

**LEGISLATION AFFECTING THE FEDERAL
RULES OF PRACTICE AND PROCEDURE¹
108th Congress**

SENATE BILLS

● *S. 12 - A Bill to Amend the Procedures that Apply to Consideration of Interstate Class Actions to Assure Fairer Outcomes for Class Members and Defendants, and for Other Purposes*

- Introduced by: Grassley
- Date Introduced: 11/19/04
- Status: Read twice and referred to the Senate Committee on the Judiciary (11/19/04).
- Related Bills: S. 274, S. 1751, S. 1769, S. 2062, H.R. 1115
- Key Provisions:
— See S. 2062.

● *S. 151 - Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003*

- Introduced by: Hatch
- Date Introduced: 1/13/03
- Status: Read twice and referred to the Senate Committee on the Judiciary (1/13/03). Senate Judiciary Committee reported favorably with amendments (1/30/03). Report No. 108-2 filed (2/11/03). Passed Senate by a vote of 84-0 (2/24/03). Referred to House Judiciary Committee (2/25/03). Referred to House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security (3/6/03). House inserted own version of bill. Chairman Sensenbrenner requested conference (3/27/03). Conferees appointed (3/27/03, 3/31/03, 4/3/03). Conference report 108-66 filed (4/9/03). House agreed to conference report by a vote of 400-25 (4/10/03). Senate agreed to conference report by a vote of 98-0 (4/10/03). Signed by President (4/30/03) (Pub. L. 108-21).
- Related Bills: S. 885, H.R. 1046
- Key Provisions:
— Section 610 amends **Criminal Rule 7(c)(1)** to permit the naming of an unknown defendant in an indictment so long as that defendant has a particular DNA profile as defined in 18 U.S.C. § 3282.

● *S. 274 - Class Action Fairness Act of 2003*

- Introduced by: Grassley
- Date Introduced: 2/4/03

¹The Congress has authorized the federal judiciary to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate legislative right of the Congress to reject, modify, or defer any of the rules. The authority and procedures for promulgating rules are set forth in the Rules Enabling Act. 28 U.S.C. §§ 2071-2077.

- Status: Read twice and referred to the Senate Committee on the Judiciary (2/4/03). Judiciary Committee approved the bill with two amendments by a vote of 12-7 and ordered it reported out of committee (4/11/03). Placed on Senate Legislative Calendar (6/2/03). Report No. 108-123 filed (7/31/03). Senate Amendment 2232 (1/20/04).

- Related Bills: S. 12, S. 1751, S. 1769, S. 2062, H.R. 1115

- Key Provisions:

- Section 3 amends **Part V of title 28, U.S.C.**, to include a new chapter on Consumer Class Action Bill of Rights and Improved Procedures for Interstate Class Actions. The new chapter includes provisions on judicial review and approval of noncash settlements, prohibition on the payment of bounties, review and approval of proposed settlements (protection against loss by class members and prohibition against discrimination based on geographic location), publication of settlement information in plain English, and notification of proposed settlement to appropriate state and federal officials.

- Section 4 amends **section 1332 of title 28, U.S.C.**, to give district courts original jurisdiction of any civil action in which the amount in controversy exceeds \$2 million, exclusive of interest and costs, and is a class action in which (1) any plaintiff class member is a citizen of a state different from any defendant, (2) any plaintiff class member is a foreign state or subject of a foreign state and any defendant is a citizen of a state, or (3) any plaintiff class member is a citizen of a state and any defendant is a foreign state or a subject of a foreign state. The above provisions do not apply in any civil action where (a) the substantial majority of the plaintiff class and the primary defendants are citizens of the state where the action was originally filed, and the claims asserted will be governed primarily by the laws of the state where the action was originally filed; (b) the primary defendants are states, state officials, or other governmental entities; or (c) the number of all members of all proposed plaintiff classes in the aggregate is less than 100.

- Section 5 provides for removal of interstate class actions to a United States district court and for review of orders remanding class actions to State courts.

- Section 6 directs the Judicial Conference of the United States to submit reports to the Senate and House Judiciary Committees on class action settlements. In these reports, the Judicial Conference shall include the following: (1) recommendations on the “best practices” that courts can use to ensure that settlements are fair; (2) recommendations to ensure that the fees and expenses awarded to counsel in connection with a settlement appropriately reflect the time, risk, expense, and risk that counsel devoted to the litigation; (3) recommendations to ensure that class members are the primary beneficiaries of settlement; (4) the actions that the Judicial Conference will take to implement its recommendations.

[As amended, only class actions involving at least \$5 million would be eligible for federal court. Further, in class actions where more than two-thirds of the plaintiffs are from the same state, the case would remain in state court automatically. In class actions where between one-third and two-thirds of the

plaintiffs are from the same state as the defendant, the court has the discretion to accept removal or remand the case back to state court based on five specified factors. The second amendment deleted language from Section 4 that classified “private attorney general” as class actions.]

[Senate Amendment 2232 made numerous amendments to S. 274, including a provision that allows an appellate court to accept an appeal from an order granting or denying a motion to remand if the motion is made within 7 days after entry of order. If the appellate court accepts an appeal, the court must complete review within 60 days after the appeal was filed, unless an extension of time is granted.]

- S. 413 - *Asbestos Claims Criteria and Compensation Act of 2003*

- Introduced by: Nickles
- Date Introduced: 2/13/03
- Status: Read twice and referred to the Senate Committee on the Judiciary (2/13/03).
- Related Bills: H.R. 1586
- Key Provisions:
 - Section 4 states that no person shall file a civil action alleging a nonmalignant asbestos claim unless the person makes a prima facie showing that he or she suffers from a medical condition to which exposure to asbestos was a substantial contributing factor.
 - Section 5 provides that a court may consolidate for trial any number and type of asbestos claims with the consent of all parties. Without such consent, the court may consolidate for trial only those claims relating to the same exposed person and that person’s household.
 - Section 5 also provides that a plaintiff may file a civil action in the state of his or her domicile or in the state where the plaintiff was exposed to asbestos, such exposure being a substantial contributing factor to the physical impairment upon which plaintiff bases his or her claim.
 - Section 5 further directs that any party may remove the action to federal court if the state court fails to comply with the procedural requirements in section 5. The federal court shall have jurisdiction of all civil actions removed, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

- S. 554 - *A bill to allow media coverage of court proceedings*

- Introduced by: Grassley
- Date Introduced: 3/6/03
- Status: Referred to the Senate Judiciary Committee (3/6/03). Senate Judiciary Committee reported bill without amendment favorably (5/22/03).
- Related Bills: None
- Key Provisions:
 - Section 2 states that the presiding judge of an appellate or district court has the

discretionary authority to allow the photographing, electronic recording, broadcasting, or televising to the public of any court proceedings over which that judge presides.

— Section 2 also directs the presiding district court judge to inform each non-party witness that the witness has the right to request that his or her image and voice be obscured during the witness's testimony.

— Section 2 specifies that the Judicial Conference may promulgate advisory guidelines on the management and administration of media access to court proceedings.

— Section 3 contains a “sunset” provision that terminates the authority of district court judges to allow media access three years after the date the Act is enacted.

● *S. 578 - Tribal Government Amendments to the Homeland Security Act of 2002*

• Introduced by: Inouye

• Date Introduced: 3/7/03

• Status: Referred to the Senate Committee on Governmental Affairs (3/7/03). Senate Indian Affairs Committee held hearing (7/30/03).

• Related Bills: H.R. 2242

• Key Provisions:

— Section 12 amends, inter alia, **Criminal Rule 6(e)(3)(C)** by replacing “federal, state . . .” with “Federal, State, tribal . . .”

● *S. 644 - Comprehensive Child Protection Act of 2003*

• Introduced by: Hatch

• Date Introduced: 3/18/03

• Status: Referred to the Senate Judiciary Committee (3/18/03).

• Related Bills: None

• Key Provisions:

— Section 6 amends **Evidence Rule 414(a)**. The amendment would allow the admission of evidence, in a child molestation case, that the defendant had committed the offense of possessing sexually explicit materials involving a minor. Section 6 also amends the definition of a “child” to include those persons below the age of 18 (instead of the current age of 14).

— Section 7 amends **28 U.S.C. chapter 119** by adding a new section 1826A that would make the marital communication privilege and the adverse spousal privilege inapplicable in any federal proceeding in which one spouse is charged with a crime against (a) a child of either spouse, or (b) a child under the custody or control of either spouse.

● *S. 805 - Crime Victims Assistance Act of 2003*

• Introduced by: Leahy

• Date Introduced: 4/7/03

• Status: Read twice and referred to the Senate Judiciary Committee (4/7/03).

• Related Bills: None

- Key Provisions:

- Section 103 amends **Criminal Rule 11** by inserting a new subdivision that requires the court, before entering judgment following a guilty plea from the defendant, to ask whether the victim has been consulted on the guilty plea and whether the victim has any views on the plea. Section 103 also directs the Judicial Conference to submit a report to Congress, within 180 days after enactment, recommending amendments to the **Criminal Rules** that give victims the opportunity to be heard on whether the court should accept the defendant’s guilty or no contest plea.

