NLWJC - Kagan

DPC - Box 012 - Folder 012

Crime - Youth Violence Bills [1]

Crime - youth viol. bills
and
family - child care policy -
afterschool

Jose Cerda III 09/09/97 02:18:55 PM

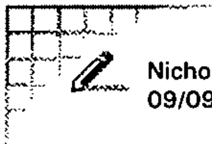
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

cc:
Subject: After School

FYI -- juvie stat on crimes committed after school....jc3

---------------------- Forwarded by Jose Cerda III/OPD/EOP on 09/09/97 02:17 PM ---------------------------



Nicholas Gess @ DOJ
09/09/97 02:09:08 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Rahm I. Emanuel/WHO/EOP, Michelle Crisci/WHO/EOP, Kent Markus/DOJ/GOV @ DOJ

cc:
Subject: After School

Rahm & Jose - I faxed each of you an advance copy of a report being presented to the AG by "Fight Crime Invest in Kids" at a juvie event in Rockville, MD tomorrow. On page 3 of the report, there is a chart which shows that 41.8% of juvenile crime occurs between 3 & 8 PM. This is based on data from 8 states. In the past, both the President & AG have cited the statistic of 50% between 3 & 6 PM. The 50% # is based on only 1 state. While we don't think there is an immediate problem, if we are called on the matter, the answer is simply that we had data from 1 state indicating 50%. Now, we have 7 more states and the more refined # is 41.8%. That's still a lot.

Crime - Youth violence bills

Bruce - FYI. Elena

U.S. Department of Justice

Office of the Attorney General

Washington, DC 20530
August 22, 1997

MEMORANDUM FOR JOHN HILLEY
SENIOR ADVISOR TO THE PRESIDENT
AND DIRECTOR FOR LEGISLATIVE AFFAIRS

TRACY THORNTON
SPECIAL ASSISTANT TO THE PRESIDENT FOR
LEGISLATIVE AFFAIRS

ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT

JOSE CERDA
SPECIAL ASSISTANT TO THE PRESIDENT

JAMES BODEN
EXAMINER
OFFICE OF MANAGEMENT AND BUDGET

FROM: KINNEY ZALESNE (202) 514-2927 KZ
ASSISTANT TO THE ATTORNEY GENERAL

KENT MARKUS (202) 514-2107 KM (KZ)
DEPUTY CHIEF OF STAFF

SUBJECT: Proposed Juvenile Justice Appropriations Strategy

Rahm has asked us to provide you with the Justice Department's goals for juvenile justice in the FY 98 appropriations process. We are told the House will vote on the Commerce-State-Justice Appropriations Bill the week of September 8, 1997, and that the Appropriations Conference will be the week of September 22, 1997.

The attached document summarizes the current state of appropriations, our goals for the House Floor, our goals for the Appropriations Conference, and our "appropriations-driven" goals for the Senate authorizing legislation, which is scheduled to come to the Senate Floor in October.

We look forward to coordinating strategy with you to accomplish these goals. Please call if you have any questions or comments.

Youth Violence Legislation
DOJ Appropriations Strategy

I. Current Appropriations, in Millions

	House (Committee)	Senate
JJ Office	$126	$155
Prevention Funds	100	75
Enforcement Block Grant	300	145
	$526	$375

II. Goals for House Floor

- Obtain direct funding stream for state and local prosecutors and courts (carve out $100M from $300M enforcement block grant).
- Reduce earmarks, or at least shift their source from new Part E (JJ discretionary money) to the $100M prevention funds.
- Set aside from the prevention funds, the enforcement block grant, and the prosecutors and courts money 3% for research, evaluation, and demonstration, and 2% for training and technical assistance.
- Set aside 2% of the overall funds for Indian tribes.

?

Ideal House Appropriations Result

JJ Office	$126	
Prevention Funds	100*	(earmarks from here)
Enforcement Block Grant	200*	
Prosecutors and Courts	100*	
	$526	(2% for tribes from here)

*3% set-aside for research, evaluation, and demonstration; 2% set-aside for training and technical assistance from each of these funds

III. Goals for Appropriations Conference

- On prevention funds, have House $100M prevail (over Senate $75M), but as a discretionary program, not the block grant structure created by the House.
- On JJ Office, get as near to Senate $155M as possible, but with House structure for distribution. (House structure appropriately sets aside funds from within money appropriated to the JJ Office for research, evaluation, training and TA, demonstration, and administration; and consolidates, rather than carves up, grant funds.) Ensure that any funds over $126 are divided evenly between new parts D and E -- research and demonstration.
- On enforcement block grant, move toward Senate $145M, aiming for maximum $175M.
- On prosecutors and courts -- assuming the House has agreed to carve out $100M from the $300M enforcement block grant -- have that construct prevail. If no such carve-out was accomplished in the House, accomplish it here.
- Ensure earmarks are kept to a minimum, and in any event, taken from prevention funds, not JJ office.
- Ensure sufficient set-asides from prevention funds, enforcement block grant, and prosecutors and courts money, for research, evaluation, and demonstration (3%), and training and technical assistance (2%).
- Ensure 2% set-aside for tribes from overall pool of money.

Ideal Appropriations Conference Result

JJ Office	$150`	
Discretionary Prevention Fund	100*	(earmarks from here)
Enforcement Block Grant	175*	
Prosecutors and Courts	100*	
	$525	(2% for tribes from here)

`Distributed per House structure, with additional assurance that all money over $126M is divided evenly between research and demonstration

*3% set-aside for research, evaluation, and demonstration; 2% set-aside for training and technical assistance from each of these funds

IV. Minimum Acceptable Levels, Assuming Overall Pool of Funds Shrinks and/or They Insist on More for the Enforcement Block Grant

Appropriations for the JJ Office, prevention funds, and/or prosecutors and courts that fell below these numbers would justify serious consideration of a veto.

Minimum Acceptable Levels

			Preferred Order of Reductions, If Compelled
JJ Office	$125`		(3)
Prevention Funds	75*	(earmarks from here)	(2)
Enforcement Block Grant	200*		
Prosecutors and Courts	75*		(1)
	$475	(2% for tribes from here)	

`Distributed per House structure, with additional assurance that all money over $126M is divided evenly between research and demonstration

*3% set-aside for research, evaluation, and demonstration; 2% set-aside for training and technical assistance from each of these funds

Appendix

"Appropriations-Driven" Goals for JJ Authorizing Bill, S. 10, on Senate Floor

- Get express authorization for At-Risk Children's Initiative, either at $100M or "such sums," to be administered as a discretionary program.

- For every line-item *except* the JJ Office, get authorization of 3% for research, evaluation, and demonstration; and 2% for training and technical assistance.

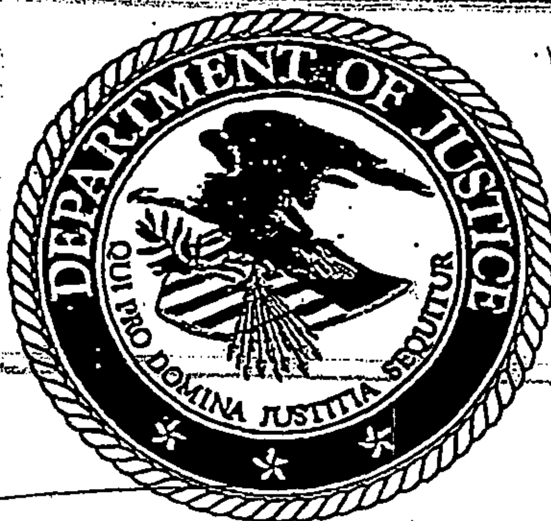
  In exchange, strike the set-asides that are currently in S. 10 (.1% of block grant, JJ money, and prosecutors and courts money for TA; 2% of prosecutors and courts money for administration and TA).

- For the $150M authorized for the JJ Office, strike the 10% set aside for research, evaluation, demonstration, information, and training and technical assistance; and replace it with an authorization for "such sums as may be required" for administration; a formula grant to the States; research, evaluation, training, and technical assistance; and demonstration.

  There are two reasons for this change. First, 10% of the JJ funds is not nearly enough for these activities, and we don't want it to act as a limit on the higher, more substantial funds the Senate appropriators actually provided. Second, the 4-part structure (administration, formula, research, demonstration) is our ideal structure, which the House adopted and the Senate appropriators *nearly* adopted -- so we are trying to get as close as possible to that structure in the final result.

To: Bruce
Elena
Rahm

Fr: Jose



DOJ summary of today's mark-up

OFFICE OF THE ATTORNEY GENERAL

FACSIMILE ~~TRANSMITTAL~~ COVER SHEET

DATE: 7/15/97

TO: Jose Cerda & ~~[illegible]~~

FACSIMILE NO. 456-7028

TELEPHONE NO. 456-5568

FROM: Kinney Zalesne

FACSIMILE NO. 202-616-5117

TELEPHONE NO. 202-514-2927

NUMBER OF PAGES INCLUDING COVER SHEET 3

COMMENTS:

per voice mail.

JUVENILE JUSTICE DEVELOPMENTS
TUESDAY, JULY 15, 1997

The House

The House voted 413-14 tonight in favor of H.R. 1818, the Juvenile Crime Control and Delinquency Prevention Act. Co-sponsored by Chairman Riggs (R-CA), Chairman Goodling (R-PA), Cong. Martinez (D-CA), Cong. Scott (D-VA), and Cong. Greenwood (R-PA), H.R. 1818 reflects months of bipartisan effort toward an effective delinquency control and prevention strategy. We support the bill, and are particularly pleased with the provisions that:

- restructure the JJ Office to increase its support for State and local delinquency control, system improvement, and prevention programs;
- continue the basic Formula Grants program to States while providing additional flexibility in implementing the core requirements;
- consolidate several existing grant programs into a flexible delinquency prevention and early intervention block grant program;
- provide Federal support for research, evaluation, and statistics, tied to the programs of NIJ and BJS; and
- authorize training and technical assistance, information dissemination, and demonstration of programs that can control, reduce, or prevent juvenile crime.

The Senate

The Judiciary Committee considered seven more amendments today. Key issues were defeat of child safety locks and deferral of the issue of separation of juveniles and adults in federal custody.

Defeated Amendments

- **Kohl.** Requirement that a child safety lock be provided with every handgun sold by an FFL. *Predictably, the Republicans (with DeWine defecting) complained that Kohl's amendment would impose an unreasonable burden on gun buyers and create a whole new area of tort liability.* ***Bending his own rules about pre-submission of amendments, Hatch produced a second-degree amendment to require FFLs to "make available" -- but not to provide -- many safety devices, including safety locks and lock boxes. This passed 10-7.***

- **Durbin.** Provision that no juvenile may waive any right prior to consultation with counsel and reasonable opportunity for parent or guardian to consult with counsel. Eventually limited to: no juvenile may waive right to counsel in any judicial proceeding, except after consulation with counsel and reasonable opportunity for parent or guardian consultation. *We were opposed. The first*

version would have dramatically impaired law enforcement efforts (no more questions of kids on the street, no more consensual searches), and the second would have expanded current law in a way we've never supported.

- **Biden.** Provision to restore presumption that delinquency proceedings occur in state court unless substantial federal interest and state declines jurisdiction. *This was somewhat more reasonable than Leahy's proposal of last week (states' right of first refusal for juveniles charged as adults in non-serious cases), but we did not favor it.*

Approved Amendments

- **Hatch.** Second-degree amendment on child safety locks. *See above.*

- **Biden.** Clarifies that new sentencing guidelines for juveniles will take into consideration the interests of juvenile defendants. *Reasonable.*

- **Biden.** Clarifies that new sentencing guidelines will apply to juveniles tried as adults. *We had no strong position.*

Debated but Deferred Until Thursday

- **Biden.** Physical and sound separation of juveniles and adult inmates in federal custody. *This is the key amendment to lay the groundwork for separation of delinquents and adults in state custody. There was a fair amount of confusion among the Members and Hatch asked the staffs to find a workable compromise. This may cause a better result than outright defeat, though, which we had expected. We will continue to work with Biden's staff on this issue.*

To: Bruce, Elena
Kathy
Fr: Jose

Crime - Youth Violence Bills

JUVENILE JUSTICE DEVELOPMENTS
THURSDAY, JULY 17, 1997

At the outset of today's Senate Judiciary Committee markup, Chairman Hatch circulated a list of 24 amendments he was prepared to accept in exchange for ending the markup by 1:00 p.m. and reporting the bill out of Committee. The list contained only the most minor Democratic amendments, some of which we do not even support.

We made it clear to Hatch and Biden staff that we would be very upset if there were no vote on our four priorities: 1) crime prevention, 2) more money and expanded authorization for prosecutors and courts, 3) the juvenile gun ban, and 4) separation of adults and juveniles, at least in federal custody. (Hatch had promised on Tuesday to work that issue out, but did not include it on his list of accepted amendments.) Biden then responded to Hatch's offer by requesting votes on at least those issues, and Leahy offered to sit down with Hatch and prioritize the remaining amendments. Hatch agreed to continue the markup, so long as the Committee votes on the bill by next Thursday afternoon, July 24, 1997.

Markup will reconvene next Wednesday, July 23, 1997, at 2 p.m., and Thursday, July 24, 1997, at 9 a.m.

In the meantime, the Committee considered two more amendments.

Approved Amendment (at least informally)

- **Feinstein**. Extension of the Gun-Free Schools Act to include dangerous weapons. Currently, under the Individuals with Disabilities Education Act, disabled students must be expelled for bringing firearms *or* dangerous weapons to school -- but under the Gun-Free Schools Act, able-bodied students must be expelled only for bringing firearms. *This was agreed to informally by unanimous consent, but never voted upon by a quorum. In any event, it may need fine-tuning and we will work with the Department of Education.*

Withdrawn Amendment

- **Grassley**. Extension of the Gun-Free Schools Act to include illegal drugs, drug paraphernalia, alcohol, and tobacco. This amendment would have mandated expulsion of any student who brought cigarettes to campus on a regular basis. *Although it is easy to say expulsion is both too severe and counter-productive for alcohol and cigarettes, the White House was concerned about opposing expulsion for possession of illegal drugs. Fortunately, Hatch and Feinstein opposed the amendment as too broad, and Grassley agreed to withdraw it and work with them further on the issue.*

Crime - Youth Violence bills

June 20, 1997

MEMORANDUM FOR BRUCE REED

FROM: MIKE COHEN
BILL KINCAID

SUBJECT: Education-Related Amendments to Juvenile Justice Bill

We thought we should give you a heads-up about some possible education-related amendments to the Juvenile Justice bill that could be considered next week.

