influence students to use illicit drugs or alcohol").

The restriction presents several problems as follows. Traditionally, it is local governments (i.e., city and county governments on behalf of police and sheriff departments) that submit applications for DARE programs. In Texas, at least, a county typically has several school districts and a city may have several school districts; therefore, efficiency in administration is optimum when a local law enforcement agency (city or county), rather than a school district, administers the DARE program.

In addition, some school districts in Texas and around the country may not have the resources necessary to apply for a DARE grant and thus may not be able to set up a DARE program. In such cases, the local government, rather than the school district, may be best situated to apply for the grant. Finally, at a tme when law enforcement agencies are taking a new interest in prevention, their inability to participate actively in all aspects of the DARE program may inadvertently discourage their interest and participation.

***184** By allowing local governments and the law enforcement agencies they supervise as well as local school districts to receive DARE grants, the amendment will promote greater administrative efficiency and enable more schools to have DARE programs.

Sections 1821 and 1822. Domestic Violence Grants

PURPOSE AND BACKGROUND

These sections, combined with section 1957 of Title 19, address the escalating problem of domestic violence by providing the judiciary and law enforcement agencies with tools to protect the victims and punish the perpetrators. At present, domestic violence is seriously under-reported and results in more injury to women than rape, auto accidents, and muggings combined. Over 4 million women are battered by their husbands or domestic partners every year, and over four thousand of these die from this abuse.

Due to persistent cultural perceptions, however, domestic battery seldom results in an arrest, and complaints of domestic violence are often dismissed by the courts as beyond the preview of the judicial or law enforcement systems. Moreover, women who eventually kill their abusers receive, on average, double the sentences that men who murder their wives receive.

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These sections are meant to assist the police and the courts to begin overcoming these problems by more clearly identifying domestic violence as the crime that it is. Section 1821 establishes a model demonstration grant program in at least 10 States to help develop means to increase prosecutions for domestic crimes; encourage reporting of domestic violence; facilitate arrests and aggressive prosecution policies; and provide legal advocacy services for victims of domestic violence. Section 1822 authorizes up to $25 million for ten States in fiscal year 1992 and such sums as needed in fiscal years 1993 and 1994. No state may receive more than $2.5 million in any fiscal year.

SECTION-BY-SECTION ANALYSIS

Section 1821

Section 1821 amends title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. S 3711 et seq., by adding a Part W entitled "Domestic Violence Intervention."

The new Part W authorizes the Director of the Bureau of Justice Assistance to make grants to 10 States to develop programs to address domestic violence in both the civil and criminal arenas. The programs specifically must be designed to increase prosecutions for domestic violence, encourage reporting of these crimes, facilitate arrests, and provide legal services to the victims. This section defines domestic violence to include violence threatened or committed by anyone related, either currently or in the past, to the victim by blood or marriage, or by anyone living with the victim.

A State must apply for the grant funds as required by the statute and the Director. In conjunction with its application a State must submit a comprehensive plan for the use of the funds. These funds must be used to supplement, not supplant, non-Federal monies available to the State for programs combatting domestic violence. ***185** In addition, no State may receive more than $2.5 milion in a single fiscal year, and no more than 5 percent of the funds appropriated by this section may be used by the Director for administration of the program.

The Director may renew a State's grant up to two times if the State's program conforms to its comprehensive plan as approved by the Director, and the State needs the funds to fully implement its program. In awarding grants, the Director must give preference to states that maintain laws or policies that facilitate the prosecution of domestic violence. Each year, States that receive funds must report to the Director, and the Director must report to Congress, on the status of the State programs.

Section 1822

This section amends Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. S 3793, by adding a new paragraph (15) authorizing the $25 million appropriation for the State Grant program in fiscal year 1992 and such sums as may be necessary in fiscal years 1993 and 1994.

SUBTITLE B–MIDNIGHT BASKETBALL

Section 1831. Grants for Midnight Basketball

PURPOSE AND BACKGROUND

These provisions authorize new monies for expenditure by the Department of Justice to support sports-linked, job skills training and educational programs for high-risk youth. These programs will be designed utilizing existing models in both inner-city and suburban settings that have demonstrated success in the prevention of juvenile crime through comprehensive, community-based interventions.

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In hearings held by the Select Committee on Children, Youth, and Families on June 17 and 18, 1991, experts testified that successful prevention programs targeting adolescents must contain certain structural elements including: personal relationships with caring adult mentors, skills training, information and resources for enriching the young person's life, and community support and involvement. A representative from the Midnight Basketball League sponsored by the Chicago Public Housing Authority testified that his program incorporates each of these key elements, and that, in a post-hoc, outside evaluation of the effectiveness of the program, the records of all 180 League players showed no involvement with the justice system during the membership period. In addition, more than half of those unemployed, out-of-school youth who joined the League when it began three years ago are now either employed full time, or have completed GED degrees.

The Midnight Basketball League programs are to be administered by the Attorney General in consultation with the Secretary of Housing and Urban Development (HUD) because a similar program, the Youth Sports Program, authorized by the Anti-Drug Abuse Act of 1988, has an administration mechanism currently in place within the Office of Drug Free Neighborhoods at HUD. This ***186** subtitle intends no duplication of HUD's current administrative structures within DOJ.

The subtitle authorizes $2.5 million to establish Midnight Basketball League programs. Program grants averaging $100,000 will be awarded to programs meeting two criteria. First, the high-risk nature of the population to be served must be documented. While the subtitle states that not less that 50 percent of the players in a League must be residents of public or assisted housing, the intent is also to include youth who would qualify for public or assisted housing but may not reside in such housing because of inadequate supply. Because the new Youth Sports Program currently in place at HUD targets residents of public housing, a form of housing subsidy most prevalent in inner-city areas, this subtitle is meant also to direct funds to suburban and rural areas where assisted housing is the more typical kind of subsidy.

Second, potential sponsors must document their intent to contribute financially to the support of individual teams. Each existing Midnight Basketball League team is “bought” by a private individual from the local community. Revenues raised in this manner are used to buy uniforms, athletic shoes and other paraphernalia attractive to teenagers, and “owners” play an active role in mentoring players and in expanding their exposure to places of business and other aspects of community life.

Two awards per year in the amount of $50 thousand each will be made to established Midnight Basketball Leagues to provide technical assistance to new program grantees. This kind of technical support is necessary because experience has shown that certain strategies work more effectively to decrease violence, such as the drafting of members of rival gangs onto the same team, and alternative approaches (e.g., allowing gang members to choose to play on the same team) can actually increase violence in high-risk areas. These provisions mandate a technical assistance award to one established League with experience in serving youth in inner-city areas, and another to a League that serves a more suburban population.

Finally, a single grant of $250,000 will be allocated for a formal, coordinated, multi-site evaluation of the effectiveness of Midnight Basketball League in preventing juvenile crime and in promoting career development in high-risk youth. Limited resources for program evaluation to date have made it impossible to perform the kind of carefully controlled study that could rule out other explanations for the dramatic behavior changes observed in League members. In order to determine whether future support of such programs at levels allowing greater national dissemination of the model is justified, formal evaluation is needed.

SECTION-BY-SECTION ANALYSIS

This section amends the Juvenile Justice and Delinquency Prevention Act to conform to these provisions by adding a new section establishing a grant program to assist local entities in organizing midnight basketball leagues. The grants may also go to groups providing technical assistance and advice to league organizers.

***187** The entities eligible for grants include nonprofit organizations providing crime prevention, employment counseling, job training, other educational services, or federally assisted low-income housing. A league organizer may only receive one grant

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under the program, although in extraordinary circumstances the Attorney General may award additional grants to organizations providing advisory services to league organizers.

Grant money may be used only for the purposes enumerated. These include the establishment of the league, payment of staff salaries, and training for league administrators to be provided by grant-eligible advisory groups. Not more than five percent of the grant may be spent on other administrative costs.

A league is to consist of at least 8 teams of 10 players each, with games held between 10 p.m. and 2 a.m. At least 50 percent of the league player must live in federally assisted low income housing in neighborhoods demonstrating at least two of the characteristics listed in the statute. In addition, players must need employment counseling, job training, or other education as indicated by criteria to be developed. League organizers must provide this counseling and training at the conclusion of each game at or near the game site. To be eligible to play, every team member must attend these classes.

For each team in a league, organizers must obtain a private business or individual sponsor from the locality served by the program. This subtitle contemplates that these sponsors will be active in the league by contributing financially to the program and by providing additional job training, educational and employment opportunities to the players.

To receive a program grant, an entity desiring to organize a league must demonstrate that it can obtain non-Federal funds to supplement the grant amount. In each of the first two years in which the grant is disbursed to the organizer, non-Federal funds must provide at least 35 percent of the cost of running the league. In each of the last three years, non-Federal monies must make up at least 50 percent of the league funding. Funds from State and local governmental agencies, private contributions, and the value of any labor or other in-kind items donated to the program may be included in the calculation of non-Federal program funding. Moreover, these grant funds, and funds contributed by State and local governments to supplement these grants, may not be deemed to replace other public funds otherwise allocated to the organizer.

A grant awarded under this program must be at least $50 thousand, but cannot exceed $125 thousand, to be disbursed over a five year period. To receive a grant, an eligible entity must submit an application that demonstrates that the neighborhood to be served meets the program criteria and outlines a plan for program implementation, including letters of agreement ensuring the availability of the requisite educational services, physical facilities, and local sponsorship interest necessary under the program. Grant selection criteria, to be developed, must include a preference for leagues in suburban and rural areas.

Program grants may be made specifically for the purpose of providing technical assistance to league organizers. These grants are to go to entities with experience with successful midnight basketball ***188** programs and the attendant employment, job training, and educational programs required by the program.

Two grants to advisory organizations shall be made in each fiscal year for which appropriations for these grants are made. One grant must go to an organization providing advice to midnight basketball leagues in public housing projects, while the other must go to an organization advising leagues in suburban or rural areas. A single grant may not exceed $50 thousand.

The Attorney General, in conjunction with the Secretary of Housing and Urban Development shall appoint an advisory committee to help distribute the grant money. The committee may have up to seven members, at least two of whom must be involved in a successful midnight basketball program in either an administrative or advisory capacity. One member must be from the Office for Substance Abuse Prevention of the Public Health Service and one from the Department of Health and Human Services, both of whom are involved in administering grants directed at high risk youth. One member must be from the Department of Education.

Any organizational or advisory group that receives a grant must submit a report for each year describing the activities carried out with the grant money.

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The Attorney General and the Secretary of Housing and Urban Development must give one grant, if the money is appropriated, for a 2-year study of the effectiveness of the midnight basketball program. When the study is completed, the group that has conducted the study must submit a report to Congress, the Attorney General and the Secretary, describing the study and making appropriate recommendations based on the study results.

Finally, this legislation authorizes the appropriation of $2.5 million for grants to organize leagues in each of fiscal years 1992 and 1993; $100 thousand for technical assistance grants in each of fiscal years 1992 and 1993; and, $250 thousand for a study to be completed in two years from the grant date in fiscal year 1992.

TITLE XIX–MISCELLANEOUS CRIMINAL PROCEDURE AND CORRECTIONS

SUBTITLE A–REVOCATION OF PROBATION AND SUPERVISED RELEASE

SECTION-BY-SECTION ANALYSIS

Section 1901

Section 1901 amends section 3553(a)(4) of title 18 of the United States Code, 18 U.S.C. S 3553(a)(4), which addresses the factors to be considered by the court in imposing a sentence. The amendment places the current language of section 3553(a)(4), which directs courts to consider the kinds of sentences and the sentencing range established for the relevant offense and defendant as set out in the Sentencing Commission guidelines issued pursuant to 28 U.S.C. S 994(a)(1), into subsection (A). The amendment adds to section 3553(a)(4) a new subsection (B) that also directs the courts to look to the Sentencing Commission guidelines or policy statements ***189** issued under 28 U.S.C. S 994(a)(3) when the defendant has violated probation or supervised release.

Section 1902

Section 1902 makes a technical correction to 18 U.S.C. S 3563(a)(3), which imposes mandatory conditions of probation for a felony, misdemeanor, or infraction, by changing the requirement that the defendant not "posses illegal controlled substances" to the requirement that the defendant not "unlawfully possess a controlled substance."

Section 1903

Section 1903 amends 18 U.S.C. S 3565(a), which provides that if a defendant violates a condition of probation prior to the expiration or termination of the probation term, the court may, pursuant to the applicable Federal Rules of Criminal Procedure and after considering the factors relevant to imposing a sentence as set out in 18 U.S.C. S 3553(a), continue the probation or revoke the probation and resentence the defendant. The amendment changes the power of the court by altering the language in subsection 3565(a)(2), which authorizes the court to revoke probation and resentence the defendant, from "impose any other sentence that was available under subchapter A at the time of the initial sentencing" to "resentence the defendant under subchapter A" of chapter 227. This is intended to allow the court after revoking probation to sentence the defendant to any statutorily permitted sentence and not be bound to only that sentence that was available at the initial sentencing.

Section 1903 also amends those portions of 18 U.S.C. S 3565 which currently provide for mandatory revocation of probation if the defendant possesses a firearm or a controlled substance during the probation term. Present law requires that the defendant be resentenced to a term of imprisonment not less than one-third of the original sentence. The amendment alters the provision to provide mandatory revocation for possession of a controlled substance or firearm in violation of the mandatory conditions of probation set out in 18 U.S.C. S 3563(a)(3) and require that the new sentence include a term of imprisonment.

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Section 1904

In addition to certain other amendments to 18 U.S.C. 3583, which pertains to supervised release, section 1904 makes essentially the same changes to the supervised release provisions as sections 1902 and 1903 make to the provisions regarding probation.

Subsection (d) of section 3583 is amended by changing the conditions of supervised release from the requirement that the defendant not "possess illegal controlled substances" to the requirement that the defendant not "unlawfully possess a controlled substance."

Subsection 3583(e), pertaining to the modification and revocation of supervised release, substitutes the word "defendant" for the word "person" throughout. Subsection 3583(e) is also amended by eliminating reference to the applicable policy statements of the Sentencing Commission and extending the reference to the Federal Rules of Criminal Procedure to those procedures applicable to revocation of supervised release. Further, this amendment adds the ***190** conditions that a defendant convicted of a class A felony whose term is revoked may not be required to serve more than 5 years in prison, and not more than one year in the case of any other level conviction. The terms of imprisonment for class B, C and D felonies remain the same.

Subsection 3583(g) is amended by striking the current subsection, which currently addresses revocation of supervised release only for possession of controlled substances, and replacing it with a subsection that provides for mandatory revocation for possession either of a controlled substance in violation of subsection 3583(d) or of a firearm in violation of Federal law or a condition of supervised release. The amended subsection (g) prescribes that the maximum term of imprisonment upon revocation of supervised release shall not be more than the terms authorized in subsection 3583(e)(3).

Subsection 3583 is further amended by the addition at the end of new subsections (h) and (i). Subsection (h) provides that if a defendant is required to serve less than the maximum term of imprisonment authorized under subsection (e) upon the revocation of his supervised release, the court may include another term of supervised release in addition to the prison term as part of the sentence. The period of supervised release in this case may not exceed the term of such release applicable to the defendant's original conviction. Moreover, this additional period of supervised release must be adjusted by subtracting the length of the prison term that the defendant is required to serve upon revocation of the initial period of supervised release. Subsection (i) provides that the power of the court to revoke supervised release and impose a sentence as outlined in subsections (e), (g), and (h) shall extend beyond the expiration of the defendant's term of supervised release to the extent necessary to adjudicate matters that arose before expiration of the term, so long as a warrant or summons based on a violation of the conditions of supervised release was issued prior to the expiration of the supervised release term.

SUBTITLE B–LIST OF VENIREMEN

PURPOSE

This subtitle amends S 3432 of title 18, United States Code, to expand the information that a capital defendant is entitled to obtain before trial, while at the same time giving courts the authority to protect the identity of prospective jurors and witnesses before trial upon a finding that such disclosure would jeopardize the life or safety of any person. The current S 3432 provides for pretrial disclosure of the names and addresses of veniremen and witnesses but does not provide judges with the authority to withhold information.

BACKGROUND

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Congress has always recognized that special pretrial discovery should be available in capital cases. Currently, S 3432 of title 18 entitles a capital defendant to a list of prospective jurors and witnesses and their addresses before trial. However, as a U.S. Attorney brought to the attention of the Subcommittee on Crime and Criminal Justice, S 3432 does not allow the court to withhold the ***191** veniremen's and witnesses' names and addresses even if their lives may be endangered.

Conversely, the Federal Rules of Criminal Procedure entitle a defendant to a witnesses' prior statements only after the witness has testified. At that point, the defendant must interrupt the trial to review the statements for purposes of cross-examination. This is an inefficient process, and is particularly inappropriate for a capital case.

This section, following the law of several States, strikes a more appropriate balance by providing limited pretrial discovery in capital cases, while authorizing the court to withhold the identity of veniremen and witnesses before trial where necessary.

SECTION-BY-SECTION ANALYSIS

Section 1911 amends S 3432 of title 18, United States Code, to provide that a person charged with treason or other capital offense shall, a reasonable time before commencement of trial, be furnished with a copy of the indictment; a list of the veniremen and of the witnesses to be produced at the trial for proving the indictment and at the sentencing hearing, stating the place of abode of each venireman and witness; relevant written or recorded statements of such witnesses and relevant portions of memoranda containing reports of their statements; copies of documents and an opportunity to examine tangible objects that the government intends to use in the trial or sentencing hearing; and such other reports, statements or information as the court may order. The list of veniremen and the name and address of a witness or other information identifying a witness need not be furnished under this section if the court finds by the preponderance of the evidence that providing the list or the name or address may jeopardize the life or safety of any person.

SUBTITLE C–IMMUNITY

Section 1921. Immunity

This section amends 18 U.S.C. 6003 to expand the list of persons who may authorize a United States attorney to request that immunity be granted to anyone called to testify before a Federal court or grand jury. In addition, the Attorney General, Deputy and Associate Attorneys General, and designated Assistant Attorneys General, the amendment extends approval authority to one other officer or employee of the Criminal Division as designated by the Attorney General.

SUBTITLE D–JUVENILE PROCEEDINGS

Section 1931

This section amends section 5032 of title 18 to clarify existing language that requires that no delinquency proceedings against a juvenile, including dispositional hearings after a finding of delinquency, may be commenced until any existing prior juvenile court records of the juvenile who is the subject of the proceedings have been released to the court, or until the court has received written certification that the juvenile's record is unavailable. This section ***192** clarifies that “commencement” of proceedings should not be read to include the filing of charges but rather be limited to the transfer to adult prosecution or a dispositional hearing under Section 5037. This section is not intended to in any way preempt State laws mandating the confidentiality of certain juvenile records. Only records that are properly available under State law are required to be provided to the court.

SUBTITLE E–PETTY OFFENSES

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Section 1941. Probation for Petty Offenses

This section amends section 3651 of title 18 to authorize the imposition of a sentence of probation for petty offenses in certain circumstances in which such a sentence is not currently available. Section 3651 currently bars the imposition of a sentence of probation where the defendant "is sentenced at the same time to a term of imprisonment for the same or a different offense." The reason for this prohibition is that the same result can be achieved through the imposition of a term of imprisonment. While this is generally true, however, supervised release is unavailable for petty offenses. As a result, courts sentencing a defendant who has committed multiple petty offenses are restricted to a choice of imprisonment or probation; they cannot impose a split sentence. This Section will provide enhance sentencing flexibility by permitting a court to impose a term of probation for a petty offense if the defendant is at the same time sentenced to a term of imprisonment for another petty offense.

Section 1942. Trial By Magistrate in Petty Offenses

This section amends section 3401 of title 18 to permit trial of petty offense cases by a United States magistrate without the defendant's consent. Currently, defendants in all misdemeanor cases have the right to be tried by a judge rather than a magistrate. This section would eliminate that ability.

Section 1943. Authority for Magistrates

This section amends section 3401 of title 18 to authorize a United States magistrate to revoke or modify the supervised release of a defendant the magistrate has sentenced. This Section overturns a recent decision by the United States Court of Appeals for the Fifth Circuit, United States v. Williams, 919 F.2d 266 (5th Cir. 1990), holding that magistrates lack such authority. Magistrates already have statutory authority to revoke the probation of probationers they have sentenced.

SUBTITLE F–OPTIONAL VENUE FOR ESPIONAGE

Section 1944. Optional Venue for Espionage

This section amends chapter 211 of title 18 buy adding a new section 3239 which will provide optional venue in the District of Columbia for the trial of espionage and related offenses.

***193** SUBTITLE G–GENERAL

Section 1951. Enhanced Penalties

This section amends sections 1541–1546 of title 18 section 1705 of title 50 to increase the penalties for certain offenses that are often committee in aid of terrorism. The maximum fine for violating economic embargo restrictions is increased from $50,000 to $1,000,000. The maximum penalty for issuance of a passport without authority is increased from a fine of $500 and imprisonment for one year to a fine of $250,000 and imprisonment for five years. The maximum penalties for making a false statement in an application for or in use of a passport, for forgery or false use of a passport, for misuse of a passport, and for fraudulent misuse of a visa or similar document are increased from a from a $2,000 and imprisonment for five years to a fine of $250,000 and imprisonment for ten years. The maximum penalty for violating safe conduct or passport restrictions is increased from a fine of $2,000 and imprisonment for three years to a fine of $250,000 and imprisonment for ten years.

Section 1952. Sentencing Guidelines for Terrorism

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This section directs the Sentencing Commission to include in its sentencing guidelines a three-level increase in the offense level of a crime that is involved with or intended to promote international terrorism. This enhancement would not apply to crimes that are themselves defined as crimes of terrorism.

Section 1953. Statute of Limitations for Terrorism

This section adds a new section 3286 to title 18 to extend the statute of limitations for certain terrorism-related offenses from five years to ten years. The affected offenses include aircraft destruction, airport violence, assaults and other crimes against diplomats, crimes against the President, members of Congress or Cabinet officers, hostage taking, willful injury to government property, maritime violence, maritime platform violence, terrorist acts abroad against United States nationals, use of weapons of mass destruction, and torture.

Section 1954. Victim's Right of Allocation

This section amends Rule 32 of the Federal Rules of Criminal Procedure to require a judge sentencing a defendant for a crime of violence or sexual abuse to permit the victim of the crime to address the court in relation to the sentence, if the victim is present at the sentencing hearing and wishes to do so.

Section 1955. Criminal History Record Information for the Enforcement of Laws Relating to Gaming

Section 1955 permits a state gaming office located within a State Attorney General's Office to obtain criminal history record information from the Interstate Identification Index of the FBI when the office seeks that information in order to carry out the State's licensing laws regarding legalized gaming.

The State of New Jersey has such a system of State regulated gaming, which is enforced within the Office of the Attorney General. New Jersey has recently encountered difficulty obtaining criminal ***194** history information from the Interstate Identification Index for the purpose of carrying out the State's gaming laws. Section 1955 would permit the state gaming enforcement office to obtain this information on the same basis that other information is obtained from the III for law enforcement purposes.

Section 1956. Prison Impact Assessments

PURPOSE AND BACKGROUND

Section 1956 requires the preparation of prison impact assessments on pending legislation and existing laws. The purpose of this provision is to assure that Congress has relevant information when considering legislation that is likely to either increase or decrease the Federal prison population. Information regarding the number of new prison beds that would have to be built, the number of new probation officers that would have to be hired, and the cost of implementing the proposed legislation will be calculated and provided to Congress to assist in a determination of whether the proposed legislation is prudent public policy.

Specifically, this amendment requires the Executive and Judicial branches to submit a prison impact assessment with any proposed legislation that could increase the number of Federal prisoners. It would also require the Department of Justice to prepare prison impact statements, in response to requests from Congress, on pending legislation and to summarize annually the impact of legislation enacted in the previous year.

The Subcommittee on Intellectual Property and Judicial Administration considered the need for Prison Impact Statements in recent oversight hearings. Prison impact assessments are necessary for Congress, the courts, and the Administration to plan for increases in the number of offenders processed through the criminal justice system. They have proven to be a useful tool at the

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State level, and there is a growing recognition of the need for prison impact statements at the Federal level. The American Bar Association this year overwhelmingly approved a resolution supporting prison impact planning.

SECTION-BY-SECTION ANALYSIS

Section 1956 amends Chapter 303, 18 U.S.C., by creating a new Section 4047, requiring the preparation of Prison Impact Assessments on pending legislation and on legislation enacted into law.

Section 4047(a) requires that the Judicial and Executive branch prepare a prison impact assessment for legislation that it submits to Congress if the legislation could increase or decrease the number of individuals incarcerated in Federal penal institutions.

Section 4047(b) requires that the Attorney General prepare a prison impact assessment on proposed legislation at the request of any member of Congress. Prison impact assessments must be prepared within 7 days of any request. The Attorney General is instructed to consult with the Sentencing Commission and the Administrative Office of the United States Courts in the preparation of the impact assessment.

***195** A prison impact assessment will contain projections for prison, probation and post-prison supervision populations; an estimate of the costs or savings associated with these changes in population; an analysis of any other significant facts that could affect the cost that the proposed legislation could have on the criminal justice system; and a statement of the methodologies and assumptions used in preparing the assessment.

Section 4047(c) directs the Attorney General to prepare a prison impact assessment each year for submission to Congress. The annual assessment shall reflect the cumulative impact of legislation enactment into law during the preceding year.

Section 1957. Interstate Enforcement of Protection Orders

PURPOSE AND BACKGROUND

This subtitle amends title 18 of the United States Code by inserting a new chapter 110A entitled “Violence against spouses.” This new provision provides that, subject to certain caveats, all orders issued by a state court for protection against abuse by a spouse or intimate partner must be recognized and enforced by other States. To be universally enforceable under this title, a protection order must have been issued by a court with jurisdiction over the parties and the matter under State law, and reasonable notice and an opportunity to be heard must have been provided to the responding party. Protection orders issued against the party that originally sought protection need not be given effect by another State if the original responding party did not request such an order, or the court did not specifically find that both parties were entitled to a protection order.

Under this title, a spouse or intimate partner includes present or former spouses, the other parent of the victim's child, persons who have lived with the victim as a spouse, and any other person similar to a spouse protected by State domestic violence laws. A protection order includes any order issued to prevent violence between spouses or intimate partners, whether temporary or final, or whether issued alone or in conjunction with civil or criminal proceedings.

SECTION-BY-SECTION ANALYSIS

Section 1957 requires State courts to recognize and enforce protection orders issued by another State to victims of domestic violence. Currently, every State employs some type of restraining order in domestic violence cases, but these orders are not always honored by other jurisdictions.

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Section 1958. Special Rule for Certain Habeas Corpus Petitions Relating to Death Sentences

PURPOSE

Section 1958 sets forth a special rule for certain habeas corpus petitions relating to death sentences, made pursuant to chapter 153 of title 28. In general, the section provides that when the petition raises a claim based on racial bias, that claim may be raised without regard to certain limitations that may apply to other types of ***196** claims. The section ensures that no person under sentence of death at the time of enactment of the Act will be executed if his or her conviction or death sentence was obtained in violation of constitutional proscriptions against the intrusion of racial bias in the criminal justice system.

BACKGROUND

The Committee believes that special rules must apply in this context because of the importance of ensuring that the criminal justice system is free of racial bias, and that defendants are not sentenced to death as a result of such bias. It therefore expands, under specified and limited circumstances, the conditions under which race-based claims may be considered on the merits.

Specifically, existing race bias claims may be raised in Federal habeas corpus proceedings whether or not they have been raised previously, unless the claim has been previously adjudicated on the merits in Federal habeas corpus proceedings. These claims must be raised not later than one year after enactment of the Act. Courts should be cognizant of Congress' intention that race claims be decided on the merits without regard to other restrictions. Therefore, if a petitioner timely files a claim under this section, but the petitioners has not yet exhausted state remedies on other claims, the Federal court should stay further proceedings on the petition under this section until the petitioner has exhausted those remedies. The court shall then allow the petitioner, within a reasonable amount of time, to amend the petition to include those claims that have been exhausted, and any other claims that are cognizable in proceedings under chapter 153.

Section 1958 was offered an amendment during Committee consideration of H.R. 3371, by Representative Howard Berman. With a quorum being present, the Committee adopted the amendment by a voice vote on September 25, 1991.

SECTION-BY-SECTION ANALYSIS

The section provides that race bias claims shall be determined on their merits, regardless of whether the petitioner has properly presented the claim previously and in compliance with state procedural rules. Procedural bars that might apply in other contexts will not apply in this context. A prior decision on the merits in Federal habeas corpus proceedings precludes a claim under this section.

A race bias claim must be based on a case decided by the United States Supreme Court prior to the date of enactment of this Act. The section also provides that the Federal courts shall apply the decisional and statutory law in existence at the time the determination of the Federal habeas corpus petition is made. This includes all supplements to the law proscribing racial bias or discrimination in the criminal justice system since the conviction and sentence.

In sum, this section gives petitioners sentenced to death one complete opportunity to make race bias claims in a habeas corpus proceeding, without regard to procedural default rules, limits on successive petitions, and questions about whether existing law applies to the determination of the habeas corpus claim. While these bars ***197** may apply in other contexts, they do not apply to the claims of race bias described above.

This section does not, of course, preclude petitioners from raising race claims under other appropriate provisions of law.

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Section 1959. NIJ Study

The section directs the National Institute of Justice (NIJ) to study the feasibility of establishing a clearinghouse to assist state prison inmates who seek transfers to other states in order to be closer to their families.

Under current law, inmates incarcerated in States which belong to the Interstate Corrections Compact can already obtain transfer to other State prison systems, subject to the availability of space and the approval of the appropriate correctional authorities.

A clearinghouse would provide inmates who seek transfers to be closer to their families with a central source of information on the availability of space in other State prison systems, and would facilitate voluntary inmate transfers between State correctional systems when space is available.

These transfers are intended to help keep the families of inmates together by allowing the inmates to serve their sentences at correctional facilities closer to their homes. Studies show that inmates who receive visits from their families are much less likely to return to prison than inmates who do not receive visits. Moreover, keeping the families of inmates together reduces the social and economic costs of incarceration.

Section 1960. Right of Victim to Impartial Jury

This section amends Rule 24(b) of the Federal Rules of Criminal Procedure by evening the number of peremptory challenges available to the prosecution and defense in a criminal trial to six each. The present rule gave the government 6 and the defendant or defendants jointly 10.

TITLE XX–FIREARMS AND RELATED AMENDMENTS

SUBTITLE A–FIREARMS AND RELATED AMENDMENTS

PURPOSE

The purpose of this subtitle is to provide certain and severe punishment for Federal firearms and explosives violations. It includes several provisions that create or increase Federal penalties for violations of Federal firearms laws by felons and other violent criminals.

BACKGROUND

Many of the provisions in this subtitle, along with other firearms provisions, were the subject of a hearing held by the Subcommittee on Crime and Criminal Justice on May 23, 1991. That hearing was held to examine the firearms provisions on H.R. 1400, the President's crime bill introduced by Rep. Robert Michel on March 12, 1991. Witnesses at that hearing included Robert S. Mueller, Assistant Attorney General for the Criminal Division, United States Department of Justice; and Richard Cook, Chief of the Firearms Division ***198** of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

Testimony at the hearing underscored the need to attack gun-related violence, especially by repeat and career offenders. A BATF study found that 90 percent of the prison inmates surveys used or carried firearms in committing their offenses. It also showed that approximately 6 percent of all criminals are responsible for up to 70 percent of the country's serious crimes.

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The provisions in this subtitle respond to the need for tough penalties or firearms offenses. For example, a provision in this subtitle increases the mandatory penalty from five to ten years for use of a semi-automatic firearm during the course of a drug trafficking or violent felony. Another provision creates a mandatory five-year penalty for possession of a firearm by persons with a previous conviction for a violent felony or a serious drug offense. Another provision creates a mandatory ten-year penalty for possession of a firearm by anyone with two previous convictions for violent felonies or serious drug offenses. This provision was offered as an amendment at Committee markup by Rep. Steven Schiff (R–NM). Other provisions streamline certain proceedings involving forfeiture of firearms and explosives.

Previous hearings on many of these provisions had been held by the Subcommittee on Crime in the 101st Congress. Some of them were included in H.R. 5269, the House version of the Crime Control Act of 1990. Most of these provisions were included in subtitle A of Title X of the subcommittee print marked up by the Subcommittee on Crime and Criminal Justice on July 31, 1991, which was reported by a vote of 13–0.

SECTION-BY-SECTION ANALYSIS

Section 2001. Enhanced Penalty for Use of Semi-Automatics

Section 2001 amends section 924(c)(1) by including a "semiautomatic firearm" in the category of firearms the use of which, during the commission of a crime of violence or drug trafficking crime, subjects the user to a mandatory penalty of 10 years imprisonment. This is double the present penalty. This enhanced penalty is warranted by the vastly increased danger presented by the use of such firearms during violent or drug trafficking crimes.

This section amends section 921(a) to define a "semiautomatic firearm" as any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round and which requires a separate pull of the trigger to fire each cartridge.

Section 2002. Increased Penalty for Second Explosive Offense

Section 2002 amends section 844(h) to increase the mandatory penalty from 10 years imprisonment to 20 years imprisonment for a second conviction for using fire or an explosive to commit a felony or carry an explosive during the commission of a felony.

Section 2003. Smuggling Firearms in Aid of Drug Trafficking

Section 2003 amends section 924 by creating a new offense, punishable by imprisonment of up to 10 years, a fine or both, for individuals ***199** who smuggle, or knowingly bring, or attempt to bring into the United States a firearm with the intent of committing or promoting the commission of a controlled substance offense or a crime of violence.

Section 2004. Prohibition Against Theft of Firearms or Explosives

This section would create new offenses, punishable by a mandatory minimum two-year prison term, for stealing a firearm or explosive materials. Section 2004 amends sections 924 and 844 by making it unlawful to steal fireams or explosive materials which have moved in, or as a part of, interstate or foreign commerce. The penalty for this offense includes imprisonment of 2 to 10 years, a fine, or both.

Section 2005. Penalty for False Statement

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Section 2005 amends section 924(a) by increasing the penalty from five years imprisonment to 10 years imprisonment, a fine, or both, for the making of knowingly false, material statements in connection with the acquisition of a firearm from a licensed dealer.

Section 2006. Statute of Limitations for Firearms Offenses

Section 2006 would extend the statute of limitations for offenses involving firearms such as machineguns, sawed off shotguns and various explosive devices from three to five years. These offenses such as possession of an unregistered machinegun or obliterating serial numbers on weapons, though within the tax code, are criminal offenses involving considerable danger to public safety and warrant statutes of limitations of five years rather than three. This section shall apply to offenses committed after the date of enactment of this act.

Section 2007. Summary Destruction of Explosives Subject to Forfeiture

This section would allow for the summary destruction of explosives used in violation of chapter 40 title 18. Section 2007 amends section 844 of title 18, United States Code, by redesignating subsection (c) as subsection (c)(1), and by authorizing the seizing officer of explosive materials forfeited to the United States in accordance with this section to destroy, in the presence of a witness, such materials where their storage or removal may prove unsafe. The seizing officer is also required to make a report of the seizure and take samples in accordance with regulations set forth by the Secretary of the Treasury.

This section also amends section 844 by enabling the owner of property so destroyed to make application within 60 days of the destruction to the Secretary for reimbursement not exceeding the value of the property. Reimbursement shall be made provided the claimant can satisfactorily establish that the property has not been used or involved in a violation of law; or that any lawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness.

***200** Section 2008. Summary Forfeiture of Certain Firearms

This section eliminates the need for forfeiture proceedings for certain unregistered weapons seized by law enforcement. Section 2008 amends section 5872 of the Internal Revenue Code of 1986 by providing for summary forfeiture to the United States of certain firearms such as machineguns, sawed-off shotguns, silencers and certain destructive devices which are not registered as required by section 5841 in the National Firearms Registration and Transfer Record. Summary forfeiture, such as exists for controlled substances that cannot be legally possessed by anyone, avoids the need for expensive and time-consuming judicial and administrative forfeiture proceedings.

This section further provides that the owner or any interested party of property so forfeited may, within one year after forfeiture, make application to the Secretary for reimbursement of the value of the property. Reimbursement not exceeding the property's value shall be made if it is satisfactorily established that the property has not been involved or used in a violation of law; or that any unlawful involvement or use of the property had been without the claimant's consent, knowledge, or willful blindness.

This section also makes two technical amendments to the Internal Revenue Code of 1986.

Section 2009. Elimination of Outmoded Language

Section 2009 makes technical amendments to section 924 of Title 18, United States Code, by eliminating outmoded references to parole made obsolete by the elimination of parole in the Comprehensive Crime Control Act of 1984.

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Section 2010. Enhanced Penalties for Use of Firearms

This section amends 18 U.S.C. 924(c)(1) to make it an offense to use or carry a firearm during and in relation to counterfeiting and related offenses such as forgery and altering or removing motor vehicle identification numbers set out in Chapter 25 of Title 18. Section 924(c) now is limited to using or carrying a firearm during and in relation to a Federal drug trafficking felony or any Federal felony crime of violence. The offenses covered by this section, although not "crimes of violence" are often committed by persons with firearms.

Section 2011. Mandatory Penalties for Firearms Possession by Violent Felons

Section 2011(a) amends section 924(a)(2) by imposing a mandatory minimum sentence of five years' imprisonment for firearms possession by a person who has a previous conviction for a violent felony or a serious drug offense and is thus disqualified from possession of a firearm under 922(g)(1).

Section 2011(b) amends section 924 by imposing a mandatory minimum sentence of ten years' imprisonment (and up to 20 years) for firearms possession (in violation of Section 922(g)) by a person who has two prior convictions for a violent felony or a serious drug offense.

***201** Section 2012. Reporting of Multiple Firearms Sales

Under current law licensed firearms dealers, collectors, manufacturers and importers are required to report multiple sales or dispositions of handguns to unlicensed persons to the Bureau of Alcohol, Tobacco and Firearms. It requires licensees to notify BATF every time the same person buys two or more pistols or revolvers within five consecutive business days. Section 2012 amends section 923(g)(3) by expanding from five consecutive business days to 30 consecutive business days the period of time during which the sale of two or more pistols or revolvers to an unlicensed individual necessitates a report pursuant to this section by the licensed seller.

