

NLWJC - Kagan

DPC - Box 004 - Folder 003

**Budget Materials - Appropriations
Riders 1999: Criminal Justice &
Campaign Finance**

New file

Budget - appropriations rules 1999 - criminal
justice and campaign finance

Hatch guy -- Leave aside disprop min req.
Need to know what changes Admin wants/needs.

Tacoby -- Significant admin provisions not included
Haven't had a lot of input
Late in day - can't make any guess re joining to omnibus
Need to see clear wins + hi level of comfort among Deems.

Title I

H Deems - oppose lot + 2nd bullet, T. 1

Charitable choice provision

Disprop min

Sound operation

News of the:

✓ Reverse waiver

24 hr oral commu-
drop reference; leave

Char contrib - will cross-
reference w/ law

DMC - compromise paper

Issue of drug - go back +
discuss w/ Helgeson

Grad. sanctions language -
go back + look

Admin sig provisions:

Prosec in there - can't do
earmark.

No more prevention #

No use of prior funds
for drug testing

Guns of table, except

can go back to Bishop on
prospective juv Brady

Prosecutors

Juv B

YHSA

Drug testing

Administration priorities:

- Dedicated/direct funds for local prosecutors (\$100M per year);
- Dedicated/direct funds for court/probation programs (\$50M per year);
- Gun ban for dangerous juvenile offenders (juvenile Brady);
- Dedicated prevention funds (half of overall package);
- Child safety locks;
- Increased penalties for Youth Handgun Safety Act; and
- Package of drug testing, intervention and trafficking bills.

(NB: Hatch rejected all of these except juvenile Brady)

Administration concerns:

- Changes to the disproportionate minority confinement requirement in current law (deal breaker for Dems generally);
- Changes to the sound separation requirement; should be 6 hours only, not 24 (Hatch and Republicans agreed to in meeting);
- Inclusion of “reverse waiver” that allows judicial review of charging decision in all but the worse cases (Leahy, Biden and Hatch working on language);
- Onerous graduated sanction conditions on block grant (Hatch agreed to substitute language in S.10, which works for us);
- Charitable choice language (Hatch agreed to cross reference welfare law);
- Drop Sense of Congress provision on trying 10-14 year olds as adults;
- Drop provision on allowing certain 10-14 year olds, on a judges order, to be tried as adults.

Brady Handgun National InstantCheck System (NICS)

"None of the funds appropriated pursuant to this Act or any other provision of law may be used for (1) the implementation of any tax or fee in connection with the implementation of 18 U.S.C. 922(t); (2) any system to implement 18 U.S.C. 922(t) that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from owning a firearm.

*House - Senate
proposal*

DRAFT SUMMARY OF JUVENILE CRIME LEGISLATION

TITLE I: Reform of the Federal Juvenile Criminal Code

- Reforms provisions of 18 U.S.C to provide greater discretion to U.S. Attorneys and the Department of Justice in determining whether to prosecute as adults juveniles alleged to have committed federal felonies
- Sets a uniform age of 14 for transfer of juveniles to adult status in the federal system (except juveniles age 10 to 14 who commit a federal capital offense may on a judge's order be tried as an adult but may not be subject to the death penalty)
- Applies federal mandatory restitution to juveniles in federal court
- Requires the U.S. Sentencing Commission to develop sentencing guidelines for juveniles convicted as adults or adjudicated delinquent in federal courts
- Provides for the deferral by federal prosecutors to state, local or tribal prosecution in cases of concurrent jurisdiction over the juvenile and the offense

TITLE II: Federal Gang Violence Act

Includes six provisions from Title II of S. 10:

- Adds a new section 522 to title 18, to prohibit the solicitation or recruitment of persons into a criminal street gangs, with stiffer penalties for the recruitment of minors.
- Increases penalties for using minors in drug dealing crimes
- Enhances penalties for using minors in a crime of violence
- Adds a sentencing enhancement for the commission of a crime while wearing body armor
- Authorizes \$100 million a year over 3 years for High Intensity Interstate Gang Areas
- Increases penalties for using force to tamper with or intimidate witnesses, victims, or informants in federal criminal cases.

TITLE III: Juvenile Crime Control, Accountability, and Delinquency Prevention

Subtitle A -- JJDP A Reform

- Reforms the Juvenile Justice and Delinquency Prevention Act (JJDP A) of 1974, and authorizes programs under the Act for 3 years.