I. Specter Amendment

Senator Specter has prepared an amendment which would, as one feature, create a broad new cross-agency waiver authority. At the request of a governor, this amendment would allow the AG, "in consultation with" the Secretaries of Labor, HHS and Education, to waive "or take other appropriate action" to permit the State to use funds under 18 federal programs for the purpose of juvenile job training, literacy training, remedial education, or substance abuse treatment as laid out in a state juvenile crime/juvenile justice action plan. Some of the more significant education programs covered include School-to-Work, Adult Education, Vocational Education, Even Start, Safe and Drug Free Schools and Vocational Rehabilitation. Two of the few major K-12 programs that aren't covered are the Title I program and Goals 2000.

Education sees major problems with Specter's proposed waiver authority, and we agree. Among other things: it provides literally no criteria or process for granting waivers; it provides essentially no limits on the scope of waivers; it appears to be unconnected to any performance or accountability requirements; and it would give the AG power over programs that other cabinet members are responsible for. Almost all of the education programs, and at least some of the others, are already subject to the responsible secretary's waiver authority. This has all of the weaknesses in Hatfield's Local Flex bill, and none of the redeeming features that some found attractive.

Specter asked Education and other agencies for their views on the amendment; late this week they provided "technical assistance," suggesting that the legislation instead direct the Secretaries to consider waivers under current law and grant them when appropriate. Not surprisingly, Specter's staff did not agree with this approach, but indicated they would go back and draft something more targeted. Biden's staff was present, too, and indicated Biden wanted to be as supportive as

he could possibly be.

If it looks anything like the draft we have seen, the Administration should oppose this amendment, and avoid getting dragged into efforts to try to fix it.

II. Hatch Amendments

We hear that Hatch is considering offering three separate voucher amendments if he thinks that Democrats aren't being cooperative enough.

- The text of Title I-A of S. 1, which would authorize a new $50 million program to fund vouchers for students to escape "unsafe schools."
- The text of Title I-B of S. 1, which would permit LEAs to give a voucher to a Title I student who is the victim of a "violent criminal offense."
- An amendment which would require states to have a voucher program as a condition of eligibility for the federal juvenile justice block grant funds.

The Administration has already taken a position against S. 1. As for the third voucher amendment, if anything, it is even more objectionable because it would essentially place an unfunded mandate on states to operate voucher programs.

III. Grassley Amendment

We hear that Grassley has prepared an amendment that would dramatically expand the gun-free schools law. The amendment would supposedly require expulsion for a long list of offenses include bringing drugs and drug paraphernalia to school, as well as regular use of alcohol or tobacco. We have few details on this, and haven't seen any language, but if the amendment is anything like what we have heard, it sounds as though it would go way beyond a reasonable extension of Gun-Free Schools.

cc: Elena Kagan
Jose Cerda

Crime - Youth Violence
Bills

OFFICE OF THE ATTORNEY GENERAL

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 6/16/97

TO: Jose Cerda

FACSIMILE NO. 456-7028

TELEPHONE NO. 456-5568

FROM: Kinney Zaleane

FACSIMILE NO. 202-616-5117

TELEPHONE NO. 202-514-2927

NUMBER OF PAGES INCLUDING COVER SHEET 9

COMMENTS:

Memo, Views Letter.

I want to send the views letter to OMB assuming you have no objections. Please let me know when I should do that. Thanks.

Hatch Youth Violence Bill - Substitute Version

Our Main Objcctions

- Separate, $50M block grant for prosecutors and courts, to be used for hiring only
  Problems: Not enough money, wouldn't fund prosecutor & court *programming*, ~~goes to states instead of being discretionary~~
- No dedicated prevention money
- No major gun provisions (child safety locks, Brady for juveniles, etc.)
- Block grant condition on records will still exclude most states
- Core protections for juveniles incarcerated in state facilities are still insufficient
- Safeguards for juveniles in federal judicial system satisfy us but maybe not Dems
- Research, other system support funds are still insufficient (we care more than Dems)

The Good News

Death penalty provision removed
6-level sentence enhancement for gang activity removed
Gang statute still exists, but improved slightly

Amendment Strategy

Dem Amendments will cover:
- Prosecutors and courts ($100M)
- After-school money ($100M)
- Child safety locks
- Brady extension
- Gun package (all of our provisions but Bailey (DeWine))
- Mandates
- Federal Safeguards
- Emergency Rescheduling
- Drug penalties ... maybe Ashcroft?
- Maybe research and other administrative costs
- Current funding levels for JJ office (?)

Still need sponsor for:
- Drug Testing & Treatment in State Prison - Biden said he would if we get 2 or 3 Republicans
- Eliminate youth violence czar
- Rest of our criminal provisions (RICO and related crime, misc. violent crime, witness intimidation)

D
J

U.S. Department of Justice

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

As the Committee prepares to consider S. 10, the Violent and Repeat Juvenile Offender Act of 1997, I write to convey the views of the Administration on this bill.

Enactment of comprehensive legislation to address youth and gang violence and drug use is a top priority of this Administration. Accordingly, on February 25, 1997, we transmitted to Congress the Anti-Gang and Youth Violence Act of 1997, which has been introduced as S. 362 by Senators Leahy and Biden. This bill is based, in part, on the recent success of Boston's three-pronged strategy to curb youth violence: tough enforcement, early intervention, and effective crime prevention. In Boston, youth homicides have dropped some 80% citywide from 1990 to 1996, and since July, 1995, not a single Boston juvenile has died in a firearm homicide. We are also seeing the payoff from others applying this balanced approach across the country. *Recently available statistics show a 25% decline in juvenile violent crime in 1995.* Distrubing projections of a doubling of violent juvenile crime in the next 20 years -- projections based upon demographic and crime trend lines from the early '90s -- no longer hold given the substantial downturns in juvenile violent crime in 1994 and 1995. Yet even with recent successes, there is still too much juvenile crime and we must press on to do more.

We commend you and other Members of the Committee for taking up this issue and hope that we can work together to enact the best possible legislation to reduce juvenile crime. We believe that this bill can be greatly improved to reflect the

comprehensive enforcement and crime prevention approach represented by the Administration's legislation.

Specifically, we believe that any bill that emerges from the Congress should include the following elements:

-- targeted funding to assist local prosecutors in combatting youth violence and gangs, and to help localities establish court-based efforts to address juvenile and youth violence;

-- targeted funding for after-school, juvenile crime prevention strategies that target at-risk youth and provide alternatives to criminal activity;

-- a permanent prohibition on firearm possession by anyone adjudicated delinquent as a juvenile of a serious or violent offense;

-- a requirement that a child safety lock be provided with each firearm sold by a federally licensed dealer;

-- tough enforcement provisions to punish the possession of firearms while committing violent or drug crimes, and the transfer of guns to minors;

-- tough enforcement provisions to protect witnesses who help prosecute gangs and other violent offenders;

-- tough drug enforcement provisions to increase penalties for selling drugs to kids, using kids to sell drugs, and selling drugs near schools;

-- meaningful reform of the federal juvenile justice system that allows prosecutors greater flexibility in prosecuting juveniles as adults, with appropriate judicial safeguards; and that makes the system more responsive to the rights of victims; and

-- provisions requiring drug testing of state and local offenders and authorizing use of state prison grant funds for drug testing, treatment and supervision of incarcerated offenders.

These and other provisions included in the Administration's proposal are essential elements of an effective, comprehensive approach to preventing and fighting youth and gang violence and related drug crime. We look forward to working with the Committee and other Members of the Congress to ensure that these elements are included in the final bill.

We turn now specifically to the provisions of S. 10. We support the goals of Title I and are pleased that this title recognizes the need to revise the statutes governing federal prosecution of juveniles as adults. For example, both S. 10 and S. 362 would transfer from the court to the prosecutor the discretion to charge juveniles as adults. However, our bill would allow certain juveniles to petition the court to be proceeded against as juveniles. We urge the Committee to adopt this provision as it maintains an important balance between streamlining the federal charging process and ensuring appropriate safeguards for juveniles in the federal system.

With regard to Title II, we agree that targeting gang violence is an important element of this legislative effort, but we are concerned that this title, which addresses gangs, contains provisions that would federalize acts best left to traditional State and local prosecution. There are already a host of federal statutes that the Department of Justice uses successfully to prosecute criminal gang activity, including RICO, comprehensive anti-drug trafficking laws, and broad statutes punishing robbery and extortion. We question the need for the overlapping provisions proposed here that also appear more cumbersome than existing tools.

The targeted approach of our bill, S. 362, gives law enforcement what it needs without over-reaching. Our bill includes several provisions designed to fill gaps in federal law relating to criminal gang activity, particularly where the States need support. For example, S. 362 includes a proposed new offense aimed at gang members who travel interstate with the intent to obstruct justice by bribery or intimidation of witnesses in State judicial proceedings. This provision is similar to but more narrowly tailored than S. 10's broad-based amendment of the Travel Act. Our bill also provides other amendments, including stiffer penalties, to help fight gangs and disrupt their illegal gun and drug markets. We urge the

Committee to choose this approach over the one currently articulated in S. 10.

Finally, we would note that the provision exempting the interception of certain communications and certain uses of pen register, trap and trace devices, and clone pagers from statutory requirements may raise constitutional concerns. A more detailed memorandum to this effect is attached.

Title III of S. 10 would dramatically expand the authority and responsibility of the juvenile justice office, within the Department of Justice, requiring it to supervise and coordinate all programs and policies in the executive branch regarding juvenile crime. While we share the objective of greater cross-government coordination of initiatives related to juvenile justice, we are concerned about efforts to impose this structure statutorily. We are also concerned that although S. 10 expands the authority of the juvenile justice office, it actually reduces the office's funding, both overall and specifically for administration. In addition, we note that S. 10 would require the Administrator of the new juvenile justice office to transmit a proposed budget to both the President and to Congress. Such concurrent reporting requirements are presumptively violative of separation of powers. Therefore, this requirement would be constitutional only if it is construed to permit the Administrator to submit his budget to Congress after consultation with the President. We look forward to working with the Committee on all of these issues concerning the juvenile justice office.

Title III would establish a block grant program designed to help state and local agencies investigate, prosecute, and punish juvenile crime as well as reduce the risk-factors associated with it. We applaud the goals of this program and agree that there is a need for swift and appropriate punishment of juvenile offenders as well as for early intervention and crime prevention. We do have substantial concerns about how the funds will be distributed, however, as well as about the conditions for receipt of the funds. Specifically, we note that S. 10 would require states to spend specified portions of their block grant funds on facilities and sanctions (35%), recordkeeping (10%), and drug testing (15%) -- but none on drug treatment and none on after-school programs, which we know work to keep juveniles safely and

constructively occupied during the hours they are most likely to get into trouble. Nor does S. 10 set aside significant funds for federal research and evaluation of programs that work. We urge the Committee to ensure that substantial funds are dedicated to all of these purposes.

Also, while we are pleased that S. 10 dedicates funding for the hiring of state and local prosecutors and court personnel, as well as for their technological support, we would urge the Committee to include prosecutor- and court-based *initiatives* -- such as anti-gang task forces and juvenile gun and drug courts -- as well as personnel and equipment. As the success in Boston shows, these programs are critical to communities' efforts to defeat gangs, guns, and drugs.

With regard to the conditions on receipts of the funds, we are concerned that certain conditions may unnecessarily limit the pool of prospective recipients. We also think it is critical that Congress preserve, as a condition for receiving funds, the existing, basic protections for juvenile delinquents detained in state facilities. The current requirements, supported by recently amended regulations, guarantee the safety of incarcerated juveniles while permitting states the flexibility they need.

Last, we are concerned that the bill's provision allowing disbursement of funds to religious organizations may violate the Establishment Clause. A more detailed analysis of this issue is attached.

Notably absent from S. 10 are provisions such as those in S. 362 to promote firearms safety and target illegal firearms possession and distribution. Our proposed requirement that child safety locks be sold with every gun is essential to thwart gun theft and to protect our children from using guns on themselves or each other, deliberately or by accident. I hope that the Committee will join the Administration in supporting this important safety measure as well as our provision to keep firearms out of the hands of those who have committed serious offenses as juveniles.

We can leave no stone unturned in this legislative effort to fight juvenile crime. We cannot afford to have future

generations ask why we did not do more to stem the tide of youth violence.

We look forward to working with you to improve S. 10 so that we can enact the best possible youth crime legislation. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Janet Reno

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

The Honorable Jeff Sessions
Chairman
Subcommittee on Youth Violence

The Honorable Joseph R. Biden, Jr.
Ranking Minority Member
Subcommittee on Youth Violence

The Establishment Clause

This memorandum provides the views of the Office of Legal Counsel, concerning the Violent and Repeat Juvenile Offender Act of 1997, S. 10. The bill should be amended to ensure that it is not applied in a manner that would violate the Establishment Clause.

The bill provides federal block grants to states to enable them to establish juvenile justice programs. The bill provides that state and local governments may disburse some of the block grant funds to nongovernmental organizations for the purpose of providing counselling and treatment to juvenile offenders. The bill provides that state and local governments may, in disbursing the block grant funds, contract with religious organizations, or provide them with vouchers, certificates, or other forms of disbursement, on the same basis as any other nongovernmental entities.

In general, the Establishment Clause does not prohibit the government from providing funds directly to religious organizations in the course of administering a neutral program. It does, however, place two significant limitations on this general principle. First, the Establishment Clause prohibits direct governmental funding of religious activity even in otherwise substantially secular settings. See Bowen, 487 U.S. 615, 621 (majority), 623 (O'Connor, J., concurring), 624 (Kennedy and Scalia, JJ., concurring), 642-47 (dissenting justices). Second, the Establishment Clause generally precludes direct governmental funding of pervasively sectarian institutions. See Bowen v. Kendrick, 487 U.S. 589, 608-12 (1988).

Although the bill states that the block grant funds must be disbursed in accord with the Establishment Clause, its plain terms strongly suggest that state and local governments will be permitted to provide direct funding to religious organizations that are pervasively sectarian, i.e., institutions "in which

religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission[.]" Hunt v. McNair, 413 U.S. 734, 743 (1973). For example, the bill expressly provides that neither the federal government nor the state shall require a religious organization to "remove religious art, icons, scripture, or other symbols" in order to be eligible for funding. Sec. 206(a)(4)(F)(iii)(II)(bb). Similarly, the bill states that a participating religious organization "shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious belief." Moreover, the bill repeatedly refers to the "religious character" of eligible religious organizations, rather than to their religious affiliation.

The bill's restrictions on governmental authority to monitor eligible religious organizations, as well its repeated references to their "religious character," strongly imply that pervasively sectarian religious organizations will be eligible to receive direct governmental funding. See, e.g., Committee for Public Educ. v. Nyquist, 413 U.S. 756, 767-77 (religious restrictions on faculty appointments suggest school is pervasively sectarian). Thus, despite the bill's express requirement that the funds be provided in compliance with Establishment Clause, the bill might be construed to authorize the direct funding of pervasively sectarian religious organizations in violation of Bowen.