Section 2012 further amends section 923(g)(3) by mandating that each licensee forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed purchaser by close of business on the date that the multiple sale or disposition occurs thus making the multiple sale information of more use to local law enforcement.

Section 2013. Receipt of Firearms by Non-Resident

This section deals with the problem posed by persons such as aliens who are legally in the United States but who do not reside in any State and who acquire firearms from Federal firearms licensees by use of intermediaries. It is generally unlawful for any person to transfer a firearm to any other person who does not reside in the State in which the transferor resides. Section 2013 amends section 922(a) by making unlawful the receipt of any firearms by any person who is not the resident of any State, unless that person is a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

Section 2014. Conspiracy to Violate Firearms Laws

Section 2014 amends sections 924 and 844 by mandating that the same penalties be imposed for a person conspiring to violate Federal firearms or explosives laws as would be imposed for the actual commission of the crimes contemplated by the conspiracy.

Section 2015. Theft of Firearms from Licensee

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This section would create new offenses for stealing firearms or explosive materials. Section 2015 amends sections 924 and 844 by authorizing imprisonment of up to 10 years, a fine, or both for the stealing of any firearm or explosive material from a licensed importer, licensed manufacturer, licensed dealer, licensed collector or permittee.

Section 2016. Disposing of Explosives

This section makes it unlawful for any person to sell or otherwise dispose of explosive materials to felons or other prohibited persons. It amends section 842(d) by expanding the category of covered parties to make it unlawful for any person to distribute explosive materials to an individual meeting the criteria enumerated in this section.

***202** Section 2017. Firearms Licensing Laws

This section requires that any application for a Federal license to engage in the business of dealing in firearms under 18 U.S.C. 923 (a) and (b) complies with all the requirements imposed on persons desiring to engage in such business by the State and political subdivision thereof in which the applicant conducts or intends to conduct business. The application must include a signed statement from the chief of police or other comparable person certifying that the applicant is not ineligible to obtain such a license under State and local laws.

Section 2018. Interstate Gun Trafficking

This section amends section 924 and authorizes a penalty of up to ten years imprisonment for anyone who travels from State to State or from a foreign country into a State and acquires or attempts to acquire a firearm for the purpose of engaging in unlawful firearms trafficking under section 922(a)(1)(A).

Section 2019. Transactions Involving Stolen Firearms

This section makes two changes to the prohibitions against transactions involving stolen firearms which have moved in interstate commerce that are contained in Section 922(j). It adds knowing possession of any such stolen firearms or ammunition and expands the reach of the prohibition to include such firearms or ammunition either before or after they were stolen.

Section 2020. Possession of Explosives by Felons

This section prohibits the possession of any explosive shipped or transported in interstate commerce by any convicted felon, anyone under indictment for a felony, any fugitive from justice and any drug addict or any mental incompetent. Current law under 18 U.S.C. 842(i) prohibits such persons from shipping, transporting or receiving explosives. Adding the prohibition on possession removes certain problems associated with the need to provide receipt of explosives by such disqualified persons.

SUBTITLE B–ASSAULT WEAPONS

PURPOSE

The purpose of this subtitle is to create criminal penalties for the unlawful possession and transfer of certain listed assault weapons. The threat posed by criminals and mentally deranged individuals armed with semi-automatic assault weapons has been tragically widespread. This subtitle is intended to prevent incidents like the ones that occurred in Stockton, California and Louisville, Kentucky from recurring. It is far better to prevent a criminal from buying an AK–47 than it is to simply put him in jail after he uses it to kill someone. No anti-crime proposal can be considered comprehensive unless it includes preventative restrictions on the proliferation of these assault weapons.

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***203** BACKGROUND

The carnage inflicted on the American public by criminals and mentally deranged people armed with Rambo-style, semi-automatic assault weapons has been overwhelming and continuing. Police and law enforcement groups all over the nation have joined together to support legislation that would help keep these weapons out of the hands of criminals. Police officers all across the country have to deal every day with the fact that they are routinely outgunned by criminals in possession of these powerful weapons. The devastating impact of these weapons can be seen in the prominent role they play in crime. Although the approximately one million assault-type weapons in the country account for only one-half of one percent of the more than 200 million privately owned firearms, they accounted for nearly thirty percent of all the firearms traced to organized crime, gun trafficking and terrorist crimes during all of 1988 and the first quarter of 1989, for example. From 1986 to 1990, 1,088 assault weapons were traced to murders in the United States and 3,505 were linked to drug traffickers. Since only about 10 percent of all gun crimes result in traces, assault weapons have been used in as many as ten times more crimes. Federal and State law enforcement officials know all too well that assault weapons like the AK–47 and AR–15 have become the weapons of choice for criminal street gangs and are used routinely in drive-by shootings.

In the spring of 1989, the Administration responded to the rising level of violence precipitated with these weapons by imposing a temporary ban on the importation of approximately 50 different types of semi-automatic rifles pending a comprehensive review of the Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms. Following that three-month comprehensive study, BATF announced a permanent ban on the importation of 43 foreign made semi-automatic rifles which were classified as semi-automatic assault weapons. BATF based its authority for the ban on section 925(d)(3) of Title 18 which limits importation of firearms which are "generally recognized as or readily adaptable to sporting purposes," which standard, BATF concluded, barred the identified weapons from importation.

The import ban has proven effective in lowering the number of imported assault weapons linked to crime. It is clear, however, that import restrictions are not enough to deal with the problem. BATF estimates that 75% of assault weapons in the United States are American made. It does not matter to the victim or to law enforcement whether these weapons were imported or domestically manufactured. At present, these weapons are legally sold and possessed with almost no restrictions. In most jurisdictions, any 18-year-old can walk into a gun store, sign a form which no one checks, and in minutes walk out with AR–15 assault rifle and an arsenal of ammunition. In 1989, California became the first state to ban the future sale of assault weapons and New Jersey followed in 1990. More than 30 cities and counties across the nation have taken similar action.

The American people overwhelmingly favor Federal legislation banning the manufacture, sale and possession of semi-automatic assault weapons like the AK–47 by 72 percent to 22 percent according ***204** to a Gallup poll taken in September of 1990. Every major law enforcement organization supports a ban on assault weapons including the International Association of Chiefs of Police, the National Sheriff's Association and the 203,000-member Fraternal Order of Police. This support is shared by groups like the AFL-CIO, AFSCME, ABA, American Jewish Congress, NEA, AARP, American Academy of Pediatrics and the U.S. Conference of Mayors.

In the 101st Congress, after extensive hearings by the Subcommittee on Crime, the Committee on the Judiciary ordered reported a bill (H.R. 4225) that would have utilized the same standard as used by BATF to prohibit the possession, transfer and certain export of these assault weapons. The bill was not acted upon by the House. Further information on action on this bill can be found in the Report accompanying the Restricted Weapons Act of 1990 (H. Rept. 101–621).

Subtitle B of this bill does not adopt the same approach as H.R. 4225. It more closely resembles the approach taken by Senator DeConcini that has been adopted by the Senate both in the its 1991 crime bill (S. 1241) as well as in its crime bill in the 101st Congress. Subtitle B:

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1. Prohibits the possession and transfer of 13 enumerated types of new semi-automatic assault weapons. These weapons are specifically named and listed in the bill. It include the AK–47, Uzi, AR–15 and Street Sweeper but not the M–1.

2. Applies the prohibition to copies of the listed assault weapons so that manufacturers cannot evade the law simply by renaming the listed weapons or making minor or cosmetic changes.

3. Grandfathers presently owned weapons so that weapons so that weapons owned before the effective date of the act can still be possessed, transferred, transported, bought and sold.

4. Allows the Secretary of the Treasury to recommend to Congress that firearms be added to or removed from the list but does not give the Secretary the authority to do that himself.

5. Doubles the penalty for the use of assault weapons during the commission of a violent or drug trafficking crime from 5 to 10 years in prison.

6. Agencies of Federal, State and local governments, such as the military and the police, are exempt from the Act.

This subtitle was the result of two hearings held by the Subcommittee on Crime and Criminal Justice. Witnesses at the first hearing, held on June 12, 1991, included Catherine Varner of Winslow, Arizona; Roger Guthrie, and agent with the Bureau of Alcohol, Tobacco and Firearms; and police officers from Dayton, Ohio and Philadelphia, Pennsylvania. The Subcommittee also heard from Richard Cook, Chief of BATF's Firearms Division; Edward Owen, Chief of the Firearms Technology Branch at BATF and Hamilton Bobb, a BATF Group Supervisor. Also testifying were Paul McNulty of the United States Department of Justice; Dewey Stokes, President of the Fraternal Order of Police; Gary Hankins, Chairman of the Washington Metropolitan Police Department's Labor Committee and Inspector Phillip O'Donnell of Washington MPD's Rapid Deployment Unit.

***205** A second hearing was held on July 25th and included the following witnesses: Chief Cornelius Behan, Baltimore County Police Department and Phillip McGuire, Law Enforcement Adviser to Handgun Control, Inc. At the request of the minority, the following witnesses testified: Jackie Miller of Louisville, Kentucky; Mike Saporito, Vice President, RSR Wholesale Guns; Patrick Squire, General Counsel, Colt Manufacturing Co., Inc.; John Krieger, President, Krieger Barrels, Inc.; Craig Markva, Director of Legislative Affairs, Gun Owners of America; Jim Fendry, Director, Wisconsin Pro-Gun Movement; and Joseph Phillips, Federal Liaison, National Rifle Association.

SECTION-BY-SECTION ANALYSIS

Section 2021

Section 1021 amends Title 18 of the United States Code by making unlawful the possession of an assault weapon by any person unless the weapon was lawfully possessed by the person prior to enactment of this act or was lawfully transferred after the effective date pursuant to regulations to be promulgated by the Secretary of the Treasury. It also renders unlawful the transfer of any assault weapon unless that weapon was also lawfully possessed by the person and the transfer is in accordance with the Treasury regulations. The phrase “or continuously possessed” is not intended to require that the person be in continual actual possession since before the effective date. The penalty for unlawful possession or transfer is up to 5 years in prison, a fine of up to $5,000, or both.

Section (b) specifically defies assault weapons as any of the following weapons, or a copy thereof:

(1) Action Arms Israeli Military Industries UZI and Galil.

(2) Auto Ordnance 27A1 Thompson, 27A5 Thompson, and M1 Thompson.

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(3) Beretta AR–70 (SC–70).

(4) Colt AR–15 and CAR–15.

(5) Fabrique Nationale FN/FAL, FN/LAR/ and FNC.

(6) INTRATEC TEC–9.

(7) MAC 10 AND 11.

(8) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs.

(9) Springfield BM59, SAR48, and G3SA.

(10) Steyr AUG.

(11) Street Sweeper and Striker 12.

(12) All Ruger Mini-14 models with folding stocks.

(13) ARMSCORP FAL.

The term "copy" is defined as "a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified." This language is intended to ensure that a producer of the same basic weapon cannot evade the Act by marketing the weapon under a different name. The Committee intends to be very clear about the weapons affected. In the case of assault rifles, the basic "configuration" has already been outlined in the Report and Recommendation of the ATF Working Group on the Importability of Certain Semi-Automatic Rifles as semi-automatic rifles which are comprised of some combination of the following ***206** features: a folding or telescopic stock; a bipod; a grenade launcher; night sights; or an ability to accept a bayonet, flash suppressor or a detachable magazine. Other relevant elements identified were whether the weapon is a semi-automatic version of a machinegun and whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.

The basic configuration for semi-automatic assault pistols includes some combination of the following military-type features: an ability to accept a detachable magazine; whether the pistol is a semi-automatic version of a submachinegun; whether it has an ammunition magazine outside the pistol grip; whether it is designed to accept a flash suppressor, silencer, or recoil compensator; whether it is equipped with a barrel shroud; whether it has an overall length of 12 inches or more and a weight of 50 ounces or more and whether a large submachinegun style bolt is used in the firing mechanism. In the case of copies of the listed assault shotguns known as the Street Sweeper and Striker 12, the basic configuration includes shotguns with revolving gun magazines and pistol grips.

The rifles and pistols affected by the prohibition against possession and sale of assault weapons are semi-automatic, as that term is defined with respect to rifles in 18 U.S.C. 921 (28). The Committee recognizes that certain machineguns have names similar to the weapons affected by the assault weapons provisions, but transfer and possession of such machineguns is already governed by the provisions of 18 U.S.C. 922(c) and the National Firearms Act, 26 U.S.C. 5845, and it is not the Committee's intent to alter the provisions of existing law respecting machine guns.

The section requires that the regulations for the lawful transfer of assault weapons be promulgated by the Secretary of the Treasury within 60 days of enactment of the act. Such regulations shall include specified documentation from the transferee, and

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a determination of whether the transferee was a felon, adjudicated as mentally defective, or a non-United States citizen (pursuant to section 922(g)); and shall allow such a transfer to proceed within 30 days after the Secretary receives such information. Violation of such transfer regulations are punishable by a fine of up to $500. It is the intent of the Committee that weapons that are lawfully possessed on the date of enactment and are lawfully transferred pursuant to regulation continue to be able to be transferred lawfully pursuant to those regulations.

This section also amends Chapter 44 of Title 18 by adding a section (S 931) entitled "Recommendation of Modifications to the List of Assault Weapons" to extend authority to the Secretary of the Treasury for recommending to Congress, in consultation with the Attorney General, modifications to the list of assault weapons set forth in section 921(a)(30). The Secretary does not have authority to add or remove a listed weapon on his or her own.

This section also amends section 924(c)(1) by increasing the penalty to 10 years imprisonment for possession or use of an assault weapon during a crime of violence or a drug-trafficking crime.

Finally, it is the Committee's intent that the prohibition against possession and transfer of assault weapons shall not apply to assault weapons, whether those specifically listed in the act or copies ***207** thereof, which were lawfully possessed before the effective date of the act. The effect of the assault weapon prohibition should be to freeze the number of assault weapons available to the general population as of the effective date. Those assault weapons legally possessed on the effective date may continue to be possessed and transferred in accordance with regulations promulgated by the Secretary of the Treasury, unless such possession and transfer is barred by some other subsection of section 922 of Title 18.

SUBTITLE C–LARGE CAPACITY AMMUNITION FEEDING DEVICES

PURPOSE AND BACKGROUND

This subtitle is designed to place severe restrictions on certain ammunition clips and other ammunition feeding devices that are frequently used with assault weapons that enable them to fire a large number of rounds without reloading. The purpose and background of this subtitle is similar to that of subtitles A and B above. Restrictions on large capacity feeding devices were the subject of the hearings in both the 101st and 102d Congresses regarding firearms issues discussed above. The Assistant Attorney General for the Criminal Division, U.S. Department of Justice, testified before the Subcommittee on Crime on March 6, 1990, and the Subcommittee on Crime and Criminal Justice on May 23, 1991, in support of the policy considerations underlying these provisions.

Section 2031

Section 2031 amends section 922 by making unlawful the possession or transfer of any large capacity ammunition feeding device, unless such device was lawfully possessed by virtue of its possession prior to the effective date of this Title.

This section also amends section 921(a) by defining a "large capacity ammunition feeding device" as a detachable magazine, belt, drum, feed strip, or similar device, which has, or which can be readily restored or converted to have, a capacity of more than seven rounds of ammunition; and which has any part or combination of parts, designed or intended to convert the aforementioned devices into a device holding this capacity of ammunition. This definition specifically excludes any attached tubular device designed to accept and capable of operating with only .22 rimfire caliber ammunition. This exclusion does not mean that such devices are the only ones that do not qualify under the definition.

Subsection (c) amends section 924(a)(1)(B) to provide a penalty of up to 5 years' imprisonment, a fine of up to $5,000 or both for violation of this section.

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This section also amends section 926 by requiring the Secretary to promulgate regulations requiring manufacturers of large capacity ammunition feeding devices to stamp each device manufactured after the effective date of this subtitle with a permanent distinguishing mark selected in accordance with regulations.

***208** TITLE XXI–SPORTS GAMBLING

PURPOSE

Title XXI addresses the growing concern regarding the effect on professional and amateur sports of State-sanctioned sports gambling, by prohibiting the spread of such gambling schemes. The provisions are based on H.R. 74, the "Professional and Amateur Sports Protection Act," introduced by Congressman John Bryant with Congressman Hamilton Fish

BACKGROUND

Oregon operates a lottery, instituted in 1989, based on the point spreads of National Football League games. Nevada permits the operation of a wide range of sports-related gambling schemes in its casinos. Both States derive revenues from these activities, and now several other States are considering sports gambling as a means to raise revenue.

Sports organizations are concerned that widespread, legalized sports gambling will undermine the integrity and tarnish the image of athletes and sports contests. They fear the risk of increased pressure on players to "shave" points, the risk of public suspicion that point shaving is taking place, the risk that fans' attention will be diverted from the sports contest to the point spread, and the risk that young fans will be deprived of their sports heroes and may be drawn into gambling activities themselves. These views were expressed by witnesses representing the major professional sports leagues and the National Collegiate Athletic Association at a hearing held before the Subcommittee on Economic and Commercial Law on September 12, 1991. Also testifying at the hearing were representatives of lottery and casino associations and the National Conference of State legislatures. On September 17, 1991, the Subcommittee met to mark up H.R. 74, and by voice vote ordered the bill favorably reported to the full Committee.

The Committee appreciates that there exists a special relationship between American sports fans of all ages and their favorite terms, and that athletic competition embodies and affirms fundamental American values worth protecting from the potential taint of corruption and scandal. The Committee's inclusion of this title in the bill reflects the conviction that these activities should be declared off limits from further exploitation as State "revenue enhancers."

Similar legislation was included in the House-passed version of the Comprehensive Crime Control Act of 1990, but was not accepted by the Senate in conference. That legislation would have amended the existing criminal prohibitions in 18 U.S.C. S S 1301–1307 against use of the mails, the electronic media, or common carriers to transmit or transport lottery-related information. These prohibitions apply even to a lottery operated by a State pursuant to State law, if such lottery involves "the placing of bets or wagers on sporting events or contests." However, these criminal prohibitions can be enforced only through prosecution by the Department of Justice, ***209** which has thus far not elected to prosecute Oregon's sports lottery. Some have even argued that existing criminal prohibition does not apply to all sports-related lotteries. The legislation included in the House-passed 1990 crime bill would have clarified that the prohibition does apply to all sports-related lotteries.

The provisions in title XXI of H.R. 3371 take a somewhat different approach. Rather than amend the Criminal Code, title XXI amends title 28 of the United States Code to authorize affected professional and amateur sports organizations, as well as the Justice Department, to seek injunctive relief to halt unlawful sports gambling schemes. And rather than prohibit only State-authorized sports lotteries, title XXI prohibits all State-authorized sports-related gambling or wagering schemes.

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Title XXI also departs from last year's legislation another respect: It specifies certain exceptions from the prohibitions. First, it excepts gambling and wagering schemes that were in operation at some point during the period between September 1, 1989, and August 31, 1990, a period roughly corresponding to the year preceding the Committee's approval of the sports gambling provision as part of the 1990 crime bill. This exception would permit Oregon to continue its professional football lottery; Nevada to continue sports-related casino gaming schemes which were in operation at some point during the one-year period; and Florida, Rhode Island, and Connecticut to continue wagering schemes related to the game of jai alai which were in operation at some point during the one-year period. The exception is written narrowly to preclude expansion of existing schemes into other sports or into other geographical areas, even within a State.

Second, title XXI also exempts certain casino gaming schemes brought into operation within two years of the effective date of the new prohibition. This exception was added as an amendment in full Committee, offered by Congressman Bill Hughes, which was adopted by a recorded vote of 17–16. The schemes that would qualify under this exception are limited to those in operation in some State or governmental entity during the one-year period between September 1, 1989, and August 31, 1990. The geographical areas that would qualify under this exception are limited to those in which casino gaming has been in continuous operation in gambling establishments, throughout the ten-year period prior to the effective date of the new prohibition, pursuant to a comprehensive system of State regulation.

As with the first exception, this exception is narrowly written to preclude the adoption of any gaming scheme, or the inclusion of any sport in any gaming scheme, beyond the particular schemes in operation in some governmental entity at some point during the one-year period; and also to preclude expansion of sports gambling into any geographical area, even within a State, beyond that in which casino gambling has been in continuous operation throughout the ten-year period. This exception would permit Atlantic City, New Jersey's State-regulated casinos to operate the same sports-related casino gaming schemes which are permitted to continue in Nevada casinos, provided the New Jersey government authorizes the operation of such casino gaming schemes and they are in operation within two years of the effective date of the prohibition.

***210** Third, title XXI also excepts pari-mutuel betting on animal racing, to make clear that the Committee does not intend animal races to be included among the sports contests covered by the new prohibition.

SECTION-BY-SECTION ANALYSIS

Section 2101 contains the short title.

Section 2102

Section 2102(a) of the bill adds a new chapter 177 to title 28 of the United States Code, entitled “Professional and Amateur Sports Protection,” to consist of new sections 3401 through 3404. Section 3401 contains definitions. “Amateur sports organization” means a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more amateur athletes participate, or a league or association of such persons or governmental entities. “Professional sports organization” is defined in a parallel fashion. “Governmental entity” is defined broadly to include, in addition to a State or political subdivision of a State, any entity or organization that has governmental authority over any geographical area that is under the authority of the United States; the term, however, is not intended to include the United States Government itself. “State” is similarly defined broadly to include all U.S. territories, possessions, commonwealths, and other entities under the authority of the United States.

Section 3402 prohibits any governmental entity from sponsoring, operating, advertising, promotion, licensing, or authorizing by law–and prohibits any person from sponsoring, operating, advertising, or promoting, pursuant to the law of a governmental entity–any lottery, sweepstakes, or other betting, gambling, or wagering scheme based on one or more competitive games in which amateur or professional athletes participate or are intended to participate, or on one or more performances of such athletes

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in such games. The prohibition is intended to be broad enough to apply to all State-authorized sports-related gambling schemes; it prohibits not only gambling schemes based directly on sports events, but also those based more indirectly, such as through the use of geographical references such as "Washington vs. Philadelphia."

Section 3403 authorizes either the United States Attorney General, or an amateur or profesional sports organization whose competitive game is alleged to be the basis of a violation of section 3403, to seek an injunction against such violation in the appropriate Federal district court.

Section 3404 specifies the few exceptions to the prohibition in section 3202. Paragraph (1) permits the continuation of a sports gambling scheme in a governmental entity to the extent it was actually in operation at any time during the one-year period beginning September 1, 1989, and ending August 31, 1990, pursuant to the law of a governmental entity. This provision is written narrowly so as to confine the gambling scheme to the smallest jurisdictions–be they State, county, municipal, or otherwise–into which the extent of the operation of a scheme during that one-year period can be circumscribed. For example, if the gambling scheme was in ***211** operation only in two cities in a State, it could not be instituted in other parts of the State. The provision is also intended to preclude the introduction of new variations on any gambling scheme, and to preclude the expansion of any gambling scheme to additional sports or from professional to amateur or amateur to professional sports. This narrowness reflects the Committee's policy judgment that existing sports gambling schemes should be strictly contained.

Paragraph (2) provides a two-year window in which a governmental entity in which commercial casino gaming has been in operation in a gambling establishment throughout the previous ten-year period, pursuant to a comprehensive system of State regulation, may authorize sports-related casino gaming schemes for its gambling establishments. The sports-related casino gaming schemes would be limited to schemes which were actually in operation in some other governmental entity at some point during the one-year period beginning September 1, 1989, and ending August 31, 1990. Thus, as with paragraph (1), the introduction of new variations on any casino gaming scheme–beyond those actually in operation in other governmental entities–would be precluded, as would the expansion of any casino gaming scheme to additional sports. Thus, the "strict containment" policy is carried forward even into this one isolated exception. The term "gambling establishment" has the meaning given it in section 1081 of title 18 of the United States Code.

Paragraph (3) makes clear that the prohibition in section 3202 does not apply to pari-mutuel betting on animal racing.

Subsection (b) of the bill amends the table of chapters for part VI of title 28.

TITLE XXII–TECHNICAL CORRECTIONS

Title XXII consists of a series of technical amendments prepared by the Office of the Legislative Counsel. Corrections are made in the following categories: Federal financial assistance for law enforcement, general title 18, erroneous cross-references and misdesignations, repeal of obsolete provisions, elimination of redundant penalties and correction of misspellings and grammatical errors.

TITLE XXIII–FEDERAL DEATH PENALTY PROCEDURES

PURPOSE

Title XXIII adopts procedures for imposition of the Federal death penalty that are nearly identical to those proposed by the Administration in H.R. 1400, with the addition of certain provisions adopted by Congress in 1988.

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BACKGROUND

In 1972, in Furman v. Georgia, 408 U.S. 238, the Supreme Court in effect invalidated all death penalty laws, both Federal and State. While not holding the death penalty per se unconstitutional, the ***212** Court found that the statutes then in place left the sentencing decision to the uncontrolled discretion of judges or juries, creating a substantial risk that the punishment would be inflicted in an arbitrary and capricious manner. In 1976, the Court approved death sentencing procedures adopted by several States that required the decisionmaker to consider and weigh certain aggravating and mitigating factors. Gregg v. Georgia, 428 U.S. 153.

In 1974, Congress adopted such procedures for imposing the death sentence for the crime of air piracy where death resulted. 49 U.S.C. App. 1473. In the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, Congress adopted death sentencing procedures for certain drug-related murders. 21 U.S.C. 848(e)–(r). Congress has not adopted death sentencing procedures meeting the Gregg standard for any other crime for which death is a penalty. Therefore, the death penalty presently cannot be imposed for any other Federal crime.

In response, Title XXIII adopts general procedures for the imposition of the Federal death penalty.

SECTION-BY-SECTION ANALYSIS

Section 2301 amends Title 18 of the United States Code by inserting a new chapter 228, "Death Penalty Procedures," as follows:

Section 3591 outlines the procedure for death sentencing. The trial of a capital case shall be divided into two phases, the first to determine the guilt or innocence of the defendant, and the second phase to determine the sentence. Accordingly, section 3591 provides that a defendant convicted of a capital offense shall be sentenced to death if, after consideration of aggravating and mitigating factors listed in section 3592, in the course of a sentencing hearing held pursuant to section 3593, it is determined that the imposition of the sentence of death is justified. Section 3591 provides that a Federal death sentence may not be imposed on someone who was less than 18 years old at the time of the offense.

Section 3591 specifies the requisite state of mind necessary for imposition of the death sentence in certain cases. Where no particular mental state is indicated the one required for conviction of the underlying offense itself is sufficient to authorize the death penalty. Thus the death penalty is authorized for a defendant found guilty of espionage, treason, and an attempt to assassinate or kidnap the President (and other named officials) under certain circumstances. No death need result in order for capital punishment to be applicable for these offenses.

The death penalty is also authorized for drug kingpins who deal in very large amounts of drugs or money. No death is required for capital punishment to be applicable to this offense. The death penalty is authorized for a defendant who is found guilty of operating as a drug kingpin (21 U.S.C. 848(b)) in a continuing criminal enterprise (21 U.S.C. 848(c)) if the violation involved not less than twice the quantity of controlled substances described in 18 U.S.C. 848(b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B). Present law requires a sentence of life imprisonment for drug kingpins in continuing criminal enterprises involving the amounts of controlled substances and gross receipts specified in those subsections. Double those amounts would involve 60,000 ***213** grams of heroin, 300,000 grams of cocaine, 3,000 grams of crack cocaine or $20 million in gross receipts.

Section 3591 also authorizes the death penalty for intentional killings during the course of drug felonies. Capital punishment is authorized for any felony violation of the Controlled Substances Act, the Controlled Substances Export and Import Act or the Maritime Drug Law Enforcement Act in circumstances where the defendant knowingly or intentionally caused the death of another individual in the course of the violation or from the use of the controlled substance involved in the violation.

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Capital punishment is also authorized if a death results from a drive-by shooting. Section 3591 refers to a new offense created in title XXIV of H.R. 371 relating to drive-by shootings. That new offense would be codified as section 922(u) of title 18, United States Code. That offense makes it unlawful to knowingly discharge a firearm from a vehicle in a reckless manner that thereby creates a grave risk of harm to human life. If death results from such conduct, even if the death was not intentionally caused by the defendant, then capital punishment is authorized.

Capital punishment is also authorized for a series of terrorism and terrorism-related offenses listed in section 3591(6) in circumstances where the defendant caused the death of another either knowingly, intentionally or with reckless disregard for human life.

Finally, this section authorizes capital punishment upon conviction of any other offense for which a sentence of death is provided by law if it is proven beyond a reasonable doubt that the defendant knowingly or intentionally caused the death of another individual.

Section 3592 sets out the mitigating and aggravating factors that can be considered in the sentencing phase.

Subsection 3592(a) sets out nine mitigating factors drawn from the Administration's bill and the 1988 drug-related death penalty law. The subsection makes it clear that the jury, or if there is no jury, the court, must also consider whether any other aspect of the defendant's character or record or any other circumstances of the offense exist that would mitigate against the imposition of the death sentence.

Subsection 3592(b) lists all three aggravating factors sought by the Administration for an offense consisting of espionage or treason and provides that the jury, or if there is no jury, the court, may consider any other aggravating factor for which notice has been given.

Subsection 3592(c) lists all eleven aggravating factors sought by the Administration for an offense consisting of homicide or attempted homicide and provides that the jury, or if there is no jury, the court, may consider any other aggravating factor for which notice has been given. To protect against double-counting, which would defeat the constitutionally mandated role of the aggravating circumstances in narrowing the class of offenders who will receive the death sentence, subsection 3592(c) generally provides that a factor may not be counted as an aggravating factor if it was an element of the underlying offense. However, under subsection 3592(c)(11), the fact that the victim was the President or Vice President, a judge, a law enforcement officer or a foreign official may be ***214** considered as an aggravating factor even if it is an element of the underlying offense.

Subsection 3592(d) lists all eight aggravating factors sought by the Administration for drug offenses and provides that the jury, or if there is no jury, the court, may consider any other aggravating factor for which notice has been given.

Subsection 3593(a), adopting language from the 1988 death sentencing procedures adopted by Congress, requires that the Government, if it intends to seek the death sentence in the event of a conviction, must give notice to the court and the defendant a reasonable time before trial begins or before acceptance by the court of a plea of guilty. The notice must set forth each aggravating factor that the government will seek to prove. The Government, for good cause shown, may amend its notice to add or delete aggravating factors a reasonable time before the sentencing phase of the trial begins.

Subsection 3593(a), using the exact language recommended by the Administration, also provides that the factors for which notice is provided may include victim impact.

Subsection 3593(b) provides that the sentencing phase hearing shall be conducted by the judge who presided at the first phase of the trial or by another judge if that judge is unavailable. The hearing shall be conducted before the jury that determined the

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defendant's guilt, by a jury impaneled for the purpose of the sentencing hearing in certain specified circumstances, or before the judge alone upon motion of the defendant and with the approval of the government.

Under subsection 3593(c), information may be presented at the sentencing phase of the trial relating to any mitigating factor or to any aggravating factor for which notice has been provided. The burden of establishing an aggravating factor is on the Government and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

Subsection 3593(d) requires special findings by the jury, or if there is no jury, by the court, identifying each aggravating factor found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury. A finding with respect to any aggravating factor must be unanimous. Only one aggravating factor need be found to impose the death sentence. If no aggravating factor is found to exist, the court shall impose a sentence other than death.

Under subsection 3593(e), if an aggravating factor is found, the jury, or if there is no jury, the court, shall then consider whether the aggravating factor of factors found to exist outweigh any mitigating factors found to exist. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. This subsection includes language adopted by Congress in 1988 which requires a jury to be instructed that, notwithstanding the above, it is never required to impose a sentence of death.

***215** Subsection 3593(f) requires, if the sentencing hearing is held before a jury, that the court instruct the jury that it shall not consider the race, color, religion, national origin, or sex of the defendant or of any victim. Each jury must sign a certificate that consideration of the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching the individual juror's decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question regardless of the race, color, religion, national origin, or sex of the defendant or any victim.

Under subsection 3594, if it does not impose the death sentence, the court may impose a sentence of life imprisonment without the possibility of release.

Section 3595 provides for a review of a death sentence in the court or appeals. Upon such review, the court of appeals shall review the entire record in the case. If the appeals court or the Supreme Court determines that any aggravating factor was not supported by the evidence or was not a proper aggravating factor, the court shall still affirm the sentence if it finds that a remaining aggravating factor found to exist is one allowed under section 3592 and that it substantially outweighs any mitigating factors found to exist.

Subsection 3596(a) provides that a sentence of death shall be implemented under the supervision of a United States Marshal in the manner prescribed by the law of the State in which the sentence was imposed. If the law of such State does not provide for the implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

Subsection 3596(b), incorporating language adopted in 1988, provides that the death sentence shall not be carried out on an individual who is mentally retarded or incompetent. In addition, the death sentence shall not be carried out on a pregnant woman.

Subsection 3596(c), drawn from the Administration's bill, provides that employees of any state department of corrections, the Federal Bureau of Prisons, the United States Marshals Service, or the United States Department of Justice and employees providing services to those agencies under contract may decline to participate in any execution or in the prosecution or appeal of any capital case if such participation is contrary to the moral or religious convictions of the employee.

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Section 3596A provides that no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country and which has occurred within Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

Section 3597 provides that a United States Marshal charged with supervising the implementation of a sentence of death may use for that purpose appropriate State or local facilities and the services of appropriate State or local officials.

Section 3598, drawn largely from the Administration's bill with the addition of certain provisions from the 1988 death sentencing ***216** law, provides for the appointment of qualified counsel to represent, in Federal court, persons who are financially unable to obtain adequate legal representation and reasonably necessary investigative, expert, or other support services. Persons entitled to such counsel and support services include: (1) defendants charged in Federal court with offenses against the United States for which capital punishment may be sought; (2) persons sentenced to death by a Federal court for such an offense against the United States, who seek appellate review of their convictions or sentences, or collateral relief under section 2255 of title 28, United States Code; and (3) persons sentenced to death in State court for offenses under State law, who seek Federal habeas corpus relief under section 2254 of title 28, United States Code.

In the case of an indigent defendant charged in Federal court with an offense against the United States, counsel is to be provided for trial-level proceedings, as provided in 18 U.S.C. 3005. If the defendant is convicted and a sentence of death is imposed, each attorney so appointed will continue to represent the client until the conclusion of direct review of the judgment, unless replaced by the court with other, similarly qualified counsel.

When a Federal court judgment imposing a sentence of death becomes final, the Government must promptly notify the sentencing court–i.e., the court that would have jurisdiction of an application for collateral relief under section 2255 of title 28, United States Code. Within ten days after receiving such notice, the court must determine whether the prisoner is entitled to the appointment of new counsel and, if so, appoint such counsel. In the case of a death sentence imposed by a State court, this section does not explicitly command that the State concerned provide notice to the federal district court that would have jurisdiction over an application for relief under section 2254 of title 28, United States Code. The Committee contemplates, however, that state authorities will promptly ensure that the Federal court is notified of the need for the appointment of counsel, in order that the attorney or attorneys so appointed can comply with the statute of limitations established for such cases by Title XI of H.R. 3371.

Counsel appointed to represent prisoners in section 2255 proceedings are to be different from the counsel who represented prisoners at trial and on direct review, unless the prisoner and counsel request continuation or renewal of the earlier representation. This will not only foster a fresh look at prior proceedings, but will ensure that appropriate claims regarding previous counsel's performance will be identified and raised.

This section establishes minimum standards for appointed counsel in all relevant proceedings. At least one lawyer appointed to represent a Federal criminal defendant at trial in a death penalty case must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after a sentence of death has been imposed in either Federal or State court, at least one lawyer so appointed must have been admitted to practice in the Federal courts for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts, or the Supreme Court of the United States. The ***217** court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the client, with due consideration to the seriousness of the penalty and the unique and complex nature of the litigation.

This section incorporates by reference applicable provisions of the Criminal Justice Act, section 3006A of title 18, United States Code.

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The provision of competent and experienced counsel alone is insufficient to guarantee that indigent defendants and applicants have the resources they need to litigate in the Federal courts. Accordingly, this section provides for ancillary services when the relevant Federal court concludes that such services are reasonably necessary. Appointed lawyers generally should obtain the court's approval before engaging expenses in this respect, but when prior approval is impractical, the court may be asked to give its approval after the fact.

This section recognizes that counsel fees and the costs of support are typically governed by a college of local rules and practices and that the general costs of legal services of all kinds may be different in different parts of the country. Accordingly, the section established a single, uniform rule for compensating appointed lawyers and reimbursing them for support services, which allows the relevant Federal court to monitor payments in order to ensure that the purposes of this section are fully implemented.

The objective of this section is not to establish new Federal rights, the alleged violation of which may be the basis of claims for Federal postconviction relief. Accordingly, the section explicitly provides that the ineffectiveness or incompetence of counsel during proceedings on a motion under section 3255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. Of course, if a prisoner complains that appointed counsel is not rendering effective representation, the court may appoint a different attorney at any stage of the proceedings.

Section 3599, drawn largely from the Administration's bill, establishes for the first time within an application for relief under section 2255 of title 28, United States Code, must be filed in death penalty cases. The one-year period that is established comports with a similar one-year Federal habeas corpus petitions by State prisoners under section 2254 of title 28, United States Code. The one-year period begins to run on the date of the issuance of the order relating to the appointment of counsel for a section 2255 application under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. In order to expedite litigation in capital cases, this section gives a section 2255 application filed under this section priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

Finally, again to bring litigation involving Federal prisoners under sentence of death into line with the new provisions established by Title XI of this Act for litigation on behalf of State prisoners under sentence of death, this section provides for an automatic ***218** stay of execution pending the determination of claims raised on direct review in a timely section 2255 application. See Title XI, section 1103 of this Act. Such a stay will run continuously following imposition of a capital sentence by a Federal court, but shall expire if the prisoner fails to prosecute his or her claims in a timely way, or upon the conclusion of appellate and collateral proceedings. Of course, provision is made for a prisoner to waive the right to attack a capital sentence under section 2255.

