

CRIME BILL -  
Conference Report



Office of the Attorney General  
Washington, D. C. 20530

June 13, 1994

The Honorable Jack Brooks  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter, in combination with the attached detailed comments, presents the recommendations of the Administration concerning the reconciliation of the final House and Senate versions of H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1994.

The Administration strongly supports prompt passage of H.R. 3355, which embodies the central elements of the President's anti-crime legislative agenda. This critical legislation sets forth a balanced and intelligent approach that will enable the Federal Government to play a significantly enhanced role in the Nation's fight against the crime and violence that plague too many of our communities.

Passage of H.R. 3355 will assist the states and localities in their efforts against violent crime -- particularly in the critical areas of police, prisons, and prevention. In addition, H.R. 3355 will provide necessary tools to Federal law enforcement officials, improving their effectiveness in combating violent crime.

Both the Senate and House versions of H.R. 3355 contain provisions addressing the key elements of police, prisons and prevention, which, while they differ at times in their specific approaches, are in many respects quite similar. In order to take advantage of the historic opportunity to enhance public safety presented by this legislation, the Conference Committee must act promptly and wisely to craft the final legislation.

While we have a historic opportunity to act, we also have a tremendous responsibility to act wisely. Both the House and Senate bills include unprecedented efforts to provide the police, prisons, and prevention necessary for a serious attack on crime. This is money needed to address this critical national issue, but in these times of fiscal restraint, we must ensure that the money is spent well. Spending our money well requires that we

effectively coordinate and integrate the Federal Government's crime-fighting efforts. Thus, many of the views we express in the attached statement are aimed at assuring that we avoid the duplication, waste, and bureaucratic battles that too often accompany government programs.

The Administration believes that the final version of H.R. 3355 should contain the following key provisions, among others:

- A Funding Mechanism to Make the Promise of the Crime Bill a Reality.

The promise of the Crime Bill -- more police on our Nation's streets, prisons to house violent offenders, and prevention programs to keep kids from starting a life of crime -- can only be realized if there is funding for these initiatives. To ensure adequate funding for these priority programs, the Administration strongly supports inclusion of a Violent Crime Reduction Trust Fund in the final legislation. Like the Violent Crime Reduction Trust Fund contained in the Senate Bill (Title XIII.E), the proposed Fund provides a mechanism by which the savings that result from reductions in the Federal workforce (as required in the Federal Workforce Restructuring Act of 1994) would be used, "de facto," to fund programs authorized in H.R. 3355. This Fund will fund the most important priority programs in the Bill. Further, to help fund the important programs included in the Crime Bill, we would propose a sixth year for the Fund, to set aside almost \$28 billion for this purpose. (This compares with a set-aside of \$22 billion in the Senate Crime Bill.) The \$28 billion would be parceled out as follows: \$2.4 billion for 1995, \$4.3 billion for 1996, \$5.0 billion for 1997, \$5.5 billion for 1998, \$6.5 billion for 1999, and \$4.1 billion for 2000.

It should be noted that there is a substantial mismatch between the annual authorizations in the bill and the annual sums made available in the "Violent Crime Reduction Trust Fund." While many of the authorizations are heavily "front-loaded" in the early years (1994-1996), the annual sums in the Trust Fund grow over time, with the largest annual sums occurring in the later years of the Fund. The sums' growth reflects the accumulation of savings resulting from reductions in federal civilian employment, which are helping to finance the authorizations in this bill. We suggest two changes to help remedy this problem. First, 1994 authorizations should be shifted to other years, as at least three-quarters of 1994 will be over by the time this bill is signed into law. There is little reason to authorize funds for a year that is largely lapsed. Second, all authorizations should remain available through the year 2000. Otherwise, programs that are authorized for the early

years of the Fund may not be funded as a result of the fiscal stringency of the Fund in those early years.

- Help for Communities to Put on Our Streets an Additional 100,000 Police Officers Engaged in Community Policing.