- Section 105 amends **Criminal Rule 32 of the Federal Rules of Criminal Procedure** by affording victims an “enhanced” opportunity to be heard at sentencing. Section 105 also directs the Judicial Conference to submit a report to Congress, within 180 days after enactment, recommending amendments to the **Criminal Rules** that give victims enhanced opportunities to participate “during the pre-sentencing and sentencing phase of the criminal process.”

- S. 817 - *Sunshine in Litigation Act of 2003*

- Introduced by: Kohl

- Date Introduced: 4/8/03

- Status: Read twice and referred to the Senate Judiciary Committee (4/8/03).

- Related Bills: None

- Key Provisions:

- Section 2 amends **28 U.S.C. chapter 111** by inserting a new section 1660. New section 1660 states that a court shall not enter an order pursuant to **Civil Rule 26(c)** that (1) restricts the disclosure of information through discovery, (2) approves a settlement agreement that would limit the disclosure of such agreement, or (3) restricting access to court records in a civil case unless the court conducts a balancing test that weighs the litigants’ privacy interests against the public’s interest in health and safety.

- Section 3 provides that the amendments shall take effect (1) 30 days after the date of enactment, and (2) apply only to orders entered in civil actions or agreements entered into after the effective date.

- S. 885 - *Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003*

- Introduced by: Kennedy

- Date Introduced: 4/10/03

- Status: Read twice and referred to the Senate Committee on the Judiciary (4/10/03).

- Related Bills: S. 151

- Key Provisions:

- Section 610 amends **Criminal Rule 7(c)(1)** to permit the naming of an unknown defendant in an indictment so long as that defendant has a particular DNA profile as defined in 18 U.S.C. § 3282.

- S. 1023 - *To increase the annual salaries of justices and judges of the United States*
 - Introduced by: Hatch
 - Date Introduced: 5/7/03
 - Status: Read twice and referred to the Senate Committee on the Judiciary (5/7/03). Ordered to be reported with amendments favorably (5/22/03). Placed on Senate Legislative Calendar (6/18/03).
 - Related Bills: S. 554
 - Section 3 authorizes the presiding judge of an appellate or district court to allow the photographing, electronic recording, broadcasting, or televising to the public of any court proceedings over which that judge presides. Section 3 also directs the presiding district judge to inform each non-party witness that the witness has the right to request that his or her image and voice be obscured during the witness's testimony. Section 3 provides that the Judicial Conference may promulgate advisory guidelines on the management and administration of the above photographing, televising, broadcasting, or recording of court proceedings. The authority of a district judge under this act shall terminate 3 years after the date of enactment of the act.

- S. 1125 - *Fairness in Asbestos Injury Resolution Act of 2003*
 - Introduced by: Hatch
 - Date Introduced: 5/22/03
 - Status: Read twice and referred to the Senate Committee on the Judiciary (5/22/03). Senate Judiciary Committee held hearing (6/4/03). Markup session held (6/19/03, 6/24/03, 6/26/03). Senate Judiciary Committee reported favorably with amendments (7/10/03). Report No. 108-118 filed (7/30/03). Placed on Senate Calendar (7/30/03).
 - Related Bills: S. 2290
 - Key Provisions:
 - Section 101 amends **Part I of title 28, U.S.C.**, to create a new five-judge Article I court called the United States Court of Asbestos Claims. The Act also sets forth procedures governing: filing of claims, medical criteria, awards, funding allocation, and judicial review.
 - Section 402 states the Act's effect on bankruptcy laws.
 - Section 403 provides that the Act supersedes federal and state law insofar as these laws may relate to any asbestos claim filed under the Act. Section 403 also makes clear that the Act's remedies shall be the exclusive remedy for any asbestos claim filed under any federal or state law.

- S. 1700 - *Advancing Justice Through DNA Technology Act of 2003*
 - Introduced by: Hatch
 - Date Introduced: 10/1/03
 - Status: Read twice and referred to the Senate Committee on the Judiciary (10/1/03). Senate Judiciary Committee held markup session (7/22/04). Senate Judiciary Committee held hearing (9/9/04). Senate Judiciary Committee reported the bill favorably—with one amendment in the nature of a substitute—by a vote of 11-7 (9/21/04).

- Related Bills: H.R. 3214
- Key Provisions:
 - Section 311 amends **Part II of Title 18, U.S.C.**, by adding a new chapter 228A regarding post-conviction DNA testing. Under new section 3600(g)(1), the statute would provide that an inmate whose DNA test results excludes him or her “as the source of the DNA evidence,” may file a motion for new trial or resentencing notwithstanding any rule or law that would bar such a motion as untimely.

- S. 1701 - *Reasonable Notice and Search Act*

- Introduced by: Feingold
- Date Introduced: 10/2/03
- Status: Read twice and referred to the Senate Committee on the Judiciary (10/2/03).
- Related Bills: S. 1709
- Key Provisions:
 - Section 2 of the bill amends, inter alia, **18 U.S.C. section 3103a(b)** by setting a specific time limit in which the government may delay giving notice that a search warrant has been issued. Under section 2, the giving of such notice may be delayed by no more than 7 calendar days. This 7-day period may be extended for additional periods of up to 7 calendar days if a court finds on each application: (1) reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual, (2) result in flight from prosecution, or (3) result in the destruction or tampering of evidence sought under the warrant. [Presently, the statute allows the government to delay giving notice for an unspecified period if the search warrant states that notice will be given "within a reasonable period of its execution."]
 - Section 2 also provides that Attorney General shall report to the Congress semiannually (a) all requests for delays of notice, and (b) all requests for extensions of notice under section 3103a(b).
 - Section 3 states that the provisions of this act shall sunset on December 31, 2005.

- S. 1709 - *Security Freedom Ensured Act of 2003 or the SAFE Act*

- Introduced by: Craig
- Date Introduced: 10/2/03
- Status: Read twice and referred to the Senate Committee on the Judiciary (10/2/03).
- Related Bills: S. 1701
- Key Provisions:
 - Section 3 of the bill amends, inter alia, **18 U.S.C. section 3103a(b)** by setting a specific time limit in which the government may delay giving notice that a search warrant has been issued. Under section 3, the giving of such notice may be delayed by no more than 7 days after execution of the warrant. This 7-day period may be extended for additional periods of up to 7 days if a court finds on each application: (1) reasonable cause to believe that notice of the execution of the

warrant will endanger the life or physical safety of an individual, (2) result in flight from prosecution, or (3) result in the destruction or tampering of evidence sought under the warrant. [Presently, the statute allows the government to delay giving notice for an unspecified period if the search warrant states that notice will be given "within a reasonable period of its execution."]

—Section 3 also provides that Attorney General shall report to the Congress semiannually (a) all requests for delays of notice, and (b) all requests for extensions of notice under section 3103a(b).

—Section 3 states that the provisions of this act shall sunset on December 31, 2005.

● S. 1751 - *Class Action Fairness Act of 2003*

• Introduced by: Grassley

• Date Introduced: 10/17/03

• Status: Read twice and placed on Senate Legislative Calendar (10/17/03). Motions to proceed to consideration (10/17/03 and 10/20/03). Cloture motion presented in Senate (10/20/03). Cloture on the motion to proceed not invoked by a vote of 59-39 (10/22/03).

• Related Bills: S. 12, S. 274, S. 1769, S. 2062, H.R. 1115

• Key Provisions:

— Section 3 amends **Part V of title 28, U.S.C.**, to include a new chapter on Consumer Class Action Bill of Rights and Improved Procedures for Interstate Class Actions. The new chapter includes provisions on judicial review and approval of noncash settlements, prohibition on the payment of bounties, review and approval of proposed settlements (protection against loss by class members and prohibition against discrimination based on geographic location), publication of settlement information in plain English, and notification of proposed settlement to appropriate state and federal officials.

— Section 4 amends **section 1332 of title 28, U.S.C.**, to give district courts original jurisdiction of any civil action in which the amount in controversy exceeds \$5 million, exclusive of interest and costs, and is a class action in which (1) any plaintiff class member is a citizen of a state different from any defendant, (2) any plaintiff class member is a foreign state or subject of a foreign state and any defendant is a citizen of a state, or (3) any plaintiff class member is a citizen of a state and any defendant is a foreign state or a subject of a foreign state. A district court may decline to exercise jurisdiction as provided above in a class action case where more than 1/3 but less than 2/3 of the plaintiff class members and the primary defendants are citizens of the state in which the action was originally filed. In reaching its decision, the district court may rely on the following considerations: (a) whether the claims asserted involve matters of national or interstate interest, (b) whether the claims asserted will be governed by laws other than those of the state where the action was originally filed, (c) in the case of a state class action, whether the case was pleaded in such a manner so as to avoid federal jurisdiction, (d) whether the number of citizens in the plaintiff class who are citizens of the state where the action was filed is substantially larger

than the number of citizens from any other state, and the citizenship of the other members is dispersed among a substantial number of states, and (e) whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

— Section 4 also contains a provision governing mass tort cases (“For purposes of this section and section 1453 of this title, a mass action shall be deemed to be a class action.” This language is not included in the related bill, S. 274.)

A district court may not exercise jurisdiction over any class action as provided above where (a) 2/3 or more of the plaintiff class and the primary defendants are citizens of the state in which the action was filed, (b) the primary defendants are states, state officials, or other governmental entities; or (c) the number of all members of all proposed plaintiff classes in the aggregate is less than 100.