When a stay of execution is lifted, either because a Federal prisoner has failed to prosecute appellate or collateral remedies in a timely way or at the conclusion of such proceedings, a further stay may be issued and a further application may be heard only if the basis for the stay and request for relief is a claim not presented in earlier proceedings, the claim was not presented previously for one of three specified reasons, and the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense for which the death penalty was imposed or the validity of that sentence under Federal law. This section is based on comparable recommendations of the American Bar Association and the Judicial Conference of the United States for proceedings by State prisoners under sentence of death under section 2254 of title 28, United States Code.

TITLE XXIV–DEATH PENALTY OFFENSES

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PURPOSE

The purpose of this title is to provide retributive punishment for offenders who commit heinous Federal crimes and to deter the commission of such future crimes. The title authorizes the death penalty for those serious Federal offenses for which capital punishment may be appropriate such as espionage, treason, Presidential assassination, terrorist killings, drug-related killings and others. The title also seeks to maintain the scope of the death penalty within bounds of sound policy and constitutionality. This title must be read in conjunction with Title XXIII because section 2301 of that title contains the requisite mental states for each death-eligible offense under this title.

BACKGROUND

Current law authorizes the death penalty for a number of offenses. These offenses are listed below. This bill retains the death penalty for every offense for which it is currently authorized. For most of these offenses, however, the death penalty is unenforcable because of a lack of constitutional procedures for its implementation consistent with decisions of the United States Supreme Court since Furman v. Georgia, 408 U.S. 238 (1972). That case found that the death penalty was being applied in an unconstitutionally arbitrary fashion and effectively abolished it until constitutional procedures were adopted by the States. The Anti-Drug Abuse Act of 1988 authorized the death penalty for certain intentional drug-related killings (also listed below) and also provided procedures for the determination of the sentence–but only for those drug-related killings. ***219** This bill retains those two offenses but would repeal the accompanying procedures and replace them with the new, comprehensive procedures contained in title XXIII. Along with retaining all currently death-eligible offenses, this bill authorizes capital punishment for many other offenses and also creates several new criminal offenses for which the death penalty is authorized.

This title authorizes the death penalty for five non-homicide offenses. They include: espionage, treason, and attempts to kill or kidnap the President (and certain others) that result in serious bodily injury to the President or come dangerously close to causing his death. It also authorizes the death penalty for drug kingpins who traffic in very large amounts of controlled substances or who make very large amounts of money through the course of drug trafficking. The applicable definition of who qualifies as a kingpin is based or present law and the amounts of drugs or money required are double the amounts that under present law mandate a sentence of life imprisonment. The Committee believes that death is an appropriate sentence for these very large kingpins who know or must know that untold numbers of deaths, and vast amounts of suffering, result from their activities.

The remainder of the offenses for which this title authorizes capital punishment are those in which a death results. For almost all of these offenses, section 2301 of title XXIII requires that the defendant have had an intent to kill in order for the death penalty to apply. In certain exceptions, however, the dealth penalty could be applied if the death resulted from conduct by the defendant that constituted a “reckless disregard for human life.” The Supreme Court's holdings in the cases of Enmund v. Florida, 458 U.S. 782 (1982) and Tison v. Arizona, 481 U.S. 137 (1987) indicate that under certain particularly heinous circumstances the Constitution permits the application of the death penalty where the defendant acted with a state of mind short of traditional notions of an intent to kill or in circumstances where an intent to kill can almost be imputed to the defendant. These circumstances can include situations in which the defendant substantially participated in actions that resulted in a death and in which the trier of fact can conclude that this participation constituted extreme reckless indifference for human life.

The Committee, however, reads these cases very narrowly and understands them to validate the constitutionality of the death penalty under these circumstances in only certain rare and particularly egregious situations. The Committee believes that extension of the so-called “reckless indifference” standard across the board to almost 50 Federal offense where death results is neither sound policy nor constitutionally unassailable. The offenses for which the Committee believes the death penalty is appropriate, on both policy and constitutional grounds, where a death results but the defendant did not necessarily have an intent to kill are: drive-by shootings and certain terrorism offenses. These offenses are enumerated in title XXIII, section 2301 in what would be 18 U.S.C. 3591 (5) and (6). In these two circumstances it is believed that the conduct that results in death, if manifesting an extreme and reckless indifference for human life, may and should warrant the death penalty. Thus, if a defendant

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intentionally discharges a firearm ***220** into a crowd of people thereby creating a grave risk to human life, and a death results from that conduct, the death penalty would be authorized. Those actions on the part of a defendant almost constitute intent to kill per se (although this is not meant to imply an unconstitutional statutory mandate or presumption of proof of an element of the offense because intent to kill is not an essential element) and the defendant should not be able to escape the reach of the death penalty by claiming that he had not specific intent to kill. (This offense, however, would not reach conduct that does not create a grave risk to human life.) Similarly, in terrorist cases if defendants take certain actions, such as blowing up planes or shooting indiscriminantly in crowded airports, they should not escape the reach of the death penalty because there may not have been an intent to kill.

The following is the list of offenses for which the title, along with title XXIII, authorizes the death penalty:

A. Non-Homicide:

1. Espionage: 18 U.S.C. 794(a) and (b).

2. Treason: 18 U.S.C. 2381.

3. Attempts to kill President and others under certain circumstances: 18 U.S.C. 1715(c)

4. Attempts to Kidnap President and others under certain circumstances: 18 U.S.C. 1751(c).

5. Drug Kingpins based on amount of drugs or money; 21 U.S.C. 848.

B. Homicide:

1. Killings by Drug Kingpins: 21 U.S.C. 848(e)(1)(A) .

2. Killing Law Enforcement Officials in connection with drug offenses: 21 U.S.C. 848(e)(1)(B)

3. Intentional killing during any drug felony: 18 U.S.C. 3591(4).

4. Domestic Hijacking where death results: 49 U.S.C. 1472(i).

5. International Hijacking where death results: 49 U.S.C. 1472(n).

6. Murder on Federal jurisdiction: 18 U.S.C. 1111.

7. Presidential Assassination: 18 U.S.C. 1751(a).

8. Conspiracy to kill President and death results: 18 U.S.C. 1751(d).

9. Conspiracy to kidnap President and death results: 18 U.S.C. 1751 (d).

10. Murder of certain Federal officials: 18 U.S.C. 1114.

11. Aircraft destruction and death results: 18 U.S.C. 32 and 34.

12. Motor vehicle destruction–death results: 18 U.S.C. 33 and 34.

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13. Transporting Explosives and death results: 18 U.S.C. 844(d).

14. Destruction of Federal property and death results: 18 U.S.C. 844 (f).

15. Destruction of Interstate Property and death results: 18 U.S.C. 844(i).

16. Mailing Dangerous Article and death results: 18 U.S.C. 1716.

***221** 17. Train wrecking and death results: 18 U.S.C. 1992.

18. Bank robbery and death results: 18 U.S.C. 2113.

19. Assassination of Congressman, Cabinet member, Supreme Court Justice or others: 18 U.S.C. 351(a).

20. Conspiracy to kill or kidnap Congressman, etc., and death results: 18 U.S.C. 351(d).

21. Murder of foreign officials: 18 U.S.C. 116(a).

22. Murder by Federal Prisoner serving life: 18 U.S.C. 1119 (new).

23. Kidnapping if death results: 18 U.S.C. 1201(a).

24. Hostage taking if death results: 18 U.S.C. 1203(a).

25. Murder for hire: 18 U.S.C. 1958(a).

26. Murder in aid of racketeering: 18 U.S.C. 1959(a)(1).

27. Murder of American national abroad: 18 U.S.C. 2332(a)(1).

28. Genocide: 18 U.S.C. 1091(b)(1).

29. Killing juror or court officer to obstruct justice: 18 U.S.C. 1503.

30. Retaliatory killing of witness: 18 U.S.C. 1513.

31. Killing persons aiding Federal investigation: 18 U.S.C. 1413.

32. Torture and death results: 18 U.S.C. 2340(a) (new).

33. Use of Weapons of mass destruction and death results: 18 U.S.C. 2339 (new).

34. Killings in firearms attacks on Federal facilities: 18 U.S.C. 930.

35. Conspiracy to deny Federal rights and death results: 18 U.S.C. 241.

36. Deprivation of Federal rights under color of law based upon race and death results: 18 U.S.C. 242.

37. Deprivation of Federal rights based upon race, religion or national origin and death results: 18 U.S.C. 245.

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38. Interference with religion and death results: 18 U.S.C. 247.

39. Killing a witness in the witness protection program: 18 U.S.C. 1512.

40. Drive-by shooting and death results: 18 U.S.C. 922(u) (new).

41. Murder of U.S. national abroad by other U.S. national: 18 U.S.C. 1118 (new)

Three additional terrorist-related offenses (violence at international airports, violence at maritime fixed platforms and violence against ships at sea) that had authorized the death penalty if death resulted were stricken from the bill at Committee markup for reasons of jurisdictional concern and sequential referral. The Committee fully expects that these offenses will be reincorporated into the bill in a form substantially similar to the original.

The last listed offense above, murder of U.S. above, murder of U.S. national abroad by another U.S. national, was adopted by the committee as an amendment offered by Rep. Patricia Schroeder (D-Colorado) and is found in section 1713 of the bill. By incorporating section 1111 of title 18 as amended by title XXIV of this bill the amendment authorizes and death penalty for first-degree murder under this offense.

***222** As part of its consideration of the appropriate scope of the Federal death penalty, the Subcommittee on Crime and Criminal Justice held a hearing on May 28, 1991, on the death penalty provisions of the President's crime bill, H.R. 1400. Witnesses at that hearing included William Barr, Deputy Attorney General, United States Department of Justice; Diann Rust-Tierney, Director, Capital Punishment Project, American Civil Liberties Union; and David Bruck, Chief Attorney, South Carolina Office of Appellate Defense on behalf of the NAACP Legal Defense Fund. This title, along with the new section 3591 of title 18 by section 2301 of title XXIII of this bill, was reported by the Subcommittee on Crime and Criminal Justice as title IX of the subcommittee print on July 31, 1991, by a vote of 13–0.

SECTION-BY-SECTION ANALYSIS

Section 2401

Section 2401 states that title XXIV may be cited as the "Federal Death Penalty Act of 1991."

Section 2402

Section 2402 amends Section 34 of title 18, United States Code, to authorize the death penalty for Federal aircraft and motor vehicle violations where death results from an intentional killing.

Section 2403

Section 2403 is a conforming amendment to Section 794(a) of title 18, United States Code. It limits imposition of the death penalty for espionage committed in times of peace to cases where the offense directly concerns nuclear weapons, war plans, and other highly sensitive government information.

Section 2404

Section 2404 conforms section 844(d) of title 18, United States Code, with the new Federal death penalty procedures provided in title XXIII. It eliminates the reference to Section 34 of title 18, United States Code, in cases involving the transport, receipt,

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or attempt to transport or receive explosives in interstate or foreign commerce with knowledge or intent to cause injury to an individual or damage to property where death results.

Section 2405

Section 2405 conforms section 844(f) of title 18, United States Code with the new Federal death penalty procedures provided in title XXIII. It eliminates the reference to section 34 of title 18, United States Code, in cases involving the malicious destruction of Federal property by explosives.

Section 2406

Section 2406 conforms section 844(i) of title 18, United States Code, with the Federal death penalty procedures provided in title XVIII by eliminating the reference to section 34 of title 18, United States Code, in cases involving the malicious destruction of interstate property by explosives.

***223** Section 2407

Section 2407 amends section 1111 of title 18, United States Code, to authorize the death penalty for first-degree murder in the special maritime and territorial jurisdiction of the United States. It eliminates references to procedures rendered unconstitutional by the Supreme Court and thus incorporates the new procedures in title XXIII.

Section 2408

Section is a conforming amendment to section 1116(a) of title 18, United States Code. It deletes the mandate of a life term for the first-degree murder of foreign officials, official guests, or internationally protected persons thereby authorizing the death penalty under the provisions of an amended section 1111.

Section 2409

Section 2409 amends Chapter 51 of title 18, United States Code, by adding a section creating a new capital offense for anyone who, while serving a life term in a Federal prison, is convicted for murder. Section 2409 defines the term "Federal prison" as any Federal correctional, detention, penal, community treatment or halfway house facility, including those operated under contract with the Federal Government. This section defines "life imprisonment" as any indeterminate term of from 15 years to life.

Section 2410

Section 2410 amends section 1201(a) of title 18, United States Code, to authorize imposition of the death penalty for kidnapping in cases where death results.

Section 2411

Section 2411 amends section 1203(a) of title 18, United States Code, to authorize imposition of the death penalty for hostage-taking in cases where death results.

Section 2412

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Section 2412 amends section 1716 of title 18, United States Code, to strike an obsolete and unconstitutional procedural reference thereby incorporating the new procedures for application of the death sentence for this offense.

Section 2413

Section 2413 amends Section 1751(c) of title 18, United States Code, to authorize imposition of the death penalty for the attempted murder or kidnapping of the President, Vice President, President-elect or Vice President-elect of the United States, if such attempt constitutes an attempt to kill the President and causes serious bodily injury to, or comes dangerously close to, causing the death of the President.

Section 2414

Section 2414 amends section 1958(a) of title 18, United States Code, to authorize the death penalty for the use of interstate commerce ***224** facilities in the commission of a murder-for-hire where death results.

Section 2415

Section 2415 amends section 1959)a)(1) of title 18, United States Code, to authorize the death penalty for the commission of a murder in aid of racketeering activity.

Section 2416

Section 2416 amends section 1992 of title 18, United States Code, to strike an obsolete and unconstitutional procedure and thereby incorporate the new procedures to imposition of the death penalty for this offense.

Section 2417

Section 2417 conforms section 2113(e) of title 18, United States Code, to the new comprehensive death penalty procedures by eliminating the reference to an obsolete and unconstitutional procedure.

Section 2418

Section 2418 amends section 23321(a)(1) of title 18, United States Code, to authorize the death penalty for the killing of a United States national, while such national is outside the United States, when such offense constitutes murder as defined by Section 1111(a) of title 18, United States Code, or is the result of conduct that constitutes a reckless disregard of human life.

Section 2419

Section 2419 amends section 903 of the Federal Aviation Act of 1958 (49 U.S.C App. 1473) by deleting the subsection providing the procedures to be followed for imposition of the death penalty for aircraft hijacking. The procedures in title XXIII of this bill would thus apply to capital cases under this offense.

Section 2420

Section 2420 amends section 1091(b)(1) of title 18, United States Code, to authorize the death penalty for genocide, defined as killing a member of a national, ethnic, racial or religious with the specific intent to destroy the group.

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Section 2421

Section 2421 amends section 1503 of title 18, United States Code, to increase the penalties for influencing or injuring court officers or jurors including authorizing the death penalty for first-degree murder. In cases involving the killing of a court officer or juror, the penalties would be those authorized by Sections 1111 and 1112 of title 18, United States Code, as amended by this title. In cases involving an attempted killing, or in which the offense was committed against a petit juror and a class A or B felony was charged, punishment would be up to 20 years imprisonment. In any other case the punishment would be imprisonment for up to 10 years.

This section also provides a technical change to section 1503 of title 18 of the United States Code by replacing the word "commissioner" ***225** everywhere it appears in that section and replacing it with the term "magistrate judge."

Section 2422

Section 2422 amends section 1513 of title 18, United States Code, by adding a paragraph prescribing the penalties for killing a person with the intent to retaliate against him or her for acting as a witness or informant in an official proceeding. This offense is death-eligible as provided in sections 1111 and 1112, as amended by this title, where death results, or up to 20 years imprisonment where death does not result.

Section 2423

Section 2423 amends section 1114(a) of title 18 of the United States Code to authorize the death penalty for the murder, pursuant to section 1111 as amended, of certain Federal officials and employees listed in that section.

Section 2424

Section 2424 amends Chapter 51 of title 18, United States Code, by adding a new section 1119 creating a new death-eligible offense of intentionally killing a State or local official, law enforcement officer or other official or employee assisting Federal law enforcement officials in a criminal investigation, while providing such assistance, because of the performance of the victim's official duties, or because of the victims's status as a public servant. It also creates an offense and authorizes the death penalty for the killing of any other person while and because such assistance to Federal law enforcement officials is being rendered. The penalty for such an offense shall be that authorized in sections 1111 and 1112 of title 18, United States Code.

Section 2425

Section 2425 amends section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) by deleting the paragraph which describes Federal jurisdiction over aircraft piracy committed outside the special aircraft jurisdiction of the United States.

Section 2426

Section 2426 amends Part I of title 18 of the United States Code by creating a new capital offense of committing torture outside of the United States where death results to any person from that conduct. Where death does not result or in the case of an attempt to commit the prohibited act, the penalty shall be by fine or imprisonment of up to 20 years or both. Where death does result, the penalty shall be imprisonment for any term up to life or a sentence of death. Torture is defined by this section as "an act committed under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or control." The phrase "severe mental pain or

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suffering" and the term "United States" are also defined by this section. Federal jurisdiction is created if the alleged offender is a national of the United ***226** States or is present in the United States regardless of the nationality of the victim or the offender.

Section 2427

Section 2427 amends Chapter 113A of title 18 of the United States Code by adding a section creating a new capital offense related to the use of weapons of mass destruction where death results. It provides that any person who uses, attempts to use or conspires to use a weapon of mass destruction, against a national of the United States while such national is outside the United States, against any person within the United States, or against any property owned by the United States or any agency or department thereof, shall be imprisoned for a term of up to life, and, if death results, to the death penalty or imprisonment for any terms of years up to life. This section also defines the phrases "national of the United States" and "weapon of mass destruction."

Section 2428

Section 2428 amends section 930 of title 18 of the United States Code to authorize imposition of the death penalty for the commission of first-degree murder committed with knowing possession of a firearm at a Federal facility or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon. In the case of any other killing or attempted killing committed in the course of either of these offenses, the penalty shall be that provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1111 and 1112 of this title.

Section 2429

Section 2429 amends sections 241, 242, 245(b) and 247(c)(1) of title 18 of the United States Code to authorize the death penalty for violation of four of the major Federal civil rights laws if such violation results in death: conspiracy to injure, threaten or intimidate any United States citizen in the free exercise or enjoyment of any Federal right; the willful deprivation of any Federal right on account of the victim's status as an alien or due to his color or race; the willful interference with or attempted interference with any person's Federal rights, whether or not under color of law, on the basis of color, race, religion or national origin; and causing damage to or attempting to damage religious property because of its religious character or obstructing or attempting to obstruct one's free exercise of religious beliefs.

Section 2430

Section 2430 amends section 1521 of title 18 of the United States Code to authorize the death penalty for the intentional killing of an individual protected by the Federal witness protection program.

Section 2431

Section 2431 amends Section 922 of title 18 of the United States Code by adding a provision creating a new Federal offense of discharging a firearm from a motor vehicle and thereby creating a grave risk to human life. The penalty for knowing violation of this ***227** offense shall be the imposition of a fine or imprisonment for up to 25 years or both and, if death results from conduct prohibited by this section, imprisonment for up to life or a sentence of death.

Section 2432

Section 2432 provides that the provisions of Chapter 228 of title 18 of the United States Code, the new death penalty chapter added by this act, shall not apply to prosecutions under the Military Code of Justice.

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COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 3371, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 7, 1991.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3371, the Violent Crime Prevention Act of 1991. Enactment of H.R. 3371 would affect direct spending and thus would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a result, the estimate required under clause 8 of House Rule XXI also is attached.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer.

***228** CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3371.

2. Bill title: Violent Crime Prevention Act of 1991.

3. Bill status: As ordered reported by the House Committee on the Judiciary, September 26, 1991.

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4. Bill purpose: H.R. 3371 would make many changes and additions to federal laws related to crime and punishment, including those related to the death penalty and writs of habeas corpus. The bill also would establish or reauthorize a number of federal programs. Provisions having a potential budgetary impact include the following:

Title I would authorize $150 million for each of fiscal years 1992, 1993, and 1994 for grants to local governments and community groups to establish or expand cooperative efforts between police and communities.

Title II would establish an implementation schedule for a requirement in current law that every federal prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment. The title also would allow prisoners who successfully complete a substance abuse treatment program to be released up to one year early.

Title III would authorize $100 million for each fiscal years 1992, 1993, and 1994 for grants to states for residential substance abuse treatment in state correctional facilities.

Title IV would authorize $100 million for each fiscal years 1992, 1993, and 1994 for grants to local educational agencies to combat crime and violence in schools.

Title V would make a number of changes to the Crime Victims Fund, including removing the ceiling on deposits into the fund and making the fund permanent.

Title VI authorize $200 million for each of fiscal years 1992, 1993, and 1994 for grants to states to develop alternative methods of incarceration and probation for young offenders.

Title VII would authorize $100 million for each fiscal years 1992, 1993, and 1994 for grants to states to develop or continue drug testing projects for the pretrial period after individuals are arrested.

Title VIII would authorize $300 million for each of fiscal years 1992, 1993, and 1994 for grants to state and local governments for major drug-related emergencies.

Title X would authorize $10 million for each fiscal years 1992 through 1996 for grants to states to develop or improve the capability to analyze deoxyribonucleic acid (DNA) for identification purposes. This title also would authorize $2 million for each of fiscal years 1992 through 1996 for the Federal Bureau of Investigation to improve the quality and availability of such DNA analyses.

Title XII would expand public safety officer death benefits to cover retired public safety officers who die or are disabled as a result of a personal injury sustained while responding to a fire, rescue, or police emergency. This title also would authorize, for each of fiscal years 1992 through 1996, $30 million for grants to states for law enforcement scholarships and $5 million for grants to states and local law enforcement agencies to provide family support services to law enforcement personnel.

***229** Title XV would require drug testing of federal offenders on post-conviction release.

Title XVIII would authorize about $101 million for fiscal year 1992 for the Drug Enforcement Administration, $200 million for each of fiscal years 1992, 1993, and 1994 for correctional options grants to states, $45 million for fiscal year 1992 for the Immigration and Naturalization Service, $25 million for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 for grants to ten states to implement a civil and criminal response to domestic violence, and about $3 million for each of fiscal years 1992 and 1993 for grants for midnight basketball league programs. This title also would authorize the use of the Justice Department's Assets Forfeiture Fund for Public Health Service block grants.

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Title XX would make a number of changes to firearms laws, including banning assault weapons and large capacity ammunition feeding devices.

Additionally, Title XIV would authorize $250,000 for training and educational programs dealing with parental child abduction; Title XVII authorize $200,000 for the Department of Justice to contract for a national study on campus sexual assault; and Title XXI would ban government-sponsored or authorized sports-related gambling. This ban would not apply to parimutual animal racing or to states that already have sports-related gambling (Nevada and Oregon). In addition, New Jersey would have two years to initiate sports-related gambling in order to be exempt from this probation.

5. ESTIMATED COSTS TO THE FEDERAL GOVERNMENT:

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***230** In addition to the amounts shown in the above table, costs associated with the required drug testing of federal offenders on post-conviction release would be about $5 million in fiscal year 1992 and $10 million to $15 million annually thereafter. The bill also contains a number of new and enhanced penalties that would result in more federal prisoners serving longer sentences, and thus increased prison costs. However, CBO cannot estimate the amount of any such costs at this time.

Basis of estimate: For the authorizations of appropriations, we have assumed that the full amounts authorized would be appropriated for each fiscal year and that outlays would reflect historical spending patterns.

There would be no significant costs associated with Title II because the implementation schedule established by this title is consistent with the Bureau of Prisons' current policy. There could be some savings to the extent that prisoners who successfully complete a substance abuse treatment program are released early. However, CBO cannot estimate the amount of any such savings.

H.R. 3371 would require drug testing of federal offenders on post-conviction release. CBO estimates that costs associated with this drug testing would be about $5 million in fiscal year 1992 and $10 million to $15 million annually thereafter. This estimate assumes that there would be about 325,000 drug tests during fiscal year 1992 and between 700,000 and 900,000 drug tests annually thereafter.

Title XVIII would authorize $200 million for each of fiscal years 1992, 1993, and 1994 for correctional options grants to states. However, currently there is an authorization for fiscal year 1992 for such sums as may be necessary for such grants. Therefore CBO has assumed that there would be no additional authorization for fiscal year 1992 associated with this provision of the bill. The authorization of Title XVIII for fiscal years 1993 and 1994 for grants to ten states to implement a civil and criminal response to domestic violence was estimated by inflating the fiscal year 1992 authorization of $25 million.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that expanding public safety officer death benefits to cover retired public safety officers would result in direct spending of less than $500,000 annually. This estimate assumes that fewer than five retired public safety officers would be killed annually.

We also estimate that there would be direct spending associated with the use of the Justice Department's Assets Forfeiture Fund for Public Health Service block grants. We estimate that the bill would result in budget authority of $28 million in fiscal year 1993, $27 million in fiscal year 1994, $26 million in fiscal year 1995, and $45 million in fiscal year 1996 for this purpose. Outlays would increase from $11 million in fiscal year 1993 to $34 million in fiscal year 1996. Because title XX would ban the importation and domestic transfer of assault weapons and large capacity ammunition feeding devices, it could result in a loss of customs duties and certain excise taxes. CBO estimates that the forgone customs duties and excise tax revenues would be negligible.

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***231** 7. Estimated cost to state and local governments: The grants authorized by this bill would be awarded to state and local governments and to community groups. In most cases the state and local governments would be required to fund a portion of the cost of the projects for which the grants are intended.

The prohibition against government-sponsored sports-related gambling could result in reduced revenues for states and localities. However, CBO cannot predict the number of state and local governments that would have initiated sports-related gambling or the amount of any such reduced revenues. Currently only Nevada and Oregon sponsor sports-related gambling.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mitchell Rosenfeld and Mark Grabowicz (226–2860).

11. Estimate approved by: C.G. Nuckols For James L. Blum, Assistant Director, for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The [1] applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3371 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

***232** OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I–JUSTICE SYSTEM IMPROVEMENT

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***233** PART B–NATIONAL INSTITUTE OF JUSTICE

* * * * * * *

ESTABLISHMENT, DUTIES, AND FUNCTIONS

Sec. 202. (a) ***

* * * * * * *

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(c) The Institute is authorized to–

(1) ***

(2) conduct or authorize multiyear and short-term research and development concerning the criminal and civil justice systems in an effort–

(A) ***

* * * * * * *

(E) to develop new methods for the prevention and reduction of crime, [,] including the development of programs to facilitate cooperation among the States and units of local government, the detection and apprehension of ***234** criminals, the expeditious, efficient, and fair disposition of criminal and juvenile delinquency cases, the improvement of police and minority relations, the conduct of research into the problems of victims and witnesses of crime, the feasibility and consequences of allowing victims to participate in criminal justice decisionmaking, the feasibility and desirability of adopting procedures and programs which increase the victim's participation it the criminal justice process, the reduction in the need to seek court resolution of civil disputes, and the development of adequate corrections facilities and effective programs of correction; and

* * * * * * *

PART C–BUREAU OF JUSTICE STATISTICS

* * * * * * *

ESTABLISHMENT, DUTIES, AND FUNCTIONS

Sec. 302. (a) ***

* * * * * * *

(c) The Bureau is authorized to–

(1) ***

* * * * * * *

(19) provide for research and improvements in the accuracy, completeness, and inclusiveness of criminal history record information, information systems, arrest warrant, and stolen vehicle record information and information systems and support research concerning the accuracy, completeness, and inclusiveness of other criminal justice record information[.];

* * * * * * *

PART E–BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

* * * * * * *

Subpart 1–Drug Control and System Improvement Grant Program

DESCRIPTION OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

Sec. 501. (a) ***

(b) The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the “Director”) is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and

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local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who ***235** violate these laws, and to assist the victims of such crimes (other than compensation), including–

(1) ***

* * * * * * *

(20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community; [and]

(21) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales[.];

(22) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as "DNA") for identification purposes. ; and.

(23) programs which address the need for effective bindover systems for the prosecution of violent 16– and 17–year olds in courts with jurisdiction over adults for the crimes of–

(A) murder in the first degree;

(B) murder in the second degree;

(C) attempted murder;

(D) armed robbery when armed with a firearm;

(E) aggravated battery or assault when armed with a firearm;

(F) criminal sexual penetration when armed with a firearm; and

(G) drive-by shootings as described in section 922(U) of title 18.

* * * * * * *

STATE APPLICATIONS

Sec. 503. (a) To request a grant under this subpart, the chief executive officer of a State shall submit an application within 60 days after the Bureau has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

(1) ***

* * * * * * *

(12) If any part of a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that–

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(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 1003 of the DNA Identification Act of 1991;

(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only–

(i) to criminal justice agencies for law enforcement identification purposes;

(ii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed ***236** in connection with the case in which such defendant is charged; or

(iii) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003 of the DNA Identification Act of 1991.

* * * * * * *

GRANT LIMITATIONS

Sec. 504. (a) A grant made under this subpart may [not–

[(1) for fiscal year 1991 appropriations be expended for more than 75 per centum; and

[(2) for any subsequent fiscal year appropriations be expended for more than 50 per centum;] not for any fiscal year be expended for more than 75 percent

of the cost of the identified uses for which such grant is received to carry out any purpose specified in section 502, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

* * * * * * *

ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS

Sec. 506. (a) [Of] Subject to subsection (f), of the total amount appropriated for this part in any fiscal year, the amount remaining after setting aside the amount to be reserved to carry out section 511 of this title shall be set aside for section 502 and allocated to States follows:

(1) ***

* * * * * * *

(c) No funds allocated to a State under subsection (a) or received by a State for distribution under [subsections (b) and (c)] subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

* * * * * * *

(e) Any funds allocated under subsection (a) or [(e)] (f) that are not distributed under this section shall be available for obligation under subpart 2.

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(f)(1) For any fiscal year beginning more than 2 years after the effective date of this subsection–

(A) 90 percent of the funds allocated under subsection (a)[, taking into consideration subsection (e) but] without regard to ***237** this subsection [,] to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such [amount] funds shall be allocated equally among States that are not affected by the operation of subparagraph (A).

* * * * * * *

Subpart 2–Discretionary Grants

CHAPTER A–GRANTS TO PUBLIC AND PRIVATE ENTITIES

PURPOSES

Sec. 510. (a)***

(b) In carrying out this chapter, the Director is authorized to make grants to, or enter into contracts with non-Federal public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in section 501(b). The Director shall have final authority over all funds awarded under this chapter.

* * * * * * *

CHAPTER B–GRANTS TO PUBLIC AGENCIES

CORRECTIONAL OPTIONS GRANTS

Sec. 515. (a)***

(b) The selection of applicants to receive grants under [subsection (a)(1) and (2)] paragraphs (1) and (2) of subsection (a) shall be based on their potential for developing or testing various innovative alternatives to traditional modes of incarceration and offender release programs. In selecting the applicants to receive grants under subsection (a)(3), the Director shall–

(1)***

(2) give priority to [States] public agencies that clearly demonstrate that the capacity of their correctional facilities is inadequate to accommodate the number of individuals who are convicted of offenses punishable by a term of imprisonment exceeding 1 year.

* * * * * * *

ALLOCATION OF FUNDS; ADMINISTRATIVE PROVISIONS

Sec. 516. (a) Of the total amount appropriated for this chapter in any fiscal year, 80 percent shall be used to make grants under section 515(a)(1), 10 percent [for section] shall be used to make grants under section 515(a)(2), and 10 percent [for section] shall be used to make grants under section 515(a)(3).

(b) A grant made under [section 515(a)(1) or (a)(3)] paragraph (1) or (3) of section 515(a) may be made for an amount up to 75 percent of the cost of the correctional option contained in the approved application.

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***238** PART F–CRIMINAL JUSTICE FACILITY CONSTRUCTION: PILOT PROGRAM

* * * * * * *

ELIGIBILITY

Sec. 602. (a) A State, unit of local government, or combination of such units shall be eligible for assistance under this part for a correctional facility project only–

(1) if the Director, with the concurrence of the Director of the National Institute of Corrections established in [chapter 315] chapter 319 of title 18, United States Code, has made a determination that such project represents a prototype of new and innovative methods and advanced design that will stand as examples of technology for avoiding delay and reducing costs in correctional facility design, construction, and improvement; and

* * * * * * *

APPLICATION; APPROVAL; PAYMENT

Sec. 603. (a) A State, unit of local government, or combination of such units desiring to receive assistance under this part for a correctional facility project shall submit to the Director an application which shall include–

(1)***

* * * * * * *

(6) reasonable assurance that the applicant will comply with the standards and recommendations of the clearinghouse on the construction and modernization of correctional facilities established under section [605] 606.

* * * * * * *

RECAPTURE PROVISIONS

Sec. 605. If, within 20 years after completion of any correctional facility project with respect to which assistance has been provided under this [section] part, such facility ceases to be operated as a correctional facility, the United States may recover from the recipient of such assistance any amount not to exceed 20 percent of the then current value of such project (but in no event an amount greater than the amount of assistance provided under this part for such project), as determined by agreement with the parties or by action brought in the district court of the United States for the district in which such facility is situated.

CLEARINGHOUSE ON THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES

Sec. 606. (a)***

(b) The Director is authorized to enter into contracts with private organizations and interagency agreements with the National Institute of Corrections, the National Institute of Justice, the Bureau of ***239** Justice [and] Statistics, and other appropriate public agencies, to operate the clearinghouse required under this section.

* * * * * * *

PART H–ADMINISTRATIVE PROVISIONS

CONSULTATION; ESTABLISHMENT OF RULES AND REGULATIONS

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Sec. 801. (a) ***

(b) The Bureau of Justice Assistance shall, after consultation with the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, State and local governments, and the appropriate public and private agencies, establish such rules and regulations as are necessary to assure the continuing evaluation of selected programs or projects conducted pursuant to [parts D,] parts E, M, N, and O in order to determine–

(1) whether such programs or projects have achieved the performance goals stated in the original application, are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal justice system;

(2) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;

(3) their cost in relation to their effectiveness in achieving stated goals;

(4) their impact on communities and participants; and

(5) their implication for related programs.

In conducting evaluations described in this subsection, the Bureau of Justice Assistance shall, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants. The Bureau of Justice Assistance shall also require applicants under [part D] subpart 1 of part E to submit an annual performance report concerning activities carried out pursuant to [part D] subpart 1 of part E together with an assessment by the applicant of the effectiveness of those activities in achieving the purposes of section [403(a)] 501 of this title and the relationships of those activities to the needs and objectives specified by the applicant in the application submitted pursuant to section [403] 503 of this title. The Bureau shall suspend funding for an approved application under [part D] subpart 1 of part E if an applicant fails to submit such an annual performance report.

* * * * * * *

NOTICE AND HEARING ON DENIAL OR TERMINATION OF GRANT

Sec. 802. (a) ***

(b) If any grant application submitted under [part D,] subpart 1 of part E or under part M,[,] N, or O of this title has been denied, or any grant under this title has been terminated, then the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, as appropriate, shall notify the applicant of its action and set forth the reason for the action taken. Whenever such an applicant requests a hearing, the Bureau of Justice ***240** Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations, including hearings on the record in accordance with section 554 of title 5, United States Code, at such times and places as necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made with respect thereto shall be final and conclusive, except as otherwise provided herein. The Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics is authorized to take final action without a hearing if, after an administrative review of the denial of such application or termination of such grant, it is determined that the basis for the appeal, if substantiated, would not establish a basis for awarding or continuing of the grant involved. Under such circumstances, a more detailed statement of reasons for the agency action should be made available, upon request, to the applicant.

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APPELLATE COURT REVIEW

Sec. 804. (a) ***

(b) The court shall have jurisdiction to affirm or modify a final action or to set it aside in whole or in part. The findings of fact by the Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Office of Justice Programs, Bureau of Justice Assistance, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, or the Bureau of Justice Statistics, to take additional evidence to be made part of the record. The Office of Justice Programs, Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, or the National Institute of Justice, may thereupon make new or modified findings of fact by reason of the new evidence so taken and filed with the court and shall file such modified or new findings along with any recommendations such entity may have for the modification of setting aside of such entity's original action. All new or modified findings shall be conclusive with respect to questions of fact if supported by substantial evidence when the record as a whole is considered.

* * * * * * *

TITLE TO PERSONAL PROPERTY

Sec. 808. Notwithstanding any other provision of law, title to all expendable and nonexpendable personal property purchased with funds made available under this title, including such property purchased with funds made available under this title as in effect before the effective date of the Justice Assistance Act of 1984, shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in section [408, 1308,] 507 or 1408 as the case may be, of this title ***241** that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL
CRIMINAL JUSTICE AGENCIES; PROHIBITION OF DISCRIMINATION

Sec. 809. (a) ***

* * * * * * *

(c)(1) ***

(2)(A) ***

* * * * * * *

(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Programs under subparagraph (G) may appeal such determination as provided in section [805] 804 of this title.

* * * * * * *

RECORDKEEPING REQUIREMENT

Sec. 811. (a) ***

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(e) There is hereby established within the [Law Enforcement Assistance Administration] Bureau of Justice Assistance a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce in such goods and property. Notwithstanding any other provision of law, any income or royalties generated from such projects together with income generated from any sale or use of such goods or property, where such goods or property are not claimed by their lawful owner, shall be paid into the revolving fund. Where a party establishes a legal right to such goods or property, the Administrator of the fund may in his discretion assert a claim against the property or goods in the amount of Federal funds used to purchase such goods or property. Proceeds from such claims shall be paid into the revolving fund. The Administrator is authorized to make disbursements by appropriate means, including grants, from the fund for the purpose of this section.

PART I–DEFINITIONS

DEFINITIONS

Sec. 901. (a) As used in this title–

(1) ***

* * * * * * *

(3) "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in ***242** and for the District of Columbia [and,] , and the Trust Territory of the Pacific Islands;

* * * * * * *

(21) "high probability of improving the criminal justice system" means that a prudent assessment of the concepts and implementation plans included in a proposed program, project, approach, or practice, together with an assessment of the problem to which it is addressed and of data and information bearing on the problem, concept, and implementation plan, provides strong evidence that the proposed activities would result in identifiable improvements in the criminal justice system if implemented as proposed;

* * * * * * *

(24) The term "residential substance abuse treatment program" means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population–

(A) directed at the substance abuse problems of the prisoner; and

(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems.