To clarify the nature of the Establishment Clause limitation that the bill itself provides, we suggest the following amendments. They are necessary to emphasize the non-pervasively sectarian nature of eligible funding recipients, and to ensure that direct governmental funding is not used to support religious activities. These amendments will therefore serve to ensure that state and local block grant recipients will administer their programs in conformity with the Constitution. They will also dramatically decrease the litigation risk that the current language presents.

First, the title to Section 206(a)(4)(F) should be amended to read "Religiously Affiliated Organizations."

Second, Section 206(a)(4)(F)(i) should be amended at lines 4-5 to change "religious organizations" to "religiously affiliated organizations," and at lines 9-10 to change "religious character" to "religious affiliation."

Third, Section 206(a)(4)(F)(ii) should be amended at line 4 by inserting "nonpervasively sectarian" prior to "religious."

Fourth, Section 206(a)(4)(F)(iii) should be amended to by substituting the word "affiliation" for the word "character."

Fifth, Section 206(a)(4)(F)(iii)(I) should be amended to provide:

(I) A nonpervasively sectarian religious organization that participates in a program authorized by this title shall retain its independence from Federal, States, and local governments, including such organizations control over its religious affiliation.

Sixth, Section 206(a)(4)(F)(iii)(I) should be amended to provide:

(II) Additional Safeguards. -- To the extent such organization is non-pervasively sectarian, neither the Federal government nor a State shall require a religious organization to --
(aa) alter its form of internal governance; or
(bb) remove <u>all</u> religious art icons, scripture, or other symbols; . . . .

Seventh, Section 206(a)(4)(F)(iv) should be amended by substituting the word "affiliation" for "character" in line three.

Eighth, Section 206(a)(4)(F)(v) should be amended to provide:

(V) EMPLOYMENT PRACTICES.-- A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 200e-1a) regarding employment practices shall not be affected by the participation of a non-pervasively affiliate in, or the receipt by such affiliate of funds , programs described in this title.

Ninth, Section 206(a)(4)(F)(vi), should be amended to provide:

(VI) NONDISCRIMINATION AGAINST BENEFICIARIES--Except as otherwise provided in law, an institution or organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in this title on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

Tenth, Section 206(a)(4)(F)(vi), should be amended by inserting the words "non-pervasively sectarian" prior to "religious" in line 2.

Eleventh, Section 206(a)(4)(F)(ix), should be amended to provide:

LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.-- No forms of disbursements to institutions or organizations to provide services and administer programs under this title shall be used or expended for any sectarian activity, including sectarian worship, instruction of proselytization.

Extension of Juvenile Court Jurisdiction to 30 Violent and Repeat Juvenile Offender Act of 1997, S.10	

This memorandum provides the views of the Office of Legal Counsel, concerning the Violent and Repeat Juvenile Offender Act of 1997, S. 10. At issue in particular is the provision in S. 10 that would extend the age until which a juvenile may be detained pursuant to federal juvenile proceeding.

At present, juvenile offenders may not be detained pursuant to a federal juvenile proceeding beyond their 21st birthday. See 18 U.S.C. § 5037. S. 10 would permit juveniles to be detained pursuant to federal juvenile proceedings until they turn 30. See §102(a).

We believe that there is a risk that the proposed extensions would be subject to substantial constitutional challenge on the ground that they infringe on a juvenile's right to the constitutional protections that attach to criminal prosecutions. The Supreme Court has explained that a juvenile proceeding is not a criminal prosecution and is therefore not subject to the full panoply of constitutional protections that apply to criminal prosecutions. See McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971) (plurality). For example, the Court has held that the right to a jury trial does not attach to a juvenile proceeding. Id. at 545. We are concerned, however, that a proceeding that could subject a juvenile to detention well into adulthood might be considered a criminal prosecution for constitutional purposes. As a result, we believe that the proposals to extend the maximum age for detention of juveniles pursuant to federal juvenile proceedings may be subject to substantial constitutional challenge.

Our conclusion is necessarily tentative because there is little precedent that is directly on point. For example, the plurality in McKeiver did not address whether detention into adulthood might trigger the juvenile's right to a jury trial, in part because the defendants were not subject to detention past their eighteenth birthday. However, in his concurrence in McKeiver, Justice White noted that most states permit juveniles

to be detained only until they turn 21, and he suggested that this limitation was relevant to his determination that the jury trial right does not attach to juvenile proceedings. Id. at 552.

One state court of appeals has upheld the constitutionality of a state statute that permits juveniles to be detained in juvenile proceedings, without a jury trial, until they turn 25. In re Charles C., 232 Cal. App. 3d 952 (5th Dist. 1991). The court of appeals reasoned that "the justification for a juvenile commitment which extends into adulthood lies in the rehabilitative function of the juvenile court system. Implicit in the authority for commitments beyond minority is the belief that rehabilitation may not be possible if an older minority -- 16 or 17 years of age -- cannot remain under the jurisdiction of the juvenile court for an adequate period of time to complete the necessary rehabilitative programs available [under state law.]" Id. at 960. Accordingly, it concluded that detention of an older juvenile until age 25 did not transform the essential nature of a juvenile proceeding. Id.

Although caselaw sheds little light on the precise nature of the limit on the maximum age until which a juvenile may be detained, we believe that, in light of Justice White's concurrence in McKeiver, the risk of a substantial constitutional challenge increases as detention pursuant to a juvenile proceeding extends beyond the age of 21.

We note that although S.10 provides that a juvenile may be tried as an adult upon written request, a juvenile's ability to make this election would not cure the constitutional problem that the extension of the maximum age of detention may create. If the extension of the maximum age were to trigger some (or all) of the constitutional protections that attach to criminal prosecutions, then a juvenile could be subject to a juvenile proceeding without those protections only after knowingly and intelligently waiving them. See Adams v. United States ex rel. McCann, 317 U.S. 269 (1942). We do not believe that a juvenile's mere failure to elect an adult proceeding would constitute a knowing and intelligent waiver of those constitutional protections. See Johnson v. Zerbst, 304 U.S. 458.

The Clone Pager Issue

Section 209 of S.10 would exempt the interception of certain communications and certain usages of pen registers, trap and trace devices, and clone pagers from the statutory requirements set forth in chapters 119 and 121 of title 18. Specifically, the provision would exempt "the interception by a law enforcement officer, or a person acting on behalf of a law enforcement officer, of any wire, oral, or electronic communication" from the statutory restrictions if "at least 1 of the parties to the communication" is an inmate or detainee of the Attorney General of the United States or of a state or local political subdivision. §209(a)(1). The provision would also exempt the use by a law enforcement officer or the agent of a law enforcement officer of a pen register, a trap and trace device, or a clone pager if "the facility is regularly used by" an inmate or detainee of the Attorney General of the United States or of a state or local political subdivision. §209(a)(2).

Our concern arises from the use of the word "facility" in subsection (a)(2). We are uncertain as to the meaning of the word "facility." We doubt that the word "facility" is intended to refer to pagers because we do not understand inmates or detainees to be in a position to be able to use pagers regularly. However, we are concerned by the alternative reading that the word "facility" is intended to refer to "telephones" or other similar modes of communication that enable one to transmit information to a pager. If the word "facility" has this latter meaning, then the provision would appear to permit law enforcement officers to clone any pager that receives a single call from a telephone line that is regularly used by an inmate or detainee. This latter reading would permit law enforcement officers to use clone pagers to retrieve the contents of all of the information that is transmitted to a pager, even when neither the recipient nor the sender is an inmate or detainee, merely because an inmate uses a prison telephone to call that pager at some time. We doubt that the legislation is intended to have this broad effect, particularly given the serious constitutional concerns that it would raise under the Fourth Amendment. We therefore recommend that the provision be amended, perhaps by deleting the reference to "clone pagers."

Crime - Youth Violence Bills

JUVENILE CRIME -- "MUST HAVE" PROVISIONS

1. Guaranteed Funds for Prosecutors/Probation Officers

   - The Administration's bill specifically sets aside $200 million over 2 years for direct grants to local prosecutors and probation officers. Without such a provision there is no guarantee that juvenile crime legislation passed by Congress will replicate successful anti-gang crackdowns like Boston's Operation Cease-fire and Nite Light. ***Juvenile crime legislation passed by the Congress must be tough on gangs by "carving out" direct funds for prosecutors and probation officers.***

2. Tighter Gun Restrictions, Tougher Gun Penalties

   - The mix of gangs and guns is at the heart of America's youth violence problem, and no juvenile crime bill can ignore this. The Administration's bill keeps guns out of the hands of violent juveniles and protects children from tragic, accidental shootings. It does this by (1) increasing penalties for illegally transferring guns to juveniles; (2) expanding the Brady Law to prohibit violent juveniles from ever owning guns; and (3) requiring federal gun dealers to provide child safety locks with every gun sold. ***Juvenile crime legislation passed by Congress must be tough on guns by increasing penalties, prohibiting violent juveniles from owning guns as adults and providing child safety locks with each gun sold.***

3. Guaranteed Funds To Keep Kids In School...And Out of Trouble

   - Statistics show that a majority of youth crimes and violence occur after school -- when kids are unsupervised and exposed to the triple threat of gangs, guns and drugs. That's why the Administration's Anti-Gang/Youth Violence Strategy calls for $135 million to keep kids in school, off the streets and out of trouble. ***Juvenile crime legislation passed by Congress must be smart with our kids by guaranteeing funds for at least 1,000 after school initiatives.***

Crime - Youth Violence Bills

DEMOCRATIC AMENDMENTS TO S. 10

TITLE ONE

1. "Safety Valve" Amendments to provision authorizing charging juveniles 14 years and older as adults in Federal court at sole, non reviewable discretion of prosecutor:

a) Sentencing safety valve - give sentencing judge authority to sentence juvenile according to sentencing guidelines without regard to statutory mandatory minimums (S.362); (LEAHY)

b) 2nd Look - At 18, juvenile would have right to petition judge for early supervised release, even if prison term is not completed; (KENNEDY)

c) Reverse waiver - after the juvenile is charged with a crime, upon motion of the defendant, the judge may hold hearing to determine whether to transfer defendant to juvenile status, upon consideration of enumerated factors (S. 362).

2. Require certification by Attorney General before U.S. Attorneys may charge juveniles as adults.

3. Narrow categories of crimes for which juvenile may be prosecuted as adult from "crime of violence" under 18 U.S.C. Sec. 16 (use of physical force against person or property of another) to "serious violent felony" under 18 U.S.C. Sec. 3559(c) (murder, manslaughter, assault, sexual abuse, kidnaping, car jacking, robbery, aircraft piracy, extortion, arson, or other offense punishable by a maximum term of imprisonment of 10 years or more and has as element use of physical force against another person). (LEAHY)

4. Right of jury trial for juveniles subject to lengthy terms of imprisonment.

5. Juvenile Death Penalty -- repeals provision lowering age to 16. (BIDEN)

6. Right to Counsel - no waiver of right to counsel without parental notification. (DURBIN)

7. Restore current certification requirement by Attorney General that prosecution of juvenile in federal court is necessary because state has refused to, or cannot, proceed against the juvenile. Also strike the "ends of justice" portion of that provision in S.10. (FEINGOLD)

TITLE THREE

8. Separate prevention funding --carve-out $100 million from the $500 million grant program for after-school programming with a strong evaluation component. (BIDEN/LEAHY)

9. Separate prosecutor/gang task force grant program -- stand alone funding for hiring prosecutors, court personnel to crack down on gangs and violent youth at the

state and local level. (BIDEN)

10. Conditions on $500 million --Modify condition requiring trying 14 year olds as adults for "all" felonies to all "violent" felonies (as defined by state law). (BIDEN/LEAHY)

11. Waiver on conditions on incentive grants for $500 million for States making progress on addressing juvenile crime and that do not meet other conditions. (KENNEDY/LEAHY)

12. Modify records provision in S. 10 to make it less expensive and to avoid preemption of state expungement laws. (BIDEN)
-If that fails, then require States to maintain all juvenile records until juvenile reaches 30 years old, and if juvenile commits crime as adult, juvenile record converted to adult record. (DURBIN)

13. Juvenile Arrestee Drug testing -- modify condition on $500 million program so states will qualify if they test all "appropriate" offenders and provide "interventions" (BIDEN)

14. Restore certain 1994 Crime Law and other prevention programs (BIDEN/ KOHL/KENNEDY), including:
-Gang Resistance Education and Training program - Amendment would retain GREAT program, an ATF-run program through which local law enforcement officers provide anti-gang education to 7th graders. The program has been appropriated with $7 or 8 million each of the past 3 years.
-Title V local incentive prevention grants- Amendment would retain Title V local incentive prevention grants which fund community-based prevention programs and require a 50-percent nonfederal match. The program has been appropriated for $20 million in each of past 3 years. (KOHL)

15. Substitute Thompson/Biden separation and other mandates on $150 million for "National Juvenile Crime Control and Juvenile Offender Accountability" program. (BIDEN)

16. Change funding authorization for "National Juvenile Crime Control and Juvenile Offender Accountability" programs from $150 million to $170 million.

17. Administrative costs -- specific percentage set aside for administrative costs of program. (BIDEN/FEINGOLD)

18. Research funding -- increase percentage for research. (BIDEN)

19. Restrict use of 35% carve-out in $500 million "Juvenile Crime Control and Juvenile Offender Accountability Incentive Block Grants" (35% carve out) for juvenile facilities so money cannot be used for operation of adult facilities. (BIDEN)

20. Pass through amendment - provide an allocation formula for the pass through to local units of government assuring that big cities get their fair share (with a waiver provision for states that conduct most of the law enforcement services at the State level). May be accepted by Hatch. (DURBIN)

21. Religious non-discrimination provision - Amend Ashcroft provisions so that religiously-affiliated organizations can provide services but not religious organizations. (DURBIN)

22. Revise Lobbying prohibition in S.10 to conform to OMB Circular A-122.

OTHER:

23. Prohibition of Laser-sighting devices in commission of a crime.

24. Authorize emergency re-scheduling authority for Attorney General. (BIDEN)

25. Create pilot program of challenge grant to cities that adopt Boston model. (SESSIONS/KENNEDY)

26. Juvenile Corrections Act–Amendment would set aside for juvenile corrections programs and facilities 10% of all Crime Act Trust Fund monies dedicated to prison construction. This would dedicate almost $800 million over 3 years to juvenile corrections. (KOHL)

27. Restore earmarked funds for the National Runaway Hotline. (DURBIN/FEINSTEIN)

28. Local Law Enforcement Block Grant - reauthorize funding. (FEINSTEIN)

29. Police Athletic Leagues - provide funding for programs. (KENNEDY)

30. Deadbeat Parents Punishment Act - Amendment would increase penalties for deadbeat parents who fail to pay child support for out-of-state child. (KOHL/SHELBY)

31. Hate Crimes Amendment. (KENNEDY)

32. Small State minimum - amendment to add a small state floor of 2% to the DOJ Truth-In-Sentencing Incentive Grants. (LEAHY)

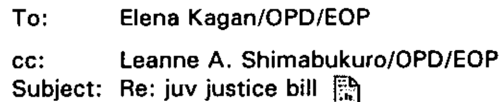
GUN AMENDMENTS

33. Child Safety Locks For Handguns–require licensed gun manufacturers, dealers, importers to sell handguns with and locking devices preventing the handgun from being discharged without first deactivating the device by means of a key or combination lock, and all firearms to carry a warning about the dangers of improper firearm storage. (KOHL/DURBIN/TORRICELLI)

Crime - Youth violence bills

Jose Cerda III 05/27/97 09:36:17 PM

Record Type: Record



To: Elena Kagan/OPD/EOP

cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Re: juv justice bill

Elena:

Justice, in their preliminary conversations with Republicans, are trying to get a prevention "carve out" in the inevitable Republican block grant to be included in the Republican mark. The notion then is that the R's, if they agree to a prevention "carve out," will pretty much let us submit our own language -- and that we will then be able to come up with language that satisfies both Rahm and the Dems interested in prevention. Ultimately, I think we need a bit more room to work with prevention language than Rahm has indicated, and that's why I agreed with Kent. However, we won't know for sure until DOJ drafts language for us, Rahm and key Dems to review.