- Consolidates numerous JJDPAs programs under an enhanced prevention block grant to the states
- Reauthorizes the state formula grants under Part B of Title II of the JJDPA
 - ✓ Reforms the core mandates on the states relating to the incarceration of juveniles to ensure the protection of juveniles in custody while providing state and local governments with needed flexibility; provisions based on H.R. 1818, but including S. 10 definitions regarding what constitutes contact between juveniles and adults;
 - ✓ Eliminates the current mandate requiring states to address efforts to reduce the disproportionate number of minorities in juvenile detention in comparison with their proportion to the population at large
- Retains the current Part G Mentoring program under Title II of the JJDPA, redesignating it as Part D
- Includes a discretionary prevention grant program designated as Part E of Title II of the JJDPA
- Reauthorizes and enhances the Runaway and Homeless Youth Program and the National Center for Missing and Exploited Children
- Authorizes grants of \$100 million per year to state prosecutors and courts, to address juvenile crime caseloads and dockets
- Authorizes \$50 million per year for 3 years to the National Institute of Justice to provide research and evaluation of the effectiveness of juvenile crime and delinquency prevention programs

Subtitle B -- Juvenile Accountability Programs

- Juvenile Accountability Block Grant Program based on the provisions of H.R. 3 and S. 10, providing block grants to state and local governments for accountability programs including graduated sanctions, restitution to victims, the construction of juvenile detention space, drug testing of juvenile offenders, habitual offender programs, and coordinated assessment of juvenile delinquents
 - ✓ Includes 3 requirements for state qualification for accountability block grants:
 - the establishment of graduated sanctions based on the provisions of H.R.3;
 - drug testing juvenile offenders upon arrest for any of a state-determined appropriate category of juvenile offenses; and

-- the recognition of the rights and needs of victims within the juvenile justice system

- Programs under both Subtitles A and B provide significant funding directly from the Department of Justice for juvenile delinquency prevention and juvenile accountability programs in Indian country.
 - ✓ Juvenile offender records provisions grant program to encourage states to treat the records of juveniles who commit the felonies of murder, armed robbery, and sexual assault be treated the same as adult criminal records for the same offenses in the state, and to treat records of juveniles who commit any other felony be treated, for criminal justice purposes only, the same as adult criminal records for the same offenses.

TITLE IV: Miscellaneous Provisions

- Provides for the equitable treatment of certain entities of local government by making them eligible for distribution of federal anticrime grants
- Amends the COPS program to permit funds to be used to assign law enforcement officers to local schools
- Provides for substance abuse treatment programs for local jails

FUNDING PROVISIONS

- Authorizes \$1 billion per year for three years, under the following formula:
 - ✓ \$450 million (45%) for Juvenile Accountability Block Grants
 - ✓ \$425 million (42.5%) for prevention programs under the JJDP, including
 - \$200 million for Juvenile Delinquency Prevention Block Grants
 - \$200 million for Part B Formula grant prevention programs
 - \$25 million for Mentoring and Discretionary grant programs
 - ✓ \$75 million (7.5%) for grants to states to upgrade and enhance juvenile felony criminal record histories and to make such records available within NCIC, the national criminal history database used by law enforcement, the courts, and prosecutors
 - ✓ \$50 million (5%) for NIJ research and evaluation of the effectiveness of juvenile delinquency prevention programs
- Authorizes an additional \$100 million a year for three years for grants to state and local prosecutors and courts for handling juvenile cases, \$100 million a year for three years for High Intensity Interstate Gang Areas; \$8 million per year for the National Center for Missing and Exploited Children, and \$3 million dollars per year for pilot projects to replicate successful crime and delinquency programs.

To the extent that segments of the population are shown to be detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups, to a greater extent than the proportion of these groups in the general population, address prevention efforts designed to reduce such disproportionate confinement, without requiring the release or the failure to detain any individual.

Juvenile Crime Bill Meeting

- **Not here to sign-off on definitive juvenile crime bill package.** Although we are willing to discuss a potential bipartisan juvenile crime bill, we need to be clear that the White House negotiators (Erskine, Podesta) have not currently agreed to include such a bill in the ongoing appropriations discussion. That decision has not been made and -- at least for our part -- will depend on two things:

1. Any juvenile crime package must be truly bipartisan. We appreciate your involving Democrats in this discussion. We will not support attaching juvenile crime legislation at this late hour if it does not include Democrats' input -- and if is not likely to receive majority support of both House and Senate Democrats.

2. Major Administration issues. Any compromise must reflect include key Administration priorities and reflect our concerns, including --

Administration priorities:

- Dedicated/direct funds for local prosecutors (\$100M per year);
- Dedicated/direct funds for court/probation programs (\$50M per year);
- Gun ban for dangerous juvenile offenders (juvenile Brady);
- Dedicated prevention funds (one third of overall package);
- Child safety locks;
- Increased penalties for Youth Handgun Safety Act; and
- Package of drug testing, intervention and trafficking bills.

Administration concerns:

- Changes to the "core mandates" that depart our proposed bill;
- Smith Brady amendment;
- Concealed weapons language in S.10; and
- Onerous conditions on block grant (i.e., graduated sanctions).