— Section 5 provides for removal of interstate class actions to a United States district court and for review of orders remanding class actions to State courts.

— Section 6 directs the Judicial Conference of the United States to submit reports to the Senate and House Judiciary Committees on class action settlements. In these reports, the Judicial Conference shall include the following: (1) recommendations on the “best practices” that courts can use to ensure that settlements are fair; (2) recommendations to ensure that the fees and expenses awarded to counsel in connection with a settlement appropriately reflect the time, risk, expense, and risk that counsel devoted to the litigation; (3) recommendations to ensure that class members are the primary beneficiaries of settlement; (4) the actions that the Judicial Conference will take to implement its recommendations.

● *S. 1769 - National Class Action Act of 2003*

• Introduced by: Breaux

• Date Introduced: 10/21/03

• Status: Read twice and referred to the Committee on the Judiciary (10/21/03).

• Related Bills: S. 12, S. 274, S. 1751, S. 2062, H.R. 1115

• Key Provisions:

— Section 2 amends **Part V of title 28, U.S.C.**, to include a new chapter on the review and approval of proposed coupon settlements in class action cases.

— Section 3 amends **Chapter 85 of title 28, U.S.C.**, to add a new provision titled “National class actions.” Under the new provision, (1) a district court shall have jurisdiction over a class action in which 1/3 or fewer of the plaintiff class are citizens of the state where the action was originally filed; (2) a district court may decline to exercise jurisdiction over a class action in which greater than 1/3 but less than 2/3 of the plaintiff class are citizens of the state where the action was originally filed. In making its decision, the district court may rely on the following considerations: (a) whether the claims asserted involve matters of state or local interest, (b) whether the claims asserted will be governed by the laws other than those of the state where the action was originally filed, (c) whether the forum was chosen in bad faith or frivolously, (d) whether the number of citizens

in the plaintiff class who are citizens of the state where the action was filed is substantially larger than the number of citizens from any other state, and the citizenship of the other members is dispersed among a substantial number of states, and (e) whether the state claims asserted by class members of the state in which the action was filed would be preempted by a federal class action; (3) a district court may not exercise jurisdiction over a class action where (a) 2/3 or more of the plaintiff class are citizens of the state where the action was originally filed, (b) the primary defendants are states, state officials, or other governmental entities; or (c) the number of all members of all proposed plaintiff classes in the aggregate is less than 100; and (4) the new provision does not apply to any class action that involves only claims (a) concerning a covered security, (b) that relates to the internal affairs or governance of a corporation or other business enterprise, or (c) that relates to the rights, duties, and obligations relating to or created by any security.

● S. 1795 - *Bail Bond Fairness Act of 2003*

- Introduced by: Graham
- Date Introduced: 10/29/03
- Status: Referred to the Senate Committee on the Judiciary (10/29/03).
- Related Bills: H.R. 2134
- Key Provisions:
 - Section 3 amends, among other things, **Criminal Rule 46(f)(1)** by providing that the district court declare bail forfeited only when the defendant fails to physically appear before the court. (The existing rule provides that the court declare bail forfeited if a condition of the bond is breached.)

● S. 2062 - *Class Action Fairness Act of 2004*

- Introduced by: Grassley
- Date Introduced: 2/10/04
- Status: Introduced, read and placed on Senate Legislative Calendar (2/10/04). Read a second time and placed on legislative calendar (2/11/04). Cloture motion (5/21/04). Cloture motion withdrawn by unanimous consent (6/1/04). Cloture motion (7/7/04). Senate Amendments 3548-3551 considered by the Senate (7/8/04). Cloture not invoked by a vote of 44 - 43 (7/8/04).
- Related Bills: S. 12, S. 274, S. 1751, S. 1769, H.R. 1115
- Key Provisions:
 - Section 3 amends **Part V of title 28, U.S.C.**, to include a new chapter on Consumer Class Action Bill of Rights and Improved Procedures for Interstate Class Actions. The new chapter includes provisions on judicial review and approval of noncash settlements, prohibition on the payment of bounties, review and approval of proposed settlements (protection against loss by class members and prohibition against discrimination based on geographic location), and notification of proposed settlement to appropriate state and federal officials. (Unlike S. 1751, there is no plain English requirement.)

— Section 4 amends **section 1332 of title 28, U.S.C.**, to give district courts original jurisdiction of any civil action in which the amount in controversy exceeds \$5 million, exclusive of interest and costs, and is a class action in which (1) any plaintiff class member is a citizen of a state different from any defendant, (2) any plaintiff class member is a foreign state or subject of a foreign state and any defendant is a citizen of a state, or (3) any plaintiff class member is a citizen of a state and any defendant is a foreign state or a subject of a foreign state. A district court may decline to exercise jurisdiction as provided above in a class action case where more than 1/3 but less than 2/3 of the plaintiff class members and the primary defendants are citizens of the state in which the action was originally filed. In reaching its decision, the district court may rely on the following considerations: (a) whether the claims asserted involve matters of national or interstate interest, (b) whether the claims asserted will be governed by laws of the state in which the action was originally filed or by the laws of other states, (c) whether the case was pleaded in such a manner so as to avoid federal jurisdiction, (d) whether the class action was brought in a forum with sufficient nexus with the plaintiff class members, (e) whether the number of citizens in the plaintiff class who are citizens of the state where the action was filed is substantially larger than the number of citizens from any other state, and the citizenship of the other members is dispersed among a substantial number of states, and (f) whether, during the three-year period preceding the filing of the class action, one or more claims asserting the same or similar factual allegations were filed on behalf of the same or other persons against any of the defendants.

— Section 4 also contains a provision governing mass tort cases (“For purposes of this section and section 1453 of this title, a mass action shall be deemed to be a class action.” This language is not included in the related bill, S. 274.) The section further provides that any action removed pursuant to the subsection shall not thereafter be transferred to any other court pursuant to 28 U.S.C. § 1407, unless a majority of the plaintiffs request the transfer.

In addition, like the predecessor legislation, a district court may not exercise jurisdiction over any class action as provided above where (a) 2/3 or more of the plaintiff class and the primary defendants are citizens of the state in which the action was filed, (b) the primary defendants are states, state officials, or other governmental entities; or (c) the number of all members of all proposed plaintiff classes in the aggregate is less than 100. S.2062 adds additional grounds for excluding class actions from federal jurisdiction: (1) more than 2/3 of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was filed; (2) at least one defendant is a party from whom plaintiffs seek “significant relief,” whose conduct forms a “significant basis” for plaintiffs’ claims, and who is a citizen of the State where the action was originally filed; (3) the principal injuries resulting from the alleged conduct occurred in the State where the action was originally filed; and (4) a class action “asserting the same or similar factual allegations against any of the defendants on behalf of the

same or other persons” was filed during the three-year period preceding the filing of the class action.

— Section 5 provides for removal of interstate class actions to a United States district court and for review of orders remanding class actions to State courts. Section 5 also provides that the court of appeals may consider an appeal from a district court’s remand order. If the court of appeals accepts the appeal, the court must render a decision within 60 days after the appeal was filed, unless an extension of time is granted. (An extension of time may be granted for no more than 10 days.)

— Section 6 directs the Judicial Conference of the United States to submit reports to the Senate and House Judiciary Committees on class action settlements. In these reports, the Judicial Conference shall include the following: (1) recommendations on the “best practices” that courts can use to ensure that settlements are fair; (2) recommendations to ensure that the fees and expenses awarded to counsel in connection with a settlement appropriately reflect the time, risk, expense, and risk that counsel devoted to the litigation; (3) recommendations to ensure that class members are the primary beneficiaries of settlement; (4) the actions that the Judicial Conference will take to implement its recommendations.

— Section 7 states that the amendments to Civil Rule 23, which were approved by the Supreme Court on March 27, 2003, would take effect on the date of enactment or December 1, 2003, whichever occurred first.

● *S. 2290 - Fairness in Asbestos Injury Resolution Act of 2004*

• Introduced by: Hatch

• Date Introduced: 4/7/04

• Status: Introduced in the Senate (4/7/04). Read second time and placed on Senate Calendar (4/8/04). Petition to invoke cloture failed by a vote of 50 - 47 (4/22/04).

• Related Bills: S. 1125

• Key Provisions:

— Section 101 establishes within the Department of Labor the Office of Asbestos Disease Compensation. The office is charged with processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under criteria and procedures established under the act. Under section 112, a claimant is not required to prove that his or her asbestos-related injury was caused by the negligence or fault of another person or entity.

— Section 221 establishes the Asbestos Injury Claims Resolution Fund, which shall be used to pay allowable asbestos-related claims.

— Section 301 states that the Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the office administrator or the Asbestos Insurers Commission.

— Section 403 provides that the act supersedes federal and state law insofar as these laws may relate to any asbestos claim filed under the act. Section 403 also makes clear that the act’s remedies shall be the exclusive remedy for any asbestos

claim filed under any federal or state law.

● *S. 2329 - Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*

• Introduced by: Kyl

• Date Introduced: 4/21/04

• Status: Introduced in the Senate and read twice (4/21/04). Considered and passed by the Senate with an amendment by a vote of 96-1 (4/22/04). Received in the House and referred to the House Judiciary Committee (4/26/04). Referred to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security (6/28/04).