Also worth noting: Education called me Friday and today. They're concerned that our adding new after school language to the juvie bill will only doom funding for their own effort. Could be...The real test, however, is whether or not we can get any of these efforts -- HHS, Ed or DOJ -- funded in the current budget environment. We should start looking at/analyzing appropriations realities.

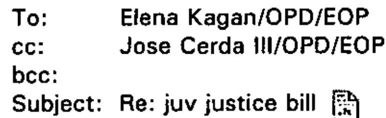
Jose'

Crime - Youth Viol Bills

Leanne A. Shimabukuro 05/27/97 06:09:17 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Jose Cerda III/OPD/EOP
bcc:
Subject: Re: juv justice bill

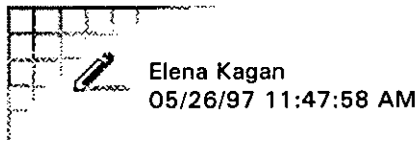


The after school provisions are in our FY 1998 budget. The reason it is not in the JJ bill is jurisdictional-- the after school funding is for a small Education Department program.

After school programs were made a part of the youth violence "strategy" booklet we released in Boston back in February. The strategy contained other items that were not specifically part of the JJ bill, but were things the Administration is doing on this front. I think we've been careful in written statements to say that after school programs are a part of the President's "strategy" on youth violence; but I think some, including the President, actually think it is written into our bill.

I think Jose can speak to how we are trying to get this as an authorized use of prevention funds in the Senate bill.

Elena Kagan



Elena Kagan
05/26/97 11:47:58 AM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
cc:
Subject: juv justice bill

So I've reviewed the section-by-section analysis of the jj bill that you gave me, and what I want to know is: where's the after-school stuff Rahm is talking about?

Crime - Youth Violence Bills

Congressional Black Caucus
Administration's Juvenile Crime Legislation

Issue: Prevention Funding. The CBC may criticize the Administration's Anti-Gang and Youth Violence Act as lacking in substantial prevention funding.

- Unlike the House-passed bill, which has no earmarked prevention funding, we have targeted prevention funding in our legislation. Our bill contains $75 million for a new At-Risk Children's Initiative. The funding can be used for anti-truancy, curfews programs, and other prevention and intervention initiatives.

- Our juvenile crime strategy also provides over $60 million for afterschool programs (FY 1998 budget request) to keep schools open late, on the weekends, and in the summer.

Issue: Incarceration of juveniles with adults in the federal system. The CBC is likely to criticize the Administration's bill for weakening the strictures on allowing juveniles to be housed with adults. Our legislation allows juveniles prosecuted as adults to be housed with adults after they reach the age of 16, at the discretion of the Bureau of Prisons.

- Under the Administration's bill, juveniles prosecuted as juveniles could not be housed with adults until they reach age 18, regardless of the offense. And no juvenile under age 16 who has been charged or convicted as an adult could be housed with an adult.

- As juveniles have become increasingly violent, housing dangerous juveniles with other juveniles can endanger younger and more vulnerable delinquents. It is appropriate to give federal prison authorities the ability to be flexible depending upon the attributes of the individual defendant.

Issue: Prosecution of more juveniles as adults. The Administration's bill expands the circumstances in which federal prosecutors can transfer juveniles to adult criminal court.

- The proposed change contained in our bill is designed to ensure that decisions about charging are made fairly and expeditiously, and that they appropriately reflect the dangers that some juveniles pose to their communities.

- In most cases, juveniles charged as adults may petition thc court to be tried as juveniles.

Issue: More mandatory minimum sentences for juveniles. The Administration's legislation increases mandatory minimum sentences from one year to three years for three narrowly targeted crimes: selling drugs to minors; using minors to distribute drugs; and trafficking drugs in or near a school or other protected location.

- We believe the proposed increases are necessary to punsih persons who endanger children by selling illegal drugs to them or who use children in their drug trade.

- Our bill permits judges to sentence youths below the age of 16 as juveniles, thereby avoiding mandatory minimums even when they are convicted in adult court as long as they do not have previous serious violent felony or serious drug offense convictions.

Issue: Availability of public records. Our bill clarifies current law by ensuring that victims of juvenile offenders have access to similar information as do other victims (e.g., victims would be able to find out about the status of the proceedings). Fingerprints and photos of delinquents who have committed the equivalent of an adult felony or a federal gun offense would be sent to the FBI and made available in the same manner as adult offenders.

- These provisions reflect the Administration's commitment to protect the rights of victims of crime. Our bill contains important protections for the rights of victims, including victims of crimes committed by juvenile offenders.

- The Administration believes these changes represent a fair balance between maintaining important protections for juveniles and expanding the information available to their victims.

Crime-Youth Violence bills

ANTI-GANG AND YOUTH VIOLENCE ACT OF 1997

SECTION-BY-SECTION ANALYSIS

The Anti-Gang and Youth Violence Act of 1997 is a comprehensive federal effort to address the nation's youth and juvenile crime problem. This legislation contains many of the proposed amendments to the federal code that were contained in legislation introduced, but not enacted into law during the 104th Congress. This legislation also redesigns, refocuses, and enhances the federal government's role in relation to state, local and Indian tribal governments in combating and preventing juvenile and youth crime, violence, gang involvement, and drug use. Additionally, this legislation includes the authorization for several programs submitted by the President in his fiscal year 1998 budget request.

TITLE I--FINDINGS, POLICIES, AND PURPOSES

This title enumerates findings regarding juvenile crime and violence, as well as purposes tied to the various provisions of the legislation. Additional definitions are provided as needed.

TITLE II--TARGETING VIOLENT GANG, GUN AND DRUG CRIMES

Subtitle A--Federal Prosecutions Targeting Violent Gangs, Gun Crimes and Illicit Gun Markets, and Drugs

Part 1--Targeting Gang and Other Violent Crimes

Section 2111. Increased penalties under the RICO law for gang and violent crimes.

This amendment would boost the penalty for certain crimes typically committed by gangs and other violent crime groups by eliminating an anomaly in the penalty provisions of the federal Racketeering Influenced and Corrupt Organizations statute (18 U.S.C. 1963(a)). Specifically, the amendment would increase the maximum penalty from twenty years to the greater of twenty years or the maximum term applicable to a racketeering activity on which the defendant's violation is based. This principle already applies under the RICO statute where the predicate racketeering activity carries a maximum life sentence. The present twenty-year maximum applicable to all other predicate racketeering offenses is anomalous in light of the fact that several of the predicate offenses that constitute "racketeering activity" themselves carry more than twenty-year (but less than life) maximum prison terms, e.g., 18 U.S.C. 1344 (bank fraud) and 21 U.S.C. 841(b)(1)(B) (large-scale drug trafficking).

Section 2112. Increased penalty and broadened scope of statute against violent crimes in aid of racketeering.

This amendment would close loopholes in 18 U.S.C. 1959, the law punishing violent crimes in aid of racketeering. The statute presently and anomalously reaches threats to commit any crime of violence (with the requisite intent) but only the actual commission of some such crimes. The amendment also would clarify that the term "serious bodily injury" in 18 U.S.C. 1959 shall be defined as provided in 18 U.S.C. 1365.

This proposal also would increase penalties for certain violent crimes in aid of racketeering in recognition of the serious nature of such crimes and to bring the penalties in line with other penalties for similar crimes in title 18. First, the amendment would increase from a maximum of ten years' imprisonment to a maximum of life imprisonment a conspiracy or attempt to commit murder or kidnapping, in violation of 18 U.S.C. 1959. That statute punishes various violent offenses committed in aid of racketeering activity. The present ten-year maximum penalty for a conspiracy or attempt to commit murder or kidnapping in aid of racketeering is clearly inadequate. The maximum penalty for a conspiracy to commit a murder within the special maritime and territorial jurisdiction of the United States is life imprisonment, 18 U.S.C. 1117, as is the maximum penalty for a conspiracy to commit kidnapping, 18 U.S.C. 1201(c). Such acts when performed with the additional intent of furthering racketeering activity deserve no lesser punishment. Moreover, an attempt warrants an equivalent sanction as a conspiracy. Second, the amendment would increase from five years to ten years the maximum penalty for committing or threatening to commit a crime of violence under paragraph (4). Finally, the amendment would increase from three years to ten years the maximum penalty for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon or assault resulting in serious bodily injury under paragraph (6).

Section 2113. Facilitating the prosecution of car-jacking offenses.

This section would eliminate an unjustified and unique scienter element created for the offense of carjacking by the enactment of section 60003(a)(14) of the Violent Crime Control and Law Enforcement Act. The carjacking statute, 18 U.S.C. 2119, essentially proscribes robbery of a motor vehicle. It punishes the taking of a motor vehicle that has moved in interstate or foreign commerce "from the person or presence of another by force and violence or by intimidation." The basic penalty is up to fifteen years' imprisonment but rises if serious bodily injury or death results.

Prior to the enactment of VCCLEA, the offense applied only if the defendant possessed a firearm. Section 60003(a)(14) of that

law appropriately deleted the firearm requirement, as had been proposed in the Senate-passed bill, but in conference a new scienter element was added that the defendant must have intended to cause death or serious bodily injury. This unique new element will inappropriately make carjackings difficult or impossible to prosecute in certain situations. Robbery offenses typically require only what the carjacking statute formerly required by way of scienter, i.e., that property be knowingly taken from the person or presence of another by force and violence or by intimidation. The Hobbs Act, 18 U.S.C. 1951, the quintessential federal robbery law which carries a higher maximum penalty than the carjacking statute, essential defines "robbery" in this manner. The new requirement of an intent to cause death or serious bodily harm will likely be a fertile course of argument for defendants in cases in which no immediate threat of injury occurs, such as where a defendant enters an occupied vehicle while it is stopped at a traffic light and physically removes the driver. Even when a weapon is displayed, the defendant may argue that although it was designed to instill fear, he had no intent to harm the victim had the victim in fact declined to leave the car.

Carjacking is one of the most serious types of robbery precisely because, unlike other person property, a car is a place where people are accustomed to feel safe and where they and their family spend hours of their lives. To give defendants who take cars from the person or presence of their occupants by force and violence or intimidation a new legal tool with which to resist their prosecution is unjustified. This new element should be eliminated as soon as possible from Section 2119. The proposed amendment would do so.

Section 2114. Facilitation of RICO prosecutions.

This amendment is intended to overcome decisions in the First and Second Circuits that require proof that a RICO conspiracy defendant agreed personally to commit at least two acts of racketeering activity. United States v. Ruggiero, 726 F.2d 913, 921 (2d Cir.), cert. denied, 469 U.S. 831 (1984); United States v. Winter, 663 F.2d 1120, 1136 (1st Cir. 1981), cert. denied, 460 U.S. 1011 (1981). See also United States v. Sanders, 929 F.2d 1466, 1473 (10th Cir.), cert. denied, 112 S.Ct. 143 (1991). Virtually all other circuits have more recently rejected these holdings and have concluded that it is sufficient to show that the defendant joined the conspiracy and agreed that two or more racketeering acts would be committed by some conspirators on behalf of the enterprise. See, e.g., Untied States v. Pryba, 900 F.2d 748, 759-60 (4th Cir. 1990); United States v. Traitz, 871 F.2d 368, 395-96 (3d Cir.), cert. denied, 493 U.S. 821 (1989); United States v. Neapolitan, 791 F.2d 489, 491-98 (7th Cir. 1986), cert. denied, 479 U.S. 1101 (1987); United States v. Joseph, 781 F.2d 549, 554-55 (6th Cir. 1986; United States v. Tille, 729 F.2d 615, 619 (9th Cir.), cert. denied, 469 U.S. 845 (1984); United States v. Carter,

721 F.2d 1514, 1528-31 (11th Cir.), cert. denied, 469 U.S. 819 (1984).

There is no reason to require that a defendant charged with RICO conspiracy personally commit racketeering acts. Standard conspiracy law does not contain such a requirement. See, e.g., Pinkerton v. United States, 328 U.S. 640, 645-48 (1946). It should be sufficient to show that the defendant joined the overall conspiracy and agreed to the commission of a pattern of racketeering activity by others on behalf of the conspiracy. This amendment resolves this conflict in the circuits.

Section 2115. Elimination of the statute of limitations for murder and Class A felonies.

This section makes important changes in federal law and will enhance the ability of federal prosecutors to bring serious offenders to justice. The first proposal relates to the prosecution of certain murders. Current law provides that no statute of limitations shall apply for the commission of a federal crime punishable by death. 18 U.S.C. § 3281. This statute should be amended to further eliminate the statute of limitations for any federal offense involving murder, even if the crime does not carry the death penalty. The rationale behind this proposal is straightforward. Most states have no statute of limitations for murder. Moreover, the act of killing another person is so serious that no murderer should go unpunished simply because the government was unable to develop a case for many years.

By virtue of the 1994 Crime Act, most murders committed during the course of a federal offense are now punishable by the death penalty -- and thus already have no statute of limitations. The 1994 Crime Act only applies, however, to murders committed on or after the Crime Bill was passed on September 13, 1994. The proposed legislation will help bridge this gap by eliminating the statute of limitations for murders committed within five years of the date of passage of the legislation and September 13, 1994. Furthermore, the Crime Act did not provide for the death penalty for murders committed in violation of the RICO statute. 18 U.S.C. §§ 1961 et seq. The proposed legislation would bridge another important gap by eliminating the statute of limitations for RICO offenses when murders are committed in furtherance of a racketeering enterprise.