Jose Cerda III

10/11/98 10:24:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Michelle Crisci/WHO/EOP
cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Drug Bills

Bruce, Elena, Rahm:

Per Elena, I have skimmed the 4 drug bills put forth by the R's; here are my thoughts...

1. **Mostly no big issues.** In truth, there's not too much worth fighting for in these bills. The demand reduction bill, reauthorization proposal and miscellaneous resolutions, etc., don't seem to include any big surprises, we should be able to generally accept them. OMB has asked ONDCP and some of the agency folks to generally mark-up the bills with our preferred language, and Deich's thinking is whatever changes we get...fine. I agree w/that. I am not too versed on the supply bill, which mostly authorizes interdiction and international drug funds, but NSC is taking the lead on it.

2. **One McCaffrey issue.** McCaffrey's Chief of Staff expressed that the General, with some cleaning up, is generally okay with the bills, too. However, he strongly objects to the 3-year authorization proposed by the R's. He insists we should have 5 years and wants to be personally notified if we don't get this in negotiations....hmmm.

3. **Two observations -- Goals, Legalization.** The ONDCP reauthorization still includes pretty lofty goals for reducing drug use over the next 5 years. The goals are no longer binding, as in previous iterations of the bill, but I think they'll prove to be a future headache. Still, the R's are insistent, and ONDCP doesn't think we'll move them any more than we have. Also, I don't think we should make a big deal about language prohibiting the study of drug legalization. ONDCP doesn't think it precludes our ability to conduct certain research, but HHS is sure to disagree. I say mark-up the language and take what we get.

4. **Two Possible opportunities.** Lastly, I'm attaching language from bills that we support that I believe are worth putting into the mix. The first is our proposal to use prison funds for drug testing and intervention and to require states to raise penalties for drug trafficking into prisons. The second is an R's bill to launch a demo on teen drug testing and drivers licenses -- something we support and just can't seem to get going.



HR3606.DR



HR3799.DR

Drug Testing, Intervention, and Trafficking Reduction Within Prisons Act of 1998
(Introduced in the House)

HR 3606 IH

105th CONGRESS

2d Session

H. R. 3606

To provide for drug testing of and interventions with incarcerated offenders and reduce drug trafficking and related crime in correctional facilities.

IN THE HOUSE OF REPRESENTATIVES

March 31, 1998

Mr. CONYERS (for himself and Mr. BARRETT of Wisconsin) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for drug testing of and interventions with incarcerated offenders and reduce drug trafficking and related crime in correctional facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Drug Testing, Intervention, and Trafficking Reduction Within Prisons Act of 1998'.

SEC. 2. ADDITIONAL REQUIREMENTS FOR THE USE OF FUNDS UNDER THE VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING GRANTS PROGRAM.

Section 20105(b) of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

'(b) ADDITIONAL REQUIREMENTS-

`(1) ELIGIBILITY FOR GRANT- To be eligible to receive a grant under section 20103 or section 20104, a State shall--

`(A) provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after the date of the enactment of this subtitle, policies that provide for the recognition of the rights of crime victims; and

`(B) no later than September 1, 1998, have a program of drug testing and intervention for appropriate categories of convicted offenders during periods of incarceration and criminal justice supervision, with sanctions including denial or revocation of release for positive drug tests, consistent with guidelines issued by the Attorney General.

`(2) USE OF FUNDS- Funds provided under section 20103 or section 20104 of this subtitle may be applied to the cost of offender drug testing and appropriate intervention programs during periods of incarceration and criminal justice supervision, consistent with guidelines issued by the Attorney General. Further, such funds may be used by the States to pay the costs of providing to the Attorney General a baseline study on their prison drug abuse problem. Such studies shall be consistent with guidelines issued by the Attorney General.

`(3) SYSTEM OF SANCTIONS AND PENALTIES- Beginning in fiscal year 2000, and thereafter, States receiving funds pursuant to section 20103 or section 20104 of this subtitle shall have a system of sanctions and penalties that address drug trafficking within and into correctional facilities under their jurisdiction. Such systems shall be in accordance with guidelines issued by the Attorney General. Beginning in fiscal year 2000, and each year thereafter, any State that the Attorney General determines not to be in compliance with the provisions of this paragraph, shall have the funds for which they would have otherwise been eligible to receive under section 20103 or section 20104, reduced by 10 percent for each fiscal year for which the Attorney General determines they do not comply. Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.'

SEC. 3. USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.

Section 1901 of part S of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff) is amended by adding at the end the following:

`(c) ADDITIONAL USE OF FUNDS- States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with Federal requirements, may use funds awarded under this part for treatment and sanctions both during incarceration and after release.'

Drug Free Teenage Drivers Act (Introduced in the House)

HR 3799 IH

105th CONGRESS

2d Session

H. R. 3799

To establish programs designed to bring about drug free teenage driving.