(25) The term "young offender" means an individual 28 years of age or younger.

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PART J–FUNDING

AUTHORIZATION OF APPROPRIATIONS

Sec. 1001. (a)(1) ***

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* * * * * * *

(3) There are authorized to be appropriated $25,500,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance, other than functions under parts D, E, F, G, L, M, [and N] N, O, P, Q, R, S, T, U, V, and W.

* * * * * * *

(5) There are authorized to be appropriated $900,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 to carry out the programs under parts D and E (other than chapter B of subpart 2) of this title.

* * * * * * *

[(6) There are authorized to be appropriated $220,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal year 1992 to carry out chapter B of subpart 2 of part E of this title.]

(7) There are authorized to be appropriated such sums as may be necessary for fiscal year 1991 and $200,000,000 for each of the fiscal ***243** years 1992, 1993, and 1994 to carry out chapter B of subpart 2 of part E of this title.

* * * * * * *

[(7)] (8) There are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the programs under part M of this title.

[(7)] (9) There are authorized to be appropriated $20,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 and 1993, to carry out part O.

(10) There are authorized to be appropriated $150,000,000 to carry out this part for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part P.

(11) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part Q.

(12) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part R.

(13) There are authorized to be appropriated $200,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part S.

(14) There are authorized to be appropriated $100,000,000 for the fiscal years 1992, 1993, and 1994 to carry out the projects under part T.

(15) There are authorized to be appropriated $30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of part U.

(16) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996. Not more than 20 percent of such funds may be used to accomplish the duties of the Director under section 2201 in part V of this Act, including administrative costs, research, and training programs.

(17) There are authorized to be appropriated $25,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 to carry out the projects under part U.

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(c) Notwithstanding any other provision of law, no funds appropriated under this section for part E of this title may be transferred or reprogrammed for carrying out any activity which is not authorized under such [parts] part.

* * * * * * *

PART L–PUBLIC SAFETY OFFICERS' DEATH BENEFITS

PAYMENTS

Sec. 1201. (A) In any case in which the Bureau of Justice Assistance (hereinafter in this part referred to as the "Bureau") determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal ***244** injury sustained in the line of duty or a retired public safety officer has died as the direct and proximate result of a personal injury sustained while responding to a fire, rescue, or police emergency, the Bureau shall pay a benefit of $100,000, adjusted in accordance with subsection [(g)] (h), as follows:

(1) ***

* * * * * * *

(b) In accordance with regulations issued pursuant to this part, in any case in which the Bureau determines that a public safety officer has become permanently and totally disabled as the direct result of a catastrophic [personal] injury sustained in the line of duty or a retired public safety officer has become permanently and totally disabled as the direct result of a catastrophic injury sustained while responding to a fire, rescue, or police emergency, the Bureau shall pay, to the extent that appropriations are provided, a benefit of up to $100,000, adjusted in accordance with subsection [(g)] (h), to such officer: provided, that the total annual benefits paid under this [section] subsection may not exceed $5,000,000. For the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: Provided further, That these benefit payments are subject to the availability of appropriations and that each beneficiary's payment shall be reduced by a proportionate share to the extent that sufficient funds are not appropriated.

(c) Whenever the Bureau determines upon a showing of need and prior to taking final action, that the death of a public safety officer or a retired public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under subsection (a) of this section.

* * * * * * *

(i) The amount payable under subsection (a) with respect to the death of a public safety officer or a retired public safety officer shall be the amount payable under subsection (a) as of the date of death of such officer.

(j)(1) No benefit is payable under this part with respect to the death of a public safety officer or a retired public safety officer if a benefit is paid under this part with respect to the disability of such officer.

(2) No benefit is payable under this part with respect to the disability of a public safety officer or a retired public safety officer if a benefit is payable under this part with respect to the death of such public safety officer or a retired public safety officer.

LIMITATIONS

Sec. 1202. No benefit shall be paid under this part–

(1) if the death or catastrophic injury was caused by the intentional misconduct of [the public safety officer or by such officer's intention] the public safety officer or the retired public safety officer who had the intention to bring about his death or catastrophic injury;

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(2) if [the public safety officer] the public safety officer or the retired public safety officer was voluntarily intoxicated at the time of his death or catastrophic injury;

***245** (3) if [the public safety officer] the public safety officer or the retired public safety officer was performing his duties in a grossly negligent manner at the time of his death or catastrophic injury;

* * * * * * *

NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY
OFFICERS WHO HAVE DIED IN THE LINE OF DUTY

Sec. 1203. The Director is authorized and directed to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty or retired public safety officers who have died while responding to a fire, rescue, or police emergency.

DEFINITIONS

Sec. 1204. As used in this part–

(1) ***

* * * * * * *

(3) "firefighter" includes an individual serving as an officially recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew [who was responding to a fire, rescue or police emergency].

* * * * * * *

(6) "public agency" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, agency, or instrumentality of any of the foregoing; [and]

(7) "public safety officer" means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, or rescue squad or ambulance crew; and

(8) "retired public safety officer" means a former public safety officer, as defined in paragraph (7), who has served a sufficient period of time in such capacity to become vested in the retirement system of a public agency with which the officer was employed and who retired from such agency in good standing.

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[PART M–REGIONAL INFORMATION SHARING SYSTEMS GRANTS]

Part M–Regional Information Sharing Systems

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***246** [PART O–RURAL DRUG ENFORCEMENT ASSISTANCE]

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Part O–Rural Drug Enforcement

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PART P–COMMUNITY POLICING; COP ON THE BEAT GRANTS

GRANT AUTHORIZATION

Sec. 1601. (a) Grant Projects.–The Director of the Bureau of Justice Assistance may make grants to units of general local government and to community groups to establish or expand cooperative efforts between police and a community for the purposes of increasing police presence in the community, including–

(1) developing innovative neighborhood-oriented policing programs;

(2) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community;

(3) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems;

(4) developing policies that reorient police emphasis from reacting to crime to preventing crime;

(5) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level;

(6) providing training and problem solving for community crime problems;

(7) providing training in cultural differences for law enforcement officials;

(8) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness programs;

(9) developing crime prevention programs in communities which have experienced a recent increase in gang-related violence; and

(10) developing projects following the model under subsection (b).

(b) Model Project.–The Director shall develop a written model that informs community members regarding–

(1) how to identify the existence of a drug or gang house;

(2) what civil remedies, such as public nuisance violations and civil suits in small claims court, are available; and

(3) what mediation techniques are available between community members and individuals who have established a drug or gang house in such community.

APPLICATION

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Sec. 1602. (a) In General.–(1) To be eligible to receive a grant under this part, a chief executive of a unit of local government, a duly authorized representative of a combination of local governments within a geographic region, or a community group shall ***247** submit an application to the Director in such form and containing such information as the Director may reasonably require.

(2) In such application, one office, or agency (public, private, or nonprofit) shall be designated as responsible for the coordination, implementation, administration, accounting, and evaluation of services described in the application.

(b) General Contents.–Each application under subsection (a) shall include–

(1) a request for funds available under this part for the purposes described in section 1601;

(2) a description of the areas and populations to be served by the grant; and

(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

(c) Comprehensive Plan.–Each application shall include a comprehensive plan which contains–

(1) a description of the crime problems within the areas targeted for assistance;

(2) a description of the projects to be developed;

(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

(4) an explanation of how the requested grant shall be used to fill those gaps;

(5) a description of the system the applicant shall establish to prevent and reduce crime problems; and

(6) an evaluation component, including performance standards and quantifiable goals the applicant shall use to determine project progress, and the data the applicant shall collect to measure progress toward meeting project goals.

ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS

Sec. 1603. (a) Allocation.–The Director shall allocate not less than 75 percent of the funds available under this part to units of local government or combinations of such units and not more than 20 percent of the funds available under this part to units of local government of combinations of such units and not more than 20 percent of the funds available under this part to community groups.

(b) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

(c) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and if the recipient can demonstrate significant progress toward achieving the goals of the plan required under section 1602(c).

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***248** (d) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1602 for the fiscal year for which the projects receive assistance under this part.

AWARD OF GRANTS

Sec. 1604. (a) Selection of Recipients.–The Director shall consider the following factors in awarding grants to units of local government or combinations of such units under this part:

(1) Need and Ability.–Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1602(c).

(2) Community-wide response.–Evidence of the ability to coordinate community-wide response to crime.

(3) Maintain program.–The ability to maintain a program to control and prevent crime after funding under this part is no longer available.

(b) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

REPORTS

Sec. 1605. (a) Report to Director.–Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1602(c).

(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year that shall contain a detailed statement regarding grants awards, activities of grant recipients, and an evaluation of projects established under this part.

DEFINITIONS

Sec. 1606. For the purposes of this part:

(1) The term "community group" means a community-based nonprofit organization that has a primary purpose of crime prevention.

(2) The term "Director" means the Director of the Bureau of Justice Assistance.

PART Q–RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR PRISONERS

GRANT AUTHORIZATION

Sec. 1701. The Director of the Bureau of Justice Assistance (referred to in this part as the "Director") may make grants under this part to States, for the use by States for the purpose of developing and implementing residential substance abuse treatment programs within State correctional facilities.

STATE APPLICATIONS

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Sec. 1702. (a) In General.–(1) To request a grant under this part the chief executive of a State shall submit an application to the Director ***249** in such form and containing such information as the Director may reasonably require.

(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

(3) Such application shall coordinate the design and implementation of treatment programs between State correctional representatives and the State Alcohol and Drug Abuse agency.

(b) Drug Testing Requirement.–To be eligible to receive funds under this part, a State must agree to implement or continue to require urinalysis or similar testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.

(c) Eligibility for Preference With After Care Component.–

(1) To be eligible for a preference under this part, a State must ensure that individuals who participate in the drug treatment program established or implemented with assistance provided under this part will be provided with aftercare services.

(2) State aftercare services must involve the coordination of the prison treatment program with other human service and rehabilitation programs, such as educational and job training programs, parole supervision programs, half-way house programs, and participation in self-help and peer group programs, that may aid in the rehabilitation of individuals in the drug treatment program.

(3) To qualify as an aftercare program, the head of the drug treatment program, in conjunction with State and local authorities and organizations involved in drug treatment, shall assist in placement of drug treatment program participants with appropriate community drug treatment facilities when such individuals leave prison at the end of a sentence or on parole.

(d) State Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)–

(1) shall prepare the application as required under subsection (a); and

(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

REVIEW OF STATE APPLICATIONS

Sec. 1703. (a) In General.–The Bureau shall make a grant under section 1701 to carry out the projects described in the application submitted under section 1702(a) upon determining that–

(1) the application is consistent with the requirements of this part; and

***250** (2) before the approval of the application the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

(b) Approval.–Each application submitted under section 1702 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

(c) Restriction.–Grant funds received under this part shall not be used for land acquisition or construction projects.

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(d) Disapproval Notice and Reconsideration.–The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

ALLOCATION AND DISTRIBUTION OF FUNDS

Sec. 1704. (a) Allocation.–Of the total amount appropriated under this part in any fiscal year–

(1) 0.4 percent shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the State prison population of such State bears to the total prison population of all the participating States.

(b) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1702 for the fiscal year for which the projects receive assistance under this part.

EVALUATION

Sec. 1705. Each State that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in such form and containing such information as the Director may reasonably require.

PART R–SAFE SCHOOLS ASSISTANCE

GRANT AUTHORIZATION

Sec. 1801. (a) In General.–The Director of the Bureau of Justice Assistance may make grants to local educational agencies for the purpose of providing assistance to such agencies most directly affected by crime and violence.

(b) Model Project.–The Director shall develop a written safe schools model in a timely fashion and make such model available to any local educational agency that requests such information.

USE OF FUNDS

Sec. 1802. Grants made by the Director under this part shall be used–

(1) to fund anticrime and safety measures and to develop education and training programs for the prevention of crime, violence, and illegal drugs and alcohol;

***251** (2) for counseling programs for victims of crime within schools;

(3) for crime prevention equipment, including metal detectors and video-surveillance devices; and

(4) for the prevention and reduction of the participation of young individuals in organized crime and drug and gang-related activities in schools.

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APPLICATIONS

Sec. 1803. (a) In General.–In order to be eligible to receive a grant under this part for any fiscal year, a local educational agency shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

(b) Requirements.–Each application under subsection (a) shall include–

(1) a request for funds for the purposes described in section 1802;

(2) a description of the schools and communities to be served by the grant, including the nature of the crime and violence problems within such schools;

(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part; and

(4) statistical information in such form and containing such information that the Director may require regarding crime within the schools served by such local educational agency.

(c) Comprehensive Plan.–Each application shall include a comprehensive plan that shall contain–

(1) a description of the crime problems within the schools targeted for assistance;

(2) a description of the projects to be developed;

(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

(4) an explanation of how the requested grant will be used to fill gaps; and

(5) a description of the system the applicant will establish to prevent and reduce crime problems.

ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS

Sec. 1804. (a) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

(b) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if–

(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

***252** (2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 1803(c).

AWARD OF GRANTS

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Sec. 1805. (a) Selection of Recipients.–The Director shall consider the following factors in awarding grants to local educational agencies:

(1) Crime problem.–The nature and scope of the crime problem in the targeted schools.

(2) Need and ability.–Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1803(c).

(3) Population.–The number of students to be served by the plan required under section 1803(c).

(b) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

REPORTS

Sec. 1806. (a) Report to Director.–Local educational agencies that receive funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 1803(c).

(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 1803(b)(4), and an evaluation of programs established under this part.

DEFINITIONS

Sec. 1807. For the purpose of this part:

(1) The term "Director" means the Director of the Bureau of Justice Assistance.

(2) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary and secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary and secondary schools. such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

PART S–ALTERNATIVE PUNISHMENTS FOR YOUNG OFFENDERS

GRANT AUTHORIZATION

Sec. 1901. (a) In General.–The Director of the Bureau of Justice Assistance (referred to in this part as the "Director") may make grants under this part to States, for the use by States and units of ***253** local government in the states, for the purpose of developing alternative methods of punishment for young offenders to traditional forms of incarceration and probation.

(b) Alternative Methods.–The alternative methods of punishment referred to in subsection (a) should ensure certainty of punishment for young offenders and promote reduced recidivism, crime prevention, and assistance to victims, particularly for young offenders who can be punished more effectively in an environment other than a traditional correctional facility, including–

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(1) alternative sanctions that create accountability and certainty of punishment for young offenders;

(2) boot camp prison program;

(3) technical training and support for the implementation and maintenance of State and local restitution programs for young offenders;

(4) innovative projects;

(5) correctional options, such as community-based incarceration, weekend incarceration, and electric monitoring of offenders;

(6) community service programs that provide work service placement for young offenders at nonprofit, private organizations and community organizations;

(7) demonstration restitution projects that are evaluated for effectiveness; and

(8) innovative methods that address the problems of young offenders convicted of serious substance abuse and gang-related offenses, including technical assistance and training to counsel and treat such offenders.

STATE APPLICATIONS

Sec. 1902. (a) In General.–(1) To request a grant under this part, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

(b) State Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)–

(1) shall prepare the application as required under subsection (a); and

(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

REVIEW OF STATE APPLICATIONS

Sec. 1903. (1) In General.–The Bureau shall make a grant under section 1901(a) to carry out the projects described in the application submitted by such applicant under section 1902(a) upon determining that–

***254** (1) the application is consistent with the requirements of this part; and

(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

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(b) Approval.–Each application submitted under section 1902 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

(c) Restriction.–Grant funds received under this part shall not be used for land acquisition or reconstruction projects, other than alternative facilities described in section 1901(b) for young offenders.

(d) Disapproval Notice and Reconsideration.–The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

LOCAL APPLICATIONS

Sec. 1904. (a) In General.–(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 1902(b).

(2) Such application shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

(4) If such application is approved, the unit of local government is eligible to receive such funds.

(b) Distribution to Units of Local Government.–A State that receives funds under section 1901 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 45-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

ALLOCATION AND DISTRIBUTION OF FUNDS

Sec. 1905. (a) State Distribution.–Of the total amount appropriated under this part in any fiscal year–

(1) 0.4 percent shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of young offenders of such State bears to the number of young offenders in all the participating States.

(b) Local Distribution.–(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State for the purposes specified under section 1901 ***255** that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified under section 1901.

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(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a State is not eligible to receive funds under section 1901, the Director shall award such funds to units of local government in such State giving priority to the units of local government that that the Director considers to have the greatest need.

(c) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1902(a) for the fiscal year for which the projects receive assistance under this part.

EVALUATION

Sec. 1906. (a) In General.–(1) Each State and local unit of government that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the National Institute of Justice.

(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of the State or unit of local government involved.

(b) Distribution.–The Director shall make available to the public on a timely basis evaluations received under subsection (a).

(c) Administrative Costs.–A State and local unit of government may use not more than 5 percent of funds it receives under this part to develop an evaluation program under this section.

PART T–GRANTS FOR DRUG TESTING UPON ARREST

GRANT AUTHORIZATION

Sec. 2001. The Director of the Bureau of Justice Assistance is authorized to make grants under this part to States, for the use by States and units of local government in the States, for the purpose of developing, implementing, or continuing a drug testing project when individuals are arrested and during the pretrial period.

STATE APPLICATIONS

Sec. 2002. (a) General Requirements.–To request a grant under this part the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

(b) Mandatory Assurances.–To be eligible to receive funds under this part, a State must agree to develop or maintain programs of urinalysis or similar drug testing of individuals upon arrest and ***256** on a regular basis pending trial for the purpose of making pretrial detention decisions.

(c) Central Office.–The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.)–

(1) shall prepare the application as required under subsection (a); and

(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

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LOCAL APPLICATIONS

Sec. 2003. (a) In General.–(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 2002(c).

(2) Such application shall be considered approved, in whole or in part, by the State not later than 90 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

(3) The State shall not disapprove an application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

(4) If such application is approved, the unit of local government is eligible to receive such funds.

(b) Distribution to Units of Local Government.–A State that receives funds under section 2001 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 90 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 90-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

ALLOCATION AND DISTRIBUTION OF FUNDS

Sec. 2004. (a) State Distribution.–Of the total amount appropriated under this part in any fiscal year–

(1) 0.4 percent shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of individuals arrested in such State bears to the number of individuals arrested in all the participating States.

(b) Local Distribution.–(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended ***257** by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified in such State's application.

(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a Sate is not eligible to receive funds under section 2001, the Director shall award such funds to units of local government in such State giving priority to the units of local government that the Director considers to have the greatest need.

(c) Federal Share.–The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 2002 for the fiscal year for which the projects receive assistance under this part.

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(d) Geographic Distribution.–The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

REPORT

Sec. 2005. A State or unit of local government that receives funds under this part shall submit to the Director a report in March of each fiscal year that funds are received under this part regarding the effectiveness of the drug testing project.

PART U–LAW ENFORCEMENT SCHOLARSHIPS

PURPOSES

Sec. 2101. It is the purpose of this part to assist States to establish scholarship programs which–

(1) enhance the recruitment of young individuals to careers in law enforcement;

(2) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel; and

(3) provide educational assistance to law enforcement personnel seeking further education;

DEFINITIONS

Sec. 2102. For purposes of this part–

(1) the term "Director" means the Director of the Bureau of Justice Assistance;

(2) the term "educational expenses" means expenses that are directly attributable to–

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree, including the cost of tuition, fees, books, supplies and related expenses;

***258** (3) the term "institution of higher education" has the same meaning given such term in section 1401(a) of the Higher Education Act of 1965;

(4) the term "law enforcement position" means employment as an officer in a State or local police force, or correctional institution; and

(5) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

ALLOTMENT

Sec. 2103. From amounts appropriated under section 2111, the Director shall allocate–

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(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State; and

(2) 20 percent of such funds to States on the basis of the State's shortage of law enforcement personnel and the need for assistance under this part.

PROGRAM ESTABLISHED

Sec. 2104. (a) In General.–From amounts available pursuant to section 2103 each State shall pay the Federal share of the cost of awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education.

(b) Federal Share.–(1) The Federal share of the cost of scholarships under this part shall not exceed 60 percent.

(2) The non-Federal share of the cost of scholarships under this part shall be supplied from sources other than the Federal Government.

(c) Lead Agency.–Each State receiving an allotment under section 2103 to conduct a scholarship program in the State in accordance with the provisions of this part shall designate an appropriate State agency to serve as the lead agency in carrying out the provisions of this part.

(d) Responsibilities of Director.–The Director shall be responsible for the administration of the program conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, promulgate regulations to implement this part.

(e) Administrative Expenses.–Each State receiving an allotment under section 2103 may reserve not more than 8 percent of such allotment for administrative expenses.

(f) Special Rule.–Each State receiving an allotment under section 2103 shall ensure that each scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(g) Supplementation of Funding.–Funds received under this part shall only be used to supplement, and not to supplant, Federal, ***259** State, or local efforts for recruitment and education of law enforcement personnel.

SCHOLARSHIPS

Sec. 2105. (a) Period of Award.–Scholarships awarded under this part shall be for a period of one academic year.

(b) Use of Scholarships.–Each individual awarded a scholarship under this may use such scholarship for educational expenses at any accredited institution of higher education.

ELIGIBILITY

Sec. 2106. An individual shall be eligible to receive a scholarship under this part if such individual has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

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STATE APPLICATION

Sec. 2107. Each State desiring an allotment under section 2103 shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. Each such application shall–

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the provisions of this part;

(2) contain assurances that the State shall advertise the scholarship assistance provided under this part;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the scholarship program under this part;

(4) contain assurances that the State shall make scholarship payments to institutions of higher education on behalf of individuals receiving financial assistance under this part;

(5) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

(6) contain assurances that the State shall promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in high schools and community colleges.

LOCAL APPLICATION

Sec. 2108. (a) In General.–Each individual desiring a scholarship under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for which financial assistance is sought.

(b) Priority.–In awarding scholarships under this part, each State shall give priority to applications from individuals who are–

***260** (1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State; and

(2) pursuing an undergraduate degree.

SCHOLARSHIP AGREEMENT

Sec. 2109. (A) In General.–Each individual receiving a scholarship under this part shall enter into an agreement with the director.

(b) Contents.–Each agreement described in subsection (a) shall–

(1) provide assurances that the individual shall work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

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(2) provide assurances that the individual will repay all of the scholarship assistance awarded under this title in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of the agreement under paragraph (1) are not complied with except where the individual–

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which an individual receiving a scholarship under this part may seek employment in the field of law enforcement in a State other than the State which awarded such individual the scholarship under this part.

(c) Service Obligation.–(1) Except as provided in paragraph (2), each individual awarded a scholarship under this part shall work in a law enforcement position in the state which awarded such individual the scholarship for a period of one month for each credit hour for which financial assistance is received under this part.

(2) For purposes of satisfying the requirement specified in paragraph (1), each individual awarded a scholarship under this part shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

REPORTS TO CONGRESS

Sec. 2110. Not later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate. Such report shall–

(1) State the number of present and past scholarship recipients under this part, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have serve law enforcement;

***261** (2) describe the geographic, racial, and gender dispersion of scholarship recipients; and

(3) describe the progress of the program and make recommendations for changes in the program.

PART V–FAMILY SUPPORT

DUTIES OF THE DIRECTOR

Sec. 2201. The Director shall–

(1) establish guidelines and oversee the implementation of family-friendly policies within law enforcement-related offices and divisions in the Department of Justice;

(2) study the effects of stress on law enforcement personnel and family well-being and disseminate the findings of such studies to Federal, State, and local law enforcement agencies, related organizations, and other interested parties;

(3) identify and evaluate model programs that provide support services to law enforcement personnel and families;

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(4) provide technical assistance and training programs to develop stress reduction and family support to State and local law enforcement agencies;

(5) collect and disseminate information regarding family support, stress reduction, and psychological services to Federal, State, and local law enforcement agencies, law enforcement-related organizations, and other interested entities; and

(6) determine issues to be researched by the Bureau and by grant recipients.

GENERAL AUTHORIZATION

Sec. 2202. The Director is authorized to make grants to States and local law enforcement agencies to provide family support services to law enforcement personnel.

USES OF FUNDS

Sec. 2203. (A) In General.–A State or local law enforcement agency that receives a grant under this Act shall use amounts provided under the grant to establish or improve training and support programs for law enforcement personnel.

(b) Required Activities.–A law enforcement agency that receives funds under this act shall provide at least one of the following services:

(1) Counseling for law enforcement family members.

(2) Child care on a 24-hour basis.

(3) Marital and adolescent support groups.

(4) Stress reduction programs.

(5) Stress education for law enforcement recruits and families.

(c) Optional Activities.–A law enforcement agency that receives funds under this act may provide the following services:

(1) Post-shooting debriefing for officers and their spouses.

(2) Group therapy.

(3) Hypertension clinics.

(4) Critical incident response on a 24-hour basis.

***262** (5) Law enforcement family crisis telephone services on a 24-hour basis.

(6) Counseling for law enforcement personnel exposed to the human immunodeficiency virus.

(7) Counseling for peers.

(8) Counseling for families of personnel killed in the line of duty.

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(9) Seminars regarding alcohol, drug use, gambling, and overeating.

APPLICATIONS

Sec. 2204. A law enforcement agency desiring to receive a grant under this part shall submit to the Director an application at such time, in such manner, and containing or accompanied by such information as the Director may reasonably require. Such application shall–

(1) certify that the law enforcement agency shall match all Federal funds with an equal amount of cash or in-kind goods or services from other non-Federal sources;

(2) include a statement from the highest ranking law enforcement official from the State or locality applying for the grant that attests to the need and intended use of services to be provided with grant funds; and

(3) assure that the Director or the Comptroller General of the United States shall have access to all records related to the receipt and use of grant funds received under this Act.

AWARD OF GRANTS; LIMITATION

Sec. 2205. (a) Grant Distribution.–In approving grants under this part, the Director shall assure an equitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

(b) Duration.–The Director may award a grant each fiscal year, not to exceed $100,000 to a State or local law enforcement agency for a period not to exceed 5 years. In any application from a State or local law enforcement agency for a grant to continue a program for the second, third, fourth, or fifth fiscal year following the first fiscal year in which a grant was awarded to such agency, the Director shall review the progress made toward meeting the objectives of the program. The Director may refuse to award a grant if the Director finds sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for reconsideration.

(c) Limitation.–Not more than 10 percent of grant funds received by a State or a local law enforcement agency may be used for administrative purposes.

DISCRETIONARY RESEARCH GRANTS

Sec. 2206. The Director may reserve 10 percent of funds to award research grants to a State or local law enforcement agency to study issues of importance in the law enforcement field as determined by the Director.

***263** REPORTS

Sec. 2207. (a) Report from Grant Recipients.–A State or local law enforcement agency that receives a grant under this Act shall submit to the Director an annual report that includes–

(1) program descriptions;

(2) the number of staff employed to administer programs;

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(3) the number of individuals who participated in programs; and

(4) an evaluation of the effectiveness of grant programs.

(b) Report from Director.–(1) The Director shall submit to the Congress a report not later than March 31 of each fiscal year.

(2) Such report shall contain–

(A) a description of the types of projects developed or improved through funds received under this Act;

(B) a description of exemplary projects and activities developed;

(C) a designation of the family relationship to the law enforcement personnel of individuals served; and

(D) the number of individuals served in each location and throughout the country.

DEFINITIONS

Sec. 2208. For purposes of this part–

(1) the term "family-friendly policy" means a policy to promote or improve the morale and well being of law enforcement personnel and their families; and

(2) the term "law enforcement personnel" means individuals employed by Federal, State, and local law enforcement agencies.

PART W–DOMESTIC VIOLENCE INTERVENTION

GRANT AUTHORIZATION

Sec. 2301. The Director of the Bureau of Justice Assistance may make grants to 10 States for the purpose of assisting States in implementing a civil and criminal response to domestic violence.

USE OF FUNDS

Sec. 2302. Grants made by the Director under this part shall be used–

(1) to encourage increased prosecutions for domestic violence crimes;

(2) to report more accurately the incidences of domestic violence;

(3) to facilitate arrests and aggressive prosecution policies; and

(4) to provide legal advocacy services for victims of domestic violence.

APPLICATIONS

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Sec. 2303. (a) In General.–In order to be eligible to receive a grant under this part for any fiscal year, a State shall submit an ***264** application to the Director in such form and containing such information as the Director may reasonably require.

(b) Requirements.–Each application under subsection (a) shall include–

(1) a request for funds for the purposes described in section 2302;

(2) a description of the programs already in place to combat domestic violence;

(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non Federal funds that would otherwise be available for activities funded under this part; and

(4) statistical information, if available, in such form and containing such information that the Director may require regarding domestic violence within that State.

(c) Comprehensive Plan.–Each application shall include a comprehensive plan that shall contain–

(1) a description of the domestic violence problem within the State targeted for assistance;

(2) a description of the projects to be developed;

(3) a description of the resources available in the State to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

(4) an explanation of how the requested grant will be used to fill gaps; and

(5) a description of the system the applicant will establish to prevent and reduce domestic violence.

ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS

Sec. 2304. (a) State Maximum.–No State shall receive more than $2,500,000 under this part for any fiscal year.

(b) Administrative Cost Limitation.–The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

(c) Renewal of Grants.–A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if–

(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

(2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 2303(c).

AWARD OF GRANTS

Sec. 2305. The Director shall consider the following factors in awarding grants to States and shall give preference to those States which have–

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(1) a law or policy that requires the arrest of a person who police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated a civil protection order;

***265** (2) a law or policy that discourages dual arrests;

(3) laws or statewide prosecution policies that authorize and encourage prosecutors to pursue domestic violence cases in which a criminal case can be proved, including proceeding without the active involvement of the victim if necessary;

(4) statewide guidelines for judges that–

(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;

(B) require any history of abuse against a child or against a parent to be considered when making child custody determinations; and

(C) require judicial training on domestic violence and related civil and criminal court issues;

(5) policies that provide for the coordination of court and legal victim advocacy services; and

(6) policies that make existing remedies to domestic violence easily available to victims of domestic violence, including elimination of court fees, and the provision for simple court forms.

REPORTS

Sec. 2306. (a) Report to Director.–Each State that receives funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 2103(c).

(b) Report to Congress.–The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 2103(b)(4), and an evaluation of programs established under this part.

DEFINITIONS

Sec. 2307. For the purpose of this part:

(1) The term “Director” means the Director of the Bureau of Justice Assistance.

(2) The term “domestic violence” means any act or threatened act of violence, including any forceful detention of an individual, which–

(A) results or threatens to result in physical injury; and

(B) is committed by an individual against another individual (including an elderly individual) to whom such individual is or was related by blood or marriage or otherwise legally related or with whom such individual is or was lawfully residing.

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PART [P]X–TRANSITION–EFFECTIVE DATE–REPEALER

CONTINUATION OF RULES, AUTHORITIES, AND PROCEEDINGS

Sec. [1601.]2401. (a)(1) All orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect on the date of the enactment of the Justice System Improvement Act of 1979 shall continue in effect ***266** according to their terms until modified, terminated, superseded, set aside, or revoked by the President or the Attorney General, the Office of Justice Assistance, Research, and Statistics or the Director of the Bureau of Justice Statistics, the National Institute of Justice, or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under this title or by operation of law.

(2)***

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TITLE 18, UNITED STATES CODE

PART I-CRIMES

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Effective April 10, 1991, the item relating to Chapter 113A is amended as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Effective on the date of the enactment of this act, the item relating to Chapter 113A is amended as follows:

CHAPTER 1-GENERAL PROVISIONS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 7. Special maritime and territorial jurisdiction of the United Stated defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1)***

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(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival ***267** in the United States with respect to an offense committed by or against a national of the United States.

* * * * * * *

S 13. Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, Territory, Possession, or District, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

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(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Territory, Possession, or District, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Territory, Possession, or District it would lie within if the boundaries of such State, Territory, Possession, or District were extended seaward to the outer limit of the territorial sea of the United States.

* * * * * * *

S 21. Stolen or counterfeit nature of property for certain crimes defined

(a) Wherever in this title it is an element of an offense that–

(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

(b) For purposes of this section, the term "official representation" means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.

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CHAPTER 2–AIRCRAFT AND MOTOR VEHICLES

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***268** S 34. Penalty when death results

Whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also [to the death penalty or to imprisonment for life, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order.] to imprisonment for life. If the death results from an intentional killing, the defendant may be sentenced to the death penalty.

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CHAPTER 9–BANKRUPTCY

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S 151. Definition

As used in this chapter, the term "debtor" means a debtor concerning whom a petition has been filed under title 11.

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CHAPTER 11–BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

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S 208. Acts affecting a personal financial interest

(a) ***

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(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve [Banks] banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

* * * * * * *

S 212. Offer of loan or gratuity to bank examiner

Whoever, being an officer, director or employee of a financial institution which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act, [or of any National Agricultural Credit Corporation,] or of any Farm Credit Bank, bank for cooperatives, production credit association, Federal land bank association, agricultural credit association, Federal land credit association, service organization chartered under section 4.26 of the Farm Credit Act of 1971, the Farm Credit System Financial Assistance Corporation, the Federal Agricultural Mortgage Credit Corporation, the Federal Farm Credit Banks Funding Corporation, the National Consumer Cooperative Bank, or other institution subject to examination by a Farm Credit Administration examiner, or of any small business investment company, ***269** makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, or institution, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 218 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System, insured financial institutions, branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), organizations operating under section 25 or section 25(a) of the Federal Reserve Act, [or National Agricultural Credit Corporations,] whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, by the Federal Deposit Insurance Corporation, by the Office of Thrift Supervision, or by the Federal Housing Finance Board, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank.

S 213. Acceptance of loan or gratuity by bank examiner

Whoever, being an examiner or assistant examiner of member banks of the Federal Reserve System, financial institutions the deposits of which are insured by the Federal Deposit Insurance Corporation, which are branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which are organizations operating under section 25 or section 25(a) of the Federal Reserve Act, or a farm credit examiner [or examiner of National Agricultural Credit Corporations], or an examiner of small business investment companies, accept, a loan or gratuity from any bank, branch, agency, corporation, association or organization examined by him or from any person connected herewith, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.

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CHAPTER 13–CIVIL RIGHTS

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S 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any [inhabitant of] person in any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go to disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured–

***270** They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life [.], or may be sentenced to death.

S 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any [inhabitant of] person in any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of [such inhabitant] such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life[.], or may be sentenced to death.

* * * * * * *

S 245. Federally protected activities

(a) ***

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with–

(1) ***

* * * * * * *

(5) any citizen because he or she has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate–

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life, or may be sentenced to death. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to

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any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building ***271** which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

* * * * * * *

S 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) ***

* * * * * * *

(c) The punishment for a violation of subsection (a) of this section shall be–

(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death;

* * * * * * *

CHAPTER 25-COUNTERFEITING AND FORGERY

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 511. Altering or removing motor vehicle identification numbers

[(a) Whoever knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, shall be fined not more than $10,000 or imprisoned not more than five years, or both.]

(a) Whoever, with intent to further the theft of a vehicle, knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, or a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, shall be fined under this title or imprisoned not more than five years, or both.

(b)(1) Subsection (a) of this section does not apply to a removal, obliteration, tampering, or alteration by a person specified in paragraph (2) of this subsection (unless such person knows that the vehicle or part involved is stolen).

(2) The persons referred to in paragraph (1) of this subsection are–

(A) a motor vehicle scrap processor or a motor vehicle demolisher who complies with applicable State law with respect to such vehicle or part;

(B) a person who repairs such vehicle or part, if the removal, obliteration, tampering, or alteration is reasonably necessary for the repair; [and]

(C) a person who restores or replaces an identification number for such vehicle or part in accordance with applicable State law[.]; and

(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle ***272** Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by–

(i) the owner or his authorized agent;

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(ii) applicable State or local law; or

(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.

* * * * * * *

(d) For purposes of subsection (a) of this section, the term "tampers with" includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility.

S 511A. Unauthorized application of theft prevention decal or device

(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed $1,000.

(b) For purposes of this section, the term "theft prevention decal or device" means a decal or other device designed in accordance with a uniform design for such devices developed pursuant to the Motor Vehicle Theft Prevention Act.

* * * * * * *

S 513. Securities of the States and private entities

(a)***

* * * * * * *

(c) For purposes of this section–

(1)***

* * * * * * *

(4) the term "organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, or any other association [or] of persons which operates in or the activities of which affect interstate or foreign commerce; and

* * * * * * *

CHAPTER 26–CRIMINAL STREET GANGS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 521. Criminal street gangs

(a) Whoever, under the circumstances described in subsection (c) of this section, commits an offense described in subsection (b) of this section, shall, in addition to any other sentence authorized by law, be sentenced to a term of imprisonment of not more than 10 years and may also be fined under this title. Such sentence of imprisonment shall run consecutively to any other sentence imposed.

(b) The offenses referred to in subsection (a) of this section are–

***273** (1) any Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act);

(2) any Federal felony crime of violence;

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(3) any felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act or the Maritime Drug Law Enforcement Act; or

(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

(c) The circumstances referred to in subsection (a) of this section are that the offense described in subsection (b) was committed as a member of, on behalf of, or in association with a criminal street gang and that person has been convicted, within the past 5 years for–

(1) any offense listed in subsection (b) of this section;

(2) any State offense–

(A) involving a controlled substance (as defined in section 102 of the Controlled Substances Act); or

(B) that is a crime of violence; for which the maximum penalty is more than 1 year's imprisonment; or

(3) any Federal or State offense that involves the theft or destruction of property for which the maximum penalty is more than 1 year's imprisonment; or

(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

(d) For purposes of this section–

(1) the term “criminal street gang” means any group, club, organization, or association of 5 or more persons–

(A) whose members engage or have engaged within the past 5 years, in a continuing series of violations of any offense treated in subsection (b); and

(B) whose activities affect interstate or foreign commerce; and

(2) the term “conviction” includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency involving a violent or controlled substances felony.