The second proposal relates to the prosecution of certain violent crimes and drug trafficking crimes. Current law provides that the general federal five-year statute of limitations applies to non-capital crimes of violence and drug trafficking crimes. 18 U.S.C. § 3282. This proposal extends to 10 years the statute of limitations for all crimes of violence and drug trafficking crimes (except for cases involving murder) currently classified as Class A felonies. Pursuant to 18 U.S.C. § 3559, Class A felonies are the

most serious federal crimes, which carry a maximum sentence of life imprisonment or death.

This proposal is necessary for several reasons. First, evidence of gang-related and other violent crimes, as well as drug trafficking crimes, often develops years after the crimes were committed because the organizations, gangs, and racketeering enterprises that typically perpetrate such crimes enforce strict codes of silence -- through violence and threats of violence -- on their members. Thus, some violent crimes and drug trafficking crimes are not solved until imprisoned defendants begin to cooperate after spending years behind bars -- years in which the five-year statutes of limitations may have lapsed. Second, society's interest in repose and fairness to prospective defendants is greatly outweighed by society's interest in punishing those individuals who commit crimes that are so serious that Congress has imposed a maximum sentence of life imprisonment or death. Under current law, theft of major art work carries a 20-year statute of limitations (18 U.S.C. § 3294), and most white-collar crimes involving financial institutions (e.g., theft of money by a bank teller) carry a 10-year statute of limitations (18 U.S.C. § 3293). Given that Class A crimes of violence and drug trafficking crimes generally are at least as harmful to society as these offenses, there is no reason for these Class A felonies to carry such a relatively short statute of limitations.

Section 2116. Forfeiture for crimes of violence, racketeering, and obstruction of justice.

This section extends the forfeiture statutes to cover all crimes of violence plus the racketeering crimes set forth in Chapter 95 (18 U.S.C. § 1951-60), including extortion, murder-for-hire, and violent crimes in aid of racketeering, and the obstruction of justice offenses set forth in Chapter 73 (18 U.S.C. § 1501-17). Presently, there is no forfeiture authority for such offenses except when they are included in a RICO prosecution.

Part 2--Targeting Serious Gun Crimes and Protecting Children from Gun Violence

Section 2121. Gun ban for dangerous juvenile offenders.

This amendment would make it unlawful for any person adjudicated a juvenile delinquent for serious violent felonies or drug crimes to receive or possess firearms. It would also make it unlawful for any person to sell or otherwise dispose of any firearm to any person knowing or having reasonable cause to believe that the recipient has been adjudicated a juvenile delinquent for such crimes. Under current law, persons adjudicated juvenile delinquent, even for the most serious crimes, e.g., murder, may receive and possess firearms as adults. This amendment will ensure

that such juveniles will be ineligible to possess firearms after the finding of juvenile delinquency.

The disability will only apply to the most serious drug offenses and violent crimes, as enumerated in the recently enacted "three-strikes" law (but because it would otherwise be impossible to administer, the proposed statutory reference incorporates the basic offenses enumerated in paragraph (c)(2) of section 3559, without the exceptions set forth in paragraph (3)). In addition, this amendment will only apply to findings of acts of juvenile delinquency that occur after the effective date of the statute. Thus, persons who have acted or been adjudicated delinquent prior to the effective date will not be subject to this disability. Adjudicated delinquents would be permitted under the proposal to have their firearms rights restored based upon an individualized determination by an appropriate authority of the state of their suitability for such restoration.

The proposal also would make a conforming change to the restoration of rights statute affecting adult convictions. One of the most serious problems today hindering enforcement of federal firearms statutes arises from the definition of "conviction" in 18 U.S.C. 921(a)(20). Under 18 U.S.C. 922(g), it is unlawful for a convicted felon to possess a firearm. Section 922(g) violations also serve as the basis for the mandatory penalties applicable under the Armed Career Criminal Act, 18 U.S.C. 924(e), for 922(g) violators with three or more crime of violence or serious drug trafficking convictions. What is a "conviction" is therefore vital to the enforcement of these important provisions.

Prior to the 1986 Firearms Owners' Protection Act, a conviction for purposes of federal firearms prohibitions was a question of federal, not state, law. Federal law provided that once an individual was convicted of a felony, that person remained under a federal firearms disability irrespective of state laws purporting to restore the person's rights to possess firearms. Offenders could apply for relief from firearms disabilities to the Secretary of the Treasury. The 1986 Act, however, changed this policy and provided, in 18 U.S.C. 921(a)(20), that a conviction for which a person has had civil rights restored generally "shall not be considered a conviction" under federal firearms statutes.

The 1986 amendment has had adverse effects from the standpoint of public safety. This results from the fact that about half the states have laws that provide for some form of automatic firearms rights restoration, including several states that provide for such restoration after a waiting period, and at least one state that automatically restores firearms possession rights immediately upon completion of a felon's sentence, so that the felon is enabled to walk directly out of prison into a gun dealer's establishment and legally arrange to purchase a firearm. Other states make restoration of rights automatic except for certain categories of

felons (typically those convicted of violent crimes), while still other states make restoration automatic for some types of firearms but not others.

Under the proposed amendment, state laws restoring firearms rights would continue to be recognized for federal firearms enforcement purposes, but only if the restoration of rights was done on an individualized rather than an automatic basis, including a determination that the circumstances of the person's conviction, and his or her record and reputation, make it unlikely that the person will endanger public safety. The Federal Government should not give effect to state restoration of rights statutes that provide for no individualized consideration of the offender's likelihood of committing future crimes. About half the states currently restore firearms rights only after such an individualized review. The remaining states need not change their laws if they do not wish to do so, but the Congressional policy underlying the federal felon-in-possession prohibition in 18 U.S.C. 922(g) should not be deemed superseded by a state law that automatically restores a felon's firearms rights. Such automatic restoration laws insufficiently protect the public safety, not only in the states that provide for such automatic restoration but in other states to which the convicted felon may travel.

The proposed amendment also includes a provision, in the final sentence, that would reverse the outcome in United States v. Indelicato, 97 F.3d 627 (1st Cir. 1996). The court there held, contrary to other courts of appeals, that where a state had never deprived a convicted felon of his or her civil rights as a result of the conviction, that person was to be considered as if the state had "restored" such rights. Whether or not this interpretation is deemed correct under the current law, as a matter of policy it makes sense to require a state to make an individualized determination of suitability to possess firearms in every case involving a conviction of a state crime punishable by more than one year in prison.

Section 2122. Locking devices for firearms.

The amendment would require Federal firearms licensees, other than licensed collectors, to provide a locking device with every firearm sold to a nonlicensee. The term "locking device" would be defined as a device that can be installed on a firearm that prevents the firearm from being discharged without removing the device. It would also include firearms being developed which can "identify" their lawful possessor by the use of a personal electronic "key", palmprint, or other identifier. The provision is intended to provide added safety to gun owners and to prevent accidental discharges that can result when children gain access to firearms.

Section 2123. Enhanced penalties for discharging or possessing a firearm during a crime of violence or drug trafficking crime.

In Bailey v. United States, __ U.S. __, 116 S. Ct. 501, 133 L. Ed. 2nd 472 (1995), the Supreme Court put a restrictive interpretation of the verb "use" in relation to a firearms violation under 18 U.S.C. § 924(c), finding that an offender only "uses" a firearm if the weapon is "actively employed" in connection with a criminal act. The legislative proposal makes it clear that the statute punishes possession of a firearm, as well as its "use." Under the proposal, possession of a firearm during the commission of a violent crime or drug felony will result in a 5-year mandatory minimum penalty. Offenders will receive a 10-year mandatory minimum penalty if during the commission of a drug felony or violent crime, the offender discharges the firearm or uses it to inflict bodily harm.

Section 2124. Juvenile handgun possession.

This proposal would increase the penalties for violations of 18 U.S.C. 922(x), which makes it unlawful for a person to transfer a handgun to a juvenile or for a juvenile to possess a handgun. Existing law provides a penalty of not more than one year for violations of Sec. 922(x) and, if the person transferring the handgun to the juvenile knew that the handgun would be used in a crime of violence, a penalty of not more than 10 years. Existing law also provides for probation by juvenile offenders, unless the juvenile has been previously convicted of certain offenses or adjudicated as a juvenile delinquent.

The proposal would eliminate probation as a mandatory sentence for juveniles. Thus, juveniles would be sentenced to a penalty of not more than one year or, if previously convicted under this section or adjudicated delinquent for an act that would be a serious violent felony under 18 U.S.C. 3559(c) if committed by an adult, sentenced to up to five years' imprisonment. The proposal also increases the penalty for adults who transfer handguns to juveniles knowing that they intend to use it in the commission of a crime of violence to not less than three years nor more than 10 years (currently only the ten-year maximum applies).

Section 2125. Increased penalty for firearms conspiracy.

This section would amend the firearms chapter of title 18 to provide that a conspiracy to commit any violation of that chapter is punishable by the same maximum term as that applicable to the substantive offense that was the object of the conspiracy. An identical amendment was enacted to the explosives chapter of title 18 by section 701 of the Anti-Terrorism and Effective Death Penalty Act of 1996 (P.L. 104-132). This also accords with several other recent congressional enactments, including 21 U.S.C. 846 (applicable to drug conspiracies) and 18 U.S.C. 1956(h) (applicable

to money laundering conspiracies). This trend in federal law, which is emulated in the penal codes of many States, recognizes that, as the Supreme Court has observed, "collective criminal agreement -- partnership in crime -- presents a greater potential threat to the public than individual delicts." Callanan v. United States, 364 U.S. 587, 593 (1961); accord, United States v. Feola, 420 U.S. 671, 693-94 (1975).

Part 3--Targeting Illicit Gun Markets

Section 2131. Certain gang-related firearms offenses as RICO predicates.

The proposed amendment would add a number of title 18 firearms offenses that are related to gang activity to the RICO statute. A brief description of the covered offenses is as follows: 922(a)(1) (illegally engaging in business of dealing in firearms); 922(a)(6) (knowingly making false statement to a licensee in order to acquire a firearm); 922(i) (transporting a firearm in interstate or foreign commerce knowing it to have been stolen); 922(j) (possession or disposition of a firearm or ammunition knowing it to have been stolen); 922(k) (transporting or receiving a firearm interstate with an obliterated serial number); 922(o) (unlawful possession or transfer of a machinegun); 922(q)(unlawful possession of a firearm that affects or has moved in interstate commerce in a school zone); 922(u) (theft from a licensee of a firearm that has moved in interstate commerce; 922(v) (illegal transfer or possession of a semiautomatic assault weapon); 922(x)(1) (sale or transfer of a firearm to a person known to be a juvenile); 924(b) (transporting or receiving a firearm in interstate commerce with intent to commit therewith a felony); 924(g) (traveling interstate to acquire a firearm, with intent to commit a crime of violence, drug trafficking offense, or other enumerated felony); 924(h) (transferring a firearm with knowledge it will be used to commit a crime of violence or drug trafficking offense); 924(k) (smuggling a firearm into the United States with intent to commit a crime of violence or drug trafficking offense); 924(l) (theft of a firearm from a licensee); and 924(m) (traveling in interstate or foreign commerce to acquire a firearm, with intent to engage illegally in business of dealing in firearms).

Section 2132. Felony treatment for offenses tantamount to aiding and abetting unlawful purchases.

This proposal would increase the punishment for the most serious record keeping violations committed by federal licensees, which are tantamount to aiding and abetting unlawful deliveries or purchases of firearms, to the same level of offense as that committed by the unlawful provider or receiver. Sections 922(b)(1) and (3) proscribe sales of firearms to persons known to be juveniles or to reside out of State, respectively. Each carries a five-year maximum sentence for a willful violation under 18 U.S.C.

924(a)(1)(D). Sections 922(a)(6) and (d) proscribe, respectively, making false statements to a licensee in relation to the acquisition of a firearm, and knowingly selling a firearm to a convicted felon or other prohibited category of firearm recipient. Each is punishable by up to ten years' imprisonment.

At present, all record keeping violations by licensees are misdemeanors carrying a maximum of one year in prison. This is insufficient in the above situations, where the knowingly false record keeping entry is very serious and closely associated with or in the nature of aiding and abetting a violation involving the provision of a firearm to a person not entitled to obtain it. Accordingly, the amendment would increase the penalty for such record keeping violations to the same as that would attach to the underlying violation.

Section 2133. Secure storage of firearms inventories.

This amendment would require Federal firearms licensees other than collectors and gunsmiths to store their firearms inventory in accordance with regulations issued by the Secretary. The purpose of the amendment is to provide security requirements for the firearms industry. Thefts of firearms from dealers is a growing problem and contributes to the number of firearms available to juvenile youth gangs and other criminals. In issuing the storage regulations, the Secretary would be required to consider the standards of safety and security used by the firearms industry. The industry, as well as other interested persons, could participate in the rulemaking process and have input into the regulations.

Section 2134. Suspension of federal firearms licenses and civil penalties for willful violations of the Gun Control Act.

Under current law, the only available administrative remedies to deal with licensees' violations are the extreme measures of denying license renewal applications and license revocation. There may be certain minor violations of the Gun Control Act, e.g., failure to timely record information in required records, that may not warrant license revocation or license denial. This amendment provides new administrative sanctions, less severe than current administrative remedies, including license suspension, civil money penalties, and authority to accept monetary offers in compromise of violations of the law and regulations.

Section 2135. Transfer of firearm to commit a crime of violence.

Present 18 U.S.C. 924(h) makes it unlawful to transfer a firearm "knowing" that the firearm will be used to commit a crime of violence or drug trafficking crime. However, 18 U.S.C. 924(b) makes it unlawful to transport or receive a firearm in interstate commerce "with knowledge or reasonable cause to believe" that any

felony is to be committed therewith. Both statutes carry the same maximum penalty.

There is no plausible reason why section 924(h) is limited to instances in which the actor has knowledge that a crime of violence or drug trafficking crime will be committed, as opposed to having "reasonable cause to believe" that such is the case. Indeed, the offenses covered by section 924(h) -- violent felonies and drug trafficking felonies -- are inherently more serious than the offenses covered by section 924(b), which extends to all felonies. Accordingly, this section would conform the scienter element in section 924(h) by adding "reasonable cause to believe" to that statute.

Section 2136. Increased penalty for knowingly receiving firearm with obliterated serial number.

The current maximum penalty for knowingly receiving a firearm with an obliterated or altered serial number in violation of 18 U.S.C. 922(k) is five years. This offense is tantamount to that of receiving a firearm known to be stolen. However, the latter carries a maximum penalty of ten years. Accordingly, this amendment would increase the maximum penalty for receiving a firearm with an obliterated or altered serial number to ten years.

Section 2137. Amendment to the Sentencing Guidelines for transfers of firearms to prohibited persons.