This is the centerpiece of the President's anti-crime program. Putting more officers on the streets, working with communities, will dramatically increase our ability to prevent crime and illicit drug activity, to ensure that criminals are apprehended when crimes occur, and to return to our citizens the sense of security that has been taken from them.

To accomplish the critical goal of putting 100,000 officers on our streets and to help implement community policing nationwide, the Administration strongly recommends that the Conference Committee authorize full and adequate funding for this program. Specifically, we support the Senate authorization level of \$8.9 billion, which will support hiring 100,000 officers, if the conferees also adopt the House Bill's funding-per-officer cap (which we support with waiver authority for the Attorney General in appropriate cases). We will have some additional, technical changes to this important proposal as well.

- Protecting our Police and our Communities from Weapons of War.

For years, law enforcement officers and victims of crime have been calling on us to take action to ban the further manufacture of certain semi-automatic "assault weapons": guns intended, not for sport or hunting, but for killing and maiming people.

We strongly believe that such deadly weapons can be limited without infringing on the rights of hunters and sportsmen. Specifically, the language found in Title XLV of the Senate Bill, and in H.R. 4296 as recently passed, bans the further manufacture of assault weapons -- and the large-capacity magazines that have played a role in so many tragedies around our Nation -- while also specifically protecting over 650 hunting and sporting guns.

We support prompt enactment of this provision, approved by both the House and Senate, and backed by the Nation's leading police organizations and victims' groups. We would also support modifying the bill, to delete the paperwork requirement found in § 3 of the House bill, and § 4506 of the Senate bill.

- Launching a "Smart and Tough" Approach to Youth Crime and Violence.

One of the most disturbing aspects of the Nation's crime problem is the significant increases in the crime, particularly violent crime, being committed by juveniles and young adults. The Administration urges the Conference Committee to include in the final legislation programs designed to combat this growing trend, including:

- o Proven and extensive substance abuse and crime prevention programs -- discussed below -- to "give kids something to say yes to" (including House Bill Title X.J);
- o Smart incarceration and alternative programs such as: Boot Camps that provide the discipline and training that will prevent young offenders from embarking on a life of crime; Drug Courts, to intensively supervise and mandate treatment for drug offenders and get them turned around before they commit more serious crimes; and Intermediate Sanctions, that provide certainty of punishment for young offenders so that they learn early that there will be consequences for criminal behavior (House Bill Titles XXI and X.E, and Senate Bill Title XII);
- o The Youth Handgun Safety Act, to get guns out of the hands of young people. This law, with certain exceptions, prohibits handguns from being possessed by or transferred to juveniles (House Bill Title XIX and Senate Bill § 662);
- o Measures to combat youth gangs and facilitate gang prosecutions, such as those found in Title VI of the Senate Bill. We particularly recommend including in a final Bill §§ 613-14 (Armed Career Criminal predicates and predicates for adult prosecution), 615 (strengthening penalties for using minors to distribute drugs), 616 (increased penalties for drug trafficking near public housing), 617 (increased penalties for violent Travel Act violations), and 618 (juvenile records). However, the authorization of funding for more prosecutors for gang prosecutions should be stated in broader terms; and
- o To deal with hardened young criminals, the discretionary authority to try 13-year-olds as adults for serious violent offenses. We generally prefer the approach of House Bill § 1101 to Senate Bill § 651, which unduly restricts the ability of judges to make case-appropriate transfer decisions.

• Significant and Innovative Crime Prevention Programs that  
"Give Our Young People Something to Say Yes To."

While we must -- and will -- insist upon personal responsibility and punish those who commit crimes regardless of their circumstances, we must also do what we can to keep young people from beginning to engage in crime.