• Related Bills: S.J. Res. 1, H.J. Res. 10, H.J. Res. 48

• Key Provisions:

— Section 2 amends **Title 18 of the United States Code** by adding a new chapter on the rights of crime victims. The bill provides that a crime victim (defined as a person directly and proximately harmed as a result of the commission of a federal offense) has a number of rights such as the right to be protected from the accused, the right to reasonable notice of any public proceeding involving the crime or release/escape of the accused, and the right to be heard at any public proceeding involving release, plea, or sentencing. Section 2 also sets forth enforcement measures available to the crime victims.

— Section 4 directs the Administrative Office to report to Congress the number of times that a crime victim was denied rights under the legislation, and the reason for such denial.

● *S. 2599 - Information Sharing Improvement Act of 2004*

• Introduced by: Chambliss

• Date Introduced: 6/24/04

• Status: Read twice and referred to the Senate Judiciary Committee (6/24/04).

• Related Bills: None

• Key Provisions:

— Section 3 amends **Criminal Rule 6** to authorize sharing of grand jury information involving a threat of actual or potential terrorist attack among appropriate federal, state, state subdivision, Indian tribal, or foreign government official.

● *S. 2679 - Tools to Fight Terrorism Act of 2004*

• Introduced by: Kyl

• Date Introduced: 6/24/04

• Status: Read twice and placed on the Senate Legislative Calendar (7/19/04).

• Related Bills: None

• Key Provisions:

— Section 113 amends **Criminal Rule 6** to authorize sharing of grand jury information involving a threat of actual or potential terrorist attack among appropriate federal, state, state subdivision, Indian tribal, or foreign government official.

- *S. 2827 - Patients' Privacy Protection Act of 2004*
 - Introduced by: Clinton
 - Date Introduced: 9/22/04
 - Status: Read twice and referred to the Senate Committee on the Judiciary (9/22/04).
 - Related Bills: H.R. 5126
 - Key Provisions:
 - Section 2 amends Article V of the Federal Rules of Evidence by creating a privilege between health care provider and patient concerning confidential communications made in the course of medical treatment.

- *S. 2845 - National Intelligence Reform Act of 2004*
 - Introduced by: Collins
 - Date Introduced: 9/23/04
 - Status: Passed Senate by a vote of 96-2 (10/6/04). Passed House (10/16/04).
 - Related Bills: H. Res. 827, H.R. 10, H.R. 5150, S. 2840
 - Key Provisions:
 - Section 2191 amends **Criminal Rule 6** to authorize sharing of grand jury information involving a threat of actual or potential terrorist attack to appropriate federal, state, state subdivision, Indian tribal, or foreign government official. Any state, state subdivision, Indian tribal, or foreign government official who receives such information may use it only in accord with guidelines issued by the Attorney General and the National Intelligence Director.

HOUSE BILLS

- *H.R. 538 - Parent-Child Privilege Act of 2003*
 - Introduced by: Andrews
 - Date Introduced: 2/5/03
 - Status: Referred to the House Committee on the Judiciary (2/5/03). Referred to the Subcommittee on Courts, the Internet, and Intellectual Property (5/5/2003).
 - Related Bills: None
 - Key Provisions:
 - Section 2 amends **Article V of the Federal Rules of Evidence** by establishing a parent-child privilege. Under proposed **new Evidence Rule 502(b)**, neither a parent or a child shall be compelled to give adverse testimony against the other in a civil or criminal proceeding. Section 2 also provides that neither a parent nor a child shall be compelled to disclose any confidential communication made between that parent and that child.

- *H.R. 637 - Social Security Number Misuse Prevention Act*
 - Introduced by: Sweeney
 - Date Introduced: 2/5/03
 - Status: Referred to the House Committees on the Judiciary and Ways and Means (2/5/03). Referred to the House Ways and Means' Subcommittee on Social Security (2/19/03). Referred to the House Judiciary Committee's Subcommittee on Crime,

Terrorism, and Homeland Security (3/6/03).

- Related Bills: None

- Key Provisions:

- Section 3 amends **chapter 47 of title 18, U.S.C.**, to prohibit the sale, public display, or purchase of a person's social security number without that person's affirmatively expressed consent.

- Section 4 states that the above prohibition does not apply to a "public record."

- Section 4 defines "public record" to mean "any governmental record that is made available to the public." (One exception to section 4 is public records posted on the Internet: "Section 1028A shall apply to any public record first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity after the date of enactment of this section, except as limited by the Attorney General[.]")

- Section 4 also provides that the Comptroller of the United States, in consultation with the Administrative Office of the U.S. Courts, shall conduct a study and prepare a report on the use of social security numbers in public records.

- H.R. 700 - *Openness in Justice Act*

- Introduced by: Paul

- Date Introduced: 2/11/03

- Status: Referred to the House Committee on the Judiciary (2/11/03). Referred to the House Judiciary's Subcommittee on Courts, the Internet, and Intellectual Property (3/6/03).

- Related Bills: None

- Key Provisions:

- Section 2 inserts a new Rule 49 in the Federal Rules of Appellate Procedure. Proposed Rule 49(a) would require the courts to issue a written opinion in the following cases: (1) a civil action removed from state court, (2) a diversity jurisdiction case in which the amount in controversy exceeds \$100,000, and (3) any appeal involving the use of the court's inherent powers. In addition, any party on direct appeal may request a written opinion under proposed Rule 49(b).

- H.R. 781 - *Privacy Protection Clarification Act*

- Introduced by: Biggert

- Date Introduced: 2/13/03

- Status: Referred to the House Committee on Financial Services (2/13/03). Referred to the House Financial Services' Subcommittee on Financial Institutions and Consumer Credit (3/10/03).

- Related Bills: None

- Key Provisions:

- Section 2 amends the Gramm-Leach-Bliley Financial Modernization Act (Pub. L. No. 106-102) to exempt attorneys from the privacy provisions of the Act. Specifically, section 2 defines "financial institution" to exclude attorneys who are subject to, and are in compliance with, client-confidentiality provisions under

their state, district, or territory's professional code of conduct.

● H.R. 975 - *Bankruptcy Abuse Prevention and Consumer Protection Act of 2003*

- Introduced by: Sensenbrenner
- Date Introduced: 2/27/03
- Status: Referred to the House Committees on the Judiciary and Financial Services (2/27/03). Referred to the House Judiciary Committee Subcommittee on Commercial and Administrative Law (2/28/03). Subcommittee hearings held (3/4/03). Subcommittee discharged (3/7/03). Committee consideration and mark-up session held. Committee ordered bill to be reported by a vote of 18-11 (3/12/03). House Report 108-40 filed (3/18/03). Passed the House with several amendments by a vote of 315-113 (3/19/03). Received in the Senate, read the first time, and placed on Senate Legislative Calendar (3/20/03). Read the second time and placed on Senate Legislative Calendar (3/21/03).
- Related Bills: None
- Key Provisions:
 - Section 221 amends **11 U.S.C. § 110** by inserting a new provision that allows the Supreme Court to promulgate rules under the Rules Enabling Act or the Judicial Conference to prescribe guidelines that establish a maximum allowable fee chargeable by a bankruptcy petition preparer.
 - Section 315 states that within 180 days after the bill is enacted, the Director of the Administrative Office of the U.S. Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section. Section 315 also directs the Director to prepare and submit a report to Congress on, among other things, the effectiveness of said procedures.
 - Section 319 expresses the sense of Congress that **Bankruptcy Rule 9011** should be amended to require the debtor or debtor's attorney to verify that information contained in all documents submitted to the court or trustee be (a) well grounded in law and (b) warranted by existing law or a good-faith argument for extension, modification, or reversal of existing law.
 - Section 419 directs the Advisory Committee on Bankruptcy Rules to propose amendments to the **Bankruptcy Rules** and **Bankruptcy Forms** that require Chapter 11 debtors to disclose certain information by filing and serving periodic financial reports. The required information shall include the value, operations, and profitability of any closely held corporation, partnership, or any other entity in which the debtor holds a substantial or controlling interest.
 - Section 433 directs the Advisory Committee on Bankruptcy Rules to, within a reasonable time after the date of enactment, propose new **Bankruptcy Forms** on disclosure statements and plans of reorganization for small businesses.
 - Section 434 adds **new section 308 to 11 U.S.C. chapter 3** (debtor reporting requirements). Section 434 also stipulates that the effective date "shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a)."
 - Section 435 directs the Advisory Committee on Bankruptcy Rules to propose

amendments to the **Bankruptcy Rules** and **Bankruptcy Forms** to assist small business debtors in complying with the new uniform national reporting requirements.

— Section 601 amends **chapter 6 of 28 U.S.C.**, to direct: (1) the clerk of each district court (or clerk of the bankruptcy court if certified pursuant to section 156(b) of this title) to compile bankruptcy statistics pertaining to consumer credit debtors seeking relief under Chapters 7, 11, and 13; (2) the Director of the Administrative Office of the U.S. Courts to make such statistics available to the public; and (3) the Director of the Administrative Office of the U.S. Courts to prepare and submit to Congress an annual report concerning the statistics collected. This report is due no later than June 1, 2005.