The proposed amendment would require the United States Sentencing Commission to provide an increase in the base offense level for certain firearms violators under sentencing guideline section 2K2.1. The increase should assure that the base offense level for a person who transfers firearms or ammunition with knowledge or reasonable cause to believe that the transferee is a convicted felon or otherwise in a prohibited category is the same as that for the transferee. Under Federal law the offense of selling or disposing of a firearm or ammunition to any person knowing or having reasonable cause to believe that the person is in a prohibited category is punishable by a maximum term of imprisonment of 10 years -- the same penalty that applies to the transferee. <u>See</u> 18 U.S.C. §§922(d), 922(g) and 924(a)(2).

The sentencing guidelines provide that a prohibited person who engages in a firearm offense is subject at least to offense level 14. Thus, for example, a convicted felon who unlawfully acquires a firearm in violation of section 922(g) of title 18, United States Code, would face a sentencing range of 18-24 months of imprisonment if his past conviction resulted in a sentence of imprisonment of 60 days or more. However, the transferor currently faces a guideline offense level of just 12 (10-16 months of imprisonment for a first offender, which can result in five months of imprisonment and five months of supervised release with home

confinement). The transferor in this case should be subject to offense level 14, like the transferee.

Guideline section 2K2.1 also provides an offense level of 20 for a prohibited person whose offense involved a machinegun or certain other dangerous firearms. The proposed directive would require the Sentencing Commission to make this offense level applicable to the transferor of such a weapon if the transferor knows or has reasonable cause to believe that the transferee is in a prohibited category. However, the sentencing guidelines currently provide additional base offense level increases in the case of defendants who have prior felony convictions of either a crime of violence or controlled substance offense, §2K2.1(a)(1), (2), (3), and (4)(A). The directive to the Sentencing Commission specifically exempts these additional increases from its requirements.

Section 2138. Forfeiture of firearms used in crimes of violence and felonies.

The amendment adds the authority to forfeit firearms used to commit crimes of violence and all felonies to 18 U.S.C. §§ 981 and 982. This authority would be in addition to the authority already available to Treasury agencies under 18 U.S.C. § 924(d).

The purpose of the amendment is 1) to provide for criminal as well as civil forfeiture of firearms; and 2) to permit forfeiture actions to be undertaken by Department of Justice law enforcement agencies who have authority to enforce the statutes governing crimes of violence but who do not have authority to pursue forfeitures of firearms under the existing statutes.

Section 924(d) of title 18 already provides for the civil forfeiture of any firearm used or involved in the commission of any "criminal law of the United States." The statute, however, is enforced only by the Treasury Department and its agencies; it provides no authority for the FBI, for example, to forfeit a gun used in the commission of an offense over which it has sole jurisdiction. Moveover, § 924(d) provides for civil forfeiture only.

Subsection (d) adds a provision to 18 U.S.C. § 924(d) intended to permit the Bureau of Alcohol, Tobacco and Firearms to forfeit property that otherwise would have to be forfeited by another agency. Under § 924(d), ATF is presently authorized to forfeit a firearm used or carried in a drug trafficking crime. Property involved in the drug offense itself, such as drug proceeds, may also be forfeitable under the Controlled Substances Act, 21 U.S.C. § 881, but ATF does not presently have authority to forfeit property under that statute and has to turn the forfeitable property over to another agency. The amendment does not expand the scope of what is forfeitable in any way, but does allow the forfeiture to be pursued by ATF when the agency is already involved

in the forfeiture of a firearm in the same case.

Finally, subsection (e) clarifies an ambiguity in the present statute relating to the 120-day period in which a forfeiture action must be filed. Presently, the statute says that a forfeiture proceeding must be filed within 120 days of the seizure of the property. This was intended to force the government to initiate a forfeiture action promptly. In one case, however, where the government did initiate an administrative forfeiture action within the 120-day period, the claimant filed a claim and cost bond which required the government to begin the forfeiture action over again by filing a formal civil judicial proceeding in federal court. The claimant then moved to dismiss the judicial proceeding because the complaint was filed outside the 120-day period.

The court granted the motion to dismiss because the literal wording of § 924(d) requires any forfeiture action against the firearm to be filed within 120 days of the seizure. United States v. Fourteen Various Firearms, ___ F. Supp. ___, 1995 WL 368761 (E.D. Va. June 19, 1995). This interpretation, however, leads to unjust results in cases where the government promptly commences an administrative forfeiture action but the claimant waits the full time allotted to him to file a claim. (Under Section 101 of this Act, the claimant would have 30 days from the date of publication of notice of the administrative forfeiture action to file a claim, which is likely to be several months after the seizure even if the government initiated the administrative forfeiture almost immediately after the seizure.) In such cases, Congress could not have intended the 120-day period for filing a judicial complaint to count from the date of the seizure; indeed, it is often the case that the claimant doesn't even file the claim until more than 120 days have passed. Thus, the amendment clarifies the statute to make clear that the government must initiate its administrative forfeiture proceeding within 120 days of the seizure and then will have 120 days from the filing of a claim, if one is filed, to file the case in federal court. The amendment also tolls the 120-day period during the time a related criminal indictment or information is pending.

Section 2139. Forfeiture for gun trafficking.

This section provides for the forfeiture, under 18 U.S.C. §§ 981 and 982, of vehicles used to commit gun trafficking, such as transporting stolen firearms, and for the proceeds of such offenses. The provision is limited to instances in which five or more firearms are involved, thus making it clear that it is not intended to be used in instances where an individual commits a violation involving a small number of firearms in his or her personal possession.

Part 4--Targeting Serious Drug Crimes and Protecting Children from Drugs

Section 2141. Increased penalties for using minors to distribute drugs.

This provision would amend Section 420 of the Controlled Substances Act (21 U.S.C. 861) to increase the current mandatory minimum penalty for using or employing minors to distribute drugs from one year to three years. Similarly, the provision would increase the mandatory minimum penalty for a second or subsequent violation of this statute from one year to five years. The proposed increases are necessary to punish persons who use or employ minors to distribute illegal drugs and to deter others from engaging in such reprehensible conduct.

Section 2142. Increased penalties for distributing drugs to minors.

This provision would amend section 418 of the Controlled Substances Act (21 U.S.C. 859) to increase the minimum penalty for distributing drugs to minors from one year to three years for a first offense, and from one year to five years for a second or subsequent offense. The proposal would also alter the age of the minor that triggers these penalties. Under the proposed amendment, the penalties would apply whenever a person at least eighteen years of age distributes drugs to a person under eighteen. Presently, the statute punishes a person at least eighteen who distributes drugs to a person under twenty-one, thus reaching some transactions in which the buyer is significantly older than the seller. This makes little sense and is inconsistent with the companion statute, 21 U.S.C. 861, which punishes persons who employ minors to distribute drugs. The proposed amendment would bring section 859 into conformity with section 861.

Section 2143. Increased penalty for drug trafficking in or near a school or other protected location.

This provision would amend Section 419 of the Controlled Substances Act (21 U.S.C. 860) to increase the mandatory minimum penalty for distributing drugs in or near a school or other protected location. The provision also would increase the mandatory minimum penalty for second and subsequent offenses from one year to five years. The increased penalties for drug trafficking in or near schools or other protected locations are consistent with the other proposed penalty increases in this legislation and are aimed at protecting children from drug trafficking and abuse, punishing drug dealers who target children, and deterring others who might engage in such conduct.

Section 2144. Serious juvenile drug trafficking offenses as Armed Career Criminal Act predicates.

This section would amend the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A), to permit the use of an adjudication of juvenile delinquency based on a serious drug trafficking offense as a predicate offense under that Act. The ACCA targets for a lengthy period of at least 15 years' imprisonment those felons found in unlawful possession of a firearm who have proven records of involvement in serious acts of misconduct involving drugs and violence.

Section 2145. Attorney General authority to reschedule certain drugs posing imminent danger to public safety.

Under existing law, the Attorney General is empowered to add temporarily a substance to Schedule I of the Controlled Substances Act when necessary to respond to an imminent danger to public safety. See 21 U.S.C. 811(h). However, the Attorney General is not authorized to reschedule a substance that already has been placed on one of the schedules of the Controlled Substances Act. Once a substance has been added to one of the schedules, any rescheduling of that substance must be done pursuant to the standard procedures for scheduling or rescheduling a substance. Under the standard procedures, the rescheduling of a substance can take several years.

The proposal would extend the Attorney General's existing authority to schedule a substance on an emergency basis to include the rescheduling of an already scheduled drug to Schedule I. This authority will give the Attorney General to respond to public health crises involving scheduled substances, such as the rapidly escalating abuse of rohypnol, a Schedule IV drug with no approved medical uses in the United States.

The proposal contains the same limitations and procedures as apply to the Attorney General's existing emergency scheduling authority. The Attorney General could temporarily reschedule a substance only for one year, with the possibility of a one-time six month extension under certain circumstances. In addition, the Secretary of Health and Human Services would continue to have a formal role in advising the Attorney General in any proposed rescheduling.

Section 2146. Increased penalties for using federal property to grow or manufacture controlled substances.

This provision would increase the penalty for cultivating or manufacturing a controlled substance on federally owned or leased land. A significant amount of the domestic marijuana crop is grown on federal lands and a substantial number of methamphetamine laboratories also have been discovered on federal lands. Federal law enforcement agencies believe that the use of federal lands for cultivating and manufacturing controlled substances has increased because there is no possibility that the land will be forfeited as is the case if the cultivation or manufacture took place on private

property.

Section 2147. Clarification of length of supervised release terms in controlled substance cases.

This section resolves a conflict in the circuits as to the permissible length of supervised release terms in controlled substance cases. Under 18 U.S.C. 3583(b), "[e]xcept as otherwise provided," the maximum authorized terms of supervised release are 5 years for Class A and B felonies, 3 years for Class C and D felonies, and 1 year for Class E felonies and certain misdemeanors. The drug trafficking offenses in 21 U.S.C. 841 prescribe special supervised release terms, however, that are longer than those applicable generally under section 3583(b). Those longer terms, which may include lifetime supervised release, were enacted in 1986 in the same Act which inserted the introductory phrase "Except as otherwise provided" in section 3583(b). Because of this clear legislative history and intent, two courts of appeals have held that section 3583(b) does not limit the length of supervised release that may be imposed for a violation of 21 U.S.C. 841 when a greater term is there provided. United States v. LeMay, 952 F.2d 995, 998 (8th Cir. 1991); United States v. Eng, 14 F.3d 165, 172-3 (2d Cir. 1994. One court of appeals, however, has reached the opposite result, holding that the length of a supervised release term that can be imposed for controlled substance cases is limited by 18 U.S.C. 3583(b). United States v. Gracia, 983 F.2d 625, 630, (5th Cir. 1993); United States v. Kelly, 974 F.2d 22, 24-5 (5th Cir. 1992).

Although the issue has not arisen with frequency, the conflict is entrenched and should be dealt with definitively. Accordingly, the amendment would add the words "Notwithstanding section 3583 of title 18" to the title 21 controlled substance offenses in the parts of those statutes dealing with supervised release to make clear that the longer terms there prescribed control over the general provision in section 3583.

Section 2148. Technical correction to assure compliance of sentencing guidelines with provisions of all federal statutes.

This section would amend 28 U.S.C. 994(a) to assure that sentencing guidelines promulgated by the United States Sentencing Commission are consistent with the provisions of all federal statutes. Currently, section 994(a) contains a requirement of consistency only with statutes in titles 28 and 18 of the United States Code. No discussion of this somewhat peculiar limitation appears in the legislative history, see S.Rep. No. 98-225, 98th Cong., 1st Sess., p. 163 (1983). The limitation seems to have been based on the mistaken assumption that all provisions pertinent to the promulgation of sentencing guidelines were contained in those two titles. However, other provisions, such as mandatory minimum sentences in title 21, are relevant and clearly are meant to act as

constraints on the guidelines. This amendment will insure that guidelines are not created that are inconsistent with the provisions of any relevant enactment of Congress.

Section 2149. Drug testing, treatment, and supervision of incarcerated offenders.

This section amends Section 20105(b) of the Violent Offender Incarceration/Truth-In-Sentencing (VOI/TIS) grant program of the Violent Crime Control and Law Enforcement Act of 1994 by adding the language at Section 20105(b)(1)(B) and Section 20105(b)(2). The victims' rights language at Section 20105(b)(A) is current law as Section 20105(b).

The amendment adds several requirements to the conditions a state must meet in order to receive funding under the VOI/TIS program. First, the state must by September 1, 1998, have a plan for drug testing/monitoring and treatment for violent offender housed in their corrections facilities. This plan needs to include sanctions for inmates who test positive. Second, the language at (2) would permit the state to use funds received under the VOI/TIS program to pay the costs of the testing and treatment required under (B). Currently the provisions at (B) are found in the Conference Report H.Rpt.104-863 that accompanies the Department's fiscal year 1997 appropriations act. The language at (2) is not included. The goal of the amendment is to make the language at (B) permanent and add the language at (2) by amending the underlying law.

Subtitle B--Grants to Prosecutors' Offices to Target Gang Crime and Violent Juveniles

This subtitle amends Section 31702, Community-Based Justice Grants for Prosecutors," of Title III of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) to respond to the increase of violent juvenile offenders and the rate of gang-related juvenile crime. This subtitle provides needed resources for state and local prosecutors to facilitate the prosecution of violent and serious juvenile offenders. There is no existing comparable legislative text and programs previously authorized to assist prosecutors have not been appropriated. As part of the President's fiscal year 1998 budget proposal, this program is authorized for appropriations of $100,000,00 for fiscal year 1998 and $100,000,000 for fiscal year 1999.

Specifically, the legislation expands authority to: hire additional prosecutors to reduce prosecutorial backlogs; enable prosecutors to more effectively prosecute youth drug, gang, and violence problems; supply the technology, equipment, and training to assist prosecutors in reducing the rate of youthful violent crime while increasing the rate of successful identification and rapid prosecution of young violent offenders; and assist

prosecutors in their efforts to engage in community-based prosecutions, problem solving, and conflict resolution techniques through collaborative efforts with law enforcement officials, school officials, probation officers, social service agencies, and community organizations.

There is also a two percent set aside of all funds appropriated under this Part to be set aside for "training and technical assistance" consistent with the above-mentioned purposes. Similarly, 10 percent is taken "off the top" of all funds appropriated under this Part to be set aside for "research, statistics, and evaluation" consistent with these purposes. Numerous jurisdictions have requested training and technical assistance as a priority need. Additionally, through the introduction of various bills, Congress has evidenced its support for enhanced research, statistics, and evaluation.

Subtitle C--Grants to Courts to Address Violent Juveniles

Subtitle C establishes federal grant funding for states, units of local government, and Indian tribal governments to use in developing and implementing innovative initiatives to increase levels of efficiency, expediency, and effectiveness with which juvenile and youths are processed and adjudicated within the criminal and juvenile justice system. This is a new grant authority to assist state, local, and tribal courts, including probation and parole offices, public defenders, and victim/witness service providers, to respond to violent and serious youthful offenders.