IN THE HOUSE OF REPRESENTATIVES

May 6, 1998

Mr. MICA (for himself, Mr. PORTMAN, Mr. HASTERT, Mr. SOUDER, Mr. MCCOLLUM, Ms. ROS-LEHTINEN, and Mr. GOSS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To establish programs designed to bring about drug free teenage driving.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Drug Free Teenage Drivers Act'.

SEC. 2. DEMONSTRATION PROGRAM.

The National Highway Traffic Safety Administration shall, within 180 days of the date of the enactment of this Act, establish a demonstration program in the States to provide voluntary drug testing for all teenager applicants (or other first time applicants for a driver's license regardless of age) for a driver's license. Information respecting an applicant's choice not to take the drug test or the result of the drug test on the applicant shall be made available to the applicant's automobile insurance company. If an applicant tests positive in the drug test, the State in which the program is established--

(1) will not issue a license to the applicant; and

(2) will require the applicant to complete a State drug treatment program and to not test positive in a drug test before reapplying for a license.

SEC. 3. INCENTIVE GRANT PROGRAM.

(a) IN GENERAL- The Secretary of Transportation shall establish an incentive grant program to States to assist the States in improving their laws relating to controlled substances and driving.

(b) GRANT REQUIREMENTS- To qualify for a grant under subsection (a) a State shall do the following:

(1) Enact, actively enforce, and publicize a law which makes it illegal to drive in the State with any measurable amount of an illegal controlled substance in the driver's body. An illegal controlled substance is a controlled substance for which an individual does not have a legal written prescription. An individual who is convicted of such illegal driving shall--

(A) have the individual's driving license suspended until the individual completes the State drug treatment program referred to in subparagraph (B) and does not test positive in a drug test; and

(B) require the individual to participate in a State drug treatment program.

(2) Enact, actively enforce, and publicize a law which authorizes the suspension (for an appropriate term as determined by the State) of a driver's license if the driver is convicted of any criminal offense relating to drugs.

(3) Enact a law which provides that beginning driver applicants and other individuals applying for or renewing a driver's license will be provided information about the laws referred to in paragraphs (1) and (2) and will be required to answer drug-related questions on their applications.

(c) USE- A State may only use a grant under subsection (a) to implement and enforce the programs described in subsection (b).

SEC. 4. TECHNICAL ASSISTANCE.

The Secretary of Transportation shall provide to the States technical assistance for--

(1) training law enforcement officers in the Standardized Field Sobriety Testing techniques to detect impaired drivers;

(2) expanding drug information and training by involving prosecutors in community drug prevention programs; and

(3) promoting uniform sanctions for drug offenses, referring drug offenders to assessment and treatment programs and involving judges in community drug prevention programs.



Jose Cerda III

10/11/98 09:56:28 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Michelle Crisci/WHO/EOP
cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Brady Language

Bruce/Elena/Rahm:

Per my conversations w/Bruce and Elena today, attached please find the Brady languaged you requested. OMB, DOJ and DPC have all seen it, and can live with it -- and, based on my discussion w/Handgun Control, I think they'll be fine with it, too.

In short, the language would: (1) prohibit a fee for the next fiscal year; (2) allow records to be retained for 3 months; (3) provide for a transition period through 6/99; and (4) guarantee that NICS records are used only to ensure the integrity of the system.

Jose'



brady.1

Brady Handgun Insta-Check System

"None of the funds appropriated pursuant to this Act or any other provision of law may be used for (1) the implementation of any tax or fee in connection with the implementation of 18 U.S.C. 922(t); (2) any system to implement 18 U.S.C. 922(t) that does not require and result in the destruction, within three months, of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from owning a firearm. Implementation of this retention limitation may be phased in over a period not to extend beyond June 30, 1999; at the end of this period all identifying information for non-prohibited individuals that exceeds the three month retention period must be destroyed. This section does not apply to State-operated systems for handgun checks. Provided further, that in implementing the NICS the following provision shall substitute for the requirement imposed on the system in 18 U.S.C. 922(t)(2)(C): "All background check information maintained in the NICS by the FBI submitted by or on behalf of a person which has been determined not to be prohibited from possessing a firearm shall be destroyed by the FBI not later than 90 days after the NICS makes such determination. Such information may be used by the FBI only for the purposes of protecting the privacy, security, and integrity of the NICS and identifying fraud in the use of the NICS. Such information may be maintained as long as needed to pursue identified cases of misuse of the NICS. A knowing violation of this provision shall be subject to the penalties provided for in 18 U.S.C. 924(a)(5). The Attorney General shall, within 90 days of the effective date hereof, promulgate regulation to implement this provision.""



Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP
cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP, Paul J. Weinstein Jr./OPD/EOP
Subject: Appropriations Miscellany -- Daily Bullets

Bruce/EK:

Per your request, here is some more info on the CJS approps:

Local Law Enforcement Block Grant -- I think the LLEBG is on OMB's list because we're generally opposed to it, period, and the draft conference report includes a permanent authorization. I don't think this is worth fighting; we've had to eat it every year anyway. Moreover, the mayors and chiefs support the LLEBG, and it actually includes some earmarks that we like (i.e., \$40 million for Boys and Girls clubs -- double last year's funding).

Brady -- This is a big problem. First, the draft language prohibits the FBI from charging a user fee for NICS and instead allocates \$42 million for its operation -- \$20 million from DOJ's working capital fund, which should be fine; and \$22 million from general appropriations, which may be fine but is costing somebody in the CJS bill. Second, the draft language requires the FBI to immediately destroy records of persons that have been cleared through NICS -- and gives persons aggrieved under this provision the right to sue. **This will result in a delay of at least 6 months while the FBI reprograms the NICS -- and should be unacceptable to us.**

OMB is proposing a compromise that drops the prohibition on charging a fee, deletes the \$42 million appropriation and allows the FBI to keep records for 6 months (actually, through 6/99). I agree with them that we should fight hard on this issue, and that this is a good counter offer. Ultimately, depending on our leverage, we may need to give even more. If so, here are my ideas on a bottom line:

1. On the Fee...Accept the \$42 million appropriations, but allow OMB to try and negotiate from where the \$22 million in general appropriations comes. Alternatively, we could agree to the \$20 million earmark in the working capital fund, but charge a reduced fee to make up for the rest.
2. On Records...Allow the FBI to initially keep records for up to 6 months so that NICS can be operational and on-line December 1st of this year. After this period, the FBI would be required to destroy records within 24 hours, as currently proposed by the CJS draft. NB: While the FBI believes complying with this will not be a problem, the sooner we destroy records...the less ability we have to check for straw purchasers through NICS. Thus, the longer we are able to keep records -- even days, weeks -- the more useful NICS will be as an overall law enforcement tool. This, of course, is exactly what the gunners don't want.

Some other quick observations from what I've seen...

Controlled Substances Act, State Ethics for U.S. Attorneys -- Both of these issues carried over into the proposed CJS draft and remain serious problems. DOJ has drafted language for OMB to try and

water down them down.

COPS -- Fully funded, of course, and with \$180 million in earmarks -- including \$5 million for community prosecutors and \$17.5 million for COPS/Schools partnerships.

Indian Country Crime -- Funded at \$189 million -- including \$34 million for COPS, \$5 million for courts, \$10 million for at-risk youth, and some money for prisons. Pretty good, I think.

Drug Testing Initiative -- Although Drug Courts were fully funded (\$40 million), our \$85 million drug testing initiative did not make it. Since it was not included in either the House or Senate bill, I guess it is safe to assume it's dead.

Prevention -- The \$95 million at-risk youth initiative that is near and dear to the AG was included in the CJS draft bill, with \$10 million earmarked for a Safe Schools Initiative.

Juvenile Accountability Block Grant -- Same as last year. Allows 40% of the \$250 million to be used on prosecutors and specialized courts. One change: up to \$20 million of these funds could be used by states for drug testing initiatives and/or defraying the costs of processing appeals by inmates on death row.

Hope this helps...jc3

OWB BRADY LANGUAGE**FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES**

Appropriations Bill: Commerce/Justice/State

Language Issue: Brady Handgun Insta-Check System

Location in House Bill: N/A

Location in Senate Bill: Section 620 of the Senate approved bill

Current Bill Language: See Attachment.

Administration Proposal: Delete provision from bill, and substitute the following:

"None of the funds appropriated pursuant to this Act or any other provision of law may be used for any system to implement 18 U.S.C. 922(t) that does not require and result in the destruction, within six months, of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from owning a firearm. Implementation of this retention limitation may be phased in over a period not to extend beyond June 30, 1999; at the end of this period all identifying information for non-prohibited individuals that exceeds the six month retention period must be destroyed. This section does not apply to State-operated systems for handgun checks."

NOTE: Deletion of Senate Section 620 will also remove the prohibition against charging fees for handgun checks. With the receipts from user fees, appropriations will not be necessary. The \$42 million provided in the Conference mark (\$22 million in direct appropriations for the FBI and \$20 million from the Working Capital Fund) can be deleted.