CHAPTER 27–CUSTOMS

* * * * * * *

S 545. Smuggling goods into the United States

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law–

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***274** Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

* * * * * * *

CHAPTER 31–EMBEZZLEMENT AND THEFT

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S 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the [Reconstruction Finance Corporation,] Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance Board, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Corporation [Farmers' Home Corporation,] the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

S 658. Property mortgaged or pledged to farm credit agencies

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit Administration, any Federal intermediate credit bank, or the Federal Crop Insurance Corporation, [Farmers' Home Corporation,] the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, any production ***275** credit association organized under sections 1131–1134m of Title 12, any regional agricultural credit corporation, or any bank for cooperatives, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

* * * * * * *

S 666. Theft or bribery concerning programs receiving Federal Funds

(a) ***

* * * * * * *

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(d) As used in this section–

(1) ***

* * * * * * *

(3) the term "local" means of or pertaining to a political subdivision within a State; and

(4) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

[(4)] (5) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

* * * * * * *

CHAPTER 33–EMBLEMS, INSIGNIA AND NAMES

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S 709. False advertising or misuse of names to indicate Federal agency

Whoever, except as permitted by the laws of the United States, uses of words "national", "Federal", "United States", "reserve", or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings or trust business; or

Whoever falsely advertises or represents, or publishes or displays any sign, symbol or advertisement reasonably calculated to convey the impression that a nonmember bank, banking association, firm or partnership is a member of the Federal reserve system; or

Whoever, except as expressly authorized by Federal law, uses the words "Federal Deposit", "Federal Deposit Insurance", or "Federal Deposit Insurance Corporation" or a combination of any three of these words, as the name or a part thereof under which he or it does business, or advertises or otherwise represents falsely by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured or guaranteed by the Federal Deposit Insurance Corporation, or by the United States or by any instrumentality ***276** thereof, or whoever advertises that his or its deposits, shares, or accounts are federally insured, or falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which the deposit liabilities of an insured bank or banks are insured by the Federal Deposit Insurance Corporation; or

Whoever, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, uses as a firm or business name or transacts business using the words "National Credit Union", "National Credit Union Administration", "National Credit Union Board", "National Credit Union Share Insurance Fund", "Share Insurance", or "Central Liquidity Facility", or the letters "NCUA", "NCUSIF", or "CLF", or any other combination or variation of those words or letters alone or with other words or letters, or any device or symbol or other means, reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the National Credit Union Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof, or falsely advertises or otherwise represents by any device whatsoever that his or its deposit liabilities, obligations, certificates, shares, or accounts are insured under the Federal Credit Union Act or by the United States or any

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instrumentality thereof, or being an insured credit union as defined in that Act falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which share holdings in such credit union are insured under such Act; or

Whoever, not being organized under chapter 7 of Title 12, advertises or represents that it makes Federal Farm loans or advertises or offers for sale as Federal Farm loan bonds any bond not issued under chapter 7 of Title 12, or uses the word "Federal" or the words "United States" or any other words implying Government ownership, obligation or supervision in advertising or offering for sale any bond, note, mortgage or other security not issued by the Government of the United States under the provisions of said chapter 7 or some other Act of Congress; or

Whoever uses the words "Federal Home Loan Bank" or any combination or variation of these words alone or with other words as a business name or part of a business name, or falsely publishes, advertises or represents by any device or symbol or other means reasonably calculated to convey the impression that he or it is a Federal Home Loan Bank or member of or subscriber for the stock of a Federal Home Loan Bank; or

[Whoever uses the words "National Agricultural Credit Corporation" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity not organized under the laws of the United States as a National Agricultural Credit Corporation; or]

***277** Whoever uses the words "Federal intermediate credit bank" as part of the business or firm name for any person, corporation, partnership, business trust, association or other business entity not organized as an intermediate credit bank under the laws of the United States; or

Whoever uses as a firm or business name the words "Department of Housing and Urban Development", "Housing and Home Finance Agency", "Federal Housing Administration", "Government National Mortgage Association", "United States Housing Authority", or "Public Housing Administration" or the letters "HUD", "FHA", "PHA", or "USHA", or any combination or variation of those words or the letters "HUD", "FHA", "PHA", or "USHA" alone or with other words or letters reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely claims that any repair, improvement, or alteration of any existing structure is required or recommended by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof, for the purpose of inducing any person to enter into a contract for the making of such repairs, alterations, or improvements, or falsely advertises or falsely represents by any device whatsoever that any housing unit, project, business, or product has been in any way endorsed, authorized, inspected, appraised, or approved by the Department of Housing and Urban Development, the Housing and Home Finance Agency, the Federal Housing Administration, the Government National Mortgage Association, the United States Housing Authority, the Public Housing Administration, the Government of the United States, or any agency thereof; or

Whoever, except with the written permission of the Director of the Federal Bureau of Investigation, knowingly uses the words "Federal Bureau of Investigation" or the initials "F.B.I.", or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, on authorized by the Federal Bureau of Investigation; or

Whoever, except with written permission of the Director of the United States Secret Service, knowingly uses the words "Secret Service", "Secret Service Uniformed Division", the initials "U.S.S.S.", "U.D.", or any colorable imitation of such words or

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initials, in connection with, or as a part of any advertisement, circular, book, pamphlet or other publication, play, motion picture, ***278** broadcast, telecast, other production, product, or item, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, product, or item, is approved, endorsed, or authorized by or associated in any manner with, the United States Secret Service, or the United States Secret Service Uniformed Division; or

Whoever uses the words "Overseas Private Investment", "Overseas Private Investment Corporation", or "OPIC", as part of the business or firm name of a person, corporation, partnership business trust, association, or business entity; or

[Whoever uses as a firm or business name the words "Reconstruction Finance Corporation" or any combination or variation of these words–]

Whoever, except with the written permission of the Administrator of the Drug Enforcement Administration, knowingly uses the words "Drug Enforcement Administration" or the initials "DEA" or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by the Drug Enforcement Administration;

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than $1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

This section shall not make unlawful the use of the word "national" as part of the name of any business or firm engaged in the insurance on indemnity business, whether such firm was engaged in the insurance or indemnity business prior or subsequent to the date of enactment of this paragraph.

A violation of this section may be enjoined at the suit of the United States Attorney, upon complaint by any duly authorized representative of any department or agency of the United States.

* * * * * * *

S 711. "Smokey Bear" character or name

Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly and for profit manufacturers, reproduces, or uses the character "Smokey Bear", originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name "Smokey Bear" shall be fined not more than $250 or imprisoned not more than six months, or both.

***279** [The Secretary of Agriculture may specially authorize the manufacture, reproduction, or use of the character "Smokey Bear" for a period not to exceed one hundred and eighty days, expiring no later than one year after the enactment hereof, by any person who, because of plans or commitments made prior to the enactment of this Act, would suffer substantial loss if denied such authorization.]

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CHAPTER 35-ESCAPE AND RESCUE

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[S 754. Rescue of body of executed offender

[Whoever, by force, rescues or attempts to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section 3567 of this title, or by force rescues or attempts to rescue such body from the place where it had been deposited for dissection in pursuance of said section 3567, shall be fined not more than $100 or imprisoned not more than one year, or both.]

* * * * * * *

CHAPTER 37–ESPIONAGE AND CENSORSHIP

* * * * * * *

S 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life[.], except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic ***280** information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.

* * * * * * *

CHAPTER 40–IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

* * * * * * *

S 842. Unlawful acts

(a) * * *

* * * * * * *

(d) It shall be unlawful for any [licensee] person knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

* * * * * * *

(i) It shall be unlawful for any person–

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

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(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in interstate or foreign commerce.

* * * * * * *

S 844. Penalties

(a) * * *

* * * * * * *

(c) (1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall ***281** make a report of the seizure and take samples as the Secretary may by regulation prescribe.

(3) Within sixty days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that–

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment [as provided in section 34 of this title].

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(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment [as provided in section 34 of this title].

* * * * * * *

(h) Whoever–

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States,

***282** including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for [ten] twenty years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment [as provided in section 34 of this title].

* * * * * * *

(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.

(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(m) Whoever steals any explosive material from a licensed importer, licensed manufacturer, licensed dealer, or permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.

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CHAPTER 41–EXTORTION AND THREATS

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S 880. Receiving the proceeds of extortion

Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense ***283** under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than three years, or both.

* * * * * * *

CHAPTER 44–FIREARMS

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S 921. Definitions

(a) As used in this chapter

(1) ***

* * * * * * *

(29) The term "semiautomatic firearm" means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(30)(A) The term "assault weapon" means any of the following weapons, or a copy thereof:

(i) Action Arms Israeli Military Industries UZI and Galil.

(ii) Auto Ordnance 27A1 Thompson, 27A5 Thompson, and M1 Thompson.

(iii) Beretta AR–70 (SC–70).

(iv) Colt AR–15 and CAR–15.

(v) Fabrique Nationale FN/FAL, FN/LAR, and FNC.

(vi) INTRATEC TEC–9.

(vii) MAC 10 and 11.

(viii) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs.

(ix) Springfield BM59, SAR48, and G3SA.

(x) Steyr AUG.

(xi) Street Sweeper and Striker 12.

(xii) All Ruger Mini-14 models with folding stocks.

(xiii) Armscorp FAL.

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(B) The term "copy" means, with respect to a weapon specified in subparagraph (A), a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified.

(31)(A) Except as provided in subparagraph (B), the term "large capacity ammunition feeding device" means–

(i) a detachable magazine, belt, drum, feed strip, or similar device which has, or which can be readily restored or converted to have, a capacity of more than 7 rounds of ammunition; and

(ii) any part or combination of parts, designed or intended to convert a detachable magazine, belt, drum, feed strip, or similar device into a device described in clause (i).

(B) The term "large capacity ammunition feeding device" does not include any attached tubular device designed to accept and capable of operating with only .22 rimfire caliber ammunition.

***284** S 922. Unlawful acts

(a) It shall be unlawful–

(1) ***

* * * * * * *

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to–

(A) ***

* * * * * * *

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Secretary; [and]

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to–

(A) ***

* * * * * * *

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Secretary [.]; and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms.

* * * * * * *

[(j) It shall be unlawful for any person to receive, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.]

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a

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part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

* * * * * * *

(s)(1) It shall be unlawful for any person to possess an assault weapon, unless–

(A) the weapon was lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30); or

(B) the weapon was lawfully transferred to the person after the effective date of this subsection.

(2) It shall be unlawful for any person to transfer an assault weapon, unless–

***285** (A) the weapon was lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30); and

(B) the transfer is in accordance with regulations prescribed by the Secretary.

(t)(1) It shall be unlawful for any person to possess or transfer any large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to any otherwise lawful possession or otherwise lawful transfer of a large capacity ammunition feeding device that was lawfully possessed before the date of the enactment of this subsection.

(u) It shall be unlawful for any person knowingly–

(1) to discharge a firearm from within a motor vehicle; and

(2) thereby create a grave risk to human life.

S 923. Licensing

(a)***

* * * * * * *

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if–

(A)***

* * * * * * *

(D) the applicant has not willfully failed to disclose any material information required, or has not made any false statement as to any material fact, in connection with his application; [and]

(E) the applicant has in a State (i) premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time, or (ii) in the case of a collector, premises from which he conducts his collecting subject to license under this chapter or from which he intends to conduct such collecting within a reasonable period of time[.]; and

(F) in the case of an application for a license to engage in the business of dealing in firearms–

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(i) the applicant has complied with all requirements imposed on persons desiring to engage in such a business by the State and political subdivision thereof in which the applicant conducts or intends to conduct such business; and

(ii) the application includes a written statement which–

(I) is signed by the chief of police of the locality, or the sheriff of the county, in which the applicant conducts or intends to conduct such business, the head of the State policy of such State, or any official designated by the Secretary; and

(II) certifies that the information available to the signer of the statement does not indicate that the applicant is ineligible to obtain such a license under the law of such State and locality.

* * * * * * *

286** (g)(1)

* * * * * * *

(3) Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any [five consecutive business] thirty consecutive days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Secretary and forwarded to the office specified thereon not later than the close of business on the day that the multiple sale or other disposition occurs. Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the date that the multiple sale or disposition occurs.

* * * * * * *

S 924. Penalties

(a)(1) Except as otherwise provided in [paragraph (2) or (3). of] this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever–

(A)***

(B) knowingly violates subsection (a)(4), [(a)(6),] (f), (k), [or (q)] (r), (s), or (t) of section 922;

* * * * * * *

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both, and if the violation is of section 922(g)(1) by a person who has a previous conviction for a violent felony or a serious drug offense (as defined in subsections (e)(2) (A) and (B) of this section), a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years.

* * * * * * *

(5) Whoever, in violation of a regulation issued under section 926(d), transfers an assault weapon that has been lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30) shall be fined not more than $500.

(6) Whoever knowingly violates section 922(u) shall be fined under this title or imprisoned not more than 25 years, or both, and if death results from conduct prohibited by that section, shall be punished by death or imprisonment for life or any term of years.

* * * * * * *

(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or

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device) for which he may be prosecuted in a court of the United States, or during and in relation to any felony punishable under chapter 25 uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced ***287** to imprisonment for five years, [and if the firearm is a short-barreled rifle, short-barreled shotgun] if the firearm is a semiautomatic firearm, an assault weapon, a short-barreled rifle, or a short-barreled shotgun, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. [No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.]

* * * * * * *

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g)[, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection].

(2) As used in this subsection–

(A) the term "serious drug offense" means–

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) or [the first section or section 3 of Public Law 96–350 (21 U.S.C. 955a et seq.)] The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.) for which a maximum term of imprisonment of ten years, or more is prescribed by law; or

* * * * * * *

(i) Whoever, with the intent to engage in or to promote conduct which–

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(3) constitutes a crime of violence (as defined in subsection (c)(3) of this section);

***288** smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.

(k)(1) Notwithstanding subsection (a)(2) of this section, any person who violates section 922(g) and has 2 previous convictions by any court referred to in section 922(g)(1) for a violent felony (as defined in subsection (e)(2)(B) of this section) or a serious

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drug offense (as defined in subsection (e)(2)(A) of this section) committed on occasions different from one another shall be fined as provided in this title, imprisoned not less than 10 years and not more than 20 years, or both.

(2) Notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(m) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined in accordance with this title, imprisoned not more than 10 years, or both.

(n) Whoever, with the intent to engage in conduct which constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

* * * * * * *

S 926. Rules and regulations

(a) ***

* * * * * * *

(d) Within 60 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations governing the transfer of assault weapons, which shall allow such a transfer to proceed within 30 days after the Secretary receives such documentation as the Secretary may require to be submitted with respect to the transfer, and shall include provisions for determining whether the transferee is a person described in section 922(g).

(e) The Secretary shall promulgate regulations requiring manufacturers of large capacity ammunition feeding devices to stamp each such device manufactured after the date of the enactment of this subsection with a permanent distinguishing mark selected in accordance with regulations.

* * * * * * *

***289** S 930. Possession of firearms and dangerous weapons in Federal facilities

(a) Except as provided in subsection [(c)] (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

* * * * * * *

(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapons, shall–

(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under section 1112 and 1113 of this title.

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[(c)] (d) Subsection (a) shall not apply to–

(1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;

(2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or

(3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

[(d)] (e) (1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (c).

[(e)] (f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

[(f)] (g) As used in this section–

(1) The term "Federal facility" means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.

* * * * * * *

[(g)] (h) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (d) shall be posted conspicuously at each public entrance to each Federal court facility, and no person ***290** shall be convicted of an offense under subsection (a) or (d) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (d), as the case may be.

S 931. Recommendation of modifications to the list of assault weapons

From time to time, the Secretary, in consultation with the Attorney General, may recommend to the Congress that certain weapons be added to, or removed from, the list set forth in section 921(a)(30).

CHAPTER 47–FRAUD AND FALSE STATEMENTS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the [Reconstruction Finance Corporation,] Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, [Farmer's Home Corporation,] the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or

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savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

***291** S 1007. Federal Deposit Insurance Corporation [Transactions] 4transactions

Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowlingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

* * * * * * *

S 1013. Farm loan bonds and credit bank debentures

Whoever deceives, defrauds, or imposes upon, or attempts to deceive, defraud, or impose upon any person, partnership, corporation, or association by making any false pretense or representation concerning the character, issue, security, contents, conditions, or terms of any farm loan bond, or coupon, issued by any Federal land bank or banks; or of any debenture, coupon, or other obligation, issued by any Federal intermediate credit bank or banks[, or by any National Agricultural Credit Corporation]; or by falsely pretending or representing that any farm loan bond, or coupon, is anything other than, or different from, what is purports to be on the face of said bond or coupon, shall be fined not more than $500 or imprisoned not more than one year, or both.

S 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowlingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the [Reconstruction Finance Corporation,] Farm Credit Administration, Federal Crop Insurance Corporation, [Farmers' Home Corporation,] the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or of the National Agricultural Credit Corporation,[,] a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act,[,] upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of ***292** security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

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S 1029. Fraud and related activity in connection with access devices

(a) Whoever–

(1) ***

* * * * * * *

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; [or]

* * * * * * *

(5) knowingly, and with intent to defraud, effects transactions, with one or more access devices issued to another person, to receive any thing of value aggregating $1,000 or more during any one-year period;

(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of–

(A) offering an access device; or

(B) selling information regarding or an application to obtain an access device; or

(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;

* * * * * * *

(c) The punishment for an offense under subsection (a) or (b)(1) of this section is–

(1) a fine of not more than the greater of $10,000 or twice the value obtained by the offense or imprisonment for not more than ten years, or both, in the case of an offense under subsection [(a)(2) or (a)(3)] (a) (2), (3), (5), (6), or (7) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph;

* * * * * * *

(e) As used in this section–

(1) ***

* * * * * * *

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of; [and]

(6) the term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device[.] ; and

***293** (7) the term "credit card system member" means a financial institution or other entity that is a member of a credit card system, including an entity whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.

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S 1031. Major fraud against the United States

(a) ***

* * * * * * *

(g)(1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed $250,000. Upon application by the Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.

(2) An individual is not eligible for such a payment if–

(A) that individual is an officer or employee of a [government] Government agency who furnishes information or renders service in the performance of official duties;

(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;

(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or

(D) that individual participated in the violation of this section with respect to which such payment would be made.

(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.

[(g)] (h) Any individual who–

(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and

(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and ***294** compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

S 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and, with the intent to deceive, knowingly makes any false material statement or report or willfully overvalues any land, property or security–

(A) in connection with reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

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(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardizes the safety and soundness of an insurer.

(b)(1) Whoever–

(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the embezzlement, abstraction, purloining, or willful misappropriation described in paragraph (1) jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years. If the amount or value embezzled, abstracted, purloined, or willfully misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to–

(A) deceive any person about the financial condition or solvency of such business, or

(B) to deceive any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory ***295** official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years.

(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

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(e)(1)A) Whoever has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Whoever is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

(f) As used in this section–

(1) the term "business of insurance" means–

(A) the writing of insurance, or

(B) the reinsuring of risks underwritten by insurance companies,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

(2) the term "insurer" means a business which is organized as an insurance company under the laws of any State, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his or her capacity as such, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

(3) the term "interstate commerce" means–

***296** (A) commerce within the District of Columbia, or any territory or possession of the United States;

(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

(C) all commerce between points within the same State through any place outside such State; or

(D) all other commerce over which the United States has jurisdiction; and

(4) the term "State" includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

S 1034. Civil penalties and injunctions for violations of section 1033

(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has

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contributed to the insolvency of an insurer which has been placed under the control of a State insurance regulatory agency or official, such penalty shall be remitted to the regulatory official of the insurer's State of domicile for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

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CHAPTER 50–GAMBLING

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S 1081. Definitions

As used in this chapter:

The term “gambling ship” means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986).

***297** The term “gambling establishment” means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

The term “vessel” includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

The term “American vessel” means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

The term “wire communication facility” means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

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CHAPTER 50A–GENOCIDE

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S 1091. Genocide

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(a)***

(b) Punishment for Basic Offense.–The punishment for an offense under subsection (a) is–

(1) in the case of an offense under subsection (a)(1), [a fine or not more than $1,000,000 and imprisonment for life;] by death or imprisonment for life, or a fine of not more than $1,000,000 or both; and

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CHAPTER 51–HOMICIDE

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 1111. Murder

(a)***

(b) Within the special maritime and territorial jurisdiction of the United States,

***298** [Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life;] Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

* * * * * * *

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

S 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any member of the Coast Guard, any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands or any other commonwealth, territory, or possession of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Education, the Department of Health and Human Services, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement

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functions, or any officer or employee of the Federal ***299** Communications Commission performing investigative, inspection, or law enforcement functions, or any officer or employee of the Department of Veterans Affairs assigned to perform investigative or law enforcement functions, or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section, any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties, or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with sections 3711 and 3716–3718 of title 31 or other statutory authority shall be [punished as provided under sections 1111 and 1112 of this title,] punished, in the case of murder, by a sentence of death or life imprisonment as provided under section 1111 of this title, or, in the case of manslaughter, a sentence as provided under section 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

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S 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title, except that [any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years].

* * * * * * *

S 1117. Conspiracy to murder

If two or more persons conspire to violate section 1111, 1114, [or 1116] 1116, or 1118 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

S 1118. Foreign murder of United States nationals

(a) Whoever, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113 of this title.

***300** (b) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same act or omission.

(c) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the act or omission took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this subsection is not subject to judicial review.

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(d) In the course of the enforcement of this section and notwithstanding any other provision of law, the Attorney General may request assistance from any Federal, State, local, or foreign agency, including the Army, Navy, and Air Force.

(e) As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

S 1119. Murder by a Federal prisoner

(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

(b) For purposes of this section–

(1) "Federal prison" means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

(2) "term of life imprisonment" means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death.

S 1120. Killing persons aiding Federal investigations

Whoever intentionally kills–

(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation–

(A) while the victim is engaged in the performance of official duties;

(B) because of the performance of the victim's official duties; or

(C) because of the victim's status as a public servant; or

(2) any person assisting a Federal criminal investigation, while the assistance is being rendered and because of it,

shall be punished as provided in sections 1111 and 1112 of title 18, United States Code. Whoever attempts to commit such a killing shall be punished as provided in section 1113.

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CHAPTER 53–INDIANS

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***301** S 1160. Property damaged in committing offense

Whenever a [white person] non-Indian, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly Indian the judgment of conviction shall include a sentence that the defendant pay to the Indian owner a sum equal to twice the just value of the property so taken, injured, or destroyed.

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If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

CHAPTER 55–KIDNAPING

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when–

(1) * * *

* * * * * * *

(5) the person is among those officers and employees designated in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official suites,

shall be punished by imprisonment for any term of year of for life and, if the death of any person results, shall be punished by death or life imprisonment.

* * * * * * *

(d) [Whoever attempts to violate subsection (a)(4) or (a)(5)] Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

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S 1202. Ransom money

(a) Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been as any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

***302** (b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State of United States boundary, knowing the proceeds to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten year, or both.

(c) For purposes of this section, the term "State" has the meaning set forth in section 245(d) of this title.

S 1203. Hostage taking

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or

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attempts to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

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S 1204. International parental kidnapping

(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

(b) As used in this section–

(1) the term "child" means a person who has not attained the age of 16 years; and

(2) the term "parental rights", with respect to a child, means the right to physical custody of the child–

(A) whether joint or sole (and includes visiting rights); and

(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

(c) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

CHAPTER 63–MAIL FRAUD

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S 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false of fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin; obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting ***303** so to do, places in any post office or authorized depository for mail matter, any matte or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

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CHAPTER 65–MALICIOUS MISCHIEF

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S 1361. Government property or contracts

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Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses shall be punished as follows:

If the damage or attempted damage to such property exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both; if the damage or attempted damage to such property does not exceed the sum of $100, by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

S 1362. Communication lines, stations or systems

Whoever willfully or maliciously injures or destroys or attempts willfully or maliciously to injure or destroy any of the works, property, or material of any radio, telegraph, telephone or cable, line, station, or system, or other means of communication, operated or controlled by the United States, or used or intended to be used for military or civil defense functions of the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communication over any such line, or system, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

In the case of any works, property, or material, not operated or controlled by the United States, this section shall not apply to any lawful strike activity, or other lawful concerted activities for the purposes of collective bargaining or other mutual aid and protection which do not injure or destroy any line or system used or intended ***304** to be used for the military or civil defense functions of the United States.

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S 1366. Destruction of an energy facility

(a) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded $100,000, or damages or attempts to damage the property of an energy facility in any amount and causes or attempts to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded $5,000 shall be punishable by a fine of not more than $25,000, or imprisonment for not more than five years, or both.

(c) For purposes of this section, the term "energy facility" means a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or interstate transmission facilities, as defined in section 2 of the Natural Gas Pipeline Safety Act of 1968.

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CHAPTER 73–OBSTRUCTION OF JUSTICE

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S 1503. Influencing or injuring officer or juror generally

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(a) punished as provided in subsection (b). Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States [commissioner] magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, [commissioner], or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be [fined not more than $5,000 or imprisoned not more than five years, or both.]

(b) The punishment for an offense under this section is–

***305** (1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

(3) in any other case, imprisonment for not more than ten years.

* * * * * * *

S 1510. Obstruction of criminal investigations

(a) ***

* * * * * * *

(d)(1) Whoever–

(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding directly or indirectly, notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

(2) As used in paragraph (1), the term "subpoena for records" means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.

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S 1512. Tampering with a witness, victim, or an informant

(a) ***

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(d) Whoever violates this section by intentionally killing an individual provided protection under section 3521 of this title shall be subject to the death penalty.

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[(d)] (e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

[(e)] (f) For the purposes of this section–

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

***306** [(f)] (g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance–

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

[(g)] (h) There is extraterritorial Federal jurisdiction over an offense under this section.

[(h)] (i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

S 1513. Retaliating against a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for–

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is–

(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

(B) in the case of an attempt, imprisonment for not more than twenty years.

[(a)] (b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for–

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

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(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

[(b)] (c) There is extraterritorial Federal jurisdiction over an offense under this section.

* * * * * * *

***307** S 1515. Definitions for certain provisions; general provision

(a) As used in sections 1512 and 1513 of this title and in this section–

(1) the term "official proceeding" means–

(A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Claims Court, or a Federal grand jury;

(B) a proceeding before the Congress; [or]

(C) a proceeding before a Federal Government agency which is authorized by law; or

(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;

* * * * * * *

S 1516. Obstruction of Federal audit

(a) Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of $100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) For purposes of this section (1) the term "Federal auditor" means any person employed on a full- or part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States and (2) the term "in any 1 year period" has the meaning given to the term "in any one-year period" in section 666 of this title.

CHAPTER 75–PASSPORTS AND VISAS

S 1541. Issuance without authority

Whoever, acting or claiming to act in any office or capacity under the United States, or a State or possession, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person whomsoever; or

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Whoever, being a consular officer authorized to grant, issue, or verify passports, knowingly and willfully grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not

Shall be fined not more than [$500] $250,000 or imprisonment not more than [one year] five years, or both.

S 1542. False statement in application and use of passport

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either ***308** for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement–

Shall be fined not more than [$2,000] $250,000 or imprisoned not more than [five] ten years, or both.

S 1543. Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, multilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, multilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same–

Shall be fined not more than [$2,000] $250,000 or imprisoned not more than [five years] ten years, or both.

S 1544. Misuse of passport

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was orginally issued and designed–

Shall be fined not more than [$2,000] $250,000 or imprisoned not more than [five years] ten years, or both.

S 1545. Safe conduct violation

Whoever violates any safe conduct or passport duly obtained and issued under authority of the United States shall be fined not more than [$2,000] $250,000 or imprisoned not more than [three] ten years, or both.

S 1546. Fraud and misuse of visas, permits, and other documents

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(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or ***309** statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty or perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement–

Shall be fined under this title or imprisoned not more than [five] ten years, or both.

(b) Whoever uses–

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined in accordance with this title, or imprisoned not more than two years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).

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CHAPTER 83–POSTAL SERVICE

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***310** S 1698. Prompt delivery of mail from vessel

Whoever, having charge or control of any vessel passing between ports or places in the United States, and arriving at any such port or place where there is a post office, fails to deliver to the postmaster or at the post office, within three hours after his arrival, if in the daytime, and if at night, within two hours after the next sunrise, all letters and packages brought by him or within his power or control and not relating to the cargo, addressed to or destined for such port or place, shall be fined not more than $150.

[For each letter or package so delivered he shall receive two cents unless the same is carried under contract.]

* * * * * * *

S 1716. Injurious articles as nonmailable

(a) ***

* * * * * * *

(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

(2) As used in this subsection, the term "ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, whether or not transmitted in accordance with the rules and regulations authorized to be prescribed by the Postal Service, with intent to kill or injure another, or injure the mails or other property, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Whoever is convicted of any crime prohibited by this section, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life[, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion, shall so order].

* * * * * * *

CHAPTER 84–PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPING, AND ASSAULT

* * * * * * *

***311** S 1751. Presidential and Presidential staff assassination, kidnaping, and assault; penalties

(a) ***

* * * * * * *

[(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.]

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(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished–

(1) by imprisonment for any term of years or for life, or

(2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in serious bodily injury to the President (as defined in section 1365 of this title) or comes dangerously close to causing the death of the President.

* * * * * * *

CHAPTER 87–PRISONS

* * * * * * *

S 1791. Providing or possessing contraband in prison

(a) Offense.–Whoever–

(1) in violation of a statute or a rule or order issued under a statute, provides to an inmate of a prison a prohibited object, or attempts to do so; or

(2) being an inmate of a prison, makes, possesses, or obtains, or attempts to make or obtain, a prohibited object;

shall be punished as provided in subsection (b) of this section.

(b) Punishment.–The punishment for an offense under this section is a fine under this title or–

(1) imprisonment for not more than 20 years, or both, if the object is specified in subsection (d)(1)(C) of this section;

(2) imprisonment for not more than 10 years, or both, if the object is specified in subsection [(c)](d)(1)(A) of this section;

(3) imprisonment for not more than 5 years, or both if the object is specified in subsection [(c)](d)(1)(B) of this section;

(4) imprisonment for not more than one year, or both, if the object is specified in subsection [(c)](d)(1)(D) or [(c)](d)(1)(E) of this section; and

(5) imprisonment for not more than 6 months, or both, if the object is specified in subsection [(c)](d)(1)(F) of this section.

(c) Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such controlled substance. Any punishment imposed under subsection (b) for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation.

(d) Definitions.–As used in this section–

(1) the term "prohibited object" means–

(A) a firearm or destructive device or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection; ***312**

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(B) marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection, ammunition, a weapon (other than a firearm or destructive device), or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison;

(C) a narcotic drug, methamphetamine, its salts, isomers, and salts of its isomers, lysergic acid diethylamide, or phencyclidine;

(D) a controlled substance (other than a controlled substance referred to in subparagraph (A), (B), or (C) of this subsection) or an alcoholic beverage;

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CHAPTER 91–PUBLIC LANDS

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S 1864. Hazardous or injurious devices on Federal lands

(a) ***

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(c) Any individual who is punished under subsection [(b) (3), (4), or (5)] (b)(5) after one or more prior convictions under any such subsection shall be fined under this title or imprisoned for not more than ten years, or both.

* * * * * * *

CHAPTER 93–PUBLIC OFFICERS AND EMPLOYEES

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[S 1904. Disclosure of information or speculation in securities affecting Reconstruction Finance Corporation

[Whoever, being connected in any capacity with the Reconstruction Finance Corporation, gives any unauthorized information concerning any future action or plan of the said Corporation which might affect the value of securities, or, having such knowledge, invests or speculates directly or indirectly in the securities or property of any company, bank, or corporation receiving loans or other ***313** assistance from the said Corporation, shall be fined not more than $10,000 or imprisoned not more than five years, or both.]

* * * * * * *

[S 1908. Disclosure of information by National Agricultural Credit Corporation examiner

[Whoever, being an examiner appointed under the provisions of law relating to National Agricultural Credit Corporations, discloses the names of borrowers of any organization examined by him, to other than the proper officers of such organization, without first having obtained express permission in writing from the Comptroller of the Currency or from the board of directors of such organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as such examiner.]

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S 1909. Examiner performing other services

Whoever, being a national-bank examiner, Federal Deposit Insurance Corporation examiner, or farm credit examiner, [or an examiner of National Agricultural Credit Corporations,] performs any other service, for compensation, for any bank or banking or loan association, or for any officer, director, or employee thereof, or for any person connected therewith in any capacity, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

* * * * * * *

CHAPTER 95–RACKETEERING

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S 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or and facility in interstate or foreign commerce, with intent to–

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, [and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both]. and thereafter performs or attempts to perform (1) any of the acts specified in paragraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (2) any of the acts specified in paragraph (2) shall be fined under this title or imprisoned ***314** for not more than 20 years, or both, and if death results shall be imprisoned for any term of years of for life.

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S 1956. Laundering of monetary instruments

(a)***

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(c) As used in this section–

(1)***

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(7) the term "specified unlawful activity" means–

(A)***

* * * * * * *

(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of section 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false

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statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending to credit and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit insurance transactons), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344, (relating to bank fraud, section 2113 or 2114 (relating to bank and postal robbery and theft), or section 2319 (relating to copyright infringement) of this title, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling) [section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207–51; 21 U.S.C. 857)] section 422 of the controlled Substances Act (21 U.S.C. 863) (relating to transportation of drug paraphernalia), section 38(c) relating to criminal violations) of the Arms Export control Act, section ***315** 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, or section 16 (relating to offenses and punishment) for the Trading with the Enemy Act; or

* * * * * * *

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the [Evironmental]Environmental Protection Agency.

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S 1958. Use of interstate commerce facilities in the commission of murder-for-hire

(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not more than $10,000 or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined not more than $20,000 and imprisoned for not more than twenty years, or both; [and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000 or both] and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both.

* * * * * * *

S 1959. Violent crimes in aid of racketeering activity

(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished–

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***316** [(1) for murder or kidnaping, by imprisonment for any term of years or for life or a fine of not more than $50,000, or both;] (1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;

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CHAPTER 97–RAILROADS

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S 1992. Wrecking trains

Whoever willfully derails, disables, or wrecks any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad; or

Whoever willfully sets fire to, or places any explosive substance on or near, or undermines any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise makes any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce; or

Whoever willfully attempts to do any of the aforesaid acts or things–

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Whoever is convicted of any such crime, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life[, if the jury shall in its discretion so direct, or, in the case of a plea of guilty, if the court in its discretion shall so order].

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

* * * * * * *

CHAPTER 103–ROBBERY AND BURGLARY

S 2111. Special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes or attempts to take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years.

S 2112. Personal property of United States

Whoever robs or attempts to rob another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years.

***317** S 2113. Bank robbery and incidental crimes

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(a) ***

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(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, [or punished by death if the verdict of the jury shall so direct]or if death results shall be punished by death or life imprisonment.

* * * * * * *

(h) As used in this section, the term "savings and loan association" means (1) any Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) having accounts insured by the Federal Deposit Insurance Corporation, and (2) any corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) which is operating under the laws of the United States.

S 2114. Mail, money, or other property of United States

(a) Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money, or other property of the United States, with intent to rob, steal, or purloin such mail matter, money, or other property of the United States, or robs or attempts to rob any such person of mail matter, or of any money, or other property of the United States, shall, for the first offense, be imprisoned not more than ten years; and if in effecting or attempting to effect such robbery he wounds the person having custody of such mail, money, or other property of the United States, or puts his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned not more than twenty-five years.

(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten years, or both.

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CHAPTER 105–SABOTAGE

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***318** [S 2157. Temporary extension of sections 2153 and 2154

[(a) The provisions of sections 2153 and 2154 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R. 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under any of these provisions when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

[(b) Effective in each case for the period above provided for, title 18, United States Code, section 2151, is amended by inserting the words "or defense activities" immediately before the period at the end of the definition of "war material", and said sections 2153 and 2154 are amended by inserting the words "or defense activities" immediately after the words "carrying on the war" wherever they appear therein.]

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CHAPTER 109–SEARCHES AND SEIZURES

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S 2237. Order to land

(a)(1) A pilot or operator of an aircraft that has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, who intentionally fails to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act, or section 1956 or 1957 of this title (relating to money laundering), shall be fined under this title, or imprisoned not more than three years, or both.

(2) The Secretary of the Treasury and the Secretary of Transportation, in consultation with the Attorney General, shall make rules governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot or operator of an aircraft.

(3) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 or another law the Customs Service enforces or administers, or the authority of a Federal law enforcement officer under a law of the United States to order an aircraft to land.

***319** (b) A foreign nation may consent or waive objection to the United States enforcing the laws of the United States by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

(c) For purposes of this section–

(1) the term “aircraft subject to the jurisdiction of the United States” includes–

(A) an aircraft located over the United States or the customs waters of the United States;

(B) an aircraft located in the airspace of a foreign nation, when that nation consents to United States enforcement of United States law; and

(C) over the high seas, an aircraft without nationality, an aircraft of the United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the United States enforcement of United States law; and

(2) the term “Federal law enforcement officer” has the same meaning that term has in section 115 of this title.

(d) An aircraft that is used in violation of this section is liable in rem for a fine imposed under this section.

(e) An aircraft that is used in violation of this section may be seized and forfeited. The laws relating to seizure and forfeiture for violation of the customs laws, including available defenses such as innocent owner provisions, apply to aircraft seized or forfeited under this section.

(f) The Secretary of the Treasury and the Secretary of Transportation may delegate Federal law enforcement officer seizure and forfeiture responsibilities under this section to other law enforcement officers.

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CHAPTER 109A–SEXUAL ABUSE

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S 2245. Penalties for subsequent offenses

Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.