— Section 604 expresses the sense of Congress that: (1) it should be the national policy of the United States that all public data maintained by the bankruptcy clerks in electronic form should be available to the public and released in usable electronic form subject to privacy concerns and safeguards as developed by Congress and the Judicial Conference.

— Section 716 expresses the sense of Congress that the Advisory Committee on Bankruptcy Rules should, as soon as practicable after the bill is enacted, propose amendments to the **Bankruptcy Rules** regarding an objection to the confirmation plan filed by a governmental unit and objections to a claim for a tax filed under Chapter 13.

— Section 1232 amends **28 U.S.C. § 2075** to insert: “The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.”

— Section 1233 amends **28 U.S.C. § 158** to provide for direct appeals of certain bankruptcy matters to the circuit courts of appeals.

[On January 28, 2004, the House voted 265-99 to append the language of H.R. 975 to S. 1920 (a bill “to extend for 6 months the period for which Chapter 12 of title 11 of the United States Code is reenacted”).]

● H.R. 1115 - *Class Action Fairness Act of 2003*

• Introduced by: Goodlatte

• Date Introduced: 3/6/03

• Status: Referred to the House Committee on the Judiciary (3/6/03). House Judiciary Committee held hearing (5/15/03). House Judiciary Committee held markup and ordered bill reported, with two amendments, favorably by a vote of 20-14 (5/21/03). House Report No. 108-144 filed (6/9/03). H. Amdt. 167 approved (6/12/03). Passed the House by a vote of 253-170 (6/12/03). Received in Senate and referred to Judiciary Committee (6/12/03).

• Related Bills: S. 12, S. 274, S. 1751, S. 1769, S. 2062

• Key Provisions:

— Section 3 amends **Part V of title 28, U.S.C.**, to include a new chapter on

Consumer Class Action Bill of Rights and Improved Procedures for Interstate Class Actions. The new chapter includes provisions on judicial review and approval of noncash settlements, prohibition on the payment of bounties, review and approval of proposed settlements (protection against loss by class members and against discrimination based on geographic location), and the publication of settlement information in plain English.

— Section 4 amends **section 1332 of title 28, U.S.C.**, to give district courts original jurisdiction of any civil action in which the amount in controversy exceeds \$2 million, exclusive of interest and costs, and is a class action in which (1) any plaintiff class member is a citizen of a state different from any defendant, (2) any plaintiff class member is a foreign state or subject of a foreign state and any defendant is a citizen of a state, or (3) any plaintiff class member is a citizen of a state and any defendant is a foreign state or a citizen or subject of a foreign state. These provisions do not apply in any civil action where (a) the substantial majority of the plaintiff class and the primary defendants are citizens of the state where the action was originally filed, and the claims asserted will be governed primarily by the laws of the state where the action was originally filed; (b) the primary defendants are states, state officials, or other governmental entities; or (c) the number of proposed plaintiff class members is less than 100.

— Section 5 provides for removal of interstate class actions to a federal district court and for review of orders remanding class actions to state courts.

— Section 6 amends **section 1292(a) of title 28, U.S.C.**, to allow appellate review of orders granting or denying class certification under Civil Rule 23. Section 6 also provides that discovery will be stayed pending the outcome of the appeal.

[As amended on May 21, 2003, the first amendment accelerates the Civil Rule 23 amendments that were approved by the Supreme Court on March 27, 2003, to the date of enactment or December 1, 2003, whichever is earlier. The second amendment revised the effective date of the legislation. The legislation will apply to all pending cases in which the class certification decision has not yet been made.]

[House Amdt. 167 raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million. The amendment also gives federal courts discretion to return intrastate class actions to state courts after weighing five factors to determine if the case is of a local character. This discretion would come into play when between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants. If more than two-thirds are citizens of the same state, the case would remain in state court.]

● H.R. 1303 - *To amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.*

• Introduced by: Smith

- Date Introduced: 3/18/03
- Status: Referred to the House Committee on the Judiciary (3/18/03). Referred to the House Subcommittee on Courts, the Internet, and Intellectual Property (3/19/03). Subcommittee held mark-up session and subsequently voted to forward the bill to the full committee (3/20/03). House Judiciary Committee held mark-up session, approved amendments, and ordered to be reported (7/16/03). House Report 108-239 filed (7/25/03). House passed by voice vote (10/7/03). Received in the Senate, read twice, and referred to the Committee on Governmental Affairs (10/14/03). Committee on Governmental Affairs reported favorably without amendment (6/2/04). Committee on Governmental Affairs reported favorably without amendment and placed on Senate Legislative Calendar (7/7/04). Senate passed without amendment (7/15/04). Presented to the President (7/22/04). Signed by President (8/2/04) (Pub. L. 108-281).
- Related Bills: None
- Key Provisions:
 - As amended, Section 1 amends Section 205(c) of the E-Government Act of 2002 (Pub. L. 107-347) by requiring the Judicial Conference to promulgate rules that protect privacy and security interests pertaining to the electronic filing and public availability of documents filed electronically or converted to electronic form. (Section 1 directs that the rules take into account the best practices in state and federal courts.)
 - Section 1 also amends the E-Government Act of 2002 by allowing a party to file an unredacted document under seal that will be part of the court record. In the court's discretion, this unredacted document will either be in lieu of, or in addition to, a redacted copy in the public file.
 - Section 1 further provides that the rules may permit the filing of a list, filed under seal, that references each item of unredacted protected information. The rules may also provide that all references to the redacted identifiers in the reference list be construed to refer to the corresponding unredacted item of protected information.

● H.R. 1586 - *Asbestos Compensation Fairness Act of 2003*

- Introduced by: Cannon
- Date Introduced: 4/3/03
- Status: Referred to the House Committee on the Judiciary (4/3/03).
- Related Bills: S. 413
- Key Provisions:
 - Section 3 states that no person shall file a civil action alleging a nonmalignant asbestos claim unless the person makes a prima facie showing of physical impairment resulting from a medical condition to which exposure to asbestos was a substantial contributing factor.
 - Section 4 provides that a court may consolidate for trial any number and type of asbestos claims with the consent of all parties. Without such consent, the court may consolidate for trial only those claims relating to the same exposed person and that person's household.

— Section 4 also provides that a plaintiff must file a civil action in the state of his or her domicile or in the state where the plaintiff was exposed to asbestos, such exposure being a substantial contributing factor to the physical impairment upon which plaintiff bases his or her claim.

— Section 4 further directs that any party may remove the action to federal court if the state court fails to comply with the procedural requirements in section 4. The federal court shall have jurisdiction of all civil actions removed, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

● H.R. 1768 - *Multidistrict Litigation Restoration Act of 2003*

• Introduced by: Sensenbrenner

• Date Introduced: 4/11/03

• Status: Referred to the House Committee on the Judiciary (4/11/03). Referred to the Subcommittee on Courts, the Internet, and Intellectual Property (5/5/2003).

Subcommittee held mark-up session and forwarded to full committee (7/22/03).

Committee held markup session and ordered bill reported by voice vote (1/28/04). House Report No. 108-416 filed (2/10/04). House passed bill by a vote of 418-0 (March 24, 2004). Received in the Senate and referred to the Senate Judiciary Committee (3/25/04).

• Related Bills: None.

• Key Provisions:

— Section 2 amends **28 U.S.C. § 1407** to permit the transferee court in a multidistrict-litigation case to retain jurisdiction over the case for trial. The transferee court may also retain jurisdiction to determine compensatory and punitive damages.

● H.R. 2134 - *Bail Bond Fairness Act of 2003*

• Introduced by: Keller

• Date Introduced: 5/15/03

• Status: Referred to the House Committee on the Judiciary (5/15/03). Referred to the Subcommittee on Crime, Terrorism, and Homeland Security (6/25/03). House Judiciary Committee favorably reported by acclamation (9/10/03) (Committee also voted to delete finding 5 in Section 2(a)(5) by a voice vote. That finding iterated that “[i]n the absence of a meaningful bail bond option, thousands of defendants in the Federal system fail to show up for court appearances every year”). Reported by the House Judiciary Committee H. Rept. 108-316 (10/15/03). Placed on Union Calendar (10/15/03).

• Related Bills: None.

• Key Provisions:

— Section 3 ostensibly amends, among other things, **Criminal Rule 46(f)(1)** by providing that the district court declare bail forfeited only when the defendant fails to physically appear before the court. (The existing rule provides that the court declare bail forfeited if a condition of the bond is breached.)