DRAFT LANGUAGE IN
CONFERENCE REPORT
ON BRADY

16 *SEC. 620. None of the funds appropriated pursuant*
17 *to this Act or any other provision of law may be used for*
18 *(1) any system to implement 18 U.S.C. 922(t) that does*
19 *not require and result in the immediate destruction of all*
20 *information, in any form whatsoever, submitted by or on*
21 *behalf of any person who has been determined not to be pro-*
22 *hibited from owning a firearm; (2) the implementation of*
23 *any tax or fee in connection with the implementation of*
24 *18 U.S.C. 922(t): Provided, That any person aggrieved by*
25 *a violation of this provision may bring an action in the*
1 *Federal district court for the district in which the person*
2 *resides: Provided further, That any person who is successful*
3 *with respect to any such action shall receive damages, puni-*
4 *tive damages, and such other remedies as the court may*
5 *determine to be appropriate, including a reasonable attor-*
6 *ney's fee. The provisions of this section shall become effective*
7 *upon enactment of this Act.*

basis without regard to applicable Federal acquisition rules and regulations where the regular procurement procedures would delay the obtaining of such items necessary for an ongoing counterterrorism, national security, or computer crime investigation or prosecution. The House has no similar provision. *HWA - 2 million limit w/ notification*

Senate Sec. 115.

The Senate bill contains a new provision which amends the Violent Crime Control and Law Enforcement Act of 1994 to allow the FBI to use funding for training for other types of operations in support of investigations in Indian country. The House has no similar provision. *SR*

Senate Sec. 116.

The Senate bill contains a new provision to repeal Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which requires the INS to create and implement a system to track the entry and exit of non-citizens into the U.S. The provision also amends Section 104 of the same Act to extend the implementation date for the State Department to issue new counterfeit-resistant border crossing cards. The House has no similar provision. *SR*

Senate Sec. 117.

The Senate bill contains a new provision which requires the submission of the specific dollar amounts budgeted for counterterrorism government-wide within the Analytical Perspectives Volume beginning with the fiscal year 2000 budget request. The House has no similar provision. *SR - put in report language*

Senate Sec. 118.

The Senate bill contains a new provision amending section 402(a) of the Controlled Substances Act to change the legal standard for civil violations of record-keeping requirement for control of licit drugs from the current standard of strict liability to one of a knowing violation. The House has no similar provision.

DESCRIPTION OF
METH PROVISIONS

*HWA
insert 111a*

Senate Sec. 119.

The Senate bill contains a new provision amending section 402(c)(1) of the Controlled Substances Act to reduce the maximum fine for violations of record-keeping requirements for the control of licit drug from the current statutory maximum of \$25,000 to a maximum of not more than \$500 if such violation does not result in an unauthorized person obtaining unlawful control of a controlled substance. The House has no similar provision.

HWA
insert 11/2

Senate Sec. 120.

The Senate bill contains a new provision requesting a GAO report about the compliance of Department of Justice attorneys with 1998 guidelines on the use of False Claims Act in health care matters. The House requests a similar GAO report in report language. HR

Senate Sec. 121.

The Senate bill contains a new provision amending Title 18 to expand the definition of firearms safety devices and to require gun dealers to certify that they have made available for sale secure gun storage or safety devices. The House has no similar provision. HR

Senate Sec. 122.

The Senate bill contains a new provision to permit the use of Byrne Discretionary Grant funding for firearm safety education programs for criminal justice personnel and the general public. The House has no similar provision. HR

Senate Sec. 123.

The Senate bill contains a new provision amending Title 18 to expand the restrictions on non-citizens purchasing firearms. The House has no similar provision. HR

Senate Sec. 124.

The Senate bill contains a new provision amending the Violent Crime Control and Law Enforcement Act of 1994 to require applicants for Violent Offender Incarceration and Truth-in-Sentencing Grants for state prison construction funds to meet additional requirements relating to mental health screening and treatment programs for prisoners by January 1, 1999 and allowing

SR

→ We are also supportive of including report language that is consistent with the factors identified in DEA's May 1, 1998 enforcement policy memorandum. Such language might state:

The Attorney General, acting through the DEA, should consider the following factors when deciding whether to pursue civil actions associated with recordkeeping violations:

- whether diversion actually occurred;
- whether actual harm to the public resulted from the diversion;
- whether the violations were intentional or negligent in nature;
- whether the violations were a first time offense;
- time intervals between inspections where no or any serious violations were found;
- whether the violations were multiple occurrences of the same type of violation;
- whether and to what extent financial profits may have resulted from the diversion; and,
- the financial capacity of registrants to pay the fines assessed.

In assessing such fines, including deciding to reduce such fines, the Attorney General, acting through the DEA, may take into account whether the violator has taken immediate and effective corrective actions, including demonstrating the existence of compliance procedures to reduce possible future violations. In appropriate situations, the Attorney General shall act through informal procedures such as warning letters."