To achieve this objective, the Administration strongly supports the full authorization level contained in the House Bill for prevention programs. Among the prevention programs included in the House and/or Senate Bills which the Administration urges be included in the final legislation are:

- o The President's Y.E.S. program (Youth Employment and Skills) which gives employment opportunities to kids in hard-hit, high-crime areas (House Bill Title X.J), and which we believe should be funded at a level of \$1 billion;
- o The Ounce of Prevention Council (Title I and §§ 5142-43 of the Senate Bill and Title X.B of the House Bill) and related programs to keep schools open after hours (Senate Bill § 5142 and House Bill §§ 1015-24), expand activities such as Boys and Girls Clubs (House Bill § 1099H and parallel Senate Bill provisions) that keep kids off the streets, and better coordinate the efforts of the Federal Government to assist communities in preventing drug abuse and crime;
- o Comprehensive prevention programs such as the House's Model Intensive Grant Programs (Title X.A);
- o Targeted prevention such as a revised Senate Safe Schools Act (Title XXVII) and the House Family and Community Endeavor Schools Grant program (Title X.B); and
- o Innovative alternatives like Midnight Sports and Police Partnerships for Youth (various House Bill Title X programs and parallel Senate Bill programs).

Prevention programs make sense, and are a critical part of any balanced attack on the crime, violence, and drug abuse that plague our cities, towns, neighborhoods, and rural communities. However, in order to ensure that these programs both have meaningful impact and are cost-effective, we must insist that they be coordinated and integrated and that we have the

flexibility and tools necessary to avoid duplication and wasted effort.

- Measures to Punish Violent Crime Stiffly.

To deal with the problem of repeat violent offenders, the Administration urges the Conference Committee to include several measures to punish stiffly those who prey upon our communities in addition to the prison program discussed below. The punishments which should be part of the final legislation include:

- The President's "three strikes and you're out" life imprisonment provision, which is targeted on the career violent offenders who do so much harm to society (House Bill Title V, with certain modifications); and
- Reinstating the Federal death penalty for the most heinous offenses, including for example the killing of Federal law enforcement officers, and the other capital crimes in the pending proposals (House Bill Title VII and Senate Bill Title II).

As we punish violent criminals more severely, we must not squander always limited resources on lengthy prison terms for low-level, non-violent criminals. Consequently, we support the House version of the so-called "safety valve" (Title II), modified to be exclusively prospective in effect, as in the Senate Bill version (§ 2404).

- Authorizations for the Departments of Justice and Treasury to Support Federal Law Enforcement Initiatives and Implementation of Crime Bill Related Programs.

The primary focus of the Crime Bill -- as it should be -- is on bolstering state and local efforts to increase the number of police on our streets, the number of violent criminals behind bars, and the scope and extent of efforts to prevent crime and "give young people something to say yes" to. But the Bill also stiffens penalties for many Federal offenses -- such as the "three strikes" law and the Federal death penalty -- and clearly envisions an expansion of Federal efforts to combat violent crime, gun crime, and drug trafficking.

Consequently, we consider it essential that the Crime Bill provide additional support to Federal law enforcement agencies who lead our national attack on crime and violence. Particularly if Congress is going to set aside substantial resources over the next five or six years to fight crime, some share of those resources should bolster our principal Federal law enforcement efforts in this regard.

Thus, we support the inclusion of § 3016 of the House Bill, which authorizes approximately \$1 billion for Treasury Department law enforcement activities, and the inclusion of the various Justice Department authorizations in the Senate Bill, totalling approximately \$1.25 billion (which appear in §§ 5132, 1405, 621, and 3907). In this way, the principal Federal crime fighting agencies -- FBI, DEA, ATF, USMS, Secret Service, Customs, and others -- can keep up the needed efforts and carry out the additional responsibilities envisioned by the Crime Bill. At the same time, the Congress and the Administration will need to be mindful of the federal workforce restrictions contained in the recently enacted Federal Workforce Restructuring Act of 1994. The Administration opposes as contrary to that Act the provisions of the bills would designate employment levels for specified programs.