● H.R. 2242 - *Tribal Government Amendments to the Homeland Security Act*

- Introduced by: Kennedy
 - Date Introduced: 5/22/03
 - Status: Referred to the House Committees on Resources, Judiciary, Budget, Intelligence, Homeland Security (5/22/03). Referred to House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security (6/25/03).
 - Related Bills: S.578
 - Key Provisions:
 - Section 12 amends, inter alia, **Criminal Rule 6(e)(3)(C)** by replacing “federal, state . . .” with “Federal, State, tribal . . .”
- H.R. 3037 - *Antiterrorism Tools Enhancement Act of 2003*
 - Introduced by: Feeney
 - Date Introduced: 9/9/03
 - Status: Referred to the House Committee on the Judiciary (9/9/03). Referred to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security (10/22/03).
 - Related Bills: None.
 - Key Provisions:
 - Section 2 amends **Criminal Rule 41(b)(3)** by providing that a magistrate judge in a district where an act of terrorism has occurred may issue a warrant for a person or property within or without that district.
 - H.R. 3214 - *Advancing Justice Through DNA Technology Act of 2003*
 - Introduced by: Sensenbrenner
 - Date Introduced: 10/1/03
 - Status: Referred to the House Committees on the Judiciary and Armed Services (10/1/03). Referred to the House Judiciary's Subcommittee on Crime, Terrorism, and Homeland Security (10/2/03). Subcommittee on Crime, Terrorism, and Homeland Security discharged (10/6/03). Judiciary Committee held mark-up session and ordered reported by a vote of 28-1 (10/8/03). House Report 108-321 filed (10/16/03). House Committee on Armed Services discharged (10/16/03). Placed on Union Calendar (10/16/03). House voted to suspend the rules and pass bill by a vote of 357-67 (11/5/03). Received in the Senate (11/6/03). Read twice and referred to the Senate Judiciary Committee (12/9/03).
 - Related Bills: S. 1700.
 - Key Provisions:
 - Section 311 amends **Part II of Title 18, U.S.C.**, by adding a new chapter 228A regarding post-conviction DNA testing. Under new section 3600(g)(1), the statute would provide that an inmate whose DNA test results excludes him or her “as the source of the DNA evidence,” may file a motion for new trial or resentencing notwithstanding any rule or law that would bar such a motion as untimely.
 - H.R. 3381 - *Crime Victims Assistance Act of 2003*

- Introduced by: Norton
- Date Introduced: 10/28/03
- Status: Referred to the House Committees on the Judiciary, Budget, and Rules (10/28/03). Referred to the Committee's Subcommittee on Crime, Terrorism, and Homeland Security (12/10/03).
- Related Bills: S.J. Res. 1, H.J. Res. 10, H.J. Res. 48.
- Key Provisions:
 - Section 103 amends **Criminal Rule 11** by adding a new subdivision that provides that the court should not enter judgment on a defendant's guilty plea before asking the prosecutor whether the victim (or any other person whose safety, by relationship to the victim, may be reasonably threatened) has been consulted on the defendant's plea. Section 103 also directs the Judicial Conference to report to the Congress, within 180 days after enactment of the act, recommending amendments to the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims and others to be heard on whether or not the court should accept a guilty or nolo contendere plea from the defendant.
 - Section 105 amends **Criminal Rule 32** by eliminating the restriction that only victims of violent crimes or sexual abuse at sentencing may be heard at sentencing. Section 105 also directs the Judicial Conference to report to the Congress, within 180 days after enactment of the act, recommending amendments to the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims to participate during the presentencing and sentencing phases.

● H.R. 4342 - *Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*

- Introduced by: Chabot
- Date Introduced: 5/12/04
- Status: Referred to the House Judiciary Committee (5/12/04). Referred to the Subcommittee on Crime, Terrorism, and Homeland Security (6/28/04).
- Related Bills: S. 2329, S.J. Res. 1, H.J. Res. 10, H.J. Res. 48
- Key Provisions:
 - Section 2 amends **Title 18 of the United States Code** by adding a new chapter on the rights of crime victims. The bill provides that a crime victim (defined as a person directly and proximately harmed as a result of the commission of a federal offense) has a number of rights such as the right to be protected from the accused, the right to reasonable notice of any public proceeding involving the crime or release/escape of the accused, and the right to be heard at any public proceeding involving release, plea, or sentencing. Section 2 also sets forth enforcement measures available to the crime victims.
 - Section 4 directs the Administrative Office to report to Congress the number of times that a crime victim was denied rights under the legislation, and the reason for such denial.

● H.R. 4547 - *Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2004*

- Introduced by: Sensenbrenner
- Date Introduced: 6/14/04
- Status: Referred to the House Judiciary Committee and House Energy and Commerce Committee (6/14/04). Referred to House Energy and Commerce Committee's Subcommittee on Health (6/18/04). Referred to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security (6/28/04). Subcommittee on Crime, Terrorism, and Homeland Security held hearing (7/6/04). Subcommittee on Crime, Terrorism, and Homeland Security held markup session and forwarded amended bill to House Judiciary Committee (9/23/04).
- Related Bills: None
- Key Provisions:
 - Section 9 amends **Criminal Rule 11** by setting forth new procedures for accepting, rejecting, or deferring a plea agreement. The legislation would amend Rule 11 to impose conditions on a court before it could accept a plea agreement. The conditions were to ensure that the plea agreement is consistent with the Federal Sentencing Guidelines. [Section 9 was subsequently deleted from the bill during markup by the Subcommittee on Crime, Terrorism, and Homeland Security on September 23, 2004.]

● H.R. 4571 - *Lawsuit Abuse Reduction Act of 2004*

- Introduced by: Smith
- Date Introduced: 6/15/04
- Status: Referred to the House Judiciary Committee (6/15/04). House Judiciary Committee held an oversight hearing titled, "Safeguarding Americans from a Legal Culture of Fear: Approaches to Limiting Lawsuit Abuse" (6/22/04). Referred to the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property (6/28/04). Judiciary Committee held mark-up and ordered measure reported by a vote of 18-10 (9/8/04). House Report 108-682 filed (9/13/04). House passed bill by vote of 229-174 (9/14/04). Received in Senate, read twice, and referred to Senate Committee on the Judiciary (9/15/04).
- Related Bills: None
- Key Provisions:
 - Section 2 amends **Civil Rule 11** by requiring the court to impose an appropriate sanction upon attorneys, law firms, or parties who violate provisions of the rule.
 - Section 3 would make amend Rule 11 applicable to state cases affecting interstate commerce.
 - Section 4 generally provides that a personal injury claim filed either in state or federal court may be filed only in the state or federal district where (1) the person bringing the claim (a) resides at the time of filing, or (b) resided at the time of the alleged injury; (2) the alleged injury or circumstances giving rise to the personal injury claim occurred; or (3) the defendant's principal place of business is located.
 - Section 6 provides that a federal court must suspend an attorney from the practice of law in the district if the attorney has violated Rule 11 three or more times.
 - Section 7 would sanction any person who willfully and intentionally "influences, obstructs, or impedes, or attempts to influence, obstruct, or impede" a pending court

proceeding through the willful and intentional destruction of documents sought in and highly relevant to that proceeding.

● H.R. 5107 - *Justice for All Act of 2004*

- Introduced by: Sensenbrenner
- Date Introduced: 9/21/04
- Status: Referred to the House Committee on the Judiciary (9/21/04). Committee held markup session and ordered bill reported (9/22/04). House Report 108-711 filed (9/30/04). House Amendment 781 agreed to by voice vote (10/6/04). House passed bill by vote of 393-14 (10/6/04). Received in Senate and read twice (10/7/04). Passed Senate without amendment by unanimous consent (10/9/04). Signed by the President - Pub. L.108-405 (10/30/04)
- Related Bills: S. 1700, HR 3214.
- Key Provisions:
— Section 102 amends **Part II of Title 18, U.S.C.**, by adding a new chapter 237 on the rights of crime victims, including the right to be heard at any public proceeding involving release, plea, or sentencing. There is also a mechanism that gives victims the right to move to enforce these rights in district court. If the district court denies the relief sought, then the victims may petition the court of appeals for a writ of mandamus. The court of appeals must decide the petition within 72 hours after the petition has been filed.

[— House Amdt 781 allows a crime victim to bring a motion to enforce the right to be heard in a proceeding involving release, plea, sentencing, or parole hearing. If the court denies the relief sought, the victim may file a petition for mandamus with the court of appeals. A single judge or the court pursuant to the FRAP may issue the writ. The court of appeals shall take up and decide the application for writ of mandamus within 72 hours after it is filed. No continuance shall be longer than 5 days.]

● H.R. 5126 - *Patients' Privacy Protection Act of 2004*

- Introduced by: Nadler
- Date Introduced: 9/22/04
- Status: Referred to the House Committee on the Judiciary (9/22/04). Referred to the Subcommittee on Courts, the Internet, and Intellectual Property (11/5/04).
- Related Bills: S. 2827
- Key Provisions:
— Section 2 amends Article V of the Federal Rules of Evidence by creating a privilege between health care provider and patient concerning confidential communications made in the course of medical treatment.

SENATE RESOLUTIONS

● S.J. Res. 1 - *Proposing an Amendment to the Constitution of the United States to Protect the Rights of Crime Victims*

- Introduced by: Kyl

- Date Introduced: 1/7/03.
- Status: Referred to the Senate Committee on the Judiciary (1/7/03). Judiciary Committee held hearing (4/8/03). Referred to House Judiciary Committee's Subcommittee on Constitution, Civil Rights, and Property Rights (6/10/03). Subcommittee on Constitution approved without amendment by a vote of 5-4 (6/12/03). Markup sessions held (7/24/03 and 7/31/03). Senate Judiciary Committee reported favorably without amendment and written report (9/4/03). Placed on Senate Calendar (9/4/03). Report No. 108-191 filed (11/7/03). Cloture motion (4/20/04).
- Related Bills: H.J. Res. 10, H.J. Res. 48
- Key Provisions:
 - Section 2 provides that a victim of a violent crime shall have the constitutional right to (1) reasonable and timely notice of any public proceeding involving the crime and any release or escape of the accused; (2) appear at such proceedings and to be heard on matters such as the release, plea, sentencing, reprieve, and pardon of the accused; and (3) adjudicative decisions that consider the victim's safety, interest in avoiding unnecessary delay, and interest in fair and timely claims to restitution from the accused. These rights shall not be restricted except as dictated by public safety, compelling necessity, or the administration of justice.