Proposed
(slim it down)

DOT PROPOSED
REPORT LANGUAGE

DOT BACKGROUND ON METH PROVISION

Weakening of Drug Enforcement Proposed in Senate Appropriations Bill

- Sections 118 and 119 of the Justice Department's Senate Appropriations bill would be a setback in law enforcement's effort to protect our citizens from dangerous drugs. These proposals would eviscerate DEA's drug and chemical regulatory systems. Street dealers would gain easier access to controlled substances, and clandestine methamphetamine lab operators would have easier access to the chemicals they need for their deadly concoction.
- Abuse and diversion (redirecting drugs from the legal stream of commerce into the hands of criminals) of legitimately produced, prescription controlled substances (i.e., the drugs regulated by the DEA) is a serious problem in the United States.
 - In 1996 licitly manufactured controlled substances accounted for 1/4 of drug deaths reported by medical examiners and 1/4 of drug-related ER admissions.
 - In 1995 more than 6.6 million Americans abused at least one prescription psychotherapeutic drug (stimulant, sedative, antidepressant or analgesic).
- Preventing the diversion of legitimately produced drugs into illicit channels is one of the primary missions of the DEA and a major purpose of the Controlled Substances Act (CSA), 21 U.S.C. §§ 801-971.
 - Prior to enacting the 1970 law, Congress was aware that some 60-70% of U.S. drug deaths arise from licitly produced drugs.
 - At the time the CSA was passed, almost 50% of the amphetamines and barbiturates produced legitimately in the U.S. were diverted into illicit channels.
 - In the past, diversion was primarily from wholesalers and manufacturers. More recently, an estimated 80-90% of drug diversion has occurred at the retail pharmacy and physician level.
- The security, record-keeping and reporting system created by the CSA and DEA regulations is designed to protect the public by regulating the flow of the most highly abused and addictive drugs and chemicals before they can be diverted to illicit uses.

- Each participant in the system -- including manufacturers, distributors, practitioners and dispensers of controlled substances -- is registered with the DEA, and must maintain a "paper trail" to account for each transaction.
- The civil penalties of up to \$25,000 in the current law encourage compliance and serve as an incentive for careful record-keeping. Congress acted wisely in creating a strict liability standard for non-adherence to the regulatory provisions of the CSA.
 - In controlled substance cases, lapses in adherence to the record-keeping and reporting provisions undermine the closed system of distribution and create the opportunity for drug diversion.
 - Where the opportunity for diversion exists, it will often be exploited. The following sample "street prices" of single tablets of legally produced controlled substance tablets give an idea of the level of demand and incentives for diversion:

Dilaudid 4 mg --	\$40-65	Ritalin 10 mg --	\$2-10
Morphine 100 mg --	\$70-80	Valium 5 mg --	\$1-5
 - In cases involving precursor chemicals (critical inputs to the manufacture of a controlled substance like methamphetamine), where the violations tend to be few in number but great in volume, large penalties are often appropriate and recoverable.
- There is no reason to change the civil penalty provisions of 21 U.S.C. § 842, which have been enforced appropriately as one important means of assuring regulatory compliance and preventing diversion.
 - The civil penalty authority is not overused. Of 63,065 pharmacies registered with the DEA in fiscal year 1997, only 35 (0.055%), and among them only 4 chain drug stores, paid a civil penalty.
 - The DEA Diversion Program emphasizes cooperation with and voluntary compliance by the regulated industry. DEA policy is clear that civil actions are not encouraged as a primary compliance tool, except in instances of actual, willful diversion, or where a registrant's irresponsibility or unwillingness to comply has created a strong potential for diversion.

- The reality is that civil prosecutors have not, as a rule, sought civil penalties in petty cases, but in cases of egregious, extensive or repeated violations.
- In determining the amount of the penalty, courts account for (1) the willfulness of the violations; (2) the extent the defendant profited from the illegal activity; (3) harm to the public; and (4) the defendant's ability to pay.
- Suggested changes to the CSA would require that the most frequently charged violations be shown to be engaged in "knowingly," and would cap penalties for these violations at \$500, unless actual drug diversion can be shown. These amendments virtually gut the system of controls now in place.
 - It is very difficult to prove that regulatory violations are committed "knowingly." Current law provides civil penalties for violations generally; the same violations committed "knowingly" are subject to criminal misdemeanor penalties. By eliminating this distinction between civil and criminal cases, the proposal would unwisely weaken the CSA's comprehensive penalty scheme.
 - A \$500 cap on civil penalties would invite manufacturers, distributors, pharmacies and physicians to cut corners and costs, use inadequate systems for record-keeping and reporting, and pay the fines if and when caught. This would sow the seeds of diversion in many pharmaceutical settings -- the exact situation in the U.S. prior to the enactment of the CSA. Pharmacies with lax standards of compliance would gain an advantage over their more conscientious competitors.
- The suggested changes in the law would fuel the methamphetamine crisis. Clandestine lab operators rely on the diversion of precursor chemicals, such as ephedrine and pseudoephedrine, from "rogue" chemical firms and careless or unwitting legitimate establishments.