S [2245] 2246. Definitions for chapter

As used in this chapter–

(1) the term "prison" means a correctional, detention, or penal facility;

***320** (2) the term "sexual act" means–

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; [or]

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; [and] ; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

S 2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

(a) Testing at Time of Pretrial Release Determination.–In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that followup tests for the virus be performed 6 months and 12 months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

(b) Testing at Later Time.–If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed 6 months and 12 months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

(c) Termination of Testing Requirement.–A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

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(d) Disclosure of Test Results.–The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

(e) Effect on Penalty.–The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under ***321** this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.

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CHAPTER 110–SEXUAL EXPLOITATION OF CHILDREN

* * * * * * *

S 2257. Record keeping requirements

(a)***

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[(f) The Attorney General shall issue appropriate regulations to carry out this section.

[(g) As used in this section–

[(1) the term "actual sexually explicit conduct" means actual but not simulated conduct as defined in subparagraphs (A) through (E) of paragraph (2) of section 2256 of this title;

[(2) "Identification document" has the meaning given that term in subsection 1028(d) of this title;

[(3) the term "produces" means to produce, manufacture, or publish and includes the duplication, reproduction, or reissuing of any material; and

[(4) the term "performer" includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.]

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CHAPTER 113–STOLEN PROPERTY

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S 2311. Definitions

As used in this chapter:

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air;

"Cattle" means one or more bulls, steers, oxen, cows, heifers, or calves, or the carcass or carcasses thereof;

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"Livestock" means any domestic animals raised for home use, consumption, or profit, such as horses, pigs, goats, fowl, sheep, and cattle, or the carcasses thereof;

* * * * * * *

Effective April 10, 1991 chapter 113A is amended as follows:

CHAPTER 113A-TERRORISM

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***322** S 2331. Definitions

[As used in this chapter–

[(1) the term "international terrorism" means activities that–

[(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

[(B) appear to be intended–

[(i) to intimidate or coerce a civilian population;
[(ii) to influence the policy of a government by intimidation or coercion; or
[(iii) to affect the conduct of a government by assassination or kidnapping; and
[(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

[(2) the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

[(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property; and

[(4) the term "act of war" means any act occurring in the course of–

[(A) declared war;

[(B) armed conflict, whether or not war has been declared, between two or more nations; or

[(C) armed conflict between military forces of any origin.

[S 2332. Criminal penalties]

CHAPTER 113A–EXTRATERRITORIAL JURISDICTION OVER
TERRORIST ACTS ABROAD AGAINST UNITED STATES NATIONALS

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S 2331. Terrorist acts abroad against United States nationals

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(a) Homicide.–Whoever kills a national of the United States, while such national is outside the United States, shall–

(1) if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;

(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and

***323** (3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

(b) Attempt or Conspiracy With Respect to Homicide.–Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall–

(1) in the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and

(2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

(c) Other Conduct.–Whoever outside the United States engages in physical violence–

(1) with intent to cause serious bodily injury to a national of the United States; or

(2) with the result that serious bodily injury is caused to a national of the United States;

(d) Definition.–As used in this section the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

([d] e) Limitation on Prosecution.–No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

[S 2333. Civil remedies

[(a) Action and Jurisdiction.–Any national of the United States injured in his person, property, or business by reason of an act of international terrorism, or his estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he sustains and the cost of the suit, including attorney's fees.

[(b) Estopped Under United States Law.–A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 116, 1201, 1203, or 2332 of this title or section 1472 (i), (k), (l), (n), or (r) of title 49 App. shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

[(c) Estopped Under Foreign Law.–A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

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***324** [S 2334. Jurisdiction and venue

[(a) General Venue.–Any civil action under section 2333 of this title against any person may be instituted in the district court of United States for any district where any plaintiff resides or where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

[(b) Special Maritime of Territorial Jurisdiction.–If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

[(c) Service on Witnesses.–A witness in a civil action brought under section 2333 of this title may be served in any district where the witness resides, is found, or has an agent.

[(d) Convenience of the Forum.–The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless–

[(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over the defendants;

[(2) that foreign court is significantly more convenient and appropriate, and

[(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

[S 2335. Limitation of actions

[(a) In General.–Subject to subsection (b), a suite for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 3 years from the date the cause of action accrued.

[(b) Calculation of Period.–The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of his whereabouts, shall not be reckoned within this period of limitation.

[S 2336. Other limitations

[No action shall be maintained under Section 2333 of this title for injury or loss by reason of an act of war.

[S 2337. Suits against government officials

[No action shall be maintained under section 2333 of this title against–

[(1) the United States, an agency of the United States; or an officer or employee of the United States or any agency thereof acting within his official capacity or under color of legal authority; or

***325** [(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or any agency thereof acting within his official capacity or under color of legal authority.

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[S 2338. Exclusive Federal jurisdiction

[The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.]

Effective on the date of enactment of this act, chapter 113A is amended as follows:

[CHAPTER 113A–EXTRATERRITORIAL JURISDICTION OVER
TERRORIST ACTS ABROAD AGAINST UNITED STATES NATIONALS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

CHAPTER 113A–TERRORISM

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S 2331. Definitions

As used in this chapter–

(1) the term "international terrorism" means activities that–

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(B) appear to be intended–

(i) to intimidate or coerce a civilian population;
(ii) to influence the policy of a government by intimidation or coercion; or
(iii) to affect the conduct of a government by assassination or kidnapping; and
(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the local in which their perpetrators operate or seek asylum;

(2) the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property; and

(4) the term "act of war" means any act occurring in the course of–

(A) declared war;

***326** (B) armed conflict, whether or not war has been declared, between two or more nations; or

(C) armed conflict between military forces of any origin.

[S 2331. Terrorist acts abroad against United States [nationals]

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S 2332. Criminal penalties

(a) Homicide.–Whoever kills a national of the United States, while such national is outside the United States, shall–

(1) if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;

(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and

(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

(b) Attempt or Conspiracy With Respect to Homicide.–Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall–

(1) if the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and

(2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

(c) Other Conduct.–Whoever outside the United States engages in physical violence–

(1) with intent to cause serious bodily injury to a national of the United States; or

(2) with the result that serious bodily injury is caused to a national of the United States;

shall be fined under this title or imprisoned not more than five years, or both.

[(d) Definition.–As used in this section the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

[(e)] (d) Limitation on Prosecution.–No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

S 2333. Civil remedies

(a) Action and Jurisdiction.–Any national of the United States injured in his person, property, or business by reason of an act of international terrorism, or his estate, survivors, or heirs, may sue ***327** therefor in any appropriate district court of the United States and shall recover threefold the damages he sustains and the cost of the suit, including attorney's fees.

(b) Estopped Under United States Law.–A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 1427 (i), (k), (1), (n), or (r) of title 49 App. shall

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estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

(c) Estopped Under Foreign Law.–A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense on any subsequent civil proceeding under this section.

S 2334. Jurisdiction and venue

(a) General Venue.–Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) Special Maritime or Territorial Jurisdiction.–If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

(c) Service on Witnesses.–A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

(d) Convenience of the Forum.–The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless–

(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

(2) that foreign court is significantly more convenient and approriate; and

(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

S 2335. Limitation of actions

(a) In General.–Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years from the date the cause of action accrued.

(b) Calculation of Period.–The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of his whereabouts, shall not be reckoned within this period of limitation.

***328** S 2336. Other limitations

No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

S 2337. Suits against Government officials

No action shall be maintained under section 2333 of this title against–

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(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his official capacity or under color of legal authority; or

(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his official capacity or under color of legal authority.

S 2338. Exclusive Federal jurisdiction

The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.

CHAPTER 113B–TORTURE

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S 2340. Definitions

As used in this chapter–

(1) the term "torture" means an act committed by a person, acting under color of law, specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within the custody or physical control of the actor;

(2) the term "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from–

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) the term "United States" includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958.

***329** S 2340A. Torture

(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) There is jurisdiction over the prohibited activity in subsection (a) if–

(1) the alleged offender is a national of the United States; or

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(2) the alleged offender is present in the United States, without regard to the nationality of the victim or the alleged offender.

S 2340B. Exclusive remedies

Nothing in this chapter precludes the application of State or local laws on the same subject, nor shall anything in this chapter create any substantive or procedural right enforceable by law by any party in any civil proceeding.

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CHAPTER 115–TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

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[S 2391. Temporary extension of section 2388

[The provisions of section 2388 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 2388 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.]

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CHAPTER 121–STORED WIRE AND ELECTRONIC
COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

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***330** S 2703. Requirements for governmental access

(a)***

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(d) Requirements for Court Order.–A court order for disclosure under subsection (b) or (c) of this section may be issued by any court that is a court of competent jurisdiction set forth in [section 3126(2)(A)] section 3127(2)(A) of this title and shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

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S 2709. Counterintelligence access to telephone toll and transactional records

(a)***

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[(b) Required Certification.–The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that–

(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).]

(b) Required Certification.–The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may–

(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that–

(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

***331** (2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that–

(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with–

(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.

* * * * * * *

(e) Requirement That Certain Congressional Bodies Be Informed.–On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all requests made under subsection (b) of this section.

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PART II–CRIMINAL PROCEDURE

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CHAPTER 205–SEARCHES AND SEIZURES

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S 3113. Liquor violations in Indian country

If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision has probable cause to believe that any person is about to introduce or ***332** has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.

Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army.

[In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses.]

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CHAPTER 206–PEN REGISTERS AND TRAP AND TRACE DEVICES

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S 3125. Emergency pen register and trap and trace device installation

(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that–

(1) an emergency situation exists that involves–

(A) ***

* * * * * * *

(2) there are grounds upon which an order could be entered under this chapter to authorize such installation and use [“] may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with section 3123 of this title.[”]

* * * * * * *

(d) A provider [for] of a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

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***333** CHAPTER 211–JURISDICTION AND VENUE

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S 3239. Optional venue for espionage and related offenses.

The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of–

(1) section 793, 794, 798, or section 1030(a)(1) of this title;

(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783 (b) or (c)); may be in the District of Columbia or in any other district authorized by law.

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CHAPTER 213–LIMITATIONS

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3286. Extension of statute of limitations for certain terrorism offenses.

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S 3281. Capital offenses

An indictment for any offense punishable by death may be found at any time without limitation [except for offenses barred by the provisions of law existing on August 4, 1939].

* * * * * * *

S 3286. Extension of statute of limitations for certain terrorism offenses

Notwithstanding the provisions of section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902 (i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572 (i), (j), (k), (l), or (n)), unless the indictment is found or the information ***334** is instituted within ten years next after such offense shall have been committed.

* * * * * * *

S 3293. Financial institution offenses

No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate–

(1) section 215, 656, 657, 1005, 1006, 1007, [1008,] 1014, 1033, or 1344;

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(2) section 1341 or 1343, if the offense affects a financial institution; or

(3) section 1963, to the extent that the racketeering activity involves a violation of section 1344;

unless the indictment is returned or the information is filed within 10 years after the commission of the offense.

* * * * * * *

CHAPTER 219–TRIAL BY UNITED STATES MAGISTRATES

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S 3401. Misdemeanors; application of probation laws

(a) ***

(b) Any person charged with a misdemeanor other than a petty offense may elect, however, to be tried before a judge of the district court for the district in which the offense was committed. The magistrate shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a judge of the district court and that he may have a right to trial by jury before a district judge or magistrate. The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court.

* * * * * * *

(d) The probation laws shall be applicable to persons tried by a magistrate under this section, and such officer shall have power to grant probation and to revoke or reinstate the probation of any person granted probation by him. A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release.

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CHAPTER 221–ARRAIGNMENT, PLEAS AND TRIAL

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[S 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

[A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of ***335** the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness.]

S 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

(a) A person charged with treason or other capital offense shall, a reasonable time before commencement of trial, be furnished with–

(1) a copy of the indictment;

(2) a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment and at the sentencing hearing, stating the place of abode of each venireman and witness;

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(3) the relevant written or recorded statements of such witnesses, relevant portions of memoranda containing reports of their statements, and copies of documents and opportunity to examine tangible objects that the government intends to use in the trial or sentencing hearing; and

(4) such other reports, statements, or information as the court may order.

(b) The list of veniremen and the name and address of a witness or other information identifying a witness need not be furnished under this section if the court finds by the preponderance of the evidence that providing the list or the name or address may jeopardize the life or safety of any person.

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CHAPTER 227–SENTENCES

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Subchapter A–General Provisions

* * * * * * *

S 3553. Imposition of a sentence

(a) Factors To Be Considered in Imposing a Sentence.–The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider–

(1) * * *

* * * * * * *

(4) the kinds of sentence and the sentencing range established for–

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements ***336** issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;

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Subchapter B–Probation

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S 3561. Sentence of probation

(a) In General.–A defendant who has been found guilty of an offense may be sentenced to a term of probation unless–

(1) * * *

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(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense. However, this paragraph does not preclude the imposition of a sentence to a term of probation for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.

* * * * * * *

S 3563. Conditions of probation

(a) Mandatory Conditions.–The court shall provide, as an explicit condition of a sentence of probation–

(1) ***

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13), unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b); [and]

(3) for a felony, a misdemeanor, or an infraction, that the defendant not [possess illegal controlled substances.] unlawfully possess a controlled substance; and

(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of the controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. In addition, the Court may decline to impose this condition for any individual defendant, if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant. A defendant who tests positive may be detained pending verification of a drug test result.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to ***337** the court-established installment schedule shall be a condition of the probation.

* * * * * * *

S 3565. Revocation of probation

(a) Continuation or Revocation.–If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable–

(1) continue him on probation, with or without extending the term of modifying or enlarging the conditions; or

(2) revoke the sentence of probation and [impose any other sentence that was available under subchapter A at the time of the initial sentencing] resentence the defendant under subchapter A.

[Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.]

[(b) Mandatory Revocation for Possession of a Firearm.–If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall,

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after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.]

(b) Mandatory Revocation for Possession of Controlled Substance or Firearm or Refusal to Cooperate in Drug Testing.–If the defendant–

(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm; or

(3) refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4);

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.

Subchapter D–Imprisonment

* * * * * * *

***338** S 3583. Inclusion of a term of supervised release after imprisonment

(a) ***

* * * * * * *

(d) Conditions of Supervised Release.–The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not [possess illegal controlled substances] unlawfully possess a controlled substance. For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court), for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title. The court may order, as a further condition of supervised release, to the extent that such condition–

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

(e) Modification of Conditions or Revocation.–The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6)–

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(1) terminate a term of supervised release and discharge the [person] defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the [person] defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

[(3) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that ***339** the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony; or]

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the [person] defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

* * * * * * *

[(g) Possession of Controlled Substances.–If the defendant is found by the court to be in the possession of a controlled substance, the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.]

(g) Mandatory Revocation for Possession of Controlled Substance or Firearm.–If the defendant–

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

(3) refuses to cooperate in drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

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(h) Supervised Release Following Revocation.–When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised ***340** release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed Revocation.–The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

* * * * * * *

CHAPTER 228–DEATH PENALTY PROCEDURES

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 3591. Sentence of death

A defendant who has been found guilty of–

(1) an offense described in section 794 or section 2381 of this title;

(2) an offense described in section 1751(c)(2) of this title;

(3) an offense referred to in section 408(c)(1) of the Controlled Substances Act, committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) of that section or twice the gross receipts described in subsection (b)(2)(B) of that section;

(4) an offense constituting a felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Law Enforcement Act where the defendant knowingly or intentionally causes the death of another individual in the course of the violation or from the use of the controlled substance involved in the violation;

(5) an offense under section 922(u) of this title (relating to drive-by shooting);

(6) an offense under section 36, 2280, 2281, 2332, 2339, or 2340A of this title, or section 902(i) or 902(n) of the Federal Aviation Act of 1958 in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under ***341** this chapter, intentionally, knowingly, or with reckless disregard for human life, caused the death of another individual; or

(7) any other offense–

(A) for which a sentence of death is provided by law; and

(B) in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under this chapter, intentionally or knowingly caused the death of another individual,

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shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified. However, no person may be sentenced to death who was less than 18 years of age at the time of the offense.

S 3592. Factors to be considered in determining whether a sentence of death is justified

(a) Mitigating Factors.–In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

(1) Mental capacity.–The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(2) Duress.–The defendant was under duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(3) Participation in offense minor.–The defendant's participation in the offense was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(4) Foreseeability.–The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

(5) Youth.–The defendant was youthful, although not under the age of 18.

(6) Prior record.–The defendant did not have a significant prior criminal record.

(7) Mental or emotional disturbance.–The defendant committed the offense under severe mental or emotional disturbance.

(8) Punishment of others equally culpable.–Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(9) Consent of victim.–The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

***342** (b) Aggravating Factors for Espionage and Treason.–In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) Previous espionage or treason conviction.–The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

(2) Risk of substantial danger to national security.–In the commission of the offense the defendant knowingly created a grave risk to the national security.

(3) Risk of death to another.–In the commission of the offense the defendant knowingly created a grave risk of death to another person.

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The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

(c) Aggravating Factors for Homicide and for Attempted Murder of the President.–In determining whether a sentence of death is justified for an offense described in section 3591(2) or (5) through (7), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

(1) Conduct occurred during commission of specified crimes.–The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)), unless the above-listed offense is the offense for which the death penalty is being sought.

(2) Involvement of firearm or previous conviction of violent felony involving firearm.–The defendant–

***343** (A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used a firearm as defined in section 921 of this title; or

(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of a firearm, as defined in section 921 of this title, against another person.

(3) Previous conviction of offense for which a sentence of death or life imprisonment was authorized.–The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

(4) Previous conviction of other serious offenses.–The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

(5) Grave risk of death to additional persons.–The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

(6) Heinous, cruel or depraved manner of commission.–The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

(7) Procurement of offense by payment.–The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, unless this is an element of the offense.

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(8) Commission of the offense for pecuniary gain.–The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value, unless this is an element of the offense.

(9) Substantial planning and premeditation.–The defendant committed the offense after substantial planning and premeditation.

(10) Vulnerability of victim.–The victim was particularly vulnerable due to old age, youth, or infirmity, and the defendant was or should have been aware of that old age, youth, or infirmity.

(11) Type of victim.–The defendant committed the offense against–

(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

***344** (C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons–

(i) while such public servant was engaged in the performance of his official duties;
(ii) because of the performance of such public servant's official duties; or
(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms "President-elect" and "Vice President-elect" mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a "Federal law enforcement officer" is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; "Federal prison" means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and "Federal judge" means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

(d) Aggravating Factors for Drug Offense Death Penalty.–In determining whether a sentence of death is justified for an offense described in section 3591 (3) or (4), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist–

(1) Previous conviction of offense for which a sentence of death or life imprisonment was authorized.–The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

(2) Previous conviction of other serious offenses.–The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving

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the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

(3) Previous serious drug felony conviction.–The defendant has previously been convicted of another Federal or ***345** State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

(4) Use of firearm.–In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

(5) Distribution to persons under twenty-one.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

(6) Distribution near schools.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

(7) Using minors in trafficking.–The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

(8) Lethal Adulterant.–The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

S 3593. Special hearing to determine whether a sentence of death is justified

(a) Notice by the Government.–Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial or before acceptance by the court of a plea of guilty, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court shall permit the attorney for the Government to amend the notice upon a showing of good cause a reasonable time before the sentencing phase of the trial begins.

***346** (b) Hearing Before a Court or Jury.–When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no persentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal procedure. The hearing shall be conducted–

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(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for the purpose of the hearing if–

(A) the defendant was convicted upon a plea of guilty;

(B) the defendant was convicted after a trial before the court sitting without a jury;

(C) the jury that determined the defendant's guilt was discharged for good cause; or

(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

(c) Proof of Mitigating and Aggravation Factors.–At the hearing, information may be presented as to–

(1) any mater relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, ***347** and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

(d) Return of Special Findings.–The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factors set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

(e) Return of a Finding Concerning a Sentence of Death.–If, in the case of–

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(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

(2) an offense described in section 3591(2) or (5)–(7), an aggravating factor required to be considered under section 3592(c) is found to exist; or

(3) an offense described in section 3591 (3) or (4), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it is never required to impose a death sentence and that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

(f) Special Precaution To Assure Against Discrimination.–In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation ***348** regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

S 3594. Imposition of a sentence of death

Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

S 3595. Review of a sentence of death

(a) Appeal.–In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

(b) Review.–The court of appeals shall review the entire record in the case, including–

(1) the evidence submitted during the trial;

(2) the information submitted during the sentencing hearing;

(3) the procedures employed in the sentencing hearing; and

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(4) the special findings returned under section 3593(d).

(c) Decision and Disposition.–

(1) If the court of appeals determines that–

(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for appeal or reflected in the record;

it shall affirm the sentence, provided that if any reviewing court determines that any aggravating factor was not supported by the evidence or is not a proper aggravating factor, the sentence shall be affirmed if the court finds that a remaining aggravating factor found to exist is one allowed under section 3592 and that the remaining aggravating factor or factors found to exist substantially outweigh any mitigating factors found to exist.

(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

***349** S 3596. Implementation of a sentence of death

(a) In General.–A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

(b) Special Bars to Execution.–A sentence of death shall not be carried out upon a woman while she is pregnant, or upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability–

(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

(c) Employees May Decline To Participate.–No employee of any State department of corrections, the Federal Bureau of Prisons, the United States Marshals Service, or the United States Department of Justice, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section or to participate in the prosecution or appeal of any capital case if such participation is contrary to the moral or religious convictions of the employee. For purposes

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of this subsection, the term "participate in any execution" includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

S 3596A. Special provisions for Indian country

Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

S 3597. Use of State facilities

A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, ***350** and shall pay the costs thereof in an amount approved by the Attorney General.

S 3598. Appointment of counsel

(a) Representation of Indigent Defendants.–Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant or applicant against whom a sentence of death may be sought, or on whom a sentence of death has been imposed, for an offense against the United States, and for any defendant or applicant seeking to vacate or set aside a death sentence in a proceeding under section 2254 or 2255 of title 28, United States Code, where the defendant or applicant is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services. Such a defendant or applicant shall be entitled to appointment of counsel and the furnishing of such other services in accordance with subsections (b) through (g).

(b) Representation Before Finality of Judgment.–A defendant or applicant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. Each counsel so appointed shall continue to represent the defendant or applicant through every subsequent stage of available judicial proceedings, unless replaced by the court with similarly qualified counsel.

(c) Representation After Finality of Judgment.–When a judgment of a Federal court imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant or applicant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order–

(1) appointing one or more counsel to represent the defendant or applicant upon a finding that the defendant or applicant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel;

(2) finding, after a hearing if necessary, that the defendant or applicant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or

(3) denying the appointment of counsel upon a finding that the defendant or applicant is financially able to obtain adequate representation.

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(d) Standards for Competence of Counsel.–In relation to a defendant or applicant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to practice in the court of appeals for at least five years and ***351** have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant or applicant, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation.

(e) Applicability of Criminal Justice Act.–Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

(f) Ancillary Services.–Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant or applicant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's or applicant's attorneys to obtain such services on behalf of the defendant or applicant and shall order the payment of fees and expenses therefore, under subsection (g). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

(g) Rate of compensation.–Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (f), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of subsections (b) through (f).

(h) Claims of Ineffectiveness of Counsel.–The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

S 3599. Collateral attack on judgment imposing sentence of death

(a) Time for Making Section 2255 Motion.–In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within one year of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

(b) Stay of Execution.–The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if–

(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection ***352** (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for

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certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

(c) Finality of the Decision on Review.–If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless–

(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed or in the validity of the sentence under Federal law.

CHAPTER 229–POSTSENTENCE ADMINISTRATION

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Subchapter A–Probation

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 3608. Drug testing of Federal offenders on post-conviction release

The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of Federal offenders on post-conviction release. The program shall include such standards and guidelines as the Director may determine necessary to ensure the reliability and accuracy of the drug ***353** testing programs. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.

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Subchapter C–Imprisonment

S 3621. Imprisonment of a convicted person

(a) ***

* * * * * * *

(e) Incentive for Prisoners' Successful Completion of Treatment Program.–

(1) Generally.–Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under subsection (b) of this section, shall remain in the custody of the Bureau for such time (as limited by paragraph (2) of this subsection) and under such conditions, as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the

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successful completion of the treatment, the Bureau shall periodically test the prisoner for drug abuse and discontinue such conditions on determining that drug abuse has recurred.

(2) Period of Custody.–The period the prisoner remains in custody after successfully completing a treatment program shall not exceed the prison term the law would otherwise require such prisoner to serve, but may not be less than such term minus one year.

* * * * * * *

CHAPTER 232–MISCELLANEOUS SENTENCING PROVISIONS

* * * * * * *

S 3663. Order of restitution

(a) ***

(b) The order may require that such defendant–

(1) ***

(2) in the case of an offense resulting in bodily injury to a victim or an offense under chapter 109A or chapter 110 of this title–

(A) ***

* * * * * * *

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; [and]

(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

***354** [(4)](5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

* * * * * * *

(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

(2) For purposes of this subsection–

(A) the term “Federal benefits”–

(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

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(B) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

[(g)](h)If such defendant is placed on probation or sentenced to a term of supervised release under this title, any restitution ordered under this section shall be a condition of such probation or supervised release. The court may revoke probation or a term of supervised release, or modify the term or conditions of probation or a term of supervised release, or hold a defendant in contempt pursuant to section 3583(e) if the defendant fails to comply with such order. In determining whether to revoke probation or a term of supervised release, modify the term or conditions of probation or supervised release, or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

[(h)](i) An order of restitution may be enforced–

(1) by the United States–

(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

(B) in the same manner as a judgment in a civil action; and

(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

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CHAPTER 235–APPEAL

* * * * * * *

***355** S 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or [order of a district courts] order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

The provisions of this section shall be liberally construed to effectuate its purposes.

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PART III–PRISONS AND PRISONERS

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CHAPTER 303–BUREAU OF PRISONS

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S 4047. Prison Impact Assessments

(a) Any submission of legislation by the Judicial or Executive branch which could increase or decrease the number of persons incarcerated or in Federal penal institutions shall be accompanied by a prison impact statement, as defined in subsection (b) of this section.

(b) The Attorney General shall, in consultation with the Sentencing Commission and the Administrative Office of the United States Courts, prepare and furnish prison impact assessments under subsection (c) of this section, and in response to requests from Congress for information relating to a pending measure or matter that might affect the number of defendants processed through the Federal criminal justice system. A prison impact assessment on pending legislation ***356** must be supplied within 7 days of any request. A prison impact assessment shall include–

(1) projections of the impact on prison, probation, and post prison supervision populations;

(2) an estimate of the fiscal impact of such population changes on Federal expenditures, including those for construction and operation of correctional facilities for the current fiscal year and 5 succeeding fiscal years;

(3) an analysis of any other significant factor affecting the cost of the measure and its impact on the operations of components of the criminal justice system; and

(4) a statement of the methodologies and assumptions utilized in preparing the assessment.

(c) The Attorney General shall prepare and transmit to the Congress, by March 1 of each year, a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year.

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S 4209. Conditions of parole

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime, that the parolee not possess illegal controlled substances.[sic] and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from an unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3653(a)(4) of this title. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to–

(1) the nature and circumstances of the offense; and

(2) the history and characteristics of the parolee;

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and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

* * * * * * *

S 4214. Revocation of parole

(a) ***

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(f) Notwithstanding any other provision of this section, a parolee who is found by the Commission to be in possession of a controlled substance , or who unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of parole, shall have his parole revoked.

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***357** CHAPTER 313–OFFENDERS WITH MENTAL DISEASE OR DEFECT

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S 4247. General provisions for chapter

(a) ***

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(h) Discharge.–Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of [subsection (e) of section 4241, 4243, 4244, 4245, or 4246,] subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

* * * * * * *

CHAPTER 319–NATIONAL INSTITUTE OF CORRECTIONS

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S 4351.

(a) ***

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the [Administrator of the Law Enforcement Assistance Administration] Director of the Bureau of Justice Assistance or his designee, Chairman of the United States Sentencing Commission or his designee, the Director of the Federal Judicial Center or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

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PART IV–CORRECTION OF YOUTHFUL OFFENDERS

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CHAPTER 403–JUVENILE DELINQUENCY

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***358** S 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)), or section 922(p) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice; however, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844 (d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1) (A), (B), or (C), (d), ***359** or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice; the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development

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and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

[Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until] A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

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***360** PART V–IMMUNITY OF WITNESSES

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S 6003. Court and grand jury proceedings

(a) ***

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General [or], Deputy Assistant Attorney General or one other officer or employee of the Criminal Division designated by the Attorney General, request an order under subsection (a) of this section when in his judgment–

(1) ***

* * * * * * *

VICTIMS OF CRIME ACT OF 1984

CRIME VICTIMS FUND

Sec. 1402. (a) ***

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* * * * * * *

[(c)(1)(A) If the total deposited in the Fund during a particular fiscal year reaches the ceiling sum described in subparagraph (B), the excess over the ceiling sum shall not be part of the Fund. The first $2,200,000 of such excess shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code, and the remaining excess shall be deposited in the general fund of the Treasury.

[(B) The ceiling sum referred to in subparagraph (A) is–

[(i) $125,000,000 through fiscal year 1990; and

[(ii) $150,000,000 thereafter through fiscal year 1994.

[(2) No deposits shall be made in the Fund after September 30, 1994.]

(d)(1) ***

[(2) The Fund shall be available as follows:

[(A) Of the first $100,000,000 deposited in the Fund in a particular fiscal year–

[(i) 49.5 percent shall be available for grants under section 1403;

[(ii) 45 percent shall be available for grants under section 1404(a);

[(iii) 1 percent shall be available for grants under section 1404(c); and

[(iv) 4.5 percent shall be available for grants as provided in section 1404A.

[(B) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 1404A.

***361** [(C) Any deposits in the Fund in a particular fiscal year in excess of $105,500,000, but not in excess of $110,000,000, shall be available for grants under section 1404(a).

[(D) Any deposits in the Fund in a particular fiscal year in excess of $110,000,000 shall be available as follows:

[(i) 47.5 percent shall be available for grants under section 1403;

[(ii) 47.5 percent shall be available for grants under section 1404(a); and

[(iii) 5 percent shall be available for grants under section 1404(c)(1)(B).]

(2) The Fund shall be available as follows:

(A) Of the total deposited in the Fund during a particular fiscal year–

(i) the first $10,000,000 shall be available for grants under section 1404A of this title;

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(ii) the next sums deposited, up to the reserved portion (as described in subparagraph (C)), shall be made available to the judicial branch for administrative costs to carry out the functions of that branch under sections 3611 and 3612 of title 18, United States Code;

(iii) and of the sums remaining after the allocations under clauses (i) and (ii)–

(I) 4 percent shall be available for grants under section 1404(c)(1); and
(II) 96 percent shall be available in equal amounts for grants under section 1403 and 1404(a) of this title.
(B) The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed $20,000,000.

(C) The reserved portion referred to in subparagraph (A) is $6,200,000 in each of fiscal years 1992 through 1995 and $3,000,000 in each fiscal year thereafter.

(e) [(1) Except as provided in paragraph (2), any] Any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next [succeeding fiscal year] two succeeding fiscal years, at the end of [which year] which period any remaining unobligated sums shall be returned to the [general fund of the Treasury] Fund.

[(2) For the purposes of the application of paragraph (1) to any grant under this chapter will respect to fiscal year 1985, there shall be substituted in such paragraph "two succeeding fiscal years" for "succeeding fiscal year" and "which period" for "which year".]

* * * * * * *

(g)(1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2)(A)[(iv)](i) to make grants for the purpose of assisting Native ***362** American Indian tribes in developing, establishing, and operating programs designed to improve–

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

* * * * * * *

CRIME VICTIM COMPENSATION

Sec. 1403. (a)(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of [40 percent] 45 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. [A grant] Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

* * * * * * *

(3) The Director may permit not more than 5 percent of a grant made under this section to be used for the administration of the crime victim compensation program receivng the grant.

* * * * * * *

(e) Notwithstanding any other provision of law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay, then–

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(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

CRIME VICTIM ASSISTANCE

Sec. 1404. (a)(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 1402(d)(2) for the purpose of grants under this subsection, [or for the purpose of grants under section 1403 but not used for that purpose,] to the chief executive of each State for the financial support of eligible crime victim assistance programs, except as provided in paragraph (7).

The Director, in the Director's discretion, may use amounts made available under section 1402(d)(2) for the purposes of grants under section 1403 but not used for that purpose, for grants under this subsection, either in the year such amounts are not so used, or the next year.

* * * * * * *

(6) In making the certification required by paragraph (2)(B), the chief executive shall give particular attention to children who are victims of violent street crime.

***363** (7) The Director may permit not more than 5 percent of sums provided under this subsection to be used by the chief executive of each State for the administration of such sums.

* * * * * * *

(c)(1) The Director shall make grants–

(A) for demonstration projects and training and technical assistance services to eligible crime victim assistance programs; and

* * * * * * *

ADMINISTRATIVE PROVISIONS

Sec. 1407. (a)***

* * * * * * *

(g) The Director shall, on [December 31, 1990] May 31, 1993, and on [December 31] May 31, 1993 every 2 years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 1402 and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

(h) Each entity receiving sums made available under this Act for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

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SECTION 503 OF THE VICTIMS' RIGHTS AND RESTITUTION ACT OF 1990

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SEC. 503. SERVICES TO VICTIMS.

(a)***

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(c) Description of Services.–(1)***

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(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes, and the cost of up to two tests of the victim for the human immunodeficiency virus during the 12 months following the assault.

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***364** SECTION 1005 OF THE NATIONAL NARCOTICS LEADERSHIP ACT OF 1988

SEC. 1005. DEVELOPMENT AND SUBMISSION OF NATIONAL DRUG CONTROL STRATEGY.

(a)***

* * * * * * *

[(c) High Intensity Drug Trafficking Areas.–(1) The Director, upon consultation with the Attorney General, heads of National Drug Control Program agencies, and the Governors of the several States, may designate any specified area of the United States as a high intensity drug trafficking area. After making such a designation and in order to provide Federal assistance to the area so designated, the Director may–

[(A) direct the temporary reassignment of Federal personnel to such area, subject to the approval of the Secretary of the department or head of the agency which employs such personnel;

[(B) take any other action authorized under section 1003 to provide increased Federal assistance to such areas; and

[(C) coordinate actions under this paragraph with State and local officials.

(2) When considering the designation of an area under this subsection as a high intensity drug trafficking area, the Director shall consider, along with other criteria the Director may deem appropriate–

[(A) the extent to which the area is a center of illegal drug production, manufacturing, importation, or distribution;

[(B) the extent to which State and local law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

[(C) the extent to which drug-related activities in the area are having a harmful impact in other areas of the country; and

(D) the extent to which a significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

[(3) Before March 1, 1991, the Director shall submit a report to the House of Representatives and to the Senate concerning the effectiveness of and need for the designation of areas under this subsection as high intensity drug trafficking areas, along with any comments or recommendations for legislation.

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[(d) Lead Agencies.–(1) The President shall designate lead agencies with areas of principal responsibility for carrying out the National Drug Control Strategy.

[(2) The Director shall require that any National Drug Control Program agency that conducts a major supply reduction activity which is in the area of principal responsibility of a lead agency designated under paragraph (1) shall–

[(A) notify such lead agency in writing of the activity; and

[(B) provide such notification prior to conducting such activity, unless exigent circumstances require otherwise.

[(3) If a lead agency objects to the conduct of an activity described under paragraph (2), the lead agency and the agency planning ***365** to conduct such activity shall notify the Director in writing regarding such objection.]

(c) Declaration of Drug Emergency Areas.–

(1) Presidential declaration.–(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

(B) For the purposes of this subsection, the term "major drug-related emergency" means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(2) Procedure for declaration.–(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

(B) Any request made under subparagraph (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude, that Federal assistance is necessary to assure an effective response to save lives, and to protect property and public health and safety.

(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(D) As part of a request for a declaration by the President under this subsection, and as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall–

(i) take appropriate action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

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(iii) submit a detailed plan outlining that government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible quantitative goals) and timetables and shall specify ***366** how Federal assistance provided under this subsection is intended to achieve such goals.

(E) The Director shall review any request submitted pursuant to this subsection and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

(3) Federal monetary assistance.–(A) The President is authorized to make grants to state or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

(D) Any State or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

(4) Nonmonetary assistance.–In addition to the assistance provided under paragraph (3), the President may–

(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(5) Issuance of implementing regulations.–Not later than 90 days after the date of the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

(6) Audit by comptroller general.–Assistance under this subsection shall be subject to annual audit by the Comptroller General.

(7) Authorization of appropriations.–There are authorized to be appropriated for each of fiscal years 1992, 1993, and 1994, $300,000,000 to carry out this subsection.

***367** TITLE 28, UNITED STATES CODE

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PART II–DEPARTMENT OF JUSTICE

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CHAPTER 31–THE ATTORNEY GENERAL

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S 524. Availability of Appropriations

(a) * * *

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(c)(1) * * *

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(12)(A) In addition to the purposes otherwise provided for in this subsection, the Fund shall be available for the purpose of providing additional amounts for block grants under subpart I of part B of title XIX of the Public Health Service Act.

(B) Amounts made available under subparagraph (A)–

(i) may be transferred only from excess unobligated amounts in the Fund and only to the extent that, as determined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1); and

(ii) shall, with respect to each fiscal year, equal 25 percent of the total of such excess amounts for that fiscal year.

(C) Amounts made available under this paragraph for block grants referred to subparagraph (A) shall be used to supplement, rather than replace, amounts that would be otherwise available for such block grants.

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PART III–COURT OFFICERS AND EMPLOYEES

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CHAPTER 58–UNITED STATES SENTENCING COMMISSION

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S 994. Duties of the Commission

(a) * * *

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(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and–

(1) has been convicted of a felony that is–

***368** (A) a crime of violence; or

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(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), section 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and [section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)] the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); and

(2) has previously been convicted of two or more prior felonies, each of which is–

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and [section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)] the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

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PART VI-PARTICULAR PROCEEDINGS

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CHAPTER 153-HABEAS CORPUS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

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S 2244. Finality of determination

(a)***

(b)(1) When, in the case of an applicant not under sentence of death, after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately ***369** withheld the newly asserted ground or otherwise abused the writ.