This subtitle amends Section 21062 of Subtitle F of Title XXI of the "Violent Crime Control and Law Enforcement Act of 1994" (42 U.S.C. 14161), that currently provides assistance to state and local courts. This subtitle reintroduces the Administration's State and Local Courts Assistance Program Act to authorize the establishment of the juvenile gun courts, drug courts, other specialized courts, and innovative programs to better deal with the adjudication and prosecution of juveniles. As part of the President's fiscal year 1998 budget proposal, this program is authorized for appropriations of $50,000,00 for fiscal year 1998.

TITLE III--PROTECTING WITNESSES TO HELP
PROSECUTE GANGS AND OTHER VIOLENT CRIMINALS

Section 3001. Interstate travel to engage in witness intimidation or obstruction of justice.

This section would amend the Travel Act (18 U.S.C. 1952) to add witness bribery, intimidation, obstruction of justice, and related conduct in State criminal proceedings to the list of predicates under the Travel Act (18 U.S.C. 1952). Recent studies

demonstrate that witness intimidation is one of the most serious impediments to the prosecution of violent street gangs and drug trafficking organizations in State courts. This amendment responds to the growing witness intimidation problem by authorizing federal prosecution of persons who travel in interstate commerce with the intent to briber or intimidate a witness, obstruct a criminal proceeding, or engage in related conduct.

Section 3002. Expanding pretrial detention eligibility for serious gang and other violent criminals.

This section would make three amendments to the pretrial detention statutes designed to enhance the ability, in appropriate circumstances, to use these statutes in prosecutions against gang members and against other violent criminals. Under the Bail Reform Act, 18 U.S.C. 3141 et seq., defendants charged with certain offenses can be detained pretrial if the court concludes there is clear and convincing evidence that no condition or combination of conditions of release will adequately assure the safety of any other person and the community. See 18 U.S.C. 3142(e) and (f). The kinds of charges that permit such detention on grounds of the defendant's dangerousness include certain serious drug trafficking offenses and a "crime of violence". They also include any felony if the defendant has previously been convicted of two or more crimes of violence or serious drug trafficking offenses.

The first proposal would add a definition of the term "convicted" to include adjudications of juvenile delinquency. Thus, it would permit pretrial detention, upon the requisite showing, of persons charged with any felony, e.g., interstate transportation of a stolen automobile, who had two or more prior violent or drug convictions, including juvenile delinquency adjudications for such conduct. This should facilitate the use of pretrial detention when appropriate against young career offenders such as gang members.

The second proposed amendment relates to the definition of "crime of violence" in 18 U.S.C. 3156(a)(4). That definition reaches offenses (A) that have as an element the use or attempted or threatened use of physical force, (B) any other felony offenses that, by their nature, involve a substantial risk that physical force may be used in the course of their commission, and (C), by virtue of an amendment in the 1994 crime bill, any felony under chapter 109A or 110 (which proscribe sex offenses and child pornography).

It is not clear whether the offenses of possession of explosives or firearms by convicted felons qualify as "crimes of violence" under the second or (B) branch of the definition. What little case law exists suggests that they do. See United States v.

Sloan, 820 F. Supp. 1133, 1136-41 (S.D. Ind. 1993); United States v. Aiken, 775 F.Supp. 855 (D. Md. 1991). See also, United States v. Dodge, 846 F. Supp. 181 (D. Conn. 1994). The Sloan court noted that, although the Supreme Court held in United States v. Stinson, 113 S. Ct. 1913 (1993), that a similar definition of "crime of violence" in the sentencing guidelines did not encompass the felon-in-possession statutes, because the Sentencing Commission had promulgated a policy statement to that effect, the bail statutes serve a very different purpose from sentencing enhancements and should be more broadly construed to protect the public from continued endangerment by convicted felons charged with a new offense of weapon possession. (Prior to the Commission's policy statement, the courts were divided as to whether a violation of 18 U.S.C. 922(a) was a crime of violence for sentencing purposes). This proposed amendment would codify the result reached in Sloan. It would not mandate pretrial detention but would permit the government to show, in the case of a convicted felon such as a gang member charged with violating the certain explosives or firearms statutes, that no one or more conditions of release would be adequate to safeguard society.

The third proposed amendment would make membership or participation in a criminal street gang, racketeering enterprise, or other criminal organization a factor to be considered by courts in making bail determinations. Presently, many other personal history and characteristics of the individual charged are required to be considered in making bail decisions, such as prior convictions, drug abuse, and whether the alleged offense was committed while on parole, probation, or other form of release pending criminal trial. Clearly, gang or organized crime group membership is a relevant factor that bears both on dangerousness and risk of flight and that courts should take into account in making bail determinations. The amendment is not intended to impinge on rights of freedom of association but rather to reach membership or participation in those organizations that exist, at least in part, for the purpose of committing crimes or depriving third parties of their lawful rights. See Madsen v. Women's Health Center, Inc., 114 S.Ct. 2516, 2530 (1994).

Section 3003. Conspiracy penalty for obstruction of justice offenses involving victims, witnesses, and informants

Increasingly typical of many criminal gangs is violence directed at silencing or retaliating against witnesses or potential witnesses and informants. 18 U.S.C. 1512 and 1513 set forth offenses and penalties that, generally speaking, adequately deter and punish such offenses. However, a conspiracy to engage in witness intimidation or retaliation in violation of these statutes is punishable only under the catchall conspiracy statute, 18 U.S.C. 371, which carries a maximum prison term of only five years. This is clearly inadequate to vindicate an offense that involves, for example, a conspiracy to kill a witness or potential witness in a

federal criminal proceeding. Such a conspiracy, if perpetrated upon the special maritime and territorial jurisdiction, would be punishable by up to life imprisonment. 18 U.S.C. 1117. This is consistent with the principle, recognized in some federal statutes and prevalent in modern State criminal codes, that a conspiracy warrants the same maximum penalty as the offense which was its object. This principle is reflected in several recently enacted federal statutes, including 21 U.S.C. 846 (drug conspiracies), 18 U.S.C. 1956(h)(money laundering conspiracies), and 18 U.S.C. 844(n)(explosives conspiracies). The proposed amendment in this section would apply this principle to 18 U.S.C. 1512 and 1513 and thus provide better protection from gang violence to witnesses and informants.

TITLE IV--PROTECTING VICTIMS' RIGHTS

Title IV contains two Sections that expand the rights and protections afforded to the victims of crime, particularly crimes committed by juvenile offenders and crimes committed against children. It should be noted that a number of other provisions of the Anti-Gang and Youth Violence Act of 1997 expand the rights and protections of crime victims. For example, the proposed Section 5002, which amends 18 U.S.C. 5032, would establish a rebuttable presumption that juvenile proceedings shall be open to victims and members of the public, with special protections and access afforded to crime victims. In addition, proposed Section 5037 would expand the allocution rights of crime victims, including the right to have input into the predisposition report prepared by the probation officer and the right to appear before the judge and be heard prior to an order of disposition.

Section 4001. Records of crimes committed by juvenile offenders.

The proposed Section 4001 would amend 18 U.S.C. 5038(a)(6) to correct an oversight in current law. The amendment affirmatively provides for a victim's or a victim's official representative's allocution at the dispositional phase of the juvenile proceeding. In addition, the new statutory language clarifies that communication is allowable with the victim about "the status or disposition of the [juvenile] proceeding in order to effectuate any other provision of [state or federal] law". This language clears up any ambiguity in current law by explicitly extending to victims of juvenile offenders the right to information about the juvenile proceeding that they might need or be entitled to under any other state or federal law, such as the victims' rights set out in 42 U.S.C. 10606. Thus, under this new language, victims of juvenile offenders would be treated like victims of adult offenders. For example, victims would be able: to know about the status of the proceedings and the release status of the offender; to consult intelligently with the prosecutor; and to make a knowledgeable victim impact statement at the time of the disposition. In

addition, if state law allows victim compensation or grants any other rights, this provision allows communication about the federal delinquency proceeding in order to effectuate those provisions.

Fingerprints and photographs of adjudicated delinquents found to have committed the equivalent of an adult felony offense or a violation of 18 U.S.C. 922(x) and 924(a)(6) (possession of a handgun by a juvenile) would be sent to the Federal Bureau of Investigation (FBI) and made available in the manner applicable to adult defendants.

The limited availability of juvenile criminal records is a serious concern in connection with violent and firearms offenses. In order to address this problem, the Department of Justice amended its regulations in 1992 to expand the ability of the FBI to receive and retain records from State courts for "serious and/or significant adult and juvenile offenses." 28 C.F.R. 2032. The proposed bill would further alleviate this problem by making corresponding changes in the statutory rules for reporting offenses by juveniles who are prosecuted federally. This amendment was passed in substance by the Senate in the 103rd Congress as Section 618 of H.R. 3355.

Further disclosure of records relating to a juvenile or a delinquency proceeding would be authorized if it would be permitted under the law of the State in which the delinquency proceeding took place. The proposal will allow for the development of State systems of graduated sanctions by making it possible for the court to take into account a juvenile's criminal history when imposing sentence. The records could also be used for analysis by the Department of Justice if so requested by the Attorney General.

Finally, the new Section 5038(c) would be amended to allow the disclosure of "necessary docketing data". This is necessary because the nationwide military justice system cannot process traffic tickets without disclosing some docketing information.

Section 4002. Victims of Child Abuse Act extension of authorizations.

This section extends the authorization of appropriations for programs under Subchapter I of the Victims of Child Abuse Act (42 U.S.C. 13001 et seq.). The programs authorized under VOCA include regional children's advocacy centers, local children's advocacy centers, and specialized training and technical assistance for state and local practitioners dealing with the prosecution of child abuse cases. These programs currently are administered by the Office of Juvenile Justice and Delinquency Prevention.

TITLE V--FEDERAL PROSECUTION OF SERIOUS AND VIOLENT JUVENILE OFFENDERS

Section 5001. Short title.

The amendments made in this title are designed to provide protection for the community and hold juveniles accountable for their actions. They will help ensure that prosecution of serious juvenile offenders is more swift and certain, and that punishment of juvenile offenders will be commensurate with the seriousness of the crimes committed.

Section 5002. Delinquency proceedings or criminal prosecutions in district courts.

Under current law, the decision to charge a juvenile as an adult for specified crimes is made by the United States district court as a result of a motion by the United States to transfer the juvenile for criminal prosecution. The offenses subject to this transfer authority are limited. Even more restrictive are the list of violent offenses for which a juvenile under 15 years of age can be transferred.

There is virtually universal agreement among federal prosecutors that the present system is cumbersome and has frequently inhibited them from seeking adult prosecution. Prosecutors who have sought the transfer of juveniles to adult status have experienced many difficulties in the application of an outmoded statute or have encountered judges personally opposed to the transfer of juveniles, even in cases involving very serious crimes. Moreover, there is a presumption under present law in favor of a juvenile adjudication, and a district court's decision to decline transfer to adult status may be reversed only upon a finding of abuse of discretion. United States v. Juvenile Male #1, 47 F.3d 68 (2d Cir. 1995). The result is a juvenile justice system which fails to provide an effective deterrent to juvenile crime and fails adequately to protect the public.

The proposed statute would amend 18 U.S.C. § 5032 to greatly strengthen and simplify the process for prosecuting the most dangerous juveniles as adults in federal court. The legislation would bring federal law into conformity with that of many states by giving prosecutors, rather than the courts, the discretion to charge a juvenile alleged to have committed certain serious felonies as an adult or as a juvenile.

The proposed statute would retain the minimum age in existing law for prosecution of a juvenile as an adult but would expand the list of offenses serious violent, gun or drug felonies. A number of states have similar statutes.

The legislation would, however, create a distinction between

juveniles 16 years of age and older and those who are younger. Prosecution of juveniles 13 to 15 years of age at the time of the offense would require approval of the Attorney General or his or her designee at a level not lower than Deputy Assistant Attorney General. This internal Justice Department approval requirement (which would not be litigable) has been used in other types of particularly sensitive cases and would ensure that careful scrutiny and uniform standards are used in determining whether to bring criminal charges against very young juveniles. Prosecutors would retain the discretion to proceed against anyone under age 18 as a juvenile delinquent. In those cases, the current requirements for prosecutorial certification would apply, thus assuring that most such cases are handled at the state or local level. [1]

The proposed bill would amend section 5032, to expand the list of serious felonies for which a juvenile can be prosecuted as an adult to include additional violent crimes, firearms charges and drug offenses. Under the amended statute, a juvenile could be prosecuted as an adult for the following offenses:

(1) a serious violent felony or a serious drug offense as described in section 3559(c)(2) and (c)(3) or a conspiracy or attempt under section 406 of the Controlled Substances Act or under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2); and

(2) the following offenses if they are not described in paragraph (1):

(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony;

(B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924;

(C) a violation of section 922(o) that is an offense under section 924(a)(2);

(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);

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[1] The federal prosecutor would be required to certify that (A) the appropriate State does not have or declines to assume jurisdiction over the juvenile, or (B) the offense is one specified in the statute, and (C) there is a substantial federal interest in the case of the offense to warrant the exercise of federal jurisdiction. 18 U.S.C. § 5032(a).

(E) a conspiracy to violate an offense described in any of subparagraphs (A) through (D); or

(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).

To ensure the prosecution in one trial of all offenses charged, a juvenile tried as an adult for one of the designated offenses could also be prosecuted as an adult for any other offenses properly joined under the Federal Rules of Criminal Procedure. With these amendments, juveniles convicted as adults could receive substantially higher sentences than under current law, commensurate with their crimes and criminal histories.

The existing statute excludes younger juveniles in Indian country charged with certain crimes from prosecution unless the tribal government opts to have the provision apply. The proposal would continue this provision.

The proposed bill allows, in certain limited circumstances, the district court to order that a juvenile charged as an adult be tried under the juvenile delinquency procedures. This is sometimes referred to as a "reverse waiver." Any juvenile charged with one of the offenses listed in 3(A)-(F) or a juvenile under the age of 16 would be able to request a "reverse waiver" hearing. A motion making such a request would have to be filed within 20 days of the juvenile first being charged as an adult. At the hearing, the juvenile charged as an adult would have the burden of establishing that it would be in the interest of justice that the case be tried under the juvenile delinquency provisions of 5032(a). The criteria by which the court should make its determination are listed in the proposed statute. The procedure for appellate review of the court's ruling would be similar to that presently used after a motion to suppress evidence. If the trial court determined that the juvenile should be tried as a juvenile delinquent, the government would have the right to seek an expedited appeal. In the event the court determined that the juvenile had not carried his or her burden of establishing that it was in the interests of justice that there be a reverse waiver, then the case would proceed to trail as an adult prosecution and the juvenile could appeal in the event of a guilty verdict.