(referred to in this section as the "Chapter") presenting
2 the specific dollar amounts budgeted, by appropriation ac-
3 count, and by line item, for counterterrorism and
4 antiterrorism programs, projects, or activities.

5 (b) The Chapter shall provide a narrative outline of
6 the content of, and state the amounts budgeted for, each
7 program, project, or activity for fiscal years 1998, 1999,
8 2000, and the preceding 5 years of the Federal
9 Counterterrorism Strategy.

10 (c) If the President determines that certain portions
11 of the information contained in the Chapter are of a sen-
12 sitive classified nature, then the President shall submit
13 to Congress a classified version of the Chapter along with
14 the unclassified version published in the Analytical Per-
15 spective Volume of the President's fiscal year 2000 budg-
16 et request.

17 SEC. 118. Section 402(a) of the Controlled Sub-
18 stances Act (21 U.S.C. 842(a)) is amended—

19 (1) in paragraph (5), by inserting "knowingly"
20 after "(5)"; and

21 (2) in paragraph (10), by inserting "knowingly"
22 after "(10)".

23 SEC. 119. Section 402(c)(1) of the Controlled Sub-
24 stances Act (21 U.S.C. 842(c)(1)) is amended—

ORIGINAL WITH LANGUAGE
PROPOSED IN SENATE BILL

1 (1) by striking "Except as provided in para-
2 graph (2), any person who violates this section
3 shall" and inserting "(A) Subject to subparagraph
4 (B) of this paragraph and paragraph (2), any person
5 who violates this section may"; and

6 (2) by adding at the end the following:

7 "(B) In the case of a violation of para-
8 graph (5) or (10) of subsection (a) in which a
9 result of the violation, no unauthorized person
10 obtains unlawful control of a controlled sub-
11 stance, the civil penalty shall be not more than
12 \$500."

13 ~~Sec. 120. The General Accounting Office shall—~~

14 ~~(1) monitor the compliance of the Department~~
15 ~~of Justice and all United States Attorneys with the~~
16 ~~"Guidance on the Use of the False Claims Act in~~
17 ~~Civil Health Care Matters" issued by the Depart-~~
18 ~~ment of Justice on June 8, 1998, including any revi-~~
19 ~~sions to that guidance; and~~

20 ~~(2) not later than February 1, 1999, and again~~
21 ~~not later than August 2, 1999, submit a report on~~
22 ~~such compliance to the Committees on the Judiciary~~
23 ~~and the Committees on Appropriations of the Senate~~
24 ~~and the House of Representatives.~~

▶ Paul J. Weinstein Jr.
10/05/98 05:13:31 PM
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Record Type: Record

To: Laura Emmett/WHO/EOP
cc: Elena Kagan/OPD/EOP
Subject: FEC Rider

Sorry I forgot one on the Treasury Postal Appropriations Bill.

A rider for which we thought we had a compromise has been reborn. McConnell, in retaliation for the General Counsel of the FEC's recommendation to restrict soft money, included a rider on the Treasury, Postal Appropriations bill in the that would require that four of the six commissioners vote to **retain** the General Counsel in his current position. Currently, no vote is necessary. Only when you hire a new General Counsel is a vote necessary.

We had a compromise in the House bill, where Livingstone had originally put forward this rider. It would have allowed the current General Counsel to keep his job, then institute this new voting procedure on retention for future General Counsels.

▶ Paul J. Weinstein Jr.
10/06/98 06:06:01 PM
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Record Type: Record

To: Laura Emmett/WHO/EOP
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
Subject: Daily Bullets

1. The HUD VA Bill has passed the House. Senator Faircloth has a hold on the bill in the Senate. D'Amato has placed a provision that would allow Freddie Mac to self insure home mortgages instead of utilizing private mortgage insurers. This would effectively eliminate, or badly damage that industry. Treasury is strongly opposed to the D'Amato provision. Unless resolved, the Housing Reform Bill which Cuomo touted yesterday will not pass, nor will we get the funds for the Vouchers.]

2. On Commerce, State, Justice, Gregg and Rogers have placed a rider on the bill which would prohibit the Federal Communications Commission (FCC) from completing their Notice of Inquiry (NOI) on Free TV time for Federal candidates. As you will recall, the FCC moved to a NOI instead of a rulemaking as a compromise until next year. We must get this provision removed.]

What was the
vote yesterday?

With appropriate
guidance the bill can
be improved.
The Wein in WH Counsel
has the bill.

The fix involves:
① delay the eff. date
until the Comm
makes its
report
(1992)

② fix the "hammer to
minors" language to
improve its constitutionality,
③ fix the Comm. to
strengthen the Exec. Branch/Demo
1/2 the cost
of C

Are we OK
w/ House coats?