HOUSE RESOLUTIONS

- H.J. Res. 10 - *Proposing an Amendment to the Constitution of the United States to Protect the Rights of Crime Victims*
 - Introduced by: Royce
 - Date Introduced: 1/7/03.
 - Status: Referred to the House Committee on the Judiciary (1/7/03). Referred to the Subcommittee on the Constitution (3/6/04).
 - Related Bills: S.J. Res. 1, H.J. Res. 48
 - Key Provisions:
 - Section 2 provides that a victim of a violent crime shall have the constitutional right to (1) reasonable and timely notice of any public proceeding involving the crime and any release or escape of the accused; (2) appear at such proceedings and to be heard on matters such as the release, plea, sentencing, reprieve, and pardon of the accused; and (3) adjudicative decisions that consider the victim's safety, interest in avoiding unnecessary delay, and interest in fair and timely claims to restitution from the accused. These rights shall not be restricted except as dictated by public safety, compelling necessity, or the administration of justice.

- H.J. Res. 48 - *Proposing an Amendment to the Constitution of the United States to Protect the Rights of Crime Victims*
 - Introduced by: Chabot
 - Date Introduced: 4/10/03.
 - Status: Referred to the House Committee on the Judiciary (4/10/03). Referred to the Subcommittee on the Constitution (5/5/2003). Subcommittee held hearing (9/30/03).

- Related Bills: S.J. Res. 1, H.J. Res. 10

- Key Provisions:

— Section 2 provides that a victim of a violent crime shall have the constitutional right to (1) reasonable and timely notice of any public proceeding involving the crime and any release or escape of the accused; (2) appear at such proceedings and to be heard on matters such as the release, plea, sentencing, reprieve, and pardon of the accused; and (3) adjudicative decisions that consider the victim's safety, interest in avoiding unnecessary delay, and interest in fair and timely claims to restitution from the accused. These rights shall not be restricted except as dictated by public safety, compelling necessity, or the administration of justice.



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JOHN K. RABIEJ
Chief

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Rules Committee Support Office

May 19, 2004

MEMORANDUM TO THE STANDING COMMITTEE

SUBJECT: *Legislative Report*

Thirty-four bills were introduced in the 108th Congress that affect the Federal Rules of Practice and Procedure. A list of the relevant pending legislation is attached. Since the last Committee meeting, we have been focusing on the following bills.

Crime Victims' Rights

On April 21, 2004, Senator Kyl introduced the "Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act" (S. 2329, 108th Cong., 2nd Sess.). The bill represents a compromise between lawmakers who supported and opposed a resolution to amend the Constitution to guarantee victims' rights (S.J. Res. 1, 108th Cong., 1st Sess.). S. 2329 passed the Senate, with one amendment, by a vote of 96-1 on April 22, 2004. Representative Chabot introduced a virtually identical bill on May 12, 2004 (H.R. 4342, 108th Cong., 2nd Sess.). It was reported that the President will sign the legislation if passed by both Houses of Congress.

Both bills add a new chapter to Title 18 of the U.S. Code establishing rights for crime victims. The bill gives a crime victim—defined as a person directly and proximately harmed as a result of the commission of a federal felony or misdemeanor offense—the right to be protected from the accused; reasonable notice of any public proceeding involving the crime or release or escape of the accused; be heard at any public proceeding involving release, plea, or sentencing (present Criminal Rule 32(i)(4)(B) permits only a victim of a violent crime or sexual abuse to speak at sentencing); confer with the prosecutor in the case; full and timely restitution; proceedings free of unreasonable delay; and be treated fairly and with respect for his or her privacy. The legislation also sets forth a number of enforcement mechanisms available to the crime victim, such as the right to seek a writ of mandamus from the appropriate court of appeals, which must be decided promptly by the court. The bills also direct the Administrative Office to report to Congress the number of times that a crime victim was denied rights under the legislation and the reason for such denial.

E-Government Act

Section 205(c) of the E-Government Act of 2002 (Pub. L. No. 107-347) requires, among other things, the Supreme Court to promulgate rules under the Rules Enabling Act to protect the privacy and security of documents filed electronically. The Department of Justice raised concerns that under the legislation, courts were not accepting unredacted documents for filing. On October 7, 2003, the House of Representatives passed a bill, “To Amend the E-Government Act of 2002 with respect to Rulemaking Authority of the Judicial Conference.” (H.R. 1303, 108th Cong., 1st Sess.) The bill authorizes a party to file, under seal, an unredacted version of the document (with the redacted version available for public use) or a reference list that identifies redacted information, which can be accessed by the parties and court.

Judge Levi established the Subcommittee on E-Government—chaired by Judge Sidney A. Fitzwater and comprised of representatives from the five advisory rules committees and the Committee on Court Administration and Case Management—to develop proposed rule amendments to implement the E-Government Act. At its January 14, 2004, meeting, the subcommittee directed Professor Daniel J. Capra, the lead reporter to the subcommittee, to draft a template rule to be considered by the advisory rules committees. At their spring 2004 meetings, the Bankruptcy and Criminal Advisory Rules Committees considered the template privacy rule, while the Appellate and Civil committees considered a modified version. At the same time, model local rules and guidance, which had been approved by the Judicial Conference regarding the electronic filing of criminal case papers, were sent to the courts. At the various meetings of the advisory committees, the Department of Justice raised concerns about the proposals.

The subcommittee is scheduled to meet on June 16, 2004, to discuss the various proposals and continue to work out a consensus on a uniform rule proposal. In fall 2004, the advisory committees will review revised drafts and specific modifications addressing issues affecting only their set of rules, with the goal of going to the Standing Committee in June 2005 with recommendations to publish proposed amendments for public comment in August 2005.

Class Actions

On February 10, 2004, Senator Grassley introduced the “Class Action Fairness Act of 2004” (S. 2062, 108th Cong., 2nd Sess.). The bill represents a compromise that was reached by the Senate Republican leadership and three prominent Democrats after a petition to invoke cloture, or limit debate, to consider an earlier class-action bill (S. 1751, “Class Action Fairness Act of 2003,” 108th Cong., 1st Sess.) was defeated by a single vote in October 2003 (59-39). The highlights of the legislation are set forth in the December 16, 2003, memorandum to the Standing Committee contained in the agenda book for the Committee’s January 15-16, 2004, meeting.

S. 2062 raises a number of complicated issues as to how the legislation will work, particularly with the jurisdictional provisions. At this time, we understand that Senate Majority Leader Bill Frist plans to bring the bill to the Senate floor for debate sometime in early June 2004. On June 12, 2003, the House passed a similar class-action bill, H.R. 1115 (108th Cong., 1st Sess.), by a vote of 253-170.

Bail Bond Forfeitures

On May 15, 2003, Representative Keller introduced the “Bail Bond Fairness Act of 2003.” (H.R. 2134, 108th Cong., 1st Sess.) The bill, which is similar to legislation introduced in previous Congresses, would amend Criminal Rule 46 to restrict a judge’s authority to forfeit a bail bond only when the defendant fails to appear before the court as ordered. (The existing rule permits a judge to forfeit a bail bond if a defendant fails to abide by any release condition.) Senator Graham introduced a similar measure, “Bail Bond Fairness Act of 2003” (S. 1795, 108th Cong., 1st Sess.), on October 29, 2003. The House Judiciary Committee favorably reported H.R. 2134 by acclamation on September 10, 2003.

About a month ago, Chairman Sensenbrenner, at the request of the Department of Justice and the Administrative Office, interceded and blocked H.R. 2134. At the request of congressional staffers, lobbyists for the bail bond industry have met with representatives from the Department of Justice and the Administrative Office to explore the possibility of presenting suggested rule changes in accordance with the Rules Enabling Act rulemaking process. There has been no further action on H.R. 2134 or S. 1795.

Asbestos

On May 22, 2003, Senator Hatch introduced the “Fairness in Asbestos Injury Resolution Act of 2003.” (S. 1125, 108th Cong., 1st Sess.) The bill, as amended, would create a no-fault trust fund that would compensate individuals exposed to asbestos. The bill established medical criteria, award values for each category of disease, and a provision to ensure that the trust fund remains solvent. The Senate Judiciary Committee reported the bill in July 2003, essentially along party-lines, by a vote of 10-8.

The legislation raised a number of concerns from Democrats and Republicans, as well as from some of the stakeholders to asbestos litigation, including the amount of the trust fund and the amount each stakeholder was required to contribute to the fund, award values to be paid to eligible claimants, and steps necessary to keep the trust fund solvent. At the request of Senator Specter, Judge Edward R. Becker held numerous meetings with representatives from Congress, defendant companies, labor organizations, claimants’ attorneys, and insurance companies in an attempt to broker a compromise.