Juveniles under the age of 16 charged as adults, but who have

not previously been adjudicated delinquent of a serious violent felony, and who are charged with certain limited offenses would be sentenced under the sentencing guidelines but would not be subject to mandatory minimums.

Section 5032(a)(4) is amended to make clear that federal juvenile proceedings are normally open to the public but may be closed in the interests of justice or for good cause shown. It also includes a provision allowing victims, their relatives and guardians to be included when the public is otherwise excluded, unless the same two tests applied for exclusion of the public also independently require exclusion.

Section 5003. Custody prior to appearance before judicial officer.

Minor changes have been made to make clear that the procedures applicable to the arrest of a juvenile prior to the formal filing of charges apply whether or not it is anticipated that the juvenile will be charged as a juvenile or as an adult.

Section 5004. Technical and conforming amendments to Section 5034.

This section is amended to clarify that it applies to juvenile proceedings only.

Section 5005. Speedy trial.

The proposed statute would require that for a juvenile in custody juvenile delinquency proceedings begin within 45 days, rather than the current 30 days. Exclusions in the Speedy Trial Act (18 U.S.C. § 3161(h)) would also be made applicable for the first time in juvenile delinquency proceedings. This additional time is necessary, particularly in cases involving both adult and juvenile defendants such as in the prosecution of gangs, to protect witnesses and critical evidence by ensuring that the trial of a juvenile does not proceed before the case against the adults. The time within which a disposition hearing must be held after an adjudication of delinquency would also be increased from 20 to 40 days. Within the 40 days, the probation office would prepare a predisposition report which would include victim impact information. Forty days is consistent with federal court practice generally and will provide the time necessary to prepare a comprehensive report.

Section 5006. Disposition; availability of increased detention, fines and supervised release for juvenile offenders.

The legislation would amend section 5037 to make fines and supervised release -- not presently sentencing options -- available for adjudicated delinquents in addition to probation and detention. The maximum period of official confinement for an adjudicated delinquent would be increased to ten years or through age 25 to

give judges increased sentencing flexibility for juveniles who are adjudicated delinquent. The maximum period for probation would be increased to the same period applicable to an adult. To strengthen the accountability of juveniles to victims, mandatory restitution would also apply to adjudicated delinquents.

Section 5007. Technical amendment of Sections 5031 and 5034.

This section makes technical and confirming amendments to Sections 5031 and 5034.

TITLE VI--INCARCERATION OF JUVENILES IN THE FEDERAL SYSTEM

Section 6001. Detention prior to disposition or sentencing.

Sections 6001 and 6002 relate to the detention of juvenile offenders prior to disposition or sentencing. Specifically, the bill would amend 18 U.S.C. 5035, to provide that juvenile offenders less than 16 years of age being prosecuted as adults but not yet convicted must be placed in an available, suitable juvenile facility located within, or a reasonable distance from, the district in which the juvenile is being prosecuted. If such a suitable juvenile facility is not available, the juvenile could be placed in any other suitable facility located within, or a reasonable distance from, the district in which the juvenile is being prosecuted. Only if neither of these types of facilities is available could a juvenile less than 16 years old be placed in some other suitable facility. In order to protect the safety of these younger offenders, the bill would require that, to the maximum extent feasible, juveniles not be detained prior to sentencing in any institution in which they have regular contact with adult prisoners.

The requirement in current Section 5035, that a juvenile charged with juvenile delinquency may not be detained in any institution in which the juvenile has regular contact with adult prisoners would generally be retained in the proposed legislation. However, the proposed bill would permit juveniles adjudicated delinquent, once they reach the age of 18, to be placed with adults in a correctional facility. This recommended change is consistent with recent regulatory changes to state requirements under the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et seq.

Section 5039 of title 18, United States Code, would also be amended to permit juveniles adjudicated delinquent to be placed with adults in community-based facilities in order to provide transition services for juveniles moving from incarceration to the community and to allow juveniles to be housed in their home communities. These changes would help protect younger juveniles 13 or 14 years old, from 19 or 20 year-olds who, although adjudicated

delinquent, may be as dangerous as adults.

The legislation would also amend Sections 5035 and 5039 to give the Attorney General discretion to confine with adults a serious juvenile offender 16 years of age or older who is charged as an adult, both before and after conviction. As under present law, only those juveniles charged as adults whom a judicial officer has found would, if released, endanger the safety of another person or the community or would pose a substantial risk of flight could be detained prior to trial.

The current requirement in Section 5039 that every juvenile under 18 years of age who is in custody be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment would continue to apply to every juvenile charged as an adult who is detained prior to trial and sentencing and would be expanded to provide for reasonable safety and security as well.

These changes are consistent with current practice in many states and are proposed to ensure that the most violent juvenile criminal offenders are not detained or incarcerated with juvenile delinquents. By providing the discretion to house older juveniles prosecuted as adults, adjudicated delinquents once they reach the age of 18 and all juveniles convicted as adults in adult facilities, this proposal would also solve practical problems reported by the U.S. Marshals Service and the U.S. Attorneys, who have experienced great difficulty in finding suitable juvenile facilities for older and violent juvenile offenders.

Section 6002. Rules governing the commitment of juveniles.

The legislative analysis for the amendments made in this discussion are discussed in the analysis accompanying Section 5005.

TITLE VII--OFFICE OF JUVENILE CRIME CONTROL AND PREVENTION

Title VII establishes within the Office of Justice Programs the "Office of Juvenile Crime Control and Prevention," the "Juvenile Crime Control and Prevention Formula Grant Program," the "Indian Tribal Grant Programs," the "At-Risk Children Grants Program," the "Developing, Testing, and Demonstrating Promising Programs Program," the "Incentive Grant Programs," the "Research, Statistics, and Evaluation" grants, and the "Training and Technical Assistance" grants.

Subtitle A of Title VII creates the "Office of Juvenile Crime Control and Prevention" to replace the Office of Juvenile Justice and Delinquency Prevention. The new Office of Juvenile Crime Control and Prevention responds to the changing nature of juvenile

and youth crime and represents a more focused, efficient, and effective office. Fundamental protections safeguarding juveniles and youth within the juvenile justice system have been maintained, while operations within this new office have been streamlined to better coordinate and integrate juvenile and youth crime initiatives with other Department of Justice activities, particularly activities within the Office of Justice Programs, the National Institute of Justice and the Bureau of Justice Statistics, as well as with states, units of local government, Indian tribal governments, and local communities.

Section 7001. Short title.

This section provides that Title VII of the Anti-Gang and Youth Violence Act may be cited as the "Juvenile Crime Control and Prevention State and Local Assistance Act of 1997."

Subtitle A--Creation of the Office of Juvenile Crime Control and Prevention

Section 7101. Establishment of Office.

Section 2701 establishes the "Office of Juvenile Crime Control and Prevention" under the general authority, and the "supervision and direction" of the Assistant Attorney General for the Office of Justice Programs, United States Department of Justice. The words "supervision and direction" are used to describe the line of authority and reporting relationship between the Director of the Office of Juvenile Crime Control and Prevention and the Assistant Attorney General for the Office of Justice Programs in the same way the words "supervision and direction" are used to describe the line of authority and reporting relationship between the Secretary of the Department of Health and Human Services and the Assistant Secretary of Health as cited at 42 United States Code Section 202. This section continues the Department of Justice's efforts in maintaining coordination and cooperation among those federal agencies whose jurisdictions involve the health, welfare, education or general well-being of youths and/or juveniles. There are numerous transitional elements to provide for the continuity between the Office of Juvenile Justice and Delinquency Prevention and the new Office of Juvenile Crime Control and Prevention, including a specific transfer for the current Administrator of the Office of Juvenile Justice and Delinquency Prevention to become the Director of the Office of Juvenile Crime Control and Prevention.

Section 7102. Conforming amendments.

Section 7102 makes minor and technical conforming amendments.

Section 7103. Authorization of appropriations.

Section 7103 provides for the authorization of appropriations to carry out the functions of the Office of Juvenile Crime Control and Prevention.

Subtitle B--Juvenile Crime Assistance

Subtitle B of Title VII of the Act maintains and establishes numerous federal grant programs and initiatives -- the "Juvenile Crime Control and Prevention Formula Grant Program," the "Indian Tribal Grant Program," the "Incentive Grant Program," the "Developing, Testing, and Demonstrating Promising Programs" program, the "At-Risk Children Grants Program," and two initiatives that provide additional funding for research, statistics, evaluation, and training, and technical assistance.

Section 7201. Formula grant assistance.

Section 7201 amends the Omnibus Crime Control and Safe Streets Act of 1968 by maintaining but revising the formula grant program.

This federal grant program has fewer state planning requirements, specifically allocates ten percent of all grants funds appropriated to be set aside and used for research activities (including program evaluations, data collection efforts, and studies to identify initiatives that reduce juvenile and youth crime and violence), and specifically allocates two percent of all grant funds appropriated to be set aside and used for providing training and technical assistance to states and local communities for the implementation of initiatives and programs that have demonstrated a high likelihood of success.

Under a new formulation, all states receive 50 percent of their allocation. To receive the remaining funds a state must continue to follow established practices and procedures for protecting juveniles within the juvenile justice system. These provisions are reflected in the Department of Justice's newly issued regulations, 28 CFR Part 31, governing this section. Should a state fail to meet the requirements of this section, the unallocated funds may be redistributed within the state.

Section 7202. Indian tribal grants.

Section 7202 establishes for the first time a direct federal grant program whereby funding goes directly from the Office of Juvenile Crime Control and Prevention to Indian tribal governments without utilizing state pass-through procedures. Grant funds under this section shall be used for initiatives designed to reduce, control, and prevent juvenile and youth crime on Indian lands. This method of direct funding is expected to better address and respond to the needs and concerns of Indian tribes as well as

increase funding for these tribes. Also included is language amending the Violent Crime Control and Law Enforcement Act of 1994 to substantially increase funding targeted for correctional facilities on Indian tribal lands.

Section 7203. At-risk children grant programs.

The "At-Risk Children Grants Program" is a new federal grant program administered by the Office of Juvenile Crime Control and Prevention that provides federal assistance to states, for distribution by states to local units of government and locally-based organizations to combat truancy, school violence, and juvenile crime by providing funding for local crime prevention and intervention strategies. Programs and initiatives funded with these grants are designed to address youth within the juvenile justice system who, with some focused supervision, direction, and discipline, can go forward to lead crime-free, productive lives. This program is an expansion of what is currently known as Title V of the Juvenile Justice and Delinquency Prevention Act.

Grants awarded pursuant of this Part may be used for: supporting locally based efforts for assisting high-risk juveniles and juveniles within the juvenile justice system; preventing and reducing truancy and school drop outs; enforcing juvenile curfews; supporting school safety programs, juvenile mentoring, violence reduction programs, intensive supervision services, jobs and life skills training, family strengthening interventions, early childhood services, after-school programs for juveniles, tutoring programs, recreation and parks programs, parent training initiatives, health services, alcohol and substance abuse services, restitution and community services activities, leadership development, accountability and responsibility education, and other such efforts designed to prevent or reduce truancy, school violence, and juvenile crime.

Local units of government that participate under this Part must utilize a local planning board to develop a three-year plan.

Section 7204. Developing, testing, and demonstrating promising programs.

Section 7204 establishes new federal discretionary grant programs for states, units of local government, and Indian tribal governments administered by the Office of Juvenile Crime Control and Prevention to develop, test, and demonstrate initiatives and programs that have a high probability of preventing, controlling, and/or reducing juvenile crime. These grants were developed to motivate states, units of local government, and Indian tribal governments to independently generate innovative initiatives to combat juvenile crime and youth violence.

This section replaces the current multiple discretionary-

categorical grant programs currently established by the Juvenile Justice and Delinquency Prevention Act of 1974, by consolidating several categorical grant programs into a single, flexible, broad program.

Section 7205. Incentive grant program.

This section establishes new federal formula grant programs for states, units of local government, and Indian tribal governments to develop and advance initiatives to prevent, control, reduce, evaluate, adjudicate, or sanction juvenile or youthful crime.

The state agency that receives a formula grant is eligible to apply for a grant under this Part. Every applicant must submit assurances to the Director of the Office of Juvenile Crime Control and Prevention that they have or will have within one year of submittal of an application:

(1) implemented a system of accountability- based graduated sanctions; and/or

(2) implemented a system of information collaboration and dissemination regarding acts of juvenile delinquency and adjudication of the same.

Grants authorized under this section may be used to:

* achieve paragraphs (1) and/or (2) above;
* advance initiatives that prevent or intervene in the unlawful possession, distribution, or sale of a firearm by or to a juvenile;
* implement initiatives that facilitate the collection, dissemination, and use of information regarding juvenile crime;
* implement new initiatives that assist state and local jurisdictions in tracking, intervening with, and controlling serious, violent, and chronic juvenile offenders;
* implement comprehensive program services in juvenile detention and correction facilities;
* implement procedures designed to prevent and reduce juvenile disproportionate minority confinement; or
* for any other purposes related to juvenile crime reduction, control, and prevention as determined by the Director of the Office.

Section 7206. Research, statistics and evaluation.

Better research, evaluation, and statistical analysis is critical to understanding and addressing the causes of juvenile and youth crime. Under this section, increased funding is combined with a collaboration between the Director of the Office of Juvenile Crime Control and Prevention and the Directors of the National Institute of Justice and the Bureau of Justice Statistics to better direct and expand these functions.

Section 7207. Training and technical assistance.

This section provides for specific federal grant funding for much-needed technical and training assistance for individuals in the fields of juvenile justice and juvenile and youth crime. Funding under this section will enable more communities to implement effective programs and initiatives that reduce, control, and prevent juvenile and youth crime. While this is a new federal grant program, training and technical assistance have been established functions of the Office of Juvenile Justice and Delinquency Prevention.

In further recognition of the importance of high quality and focused research, statistical analysis, evaluation, training, and technical assistance, Title VII includes specific provisions within each funded program setting aside a percentage of grant funds appropriated for the above-mentioned functions. These monies are in addition to funding appropriated for these functions in Sections 409 and 410 of Title VII. Specifically, Sections 403, 404, 405, 406, 407, and 408 of Title VII of this Act provide that 2 percent of all funds appropriated for each funded program shall be set aside for training and technical assistance consistent with Title VII. Similarly, Sections 403, 404, 405, 406, 407, and 408 provide that 10 percent of all funds appropriated for each funded program shall be set aside for research, statistics and evaluation activities consistent with Title VII.

Subtitle C--Missing and Exploited Children

This subtitle amends the "Missing Children's Assistance Act" (42 U.S.C. 5771 et seq.) by extending its authorization to the year 2001 and by setting aside funds appropriated under this subtitle to be used for research, statistics, evaluation, and training. Additionally, conforming language is added to the Act to reflect the replacement of the Office of Juvenile Justice and Delinquency Prevention with the new Office of Juvenile Crime Control and Prevention.