(2) In the case of an applicant under sentence of death, a claim presented in a second or successive application, that was not presented in a prior application under this chapter, shall be dismissed unless–

(A) the applicant shows that–

(i) the basis of the claim could not have been discovered by the exercise of reasonable diligence before the applicant filed the prior application; or

(ii) the failure to raise the claim in the prior application was due to action by State officials in violation of the Constitution of the United States; and

(B) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed, or in the validity of that sentence under Federal law.

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S 2251. Stay of State court proceedings

(a)(1) A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

(2) After the granting of such a stay, any such proceeding in any State court of by or under the authority of any State shall be void. If no stay is granted, and such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

(b) In the case of an individual under sentence of death, a warrant or order setting an execution shall be stayed upon application to any court that would have jurisdiction over an application for habeas corpus under this chapter. The stay shall be contingent upon reasonable diligence by the individual in pursuing relief with respect to such sentence and shall expire if–

(1) the individual fails to apply for relief under this chapter within the time requirements established by section 2254(g) of this chapter;

(2) upon completion of district court and court of appeals review under section 2254 of this chapter, the application is denied and–

(A) the time for filing a petition for a writ of certiorari expires before a petition is filed;

(B) a timely petition for a writ of certiorari is filed and the Supreme Court denies the petition; or

(C) a timely petition for certiorari is filed and, upon consideration of the case, the Supreme Court disposes of it in a manner that leaves the capital sentence undisturbed; or

(3) before a court of competent jurisdiction, in the presence of counsel qualified under section 2257 of this chapter and after ***370** being advised of the consequences of the decision, an individual waives the right to pursue relief under this chapter.

* * * * * * *

S 2253. Appeal

In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

[An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.]

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause. However, an applicant under sentence of death shall have a right of appeal without a certification of probable cause, except after denial of a second or successive application.

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S 2254. State custody; remedies in Federal courts

(a) ***

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(g)(1) In the case of an applicant under sentence of death, any application for habeas corpus relief under this section must be filed in the appropriate district court not later than one year after–

(A) the date of denial of a writ of certiorari, if a petition for a writ of certiorari to the highest court of the State on direct appeal or unitary review of the conviction and sentence is filed, within the time limits established by law, in the Supreme Court;

(B) the date of issuance of the mandate of the highest court of the State on direct appeal or unitary review of the conviction and sentence, if a petition for a writ of certiorari is not filed, within the time limits established by law, in the Supreme Court; or

(C) the date of issuance of the mandate of the Supreme Court, if on a petition for a writ of certiorari the Supreme Court grants the writ, and disposes of the case in a manner that leaves the capital sentence undisturbed.

(2) The time requirements established by this section shall be tolled–

(A) during any period in which the State has failed to provide counsel as required in section 2257 of this chapter;

(B) during the period from the date the applicant files an application for State postconviction relief until final disposition ***371** of the application by the State appellate courts, if all filing deadlines are met; and

(C) during an additional period not to exceed 90 days, if counsel moves for an extension in the district court that would have jurisdiction of a habeas corpus application and makes a showing of good cause.

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S 2256. Law applicable

In an action filed under this chapter, the court shall not apply a new rule. For purposes of this section, the term "new rule" means a clear break from precedent, announced by the Supreme Court of the United States, that could not reasonably have been anticipated at the time the claimant's sentence became final in State court.

S 2257. Counsel in capital cases; State court

(a) A State in which capital punishment may be imposed shall provide legal services to–

(1) indigents charged with offenses for which capital punishment is sought;

(2) indigents who have been sentenced to death and who seek appellate, collateral, or unitary review in State court; and

(3) indigents who have been sentenced to death and who seek certiorari review of State court judgments in the United States Supreme Court.

(b) The State shall establish an appointing authority, which shall be–

(1) a statewide defender organization;

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(2) a resource center; or

(3) a committee appointed by the highest State court, comprised of members of the bar with substantial experience in, or commitment to, criminal justice.

(c) The appointing authority shall–

(1) publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing qualifications and performance of counsel, which shall include–

(A) knowledge and understanding of pertinent legal authorities regarding issues in capital cases;

(B) skills in the conduct of negotiations and litigation in capital cases, the investigation of capital cases and the psychiatric history and current condition of capital clients, and the preparation and writing of legal papers in capital cases;

(C) in the case of counsel appointed for the trial or sentencing stages, 5 years of experience in the representation of criminal clients in felony cases and experience in at least one case in which the death penalty was sought; and

(D) in the case of counsel appointed for the appellate, postconviction, or unitary review stages, 5 years of experience in the representation of criminal clients in felony cases at the appellate, postconviction, unitary review, or certiorari ***372** stages and experience in at least one case in which the client has been sentenced to death;

(2) monitor the performance of attorneys appointed and delete from the roster any attorney who fails to meet qualification and performance standards; and

(3) appoint a defense team, which shall include at least 2 attorneys, to represent a client at the relevant stage of proceedings, promptly upon receiving notice of the need for the appointment from the relevant State court.

(d) An attorney who is not listed on the roster shall be appointed only on the request of the client concerned and in circumstances in which the attorney requested is able to provide the client with quality legal representation.

(e) No counsel appointed pursuant to this section to represent a prisoner in State postconviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and counsel expressly request continued representation.

(f) The ineffectiveness or incompetence of counsel appointed pursuant to this section during State or Federal postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal postconviction proceedings.

(g) Upon receipt of notice from the appointing authority that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual's competency to decline the appointment, and whether the individual has knowingly and intelligently declined it.

(h) Attorneys appointed from the private bar shall be compensated on an hourly basis and at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases and shall be reimbursed for expenses reasonably incurred in representing the client, including the costs of law clerks, paralegals, investigators, experts, or other support services.

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(i) Support services for staff attorneys of a defender organization or resource center shall be equal to the services listed in subsection (h).

(j) If a State fails to provide counsel in a proceeding specified in subsection (a), or counsel appointed for such a proceeding fails substantially to meet the qualification standards specified in subsections (c)(1) or (d), or the performance standards established by the appointing authority, the court, in an action under this chapter, shall neither presume findings of fact made in such proceeding to be correct nor decline to consider a claim on the ground that it was not raised in such proceeding at the time or in the manner prescribed by State law.

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***373** CHAPTER 177–RACIALLY DISCRIMINATORY CAPITAL SENTENCING

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S 3501. Prohibition against the execution of a sentence of death imposed on the basis of race

(a) In General.–No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed on race.

(b) Inference of Race as the Basis of Death Sentence.–An inference that race was the basis of a death sentence is established if valid evidence is presented demonstrating that, at the time the death sentence was imposed, race was a statistically significant factor in decisions to seek or to impose the sentence of death in the jurisdiction in question.

(c) Relevant Evidence.–Evidence relevant to establish an inference that race was the basis of a death sentence may include evidence that death sentences were, at the time pertinent under subsection (b), being imposed significantly more frequently in the jurisdiction in question–

(1) upon persons of one race than upon persons of another race; or

(2) as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.

(d) Validity of Evidence Presented to Establish an Inference.–If statistical evidence is presented to establish an inference that race was the basis of a sentence of death, the court shall determine the validity of the evidence and if it provides a basis for the inference. Such evidence must take into account, to the extent it has compiled and publicly made available, evidence of the statutory aggravating factors of the crimes involved, and shall include comparisons of similar cases involving persons of different races.

(e) Rebuttal.–If an inference that race was the basis of a death sentence is established under subsection (b), the death sentence may not be carried out unless the government rebuts the inference by a preponderance of the evidence. The government cannot rely on mere assertions that it did not intend to discriminate or that the cases fit the statutory criteria for imposition of the death penalty.

S 3502. Access to data on death eligible cases

Data collected by public officials concerning factors relevant to the imposition of the death sentence shall be made publicly available.

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S 3503. Enforcement of the chapter

In any proceeding brought under section 2254, the evidence of a prima facie case supporting a claim under this chapter may be presented in an evidentiary hearing and need not be set forth in the ***374** petition. Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2921 shall be presumed to be correct unless–

(1) the State is in compliance with section 2922;

(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim; and

(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

S 3504. Construction of chapter

Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2921.

CHAPTER 178–PROFESSIONAL AND AMATEUR SPORTS PROTECTION

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 3701. Definitions

For purposes of this chapter–

(1) the term “amateur sports organization” means–

(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization that has governmental authority over a geographical area that is under the authority of the Government of the United States,

(3) the term “professional sports organization” means–

(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term “person” has the meaning given such term in section 1 of title 1, and

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(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

S 3702. Unlawful sports gambling

It shall be unlawful for–

***375** (1) a government entity to sponsor, operate, advertise, promote, license, or authorize by law, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

S 3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization of amateur sports organization whose competitive game is alleged to be the basis of such violation.

S 3704. Applicability

Section 3702 shall not apply to–

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a governmental entity, to the extent that the particular scheme was in operation in the period beginning September 1, 1989, and ending August 31, 1990, in such governmental entity pursuant to the law of any government entity;

(2) a commercial casino gaming scheme in operation in a gambling establishment (as defined in section 1081 of title 18), to the extent that the particular commercial casino gaming scheme is–

(A) described in paragraph (1) with respect to a governmental entity, and

(B) in operation not later than 2 years after the effective date of this chapter, in a governmental entity in which commercial casino gaming was in operation in such an establishment throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation, or

(3) parimutuel animal racing.

CONTROLLED SUBSTANCES ACT

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***376** PENALTY FOR SIMPLE POSSESSION

Sec. 404. (a) ***

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(b)(1) Whoever, being a physical trainer or adviser to an individual, endeavors to persuade or induce that individual to possess or use anabolic steroids in violation of subsection (a), shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both. If such individual has not attained the age of 18 years, the maximum imprisonment shall be 5 years.

(2) As used in this subsection, the term "physical trainer or adviser" means any professional or amateur coach, manager, trainer, instructor, or other such person, who provides any athletic or physical instruction, training, advice, assistance, or other such service to any person.

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CONTINUING CRIMINAL ENTERPRISE

Sec. 408. (a) ***

(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if–

(1) ***

(2)(A) the violation referred to in subsection [(d)(1)] (c)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

* * * * * * *

DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

Sec. 418. (a) Except as provided in section 419, any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age; or to a woman while she is pregnant; is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b), and (2) at least twice any term of supervised release authorized by section 401(b), for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

(b) Except as provided in section 419, any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age; or to a woman while she is pregnant, after a prior conviction under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) has become final, is subject to (1) three times the maximum punishment authorized by section 401(b), and (2) at least three times any term of supervised release authorized by section 401(b), for a second offense or subsequent offense involving the same controlled substance and schedule. Except to the ***377** extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A).

TITLE II–CONTROL AND ENFORCEMENT

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PART D–OFFENSES AND PENALTIES

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[DISTRIBUTION IN OR NEAR SCHOOLS]

DISTRIBUTION OR MANUFACTURING IN OR NEAR SCHOOLS AND COLLEGES, OR PUBLIC HOUSING

Sec. 419. (a) Any person who violates section 401(a)(1) or section 416 by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, [or] a playground, or a public housing project, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) of this title; and (2) at least twice any term of supervised release authorized by section 401(b) for a first offense. A fine up to twice that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a person shall be sentenced under this subsection to a term of imprisonment of not less than [one year] 3 years. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana.

(b) Any person who violates section 401(a)(1) or section 416 by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, [or] a playground, or a public housing project, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than [three years] 5 years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b) for a first offense, and (2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense. A fine up to three times that authorized by section 401(b) may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a person shall be sentenced under this subsection to a term of imprisonment of not less than [three years] 5 ***378** years. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A).

* * * * * * *

SECTION 5124 OF THE PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION ACT OF 1990

SEC. 5124. ELIGIBLE ACTIVITIES.

Grants under this chapter may be used in public housing or other federally assisted low-income housing projects for–

(1) the employment of security personnel;

(2) reimbursement of local law enforcement agencies for additional security and protective services;

(3) physical improvements which are specifically designed to enhance security;

(4) the employment of one or more individuals–

(A) to investigate drug-related crime on or about the real property comprising any public or other federally assisted low-income housing project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding;

(5) the provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

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(6) programs designed to reduce use of drugs in and around public or other federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs; [and]

(7) providing funding to nonprofit public housing resident management corporations and resident councils to develop security and drug abuse prevention programs involving site residents[.] ; and

(8) with respect only to public housing, the determination by the public housing agency (in consultation with appropriate officials of the applicable local government and law enforcement agencies) of the geographical boundaries of the real property comprising public housing projects of the agency and the posting of signs identifying the property of the projects as drug-free zones.

TITLE 23, UNITED STATES CODE

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CHAPTER 1–FEDERAL-AID HIGHWAYS

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***379** S 160. Motor vehicle theft prevention program

(a) In General.–Not later than 180 days after the date of enactment of this section, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the "program") under which–

(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner–

(A) states that the vehicle is not normally operated under certain specified conditions; and

(B) agrees to–

(i) display program decals or devices on the owner's vehicle; and

(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specific conditions; and

(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

(b) Uniform Decal or Device Designs.–

(1) In general.–The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

(2) Type of design.–The uniform design shall–

(A) be highly visible; and

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(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

(c) Voluntary Consent Form.–The voluntary consent form used to enroll in the program shall–

(1) clearly state that participation in the program is voluntary;

(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

***380** (4) include any additional information that the Attorney General may reasonably require.

(d) Specified Conditions Under Which Stops May Be Authorized.–

(1) In general.–The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may include–

(A) the operation of the vehicle during certain hours of the day; or

(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

(2) More than one set of conditions.–The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

(3) No new conditions without consent.–After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

(4) Limited participation by states and localities.–A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

(e) Motor Vehicles for Hire.–

(1) Notficiation to lessees.–Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

(2) Type of notice.–The notice required by this subsection shall–

(A) be in writing;

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(B) be in a prominent format to be determined by the Attorney General; and

(C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

(3) Fine for failure to provide notice.–Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed $5,000.

***381** (f) Participating State or Locality.–A State or locality may participate in the program by filing an agreement to comply with the terms and conditions of the program with the Attorney General.

(g) Notification of Police.–As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

(h) Regulations.–The Attorney General shall promulgate regulations to implement this section.

(i) Authorization of Appropriations.–There are authorized such sums as are necessary to carry out this section.

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SECTION 5122 OF THE DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986

SEC. 5122. STATE PROGRAMS.

(a) ***

* * * * * * *

(c) Drug Abuse Resistance Education Programs.–(1) Not less than 10 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies or local governments that work cooperatively with local educational agencies in consortium with entities which have experience in assisting school districts to provide instruction to students grades kindergarten through 6 to recognize and resist pressures that influence such students to use controlled substances, as defined in Schedules I and II of section 202 of the Controlled Substances Act the possession or distribution of which is unlawful under such Act, or beverage alcohol, such as Project Drug Abuse Resistance Education, that meet the requirements of paragraph (2).

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SECTION 206 OF THE INTERNATIONAL ECONOMIC EMERGENCY POWERS ACT

PENALTIES

Sec. 206. (a) a civil penalty of not to exceed [$10,000] $1,000,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than [$50,000] $1,000,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

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FEDERAL RULES OF CRIMINAL PROCEDURE

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***382** VI. TRIAL

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(a) Examination.–The court may permit the defendant or the defendant's attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or the defendant's attorney and the attorney for the government to supplement the examination by such further injury as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper. In death penalty cases, the court shall permit the defendant or his attorney and the attorney for the Government to conduct direct, oral examination of any of the prospective jurors.

(b) Peremptory Challenges.–If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, [the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges] each side is entitled to 6 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

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VII. JUDGMENT

RULE 32. SENTENCE AND JUDGMENT

(a) Sentence. ***

(1) Imposition of Sentence. Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the Government with notice of the probation officer's determination, pursuant to the provisions of subdivision (c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government an opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also–

(A) determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

***383** (B) afford counsel for the defendant an opportunity to speak on behalf of the defendant; [and]

(C) address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.[.]; and

(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.

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The attorney for the Government shall have an [equivalent opportunity] opportunity equivalent to that of the defendant's counsel to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the Government, the court may hear in camera such a statement by the defendant, counsel for the defendant, the victim, or the attorney for the Government.

* * * * * * *

(f) Definitions.–For purposes of this rule–

(1) "victim" means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocation under subdivision (a)(1)(D) may be exercised instead by–

(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

(2) "crime of violence or sexual abuse" means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.

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INTERNAL REVENUE CODE OF 1986

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Subtitle E–Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 53–MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

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Subchapter D–Penalties and Forfeitures

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***384** SEC. 5872. FORFEITURES.

(a) Laws Applicable.–

(1) In general.–Any firearm involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal revenue laws relating to searches, seizures, and forfeitures of unstamped articles are extended to and made to apply to the articles taxed under this chapter, and the persons to whom this chapter applies.

(2) Summary forfeiture of unregistered firearms.–

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(A) In general.–Notwithstanding paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

(B) Rights of innocent owners.–Within 1 year after any summary forfeiture made pursuant to subparagraph (A), the owner of the property seized (including any person having an interest in the property) may make application to the Secretary for reimbursement of the value of the property. The Secretary shall make an allowance to the claimant not exceeding the value of the property so forfeited, if the claimant establishes to the satisfaction of the Secretary that–

(i) the property has not been involved or used in a violation of law, or

(ii) any unlawful involvement or use of the property had been without the claimant's consent, knowledge, or willful blindness.

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Subtitle F–Procedure and Administration

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CHAPTER 66–LIMITATIONS

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Subchapter D–Periods of Limitation in Judicial Proceedings

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SEC. 6531. PERIODS OF LIMITATION ON CRIMINAL PROSECUTIONS.

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 5 years for offenses described in section 5861 (relating to firearms), and 6 years–

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***385** SECTION 2596 OF THE CRIME CONTROL ACT OF 1990

SEC. 2596. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)***

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(d) Violations to Which Civil Money Penalties Applies.–Section 951(c) [(1)] (2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended–

(1)***

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SECTION 104 OF THE FOREIGN CORRUPT PRACTICES ACT OF 1977

PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

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Sec. 104. (a) Prohibition.–It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to–

(1)***

* * * * * * *

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of–

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such [issuer] domestic concern in obtaining or retaining business for or with, or directing business to, any person.

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FEDERAL AVIATION ACT OF 1958

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***386** CRIMINAL PENALTIES

GENERAL

Sec. 902. (a)***

* * * * * * *

AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

(n)(1)***

* * * * * * *

[(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

(4)] (3) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and the property aboard.

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VENUE AND PROSECUTION OF OFFENSES

VENUE

Sec. 903. (a) ***

* * * * * * *

[PROCEDURE IN RESPECT OF PENALTY FOR AIRCRAFT PIRACY

[(c)(1) A person shall be subjected to the penalty of death for any offense prohibited by section 902(i) or 902(n) of this Act only if a hearing is held in accordance with the subsection.

[(2) When a defendant is found guilty of or pleads guilty to an offense under section 902(i) or 902(n) of this Act for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in paragraphs (6) and (7), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravating factors set forth in paragraph (7) exists or that one or more of the ***387** mitigating factors set forth in paragraph (6) exists. The hearings shall be conducted–

[(A) before the jury which determined the defendant's guilt;

[(B) before a jury impaneled for the purpose of the hearing if–

[(i) the defendant was convicted upon a plea of guilty;

[(ii) the defendant was convicted after a trial before the court sitting without a jury; or

[(iii) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

[(C) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

[(3) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in paragraph (6) or (7). Any information relevant to any of the mitigating factors set forth in paragraph (6) may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in paragraph (7) shall be governed by the rules governing the admission of evidence at criminal trials. The Government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in paragraph (6) or (7). The burden of establishing the existence of any of the factors set forth in paragraph (7) is on the Government. The burden of establishing the existence of any of the factors set forth in paragraph (6) is on the defendant.

[(4) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in paragraph (6) and as to the existence or nonexistence of each of the factors set forth in paragraph (7).

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[(5) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in paragraph (7) exists and that none of the factors set forth in paragraph (6) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in paragraph (7) exists, or finds that one or more of the mitigating factors set forth in paragraph (6) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

[(6)The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that at the time of the offense–

[(A) he was under the age of eighteen;

***388** [(B) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

[(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

[(D) he was a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

[(E) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing death to another person.

[(7) If no factor set forth in paragraph (6) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that–

[(A) the death of another person resulted from the commission of the offense but after the defendant had seized or exercised control of the aircraft; or

[(B) the death of another person resulted from the commission or attempted commission of the offense, and–

[(i) the defendant has been convicted of another Federal or State offense (committed either before or at the time of the commission or attempted commission of the offense) for which a sentence of life imprisonment or death was imposable;

[(ii) the defendant has previously been convicted of two or more State or Federal offenses with a penalty of more than one year imprisonment (committed on different occasions before the time of the commission or attempted commission of the offense), involving the infliction of serious bodily injury upon another person;

[(iii) in the commission or attempted commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense or attempted offense; or

[(iv) the defendant committed or attempted to commit the offense in an especially heinous, cruel, or depraved manner.]

* * * * * * *

***389** ADDITIONAL VIEWS ON H.R. 3371

We have before us a crime bill with a wide range of objectives. I firmly believe that the American people deserve a crime bill. I support many of the provisions in this bill. In particular, I am pleased that the bill contains a requirement to create a national system of identifying child abusers. This provision will help prevent the horror stories we hear of convicted child abusers being hired to work with children.

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However, there are provisions in the bill which concern me. I hope that floor debate and amendments will remedy these concerns. One of my difficulties with this bill relates to its assault weapons provisions. I do share the concerns of many Americans about the magnitude of crime in our country and the role that these weapons play. The task in fashioning a legislative response to this problem is to balance the interests of public safety against the Second Amendment right to bear arms. My concern for reasonable regulation of guns has previously been demonstrated.

The assault weapon language in this crime bill presents a problem. Section 921(a)(A) defines the assault weapon by listing a number of firearms. However, that list is not the only defining criterion. Section 921(a)(B) broadens the definition by adding "a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified." The "same basic configuration" language is dangerously broad and vague. It could easily be construed to incorporate many semi-automatic rifles. In fact, the definition of assault weapon is being developed on the basis of appearance alone. As a result, no relationship exists between a weapon being banned and its potential use in crimes. This could easily result in banning almost all semi-automatic weapons, an effect that no one wants.

A second problem provision would ban the possession of "large capacity ammunition feeding devices." This ban is too broad in that it applies to commonly owned firearms in addition to assault weapons. This would criminalize most of the semi-automatic handguns sold today, along with many common lever action rifles and pump action shotguns. While the apparent goal of this measure is to control components which could be used to modify a magazine to accept more than seven rounds, the practical effect would be to make criminals out of gun dealers or citizens possessing generic hardware components.

I am determined to give the American people a bill that's tough on crime. However, the provisions above create confusion without any significant impact on the problems that need to be addressed.

Craig T. James.

***390** ADDITIONAL VIEWS OF THE HONORABLE STEVE SCHIFF

I agree with a number of my colleagues that habeas corpus procedures need to be reformed. However, I believe that the proposed amendment submitted in Committee went too far in that it potentially prevents a criminal defendant from litigating a question of federal law in federal court.

***391** DISSENTING VIEWS OF HON. HENRY J. HYDE, HON. F. JAMES SENSENBRENNER, JR., HON. BILL McCOLLUM, HON. GEORGE W. GEKAS, HON. HOWARD COBLE, HON. D. FRENCH SLAUGHTER, HON. LAMAR SMITH, AND HON. JIM RAMSTAD

We are opposed to major provisions of the crime bill as reported by the Committee because they are, in every vital respect, responsive to the needs and interests of criminals and the American Civil Liberties Union at the expense of the interests of justice, law enforcement, victims of violent crime, State and Federal courts, and the responsible, law-abiding citizens of this nation.

It is an affront to the families of victims who have tried to lay their suffering to rest and do not deserve to see murderers who have been lawfully convicted and sentenced get a chance to be set free due to minor technicalities. This legislation will place insurmountable evidentiary and procedural burdens on the states and erect additional barriers to the carrying out of death sentences that are already in place. It will prevent both the states and the federal government in the future from imposing the death penalty on those who have committed the most egregious and heinous of crimes. It will also strengthen the hand of criminals in all types of non-capital cases by enlarging their opportunities for prolonging litigation and securing the overturning of their convictions and sentences.

The key provisions to which we object are as follows:

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OVERTURNING "ARIZONA V. FULMINATE" (TITLE IX) [1]

In Arizona v. Fulminante, 59 U.S.L.W. 4235 (1991), the Supreme Court of the United States held that the same standard of harmless error should apply to the admission of involuntary statements (so-called "coerced confessions") that applies to other claims of constitutional error. Title IX of the Committee bill, in contrast, provides that admission of a coerced confession shall never be considered harmless error even where the state can prove beyond a reasonable doubt that the defendant would had been convicted even if the improper admission had not occurred.

Title IX would not only overturn Fulminante, but would establish an automatic reversal rule that is broader than any that has existed in the past. The definition of so-called "coerced confessions" in title IX is not limited to involuntary statements, but includes any confession "elicited in violation of the *** fourteenth *** amendment." In state cases this would include, for example, voluntary statements obtained through undercover methods of investigation ***392** after the defendant has been formally charged, in violation of the rule derived from Massiah v. United States, 377 U.S. 201 (1964). Admission of such statements has never been automatic grounds for reversal of a conviction in the past, but it would be under title IX.

Under normal harmless error standards, a conviction is not reversed on the basis of constitutional trial error if the government can prove under the difficult "beyond a reasonable doubt" standard that the error had no effect on the outcome of the proceedings. The Majority has advanced no clear reason why a different rule should apply to claims relating to involuntary statements by a defendant.

The practical effect of title IX is that killers, rapists, and drug traffickers will have their convictions overturned on the basis of improper admission of their statements, even where the independent evidence of guilt is overwhelming, and the government shows beyond a reasonable doubt that the offender would have been convicted even if the improper admission had not occurred. This denies justice and punishes the crime victim and the innocent public by giving the criminal a windfall chance at acquittal that may be wildly disproportionate to any official misconduct in the case.

In sum, title IX cannot be rationally understood as a means of remedying the constitutional violations it purports to address, or preventing their occurrence. A defendant who has been subjected to real abuses has a claim for damages under 42 U.S.C. 1983, and officers who engage in brutality are subject to criminal, civil, and disciplinary sanctions. Under Fulminante, improper admission of a confession continues to be grounds for reversal whenever it is not harmless beyond a reasonable doubt. Against this background, title IX is simply a perverse provision that punishes the public for errors by the trial court that could not have prejudiced the defendant or affected the outcome of the case.

HABEAS CORPUS REFORM (TITLE XI)

Title XI of the Committee-approved bill would overturn or seriously weaken numerous Supreme Court decisions that currently limit delay and abuse of the judicial process by prisoners. It will vastly increase the opportunities for abuse in all types of criminal cases and would have truly devastating consequences in capital cases. Oddly, the proponents of this title couched their proposal in the language of reform claiming it would "expedite habeas corpus proceedings and promote finality." In fact, as explained below, the provisions would have precisely the opposite effect.

Section 1102 sets a one-year time period for habeas filing in capital cases. This is roughly double the fully adequate 180-day period proposed by the Powell Committee, and many times greater than the time provided for seeking review of criminal judgments in other contexts. Since the automatic stay-of-execution provisions in section 1103 would remove the pressure of upcoming execution dates that currently limits delay by the defense in filing, this overly long limitation period would result in increased delay in comparison with the current system.

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Section 1104 will overturn–in both capital and non-capital cases, and in both state and federal cases–the general retroactivity rules ***393** adopted by the United States Supreme Court in Teague v. Lane, 109 S. Ct. 1060 (1989) and related cases. It limits the definition of non-retroactive "new rules" to rules announced by the Supreme Court that involve a "clear break from precedent." Under this novel standard, almost all later decisions would be retroactively applicable to overturn earlier convictions and sentences that were imposed in conformity with existing law. This is because most of the Supreme Court's decisions affecting criminal procedure resolve issues that had previously been unsettled, and very few involve a "clear break from precedent." The practical effect of this change would be to aggravate the already acute problems of delay and abuse in capital cases by facilitating prolonged litigation and repetitive filings premised on later decisions. it would also seriously threaten the integrity of criminal judgments in all types of non-capital cases.

Section 1105 would mandate that every State with a death penalty create an elaborate and expensive system for appointing counsel in capital cases. The system would be run (and appointments made) by a defender organization, defense "resource center," or committee of criminal defense lawyers. Judicial appointment of counsel would be barred, and state capital counsel would have to meet more exacting standards than those prescribed by federal law for attorneys representing federal capital defendants. If an attorney failed to meet the proposal's counsel qualifications standards or the performance standards of the defense entity running the system, then the normal rules of deference to state court determinations and procedural default would be completely waived, even if there is no question that the defendant was in fact effectively represented by constitutionally competent counsel.

Section 1106 rejects the core recommendation of the Powell Committee which proposed to limit second and successive habeas petitions in capital cases to new claims that cast doubt on the factual guilt of the defendant. Section 1106 permits challenges to the validity of capital sentences in repetitive filings. This allows convicted murderers whose guilt is not in question to engage in endless litigation concerning alleged technical defects in their sentences. It will allow such prisoners to raise technical challenges to the validity of their sentences in second, third, fourth, or even later federal habeas petitions. Remarkably, the section does not even bar relitigation of claims that have been rejected in earlier federal habeas corpus petitions.

At the Committee mark up, Congressman Bill McCollum, on behalf of Congressman Henry Hyde, offered the habeas corpus reform provisions that have been passed by the senate in Title XI of S. 1241, the Biden-Thurmond crime bill. The proposal includes general reforms to curb the abuse of habeas corpus and reforms addressed to the particularly acute problems of delay and abuse in capital cases. The capital litigation provisions are based on the recommendations of the "Powell Committee," which were passed overwhelmingly by the House as title XIII of H.R. 5269 last year.

Subtitle A provides general reforms for capital and non-capital cases. It includes a rule of deference to full and fair state court adjudications of a prisoner's claims, and a one-year time limit on the filing of habeas petitions. The limitation period would be deferred ***394** where legitimate grounds–such as claims based on newly discovered facts or unlawful state interference with filing–existed for not filing at an earlier time.

Subtitle B incorporates the "Powell Committee" recommendations with respect to capital cases. States that appoint competent counsel to represent indigent capital defendants in state collateral proceedings would obtain further safeguards against delay and litigation abuse in capital cases, in addition to the "full and fair adjudication" standard of review and reasonable time limits on federal habeas filings. Prisoners under a sentence of death in such states would be limited to a single federal habeas corpus petition, except in the extraordinary case in which a claim is raised that casts doubt on the defendant's guilt of the offense for which the death penalty was imposed. In addition, subtitle B sets definite time limits for concluding the litigation of capital habeas petitions at the various levels of federal review. These measures provide an effective response to the pattern of litigation abuse and endless delay that has thwarted the use of state death penalty laws.

The full and fair standard of review in the proposal encompasses two essential requirements:

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(1) the state determination must be reasonable, including a reasonable interpretation and application of federal law, and a reasonable determination of the facts in light of the evidence presented to the state court; and

(2) The state adjudication must be carried out in a manner consistent with the procedural requirements of federal law that apply in state proceedings.

This same "full and fair" standard of review has been passed by the Senate on two separate occasions, first as part of S. 1763 in the 98th Congress and most recently by an overwhelming margin in S. 1241 (Title XI) in the first session of the 102nd Congress.

Review under this standard is not limited to considering the adequacy of the procedures used by the state courts, but includes, as indicated above, a determination by the federal habeas court that the state court decision was reasonable. This understanding has been consistently maintained by the proponents of the proposal throughout its decade-long consideration by Congress. [2]

***395** Deferential review standards of this type are nothing new to the courts. For example, under current law, state court fact-finding is presumptively entitled to deference on federal habeas review if the state hearing was full and fair. This is not limited to a pure "process" review, but includes a determination that the factual determination of the state court was fairly supported by the evidence. See 28 U.S.C. 2254(d)(8); Townsend v. Sain, 372 U.S. 293, 316 (1963). In judicial review of the actions of state officers in suits under 42 U.S.C. 1983, the disposition does not depend on whether the official was correct in his view of federal law in the reviewing court's estimation, but on whether his view of federal law and its implications under the circumstances was reasonable. See Anderson v. Creighton, 483 U.S. 635 (1987).

Most significantly, the Supreme Court has held in its "retroactivity" caselaw that final state judgments will generally be upheld on federal habeas review, despite contrary later decisions, so long as the state court's decision reflected a reasonable interpretation of Supreme Court precedent at the time of the state adjudication. See, e.g., Teague v. Lane, 489 U.S. 288 (1989); Butler v. McKellar, 110 S.Ct. 1212 (1990). The full and fair standard of the Senate-passed provisions involves the same notion of reasonableness, and applies to both the legal and factual aspects of a claim. Reasonable interpretations and applications of federal law, as well as reasonable determinations of the facts relevant to a federal claim, would be entitled to deference on federal habeas review.

This is a balanced approach that is fair to both the public and the defendant, promotes finality of criminal judgments, and accords appropriate recognition to the role of the state courts in our federal system. It avoids the absurd consequences of current rules under which a federal trial judge or appellate panel is required to overturn a state judgment on habeas review if it happens to disagree with the state courts' resolution of an unsettled legal issue, even if the state courts' view is fully reasonable and consistent with the views of every other federal court that has considered the issue. Conversely, review of the state decision under the full and fair standard ensures that a federal remedy will be available if the state court decision disregarded or did not reflect a reasonable interpretation and application of clearly established federal rights.

FAIRNESS IN DEATH SENTENCING ACT (TITLE XVI)

The likely result of this proposal, which would apply to every state defendant now on death row, will be the invalidation of every capital sentence now in effect, as well as precluding the future use of capital punishment in the United States. This would not occur because racial prejudice permeates the criminal justice system, but because the proposal would impose unrealistic burdens of proof on the prosecution in response to alleged statistical disparities.

The "Fairness in Death Sentencing Act," formerly the "Racial Justice Act," is based on the myth that black defendants are sentenced to death far in excess to sentences received by white defendants for the same crimes. No study has ever proved this to be the case. In fact, the opposite is true.

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***396** As Dr. Stephen Klein, a statistician with Rand Corporation, testified on the Act, a black defendant stands a better chance of avoiding a death sentence for a homicide conviction. This fact is affirmed by data from the Bureau of Justice Statistics, which shows that white homicide defendants are proportionately more likely to be sentenced to death than black homicide defendants. [3]

The statistical "problem" that the Fairness in Death Sentencing Act seeks to address is that black defendants in homicide cases–who are typically charged with murdering black victims–are proportionately less likely to receive the death penalty than their white counterparts. Reliable empirical analysis also indicates that this "disparity" is not the result of racial bias against black victims or in favor of black defendants. Rather, it reflects differences among the characteristics of crimes committed in different population groups, such as the likelihood that the killing was committed in the course of another violent offense, whether it was a stranger-to-stranger killing or the result of a fight among family members or acquaintances, and so on.

If the "Fairness in Death Sentencing Act" were really designed to remedy this statistical disparity–despite its non-invidious origin–the obvious solution would be to seek the death penalty in more cases in which black defendants murder black victims. Unsurprisingly, this is not the solution proposed by the Act. Instead the Act would invalidate the capital sentences of any defendant who decided to raise a claim without regard to whether there was any evidence of racial discrimination in his or her own case. This is simply a perverse proposal to redress alleged statistical "discrimination" against black murder victims through increased leniency towards their killers–as well as other capital murderers.

It is absolutely essential to our system of criminal justice that impermissible factors, such as race, do not affect the capital sentencing process. The Constitution guarantees that race shall not be a factor and numerous procedural safeguards have been put in place by the United States Supreme Court to insure that racial bias does not affect the imposition of the death penalty.

In contrast, the Act would force the prosecutor to explicitly consider race in deciding whether to seek the death penalty in order to achieve the racial proportions that the Act deems proper. This is precisely the opposite of what the Constitution demands. The insurmountable problem with the "Fairness in Death Sentencing Act" is that it makes achievement of specified racial proportions in imposing penalties the essential criterion of the validity of the criminal justice process, and thereby effectively mandates race-conscious charging and sentencing practices that the Constitution prohibits.

During Committee consideration of Title XVI, Congressman McCollum offered an amendment to strike the "Fairness in Death Sentencing Act" and insert the provisions of the "Equal Justice Act" found in title X of H.R. 1400, the Administration's Crime bill. The amendment would provide safeguards against racial bias in ***397** the capital sentencing process. It would require voir dire of jurors to determine racial prejudice, require a change of venue of an impartial jury cannot be obtained due to racial prejudice, require jury certification to insure that race is not a factor in returning a sentence of death and would outlaw appeals to racial prejudice by either the prosecutor or the defense attorney. The provisions of the Equal Justice Act will provide protection against racial discrimination without quotas or the imposition of standards which cannot be achieved.

As in many other provisions of the committee bill, in the Fairness in Death Sentencing Act, death penalty opponents are simply attempting to do indirectly that which they have been unable to do directly–abolish the death penalty.

EXCLUSIONARY RULE (TITLE XVII, SECTION 1720)

The exclusionary rule provision adopted by the Committee is purportedly an attempt to codify the "good faith" exception found in the United States Supreme Court decision of United States v. Leon, 468 U.S. 897 (1984). In adopting this measure, however, the Committee failed to address the threshold question: If Leon is already the law, why does it need to be codified? A careful examination of the language reveals not only that the amendment is significantly narrower than current law, but it is also defective in that it will have the effect of inhibiting the counts from expanding existing exceptions and recognizing new exceptions in future decisions.

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In Leon, the court clarified that the exclusionary rule is not required by the Constitution, but is a remedy for violations of the fourth amendment designed to deter misconduct by law enforcement. The Court in Leon ruled that evidence obtained by officers acting with a search warrant should not be excluded if a judge later finds that the warrant was invalid, provided that the officers' reliance on the warrant was reasonable.