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On April 7, 2004, Senator Hatch introduced the “Fairness in Asbestos Injury Resolution Act of 2004.” (S. 2290, 108th Cong., 2nd Sess.) While many Senators supported the bill, a number of members argued that the size of the trust fund was inadequate to pay all the eligible claimants. On April 22, 2004, a vote was held on a motion to invoke cloture on S. 2290. The vote was 50-47, falling well short of the 60 votes needed to consider the legislation.

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Attachments



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Rules Committee Support Office

December 17, 2004

MEMORANDUM TO THE STANDING COMMITTEE

SUBJECT: Legislative Report

Forty-four bills were introduced in the 108th Congress that affect the Federal Rules of Practice, Procedure, and Evidence. A list of the relevant pending legislation is attached. Since the last Committee meeting, we have been focusing on the following bills.

Crime Victims' Rights

On October 30, 2004, the President signed the "Justice for All Act of 2004." (Pub. L. No. 108-405.) The Act adds a new chapter to Title 18 of the U.S. Code establishing rights for crime victims. Under section 102 of the Act, a crime victim—defined as a person directly and proximately harmed as a result of the commission of a federal felony or misdemeanor offense—is afforded certain rights, including the right "to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." The provision sets forth rights broader than rights provided crime victims under the proposed amendment to Criminal Rule 32, which was approved by the Judicial Conference in September 2004. To avoid confusion and possible supersession problems, the Judicial Conference—on recommendation from the Committee on Rules of Practice and Procedure—withdraw the proposed amendment to Criminal Rule 32 before it was submitted to the Supreme Court.

If the district court denies any right provided a crime victim under the Act, the victim may petition the court of appeals for a writ of mandamus. Curiously, the Act states that such an order may be issued by a single judge in accordance with a circuit rule or Federal Rule of Appellate Procedure. Appellate Rule 27(c) says, "A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding." And Appellate Rule 47(a) prohibits local rules inconsistent with the federal procedural rules. It is unclear whether the provision is voided by its own terms.

Under the Act, the court of appeals must take up and decide the petition for a writ of mandamus within 72 hours of filing. Unlike Appellate Rule 21(b)(1), which permits the court to deny a petition for writ of mandamus “without an answer,” the Act requires the court to state the reasons on the record in a written opinion. Moreover, the 72-hour deadline for a court of appeals to act is too brief and unworkable. It is also problematical because the deadline is set in “hours” instead of days, which is used uniformly throughout the Appellate Rules. It is unclear how the deadline would operate when the time period expires on a weekend or legal holiday. The Act also directs the Administrative Office to report annually to Congress the number of times that a crime victim was denied rights under the legislation and the reason for such denial. (See attached memorandum to courts.)

The Administrative Office advised Congressional staff of the pending amendments to Criminal Rule 32 approved by the Judicial Conference on crime victims’ allocution rights. Staff was also advised of concerns about the mandamus and appellate procedures in the Act. A formal response to Congress was not pursued because the Judicial Conference had adopted a resolution on April 14, 1997, expressing a strong preference for a statutory approach to victims’ rights over a constitutional amendment. The Conference took no position on the specifics of the proposed legislation. (JCUS-SEP 97, pp. 66-67.) At the Criminal Rules Committee meeting in October 2004, chair Susan C. Bucklew appointed a subcommittee to study whether Criminal Rule 32 needs to be amended in light of the new Act.

9/11 Legislation

On December 17, 2004, President Bush signed the “Intelligence Reform and Terrorist Prevention Act of 2004.” (S. 2845, 2nd Sess., 108th Cong.) Section 6501 of the bill amends Criminal Rule 6 to authorize sharing of grand jury information involving terrorist activity with an appropriate federal, state, state subdivision, Indian tribal, or foreign government official.

Section 6501 implements an unexecuted amendment to Rule 6 contained in the Homeland Security Act of 2002 (Pub. L. No. 107-296), which never took effect because it was based on an outdated version of the rule. Ordinarily, the judiciary opposes any proposed legislation directly amending a federal rule inconsistent with the rulemaking process. In this case, however, Congress had earlier exercised its prerogative to amend the rule directly, and the new legislation implemented its prior decision. Nonetheless, a few suggestions were sent to Congressional staff to revise the language consistent with conventions adopted in the restyled Criminal Rules, e.g., substitute “in accordance with” for “pursuant to.” The suggestions were not adopted primarily because action on the legislation was moving too fast. The Criminal Rules Committee is expected to consider whether the style changes should be advanced by the rulemaking process as technical amendments.

E-Government Act

Section 205(c) of the E-Government Act of 2002 (Pub. L. No. 107-347) requires, among other things, the Supreme Court to promulgate rules under the Rules Enabling Act to protect the privacy and security of documents filed electronically. Judge Levi established the Subcommittee on E-Government—chaired by Judge Sidney A. Fitzwater and comprised of representatives from the five advisory rules committees and the Committee on Court Administration and Case Management—to develop proposed rule amendments to implement the E-Government Act. A template privacy rule was prepared by Professor Daniel Capra for the advisory committees' consideration. It was revised to account for amendments to the E-Government Act enacted on August 2, 2004, which authorize a party to file, under seal, an unredacted version of the document (with the redacted version available for public use) or a reference list that identifies redacted information, which can be accessed by the parties and court. (Pub. L. No. 108-281.)

At their fall 2004 meetings, the Appellate, Bankruptcy, Civil, and Criminal Advisory Rules Committees considered the revised template privacy rule and specific modifications addressing issues affecting only their set of rules. The advisory rules committees suggested amendments to the template rule, which Professor Capra incorporated in the template rule. (The Appellate Rules Committee agreed to adopt a “dynamic conformity” rule, which will adopt by incorporation the Civil and Criminal Rules provisions.) The revised template rule is presented as an informational item for the Standing Committee's consideration at its January 2005 meeting.

Civil Rule 11

On June 15, 2004, Representative Smith introduced the “Lawsuit Abuse Reduction Act of 2004.” (H.R. 4571, 2nd Sess., 108th Cong.) The bill would, among other things, amend Civil Rule 11 to require the court to impose sanctions for every violation of the rule. (H.R. 4571 would reinstate sanction provisions that were deleted in 1993.) The bill also applies amended Rule 11 to state cases affecting interstate commerce, alters the venue standards for filing tort actions in state and federal court, requires the court to suspend an attorney from the practice of law before the federal district court for at least one year if the attorney violated Rule 11 three or more times, and requires a court—either state or federal—to sanction any person who willfully and intentionally impedes a pending court proceeding through the willful and intentional destruction of documents relevant to that proceeding. On July 9, 2004, Director Meham sent a letter to Chairman Sensenbrenner opposing H.R. 4571. In addition, the American Bar Association sent a letter to each Member of Congress opposing the bill. (See attached.) The House passed the bill on September 14, 2004, by a vote of 229-174.

The bill was referred to the Senate. On September 16, 2004, Director Mecham wrote to Chairman Hatch opposing the legislation. (See attached.) There has been no further action on the bill.

Criminal Rule 11

On June 14, 2004, Representative Sensenbrenner introduced the “Defending America’s Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2004.” (H.R. 4547, 2nd Sess., 108th Cong.) The legislation would, among other things, amend Criminal Rule 11 to impose conditions on a court before it could accept a plea agreement. The conditions were designed to ensure that every plea agreement accepted by a court is consistent with the Federal Sentencing Guidelines. For example, a court would be required to make specific findings that certain plea agreements adequately reflect the “seriousness of the actual offense behavior.”

On September 20, 2004, Director Mecham sent a letter to Representative Coble, chairman of the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security, opposing, among other things, the Rule 11 provision. (See attached.) On September 23, 2004, the subcommittee deleted the Rule 11 provision from the bill during a mark-up session.

Sealed Settlement

On April 8, 2003, Senator Kohl reintroduced the “Sunshine in Litigation Act of 2003.” (S. 817, 1st Sess., 108th Cong.) The bill provides that a court may not enter an order that would, among other things, approve a settlement agreement that limits disclosure of the agreement unless the court makes specific findings concluding that the litigants’ privacy interests outweigh the public’s interest in safety and public health.

In October 2002, Director Mecham wrote to Senator Kohl advising him that the Civil Rules Committee was considering confidentiality provisions in settlement agreements as part of its ongoing study of issues arising from sealed settlement agreements. In December 2003, Director Mecham provided Senator Kohl with an interim report on the status of the empirical study of court orders sealing settlement agreements undertaken by the Federal Judicial Center. The results of the final report were sent to Senator Kohl on November 17, 2004. (See attached.) There has been no further action on the bill.

Blakely v. Washington

On November 16-17, 2004, the United States Sentencing Commission held a public hearing in Washington, D.C., to discuss the Federal Sentencing Guidelines in the aftermath of the Supreme Court’s decision in *Blakely v. Washington*. Judge Bucklew appeared and testified before the Commission on November 16, 2004. (A transcript of the proceedings is available at www.ussc.gov.) Judge Bucklew appointed a subcommittee to study *Blakely*-related issues

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and recommend proposed rules amendments depending upon the outcome of *United States v. Booker* and *United States v. Fanfan*, currently under consideration by the Supreme Court.

James N. Ishida

Attachments