The amendment adopted by the Committee departs from Leon by conditioning the application of the "good faith" exception on a showing that the magistrate issuing the warrant was "neutral and detached." This reverses the presumption under Leon that an officer is entitled to rely on a magistrate's authorization, and potentially requires a subjective inquiry into the magistrate's thought processes. It rejects the clear holding of Leon that the purpose of the exclusionary rule is to deter law enforcement misconduct and not to police the activities of magistrates or other judicial officers.

An amendment offered by Mr. McCollum would have logically extended the "good faith" exception to searches not involving warrants, where the court determines that the officer's belief in the lawfulness of the search was objectively reasonable. The same provision was passed overwhelmingly by the House last year as Section 2204 of H.R. 5269. This extension of the good faith exception has already been recognized by the federal courts in the Fifth and Eleventh Circuits which have applied a fully general "good faith" exception–in both warrants and non-warrant cases–since the decision of the United States v. Williams, 622 F.2d 830 (5th Cir. 1980). Experience has shown that this approach has no adverse effect on ***398** the rights of suspects and defendants, and there is no reason why the benefits of this reform should not be available on a nationwide basis. Unfortunately, the McCollum amendment was defeated with the adoption of the Committee amendment.

SPECIAL RULES FOR CERTAIN HABEAS CORPUS PETITIONS (TITLE XIX, SECTION 1958)

An amendment was adopted in the Committee which would abrogate all normal rules relating to procedural default and retroactivity in relation to claims of alleged racial discrimination or bias in capital cases. The amendment would give inmates a year to raise any race-related claim on federal habeas, even if there was no justification for failing to raise it earlier–even if the defense deliberately withheld the claim in state proceedings with the intention of ambushing the government at a later point when the claim would be difficult or impossible to answer.

This amendment is not limited to claims under Batson v. Kentucky, 476 U.S. 79 (1986) (prosecutor may be required to provide non-invidious reason for striking jurors from particular racial group), but applies to "any existing race bias claim." A wide array of claims of this type, based on existing Supreme Court decisions, could be freely raised under the amendment. [4]

Although proponents characterize this amendment as an attempt to provide "fairness," it will, in fact, unfairly and arbitrarily invalidate numerous death sentences imposed on aggravated murderers. This will not occur because of any demonstrated effect of racial bias in the criminal justice process, but simply because the passage of time has made response to a claim difficult or impossible. In relation to Batson claims, for example, it is humanly impossible for a prosecutor to recall and explain why he struck particular jurors in a particular case, when the issue is raised for the first time years after the trial. The insurmountable burden this provision will place on the prosecution is well-illustrated by an example given by Ms. Gaele Barthold, Deputy District Attorney for Law, of the District Attorney's Office of Philadelphia County, who testified before the Subcommittee on Civil and Constitutional Rights as follows:

> A prosecutor in a 1982 trial, occurring well before Batson's decision, struck six blacks from a jury. When the Batson claim was subsequently litigated on federal collateral review (because the case was not final when Batson was decided), the prosecutor was able to recall why he struck all but one of the blacks. As to that individual, he was unable to recall with certainty the reason for the exercise of the strike, but he believed it was for one of two reasons, neither based on race. The magistrate ***399** credited the prosecutor's testimony with regard to the use of his strikes and further found that the prosecutor has no discriminatory motive in striking any of the blacks. Relief was nonetheless granted to the defendant because the prosecutor could not provide the precise, racially neutral reason for the exercise of the last strike.

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Written testimony of Gaele Barthold before the Subcommittee on Civil and Constitutional Rights, July 11, 1991, p. 7. (emphasis added).

Ms. Barthold concludes, properly, that this decision, which was subsequently upheld on appeal, evidences the absurdity of this legislation and its predictable effect–throwing open the doors of death row to society's most egregious murders and criminals. This amendment is, in fact, anti-death penalty legislation dressed up as civil rights legislation.

CONCLUSION

In conclusion, it is unfair to the citizens of this country for this Committee to posture law and order and then attempt to pass legislation which will hinder law and promote disorder.

The Majority knows the American people overwhelming support the death penalty for heinous offenses, but they have drafted their bill to insure that it will rarely, if ever, be imposed.

Rather than insuring that each individual receives a fair trial before a impartial and unbiased jury, they would enact a racial quota system for the imposition of the death penalty.

They say they favor habeas corpus reform, but their so-called “reforms” will only promote further unnecessary delays and repetitious litigation.

They say they support the needs of law enforcement, but this bill erects new barriers to the use of evidence in criminal trials that will insure the release of criminals on legal technicalities.

In the face of the overwhelming demand of law enforcement, victims, prosecutors, and responsible citizens, this body should adopt criminal justice reform measures that will result in the orderly, fair and swift resolution of criminal proceedings and appeals. The bill as reported by the Committee, would have the opposite effect and should, therefore, be rejected.

Henry J. Hyde.
F. James Sensenbrenner.
Bill McColllum.
George W. Gekas.
Howard Coble.
D. French Slaughter.
Lamar Smith.
Jim Ramstad.

***400** DISSENTING VIEWS OF HON. HENRY J. HYDE, HON. F. JAMES SENSENBRENNER, Jr., HON. BILL McCOLLUM, HON. GEORGE W. GEKAS, HON. D. FRENCH SLAUGHTER, Jr., HON. LAMAR S. SMITH, HON. STEVEN SCHIFF, AND HON. JIM RAMSTAD

INTRODUCTION

We strongly oppose the Committee Print or Democratic “Omnibus Crime Control Act of 1991” (sometimes referred to as H.R. 3371). With the exception of several provisions added by way of amendment at markup, e.g., Mr. Sensenbrenner's Victims' Rights Package, Mr. Gekas' International Parental Kidnapping subtitle, Mr. Ramstad's “Jacob Wetterling Crimes Against Children Registration Act” and the follow-up amendment by Mr. James, and certain anti-terrorism provisions from the President's Crime Bill offered and accepted as an amendment by Mr. Smith of Texas, the experience in the Judiciary Committee is once again similar to years past. The most damaging provisions in the fight against crime are outlined below.

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The concerns of law enforcement are again this year substantial and important. The Attorney General of the United States has registered strong opposition to key, core proposals of the legislation reported by the Judiciary Committee. Again this year the fact that the National District Attorneys Association and the National Association of Attorneys General have opposed key elements of the legislation is instructive.

Finally, this legislation seeks quick, easy, but unworkable answers. Aside from omitting important penal provisions guaranteeing the certainty of punishment–especially in the area of drugs, the legislation throws money at problems and does so at such a level (more than $1.2 billion) that the programs will not be funded, given the Budget Agreement and similar concerns. Moreover, such programs, as discussed below, are completely redundant with existing programs in the very same areas. Similar problems are found in the title banning certain semiautomatic "assault weapons" and large capacity ammunition feeding devices or clips. The death penalty provisions found in the legislation in a similar fashion are accomplished by slight of hand. The death penalty provisions retract on a whole body of Supreme Court precedent and promote that approach instead of an approach offered by Mr. Gekas which is largely identical to that which passed the House last year as H.R. 5269.

Our principal objections to the legislation follows.

UNFUNDED GRANT PROGRAMS (TITLES I–IV, VI, VII)

In an effort to throw money at the crime problem, the House Judiciary Committee has created a multitude of unfunded grant programs likely to stay unfunded as they demand more than $1.2 billion. ***401** Many of the notions underlying the programs are laudable. Yet, the approach is not only redundant with current legislative program initiatives, but will largely remain unfunded due to budget constraints with NO solution to the crime epidemic resulting.

Several of the titles are as follows: (1) Drug Testing of Arrestees; (2) Drug Treatment in State and Federal Prisons; (3) Alternative Punishments For Young Crime Offenders (or the Certainty of Punishment for Young Crime Offenders); (4) Community Policing–"Putting the Cop Back on the Beat"; (5) Safe Schools.

These titles essentially represent grant programs and with other titles reported from the Committee authorize roughly over $1.2 billion. when still other "as necessary" authorizations are counted this figure greatly increases. (Such grant programs generally authorize additional monies for BHA "Bureau of Justice Assistance" at the Dept. of Justice, to in turn fund the States.) The proposal does not discuss related appropriations. with regard to the budget agreement, one might ask what existing programs must be cut in order to fund the grant programs.

The programs while expensive are redundant with existing DoJ (e.g., OJP–BJA) programs. In OJP's words, "[w]ith regard to all of these new grant programs, such a large infusion of money would tend to supplant, rather than supplement on-going [state and local] law enforcement efforts. The BJA grant program has more than trebled since FY 1989 ($150 million in FY 1989–$490 million in FY 1991). In this time of fiscal restraint, it does not seem justifiable to support the creation of additional grant programs which are duplicative, and for which funding is currently provided." Thus, while many of the objectives are laudable the means chosen will prevent accomplishing those objectives.

Other funding-related provisions cause concern (See Title XVIII). A Hughes Amendment providing for the broad waiver of the 4-year limitation for effective BJA projects is inconsistent with the purposes underlying "seed grants". States should be able, in most cases, to assume funding of projects after 4 years. The same can be said of a provision making permanent a temporary 75%/25% Federal-State sharing arrangement related to law enforcement. The previous standard, 50%/50% arrangement is placed at risk of extinction. The current change will burden the taxpayer and the budget process, diverting monies from necessary social programs. The Hughes Amendment diverting funds from the asset forfeiture program diverts to areas already funded thru BJA or OJP under current legislation and done so at substantial levels.

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FIREARMS (TITLE XX)

Although some of us are not opposed to an "assault weapon" ban in principle, the legislation in question is ill-conceived and poorly drafted. We share the concerns of many Americans about the magnitude of crime in our country and the role that these weapons may play. The task in fashioning a legislative response to this problem is to balance the interests of public safety with the rights of law-abiding Americans to bear arms, as guaranteed under the Constitution. Many of our concerns for reasonable regulation of guns ***402** have been demonstrated previously. The provisions in question unfortunately will not reduce crime and instead burdens the rights of law-abiding citizens without promising the altering of criminal behavior. The relevant provisions do so to such as extent that we must respectfully yet strongly object.

The terms semiautomatic (or semi-automatic) assault weapon, assault weapon, semiautomatic firearm, are often used interchangeably and loosely, particularly in this bill. According to experts in the field, true assault weapons are generally military weapons which allow the operator to select either fully automatic or semiautomatic fire. With the latter, the operator must pull the trigger for each individual firing. With the former, a single pull of the trigger releases a burst or spray of bullets. The category of weapons proposed to be banned under the legislation does not allow such a selection and fires only in semiautomatic mode. Yet, the subtitle and the provisions in question use the terms "assault weapons" to perhaps suggest a conclusion.

More specifically, the provision bans the possession or transfer of, with certain exceptions, 13 categories of semi-automatic firearms amounting to approximately 23 firearms. The ban also includes "copies" of these listed firearms. "Copy" is defined to mean "a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified." The "same basic configuration" language is dangerously (and perhaps unconstitutionally) vague and broad. It could easily be construed to include many more semiautomatic weapons. Indeed, subcommittee hearings established that all semi-automatic firearms, whether handguns or "assault weapons", function, i.e., fire and reload, in exactly the same manner.

The evidence on actual use in crime of many of the banned or listed weapons is also questionable. ATF traces and the trends of such traces (e.g., the number of traces conducted on semiautomatic weapons as a percentage of total traces, growth in the number of traces conducted on semiautomatic weapons) yield inconclusive results regarding whether such weapons are being used increasingly in crime. Moreover, ATF traces may be done for a variety of reasons, not limited to crime investigation. [1] FBI Uniform Crime Reports (UCR) indicate that during a 10-year period approximately 4% of the police homicides, by any means, were caused by certain semiautomatic rifles. Other sources place the number closer to 1% for homicides generally. State reports (e.g., AL, CA, FL) are also inconclusive and may suffer from data problems. Likewise, when Mr. Schiff recently asked Mr. Schumer about how often a certain listed (i.e., banned) weapon was used in crime, Mr. Schumer replied that he did not yet have the data. (The Committee proceeded to add the weapon to the list of banned firearms.) Similarly, when Mr. Schiff sought similar data from DoJ, among other things, including inconclusive data, the response noted that DEA seizures of semiautomatic rifles have decreased, i.e., approximately 30% from FY 1989 to FY 1990.

***403** Along the same lines, certain weapons on the list rarely if ever appear in crime reports, are impractical for the criminal, and have other, legitimate uses. The Colt AR–15 is a civilian, semiautomatic version of the M–16 used by the military and is often used by veterans for target shooting. It is the standard in Defense Department promoted National Matches in Camp Perry, Ohio. Its size and conspicuousness make it an unlikely and impractical weapon. The same can be said about other weapons on the list.

Supply/Demand behavior also conflicts with the reasoning underlying the "assault weapon" ban. The reasonable business, i.e., most manufacturers, if a product is banned, will simply alter the product enough to evade the ban. The market adjusts accordingly and Congress is faced with the prospect of repeatedly voting on new proposals and updating the list. Section 2021(c) confirms this result. Manufacturers will adjust as Congress adjusts and so on perhaps without end.

The proposal also bans the possession or transfer of clips capable of holding more than 7 rounds, defined as "large capacity ammunition feeding devices". The number 7 is sufficiently low that it applies to commonly owned firearms in addition to

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"assault weapons". This would criminalize most of the semiautomatic handguns sold today, along with many common lever action rifles and pump action shotguns. Hunting and the right to self-defense, among other rights, are sacrificed.

Both this ban and the weapon ban contain a grandfather clause and strictly regulate transfers. The regulations make possible the "back-door" registration of gunowners. Moreover, the penalties for violating some of the above-mentioned provisions include up to 5 years' imprisonment, or possibly up to 10 years' imprisonment if other provisions are consulted.

THE GEKAS AND SCHUMER DEATH PENALTY PROPOSALS (TITLES XXIII, XXIV)

Mr. Gekas has offered a comprehensive federal death penalty proposal which is based on, and largely identical to, the death penalty provisions passed by the House of Representatives last year as title II of H.R. 5269, and to the President's death penalty proposal in title I of H.R. 1400. That proposal provides fair and effective procedures and adequate authorizations to impose capital punishment for the most heinous federal crimes.

However, the House Judiciary Committee has not adopted the Gekas proposal, which incorporates the sound standards and procedures that the House of Representatives passed last year. Instead, it has adopted provisions offered by Mr. Schumer which are so biased and inadequate that the federal death penalty could probably not be used as a practical matter. Federal prosecutors will not waste their time and the public's resources in seeking death sentences under provisions which ensure that the effort will be unsuccessful.

The most striking features of the Schumer proposal include the following:

Radically restricts the death penalty in comparison with its traditional scope by generally barring capital punishment for ***404** murders committed with reckless disregard for human life, despite the Supreme Court's affirmation of the constitutionality of imposing capital punishment under this standard in Tison v. Arizona, 481 U.S. 137 (1987).

Generally bars consideration of the death penalty on such grounds as that a murder was committed by a prisoner already serving a life term, in the course of a hostage taking or terrorist offense, or for hire. More broadly, bars in most cases treating the commission of murder in the course of specified serious violent crimes as a statutory aggravating factor, despite the Supreme Court's upholding of the constitutionality of similar state capital sentencing provisions in Lowenfield v. Phelps, 484 U.S. 231 (1988).

Requires instruction to jury that it need never impose the death penalty, even if the aggravating factors clearly outweigh any mitigating factors. This gives the jury a standardless discretion to refrain from imposing the death penalty on the basis of caprice or personal predilection, and rejects the approach upheld by the Supreme Court in Blystone v. Pennsylvania, 110 S. Ct. 1078 (1990).

Includes language which apparently requires reversal of capital sentences on basis of error "reflected in the record," even if it was not properly preserved for appeal. This would give the defense free rein to engage in "sandbagging" in capital cases, withholding claims of error at trial, and then ambushing the government by raising them for the first time on appeal, when it is too late to correct them without overturning the judgment.

Overall, it is clear that the Schumer provisions are not provisions to permit the use of capital punishment under federal law, but provisions that would prevent its use. Adoption of the Gekas provisions on the House floor, in lieu of the Schumer proposal, is essential to the restoration of an enforceable federal death penalty.

Additionally, the Committee Print would effectively abrogate existing federal discovery rules that place evenhanded disclosure obligations on the government and the defense. It would substitute blatantly biased rules that require the government to disclose virtually all of its evidence to the defense before trial in capital cases, while requiring the defense to disclose nothing.

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The defense would obtain almost all of the evidence in the government's possession at an early point, but would be free to engage in tactical surprise at trial and to conceal evidence in its possession whose disclosure would promote a just disposition of the case.

The specific disclosure obligations on the government under the provision include identities and addresses of witnesses and veniremen, all statements of such witnesses, copies of documents and tangible objects to be offered in evidence, and all other reports, statements, and information directed by the court. Both evidence to be offered at trial and evidence to be offered at the sentencing hearing would have to be disclosed by the government before trial. The defense would not have to disclose anything relating to either phase of the proceedings at any time.

***405** DRUGS AND CRIME (GENERALLY TITLE XV)

In the area of combatting drug-related crime, the Committee Print opts for grant money and paper promises rather than real law enforcement measures to eliminate illegal drug use and drug trafficking and the crimes resulting from these activities.

There are some noteworthy exceptions such as drug testing for federal offenders as a condition of post-conviction release, enhanced penalties for drug trafficking in prisons, and criminal penalties for failing to obey an order to land an aircraft issued by a federal law enforcement official. On the whole, however, this bill does not guarantee certain punishment for drug offenses, it does not protect children from the activities of drug kingpins and their dealers on the streets.

A truly effective and credible anti-crime measure should include enhanced penalties for selling drugs to minors or involving minors in drug trafficking, certainty of punishment for violent juveniles involved in serious drug offenses, a mandatory term of life imprisonment for those convicted a third time of a violent crime or serious drug offense, and a real, workable death penalty for drug kingpins, those who show a reckless disregard for human life and thereby cause death, and where an attempt is made on the life of a juror, witness, public officer, or other third party involved in the investigation or prosecution of a drug kingpin.

The omission of these and other tough anti-drug provisions show this bill for what it really is–a repackaging of failed ideas and expensive programs that is tough on the American taxpayers and soft on criminals. Like the majority o this bill, the drug-related provisions fail to give the American people what they want and need–real security from the terrors of crime and drugs.

CONCLUSION

The Committee Print or Democratic “Omnibus Crime Control Act of 1991” reported to the House by the Judiciary Committee represents a step backward, a step in favor of the interests of the defendant and the convicted felon. This same legislation ironically punishes the taxpayer and the law-abiding citizen and tramples over guaranteed rights whether they be the right to bear arms responsibily, the right to self-defense and the defense of one's family or the right to live in safety. The District Attorneys, the Attorney Generals and the Department of Justice have spoken out on the issue of crime. The American public has similarly made its views known. Action is demanded. Once again, Congress must prevent the “far Left”, and with its pro-criminal agenda, from determining or, in turn eliminating, this year's crime legislation.

Therefore, we respectfully dissent.

Henry J. Hyde.
F. James Sensenbrenner, Jr.
Bill McCollum.
George W. Gekas.
D. French Slaughter, Jr.
Lamar S. Smith.

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Steven Schiff.
Jim Ramstad.

***406** ADDITIONAL DISSENTING VIEWS OF HON. TOM CAMPBELL

Whereas I generally agree with the conclusions and tone of the minority report, I am writing specifically on several points: I disagree in tone with the minority report regarding the semiautomatic assault weapons ban; I do not believe that the restriction in the bill conflicts with constitutional requirements. I would also add the two following points which the Committee did not accept:

(1) Police Officers' Bill of Rights. The Committee failed to incorporate H.R. 2946, the Police Officers' Bill of Rights, as a provision. This bill, which covered internal disciplinary reviews within police departments, unfortunately was subjected to several misconceptions. First, a number of opponents treated the bill as if it affected criminal investigations; it did not. Second, a number of opponents claimed that the bill violates principles of federalism; it does not. Police officers–unlike any other local or state officials–are uniquely subject to federal civil rights laws, including, for example, 42 U.S. Code Section 1983, 18 U.S. Code 241, and 18 U.S. Code Section 242. All these laws implicate police because of their authority to use force in their daily duties. In addition, the federal government has extensively applied federal regulations on state and local employees, see, e.g., 29 C.F.R. Section 553, et. seq. (extensive federal regulations of state and local employees under Fair Labor Standards Act (FLSA). This legislation is reasonable and would guarantee fundamental fairness for law enforcement personnel; the Committee should have adopted it.

(2) Drug Kingpin Death Penalty. The Committee failed to adopt legislative findings that would clearly state that the Congress finds that the sale of the amount of drugs specified within the Act would cause death and gravely injure the health and safety of the Nation. Without such a statement of findings, the death penalty, which I support, could be susceptible to attack under Coker v. Georgia, 433 U.S. 584 (1976); with such a statement of findings, the drug kingpin death penalty would be more likely to be upheld on appeal.

1 U.S. Congress, Office of Technology Assessment, Genetic Witness: Forensic Uses of DNA Tests (July 1990) (hereafter "OTA Report") at p. 10.

2 OTA Report, p. 21.

3 See, e.g., Andrews v. State, 533 So. 2d 841(Fla. Dist. Ct. App. 1988) (first appellate opinion upholding the admissibility of DNA evidence). The defense in Ancrews called no experts of its own to question the validity of the evidence.

4 447 N.W. 2d 428.

5 144 Misc. 2d 956 (N.Y. 1989).

6 Among other problems, the court noted that the Bureau's "continued use of ethidium bromide invites sound scientific criticism," "the FBI program of proficiency testing has serious deficiencies," "the problems manifest" in one of the Bureau's population databases were "not satisfactorily explained by the government witnesses," and an examination of the FBI's validation study "raises troublesome questions about the quality of the Bureau's work." These deficiencies, the magistrate found, went to the weight of the evidence and not its admissibility.

7 Slip op., Jan. 24, 1991.

8 No. F06227–89, slip op. (D.C. Sup. Ct. Sept. 20, 1991).

9 P. 14.

10 Westin. "A Privacy Analysis of the Use of DNA Techniques as Evidence in Courtroom Proceedings, " in Banbury Report 32: DNA Technology and Forensic Science (1989).

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11 Guidelines for a Quality Assurance Program for DNA Analysis, 18 Crime Laboratory Digest 44, 65 (April 1991).

12 New York Report, p. 64.

13 N.Y. Report, P. 34.

1 Proposed section 2254(d).

2 Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441 (1963).

3 28 U.S.C. 2254(d); proposed section 2254(e) of the Hyde amendment.

4 Proposed section 2254(d) of the Hyde amendment (emphasis supplied).

5 See Yackle, Explaining Habeas Corpus, 60 N.Y.U. L. Ver. 991 (1985).

6 Testimony of the Honorable Gilbert Merritt, Chief Judge, U.S. Court of Appeals for the Sixth Circuit (hereinafter cited as "Merritt testimony"), Hearings on Habeas Corpus Reform Before the Subcomm. on Civil and Constitutional rights of the House Comm. on the Judiciary, 102nd Cong., 1st Sess. (June 27, 1991) (hereinafter cites as "Subcommittee Hearings, June 27, 1991").

7 Frank v. Magnum, 237 U.S. 309 (1915).

8 Statement of John J. Curtin, Jr., President, American Bar Association, and James Liebman, Vice Dean and Professor, Columbia University School of Law, at 14–15 (hereinafter cited as "Curtin and Liebman statement"), Hearings on Habeas Corpus Reform Before the Subcomm. on Civil and Constitutional rights of the House Comm. on the Judiciary (July 17, 1991) (hereinafter cited as "Subcommittee Hearings, July 17, 1991").

9 Moore v. Dempsey, 261 U.S. 86 (1923).

10 Statement of Andrew McBride, Associate Deputy Attorney General, United States Department of Justice, at 21 (hereinafter cited as "McBride statement"), Subcommittee Hearings, June 27, 1991.

11 S. Rep. No. 226, 98th Cong., 1st Sess. 25 (1983).

12 128 Cong. Rec. S265 (daily ed., Feb. 2, 1982) (emphasis supplied).

13 Statement of Dan Lungren, California State Attorney General, at 21–30, Subcommittee Hearings, June 27, 1991.

14 Testimony of the Honorable Christine Durham, Justice, Utah Supreme Court (hereinafter cited as "Durham testimony"), Subcommittee Hearings, July 17, 1991. Accord testimony of John J. Curtin, Jr., President, American Bar Association (hereinafter cited as "Curtin testimony"), id.

15 Statement of Larry W. Yackle, Professor, Boston University School of Law, at 27 (hereinafter cited as "Yackle statement"), Subcommittee Hearings, June 27, 1991.

16 428 U.S. 465 (1976).

17 Yackle statement at 17, Subcommittee Hearings, June 27, 1991.

18 Id. at 17.

19 401 U.S. 37 (1971).

20 Yackle statement at 18, Subcommittee Hearings, June 27, 1991.

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21 28 U.S.C. S 1738.

22 Kremer v. Chemical Constr. Corp., 456 U.S. 461 (1982).

23 Letter from Larry W. Yackle, Professor, Boston University School of Law, to the Honorable Jack Brooks, Hamilton Fish, Don Edwards, and Henry Hyde, September 20, 1991.

24 111 S. Ct. 1138, 1147 (1991).

25 Curtin and Liebman statement, Subcommittee Hearings, July 17, 1991.

26 Scheidgger, Rethinking Habeas Corpus at 34 (Criminal Justice Legal Foundation, August 1989). Mr. Scheidgger attempts to impeach the importance of this finding by arguing that some of the constitutional violations found by the Eleventh Circuit are less important than other violations, and thus that only some of those violations should "count." Id. at 34–41. The Committee believes, however, that all constitutional violations resulting in death sentences "count" and should be rectified.

27 Testimony of James Liebman, Vice Dean and Professor, Columbia University School of Law, on behalf of the American Bar Association, Subcommittee Hearings, July 17, 1991.

28 Testimony of the Honorable Rosemary Barkett (hereinafter cited as "Barkett testimony"), Hearings on Habeas Corpus Reform before the Subcom. on Civil and Constitutional Rights of the House Comm. on the Judiciary, May 22, 1991 (hereinafter cited as "Subcommittee Hearings, May 22, 1991").

29 Barkett testimony, id.

30 Durham testimony, Subcommittee Hearings, July 17, 1991. Accord testimony of William Leech, Esq., id.

31 Testimony of David Bruck, Chief Attorney, South Carolina Office of Appellate Defense (hereinafter cited as "Bruck testimony"), Subcommittee Hearings, June 27, 1991.

32 Bruck Testimony, Subcommittee Hearings, June 27, 1991.

33 Curtin and Liebman statement at 26, Subcommittee Hearings, July 17, 1991.

34 Remarks of the Chief Justice, American Law Institute Annual Meeting, Mayflower Hotel, May 15, 1990 (emphasis supplied).

35 Letter from L. Ralph Mecham, Director, Administrative Office of U.S. Courts, to the Honorable Don Edwards, September 23, 1991.

36 For example, current and former Chief and Associate Justices from the States of California, Colorado, Florida, Louisiana, Michigan, New Hampshire, New Jersey, New York, South Carolina, North Carolina, Texas, and Washington have contacted the Committee about their opposition to the "full and fair adjudication" standard.

37 See, for example, resolutions of the Bar Assocaitions of States of Arizona, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Missouri, Nevada, Ohio, South Carolina, and Tennessee, the cities of Boston, Kansas City (Missouri), Los Angeles, Philadelphia, and San Francisco, the counties of Essex County, New Jersey, Mercer County, New Jersey, and New York County, New York, and the Arizona Black Lawyers Association, the North Carolina Academy of Trial Lawyers, and the Federal Bar Association of the Western District of Washington.

38 Brown v. Allen, 344 U.S. 443, 463 (1953).

39 See generally, H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 115–18 (1990).

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40 H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 118 (1990).

41 489 U.S. 288 (1989).

42 110 S. Ct. 1212 (1990).

43 See generally, H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 122–28 (1990).

44 Curtin testimony, Subcommittee Hearings, July 17, 1991.

45 See e.g., Griffith v. Kentucky, 479 U.S. 314, 324 (1987); United States v. Johnson, 457 U.S.C. 57, 549–50 (1982); Deist v. United States, 394 U.S. 244, 248 (1969).

46 See, e.g., Desist v. United States, 394 U.S. at 263–64 (dissenting opinion).

47 H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 122–28 (1990).

48 Teague v. Lane, 489 U.S. at 304; Griffith v. Kentucky, 479 U.S. 314, 324 (1987); United States v. Johnson, 457 U.S. 537, 549–50 (1982); Desist v. United States, 394 U.S. 244, 248 (1969).

49 Durham testimony, Subcommittee Hearings, July 17, 1991; Curtin testimony, id.

50 Stovall v. Denno, 388 U.S. 293 (1967).

51 Teague v. Lane, 489 U.S. at 313.

52 McBride statement, Subcommittee Hearings, June 27, 1991.

53 Testimony of Dane Gillette, Deputy Attorney General, State of California, Subcommittee Hearings, July 17, 1991; testimony of Stephen Kinnard, Esq. (hereinafter cited as "Kinnard testimony"), Subcommittee Hearings, May 22, 1991; memorandum from Supreme Court of Ohio, Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases, to United States House of Representatives, September 21, 1990.

54 Testimony of Bryan Stevenson, Executive Director, Alabama Capital Representation Resource Center (hereinafter cited as "Stevenson testimony"), Subcommittee Hearings, May 22, 1991; testimony of Marvin White, id. (describing a third year law student who questioned witnesses at a capital trial); Kinnard testimony, id. For a detailed description of the egregious deficiencies in the system of providing counsel in capital cases, see H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 135–39 (1990).

55 See, e.g., Barkett testimony, Subcommittee Hearings, May 22, 1991; testimony of Joe Giarrusso, Esq. (hereinafter cited as "Giarrusso testimony"), id.; Kinnard testimony, id.

56 Barkett testimony, Subcommittee Hearings, May 22, 1991. Accord, Giarrusso testimony, id.; Curtin testimony, Subcommittee Hearings, July 17, 1991. Mainstream groups representing the interests of victims within the criminal justice system have taken no position on proposed habeas corpus legislation. Testimony of Dorothea Morefield, Subcommittee Hearings, June 27, 1991.

57 Stevenson testimony, Subcommittee Hearings, May 22, 1991; Kinnard testimony, id.

58 Giarrusso testimony, id.

59 H.R. Rep. No. 101–681, 101st Cong., 2d Sess. 128–35 (1990).

60 Id. at 121 (1990).

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61 111 S. Ct. 1454 (1991).

62 Id. at 1475.

63 Curtin and Liebman statement at 52, Subcommittee Hearings, July 17, 1991.

1 468 U.S. 897 (1984).

2 Congressional Research Serv., Library of Congress, The Constitution of the United States; Analysis and Interpretation 949–51 (1987).

3 United States v. Weeks, 232 U.S. (1914). For a discussion of the development of the exclusionary rule in Federal courts, see W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 3–9 (2d ed. 1987).

4 Mapp v. Ohio, 367 U.S. 643 (1961). For a discussion of the developments of the exclusionary rule as applicable to State courts, see W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 9–16 (2d ed. 1987).

As a matter of State law, a number of States had applied an exclusionary rule even before Mapp was decided. See Wolf v. Colorado, 338 U.S. 25, 34–38 (tables B, D, F, I) (1948); Elkins v. United States, 364 U.S. 206, 224–32 (1960); Mapp v. Ohio, 376 U.S. 643, 651 (1961); L. Friedman, A History of American Law 132–33 (1973).

5 United States v. Calandra, 414 U.S. 338 (1974).

6 United States v. Janis, 428 U.S. 433 (1976).

7 I.N.S. v. Lopez-Mendoza, 468 U.S. 1032 (1984).

8 United States v. Havens, 446 U.S. 620 (1980).

9 Elkins v. United States, 364 U.S. 206, 217 (1960).

10 Terry v. Ohio, 392 U.S. 1, 13 (1965).

11 One of the goals of the exclusionary rule is "assuring the people–all potential victims of unlawful government conduct that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." United States v. Calandra, 414 U.S. 338, 357 (1973) (Brennan, J., dissenting). See also Weeks v. United States, 232 U.S. 383, 392, 394 (1914): "The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures***should find no sanction in the judgments of the courts, which are charged at all times with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights. *** To sanction such proceedings would be to affirm by judicial decision a manifest neglect, if not an open defiance, of the prohibition of the Constitution, intended for the protection of the people against such unauthorized action."

12 Stewart, The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and Seizure Cases, 83 Colum. L. Rev. 1365, 1392 (1983).

13 See generally Special Comm. on Crim. Justice in a Free Soc'y, Am. Bar Ass'n Section of Crim. Justice, Criminal Justice in Crisis 12–22 (1988).

14 General Accounting Office, "Impact of the Exclusionary Rule on Federal Criminal Prosecution" (April 19, 1979).

15 Id.

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16 The data is surveyed in Davies, A Hard Look at What We Know (And Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost Arrests," 1983 Am. Bar Found. Research J. 611. See also W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 22 n. 6 (2d ed. 1987).

17 Stewart, The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases, 83 Colum. L. Rev. 1365, 1393 (1983).

18 N.Y. Times, April 28, 1965, at 50, col. 1, quoted in Kamisar, The Exclusionary Rule in Historical Perspective: The Struggle to Make the Fourth Amendment More Than "An Empty Blessing," 62 Judicature 337, 349–50 (1979), and Stewart, The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases, 83 Colum. L. Rev. 1365, 1386 (1983).

19 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 27 (2d ed. 1987). See also Operation of the Exclusionary Rule: Oversight Hearings Before the Subcommittee on Crim. Justice of the House Comm. on the Judiciary, 97th Cong., 2d Sess. 104 (1982) (statement of Maryland Attorney General Sachs).

20 Mapp v. Ohio, 367 U.S. 653 (1961).

21 Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. Chi. L. Rev. 665 (1970).

22 Silverthorne Lumber Co. v. United States, 251 U.S. 385, 393 (1920).

23 A special committee appointed by the American Bar Association to study the impact of constitutional rights on crime and crime control in the United States agrees with this assessment. See Special Comm. on Crim. Justice in a Free Soc'y, Am. Bar Ass'n Section of Crim. Justice, Criminal Justice in Crisis ch. 1 (1988).

24 Dworkin, Fact Style Adjudication and the Fourth Amendment: The Limits of Lawyering, 48 Ind. L.J. 329, 330–31 (1973).

25 468 U.S. 897 (1984).

26 Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 394 (1974).

27 W. LaFave, Search and Seizure: Treatise on the Fourth Amendment 79 (2d ed. 1987) (quoting from Wishman, Evidence Illegally Obtained by Police, N.Y. Times, Sept. 21, 1981, at 21, Col. 3).

28 See United States v. Leon, 468 U.S. 897 (1984).

1 An estimate of H.R. 3371 as ordered reported by the House Committee on the Judiciary. This estimate was transmitted by the Congressional Budget Office on October 7, 1991.

1 This Title was not the subject of a single hearing, nor was it the product of legislation reported by any Subcommittee of the Judiciary Committee. At a minimum, the title deserves further study to determine the effect of the decision.

2 The following statements from the legislative history are illustrative: S. Rep. No. 226, 98th Cong., 1st Sess. 25–27 (committee report on S. 1763); 130 Cong. Rec. 1865–66 (1984) (remarks of Senator Hatch in debate on S. 1763) ("The principal requirements are that the State determination be reasonable and that it be arrived at by procedures consistent with due process... the proposed "full and fair" standard for habeas corpus review is essentially a standard of reasonableness."); Cong. Rec. S. 8583 (June 25, 1991) (remarks of Senator Thurmond in debate on S. 1241) ("the full and fair standard... would apply only if... the State determination was a reasonable interpretation of Federal law and the facts as well as a reasonable application of the law to the facts... and... the adjudication was conducted in a manner consistent with the procedural requirements of Federal Law."); Statement of Associate Deputy Attorney General Andrew G. McBride before the House Judiciary Subcommittee on Civil and Constitutional Rights 21–22 (June 27, 1991); Who is on Trial? Conflicts between the Federal and State Judicial Systems in Criminal Cases: Hearing before a Subcommittee of the House Committee on Government Operations, 100th Cong., 2d Sess.

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8, 41–42 (1988) (testimony of Associate Deputy Attorney General Paul Cassell); Habeas Corpus Reform: hearing on S. 238 before the Senate Judiciary Committee, 99th Cong., 1st Sess. 33–35 (1985) (testimony of Assistant Attorney General Stephen S. Trott); The Habeas Corpus Reform Act of 1982: Hearing on S. 2216 before the Senate Judiciary Committee, 97th Cong., 2d Sess. 16 (1982) (testimony of Assistant Attorney General Jonathan C. Rose).

3 This fact is also affirmed by the study on capital punishment in the State of Georgia performed by Professor David Baldus and addressed by the court in McCleskey v. Kemp, 481 U.S. 279 (1987). In that study 7% of the white defendants received the death penalty versus 4% of the black defendants.

4 These include claims that grand or petit juries were selected on the basis of race, Vasquez v. Hillery, 474 U.S. 254 (1986); Whitus v. Georgia, 385 U.S. 545 (1962); that prosecutorial discretion was exercised on the basis of race, Wayte v. United States, 470 U.S. 598 (1985); that the prosecutor used racially biased arguments, Donnelly v. DeChristoforo, 416 U.S. 637 (1976); that widespread bias in the community made a change of venue constitutionally necessary, Irvin v. Dowd, 366 U.S. 717 (1961); or that examination for racial bias on vior dire was improperly omitted despite a substantial risk of such bias or an interracial crime, Ristaino v. Ross, 424 U.S. 589, 596 (1976); Turner v. Murray, 476 U.S. 28 (1986). It is also important to note that the decision of the United States Supreme Court in Powers v. Ohio will further expand the scope of this amendment by allowing white defendants to raise Batson claims based on the alleged exclusion of black jurors.

1 This factor also has been cited as a cause for criticism of a related report in the Atlanta Journal-Atlanta Constitution.

H.R. REP. 102-242(I), H.R. REP. 102-242, H.R. Rep. No. 242(I), 102ND Cong., 1ST Sess. 1991, 1991 WL 206794 (Leg.Hist.)

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