Furthermore, we urge that all new Administration responsibilities and mandates, including but not limited to commissions, task forces, guidelines and standards development, model statutes, reports, and studies, be made explicitly subject to the availability of appropriations and contain appropriate authorization language. Otherwise, these provisions may have the unintended effect of requiring the Justice Department to cut law enforcement agents or prosecutors to conduct studies, convene commissions, or prepare reports. As a general rule, we would suggest that the number of new committees, commissions, task forces, and studies be kept to an absolute minimum.

- Assisting the States to Build and Operate More Correctional and Detention Facility Space to Get More Violent Offenders and Criminal Aliens Off Our Streets.

It is incumbent upon the Federal Government to aid states that are struggling to make sure that violent criminals and criminal aliens are not being released prematurely for lack of space. The Federal Government is building the prisons and detention facilities necessary to ensure that Federal offenders are not being prematurely released, and this Administration is committed to maintaining the necessary capacity. However, none of us will be safe until the states can do the same.

The Administration believes that the best way to accomplish this objective in H.R. 3355 is for the Conference Committee to adopt an overall authorization level for state prison and jail assistance which approximates that contained in Title XIII of the Senate Bill -- \$6.5 billion -- over six years.

In particular, we support versions of two sorts of plans to help states incarcerate offenders. First, we support a combination of the prison grant programs authored by Senator

Biden and Representative Hughes -- § 1321 of the Senate Bill and Title VI of the House Bill -- because we believe that some Federal funds should be made available on a discretionary basis to states to build and operate appropriate facilities for housing serious drug and violent offenders -- including boot camps, prisons, jails, and community detention facilities.

Second, we also believe that another pool of Federal grant funds should be used, in part, to encourage states to adopt "Truth in Sentencing" policies and to make other improvements in their criminal justice systems that will ensure that the most violent offenders are kept behind bars. Title VIII of the House Bill -- a "Truth in Sentencing" measure sponsored by Rep. Chapman -- intends to do just that; and does so in a manner superior to that found in the Regional Prisons program in § 1341 of the Senate Bill. As compared to the Senate provision, the House proposal will incarcerate more violent criminals, more quickly, at less cost. The Regional Prisons proposal is unduly expensive, has significant operational problems, and will take too long to get violent criminals off the streets.

The Administration's objective in this area is clear: the Crime Bill should adopt the plan that most effectively -- within funding constraints -- locks up the largest number of violent criminals and criminal aliens, as quickly as possible, at the lowest possible cost, while encouraging innovation and creativity in this area that consumes so much of our resources. A formulation combining the House and Senate Bill provisions outlined above will achieve this result.

- Crime Victims' Rights and Protections.

We need to make sure that the scales of justice give full weight to the interests of the victims of crime. Therefore, we strongly support enactment of provisions to give victims of Federal violent and sexual abuse crimes a right to address the court concerning the sentence to be imposed (right of allocution), parallel to the existing right of the offender to make such a statement, and provisions to improve the administration of the Crime Victims Fund and the programs it supports (Title I.A-B of the House Bill and Title IX.A-B of the Senate Bill). We urge enactment of these provisions with some necessary technical changes to ensure that the proposed allocution reform will remain in effect after December 1, 1994.

We also generally support the mandatory restitution provisions (§ 902 of the Senate Bill) to require the issuance by the court of a full order of restitution in cases under the criminal code and recommend that it be included in a final bill. We have a few recommendations concerning specifics in the

formulation of this proposal, and would be pleased to assist the Committee in finalizing it.

- The Racial Justice Act and Assuring Non-discrimination in the Criminal Justice System.

Title IX of the House Bill contains a proposal designed to prevent racial discrimination in the imposition of capital punishment. The Administration abhors discrimination in all aspects of the criminal justice system, including capital punishment. We also support the death penalty as an appropriate sanction for the most heinous cases, such as the murder of law enforcement officers. Accordingly, we are committed to work with the Committee on provisions that would prevent discrimination while allowing effective use of capital punishment in appropriate cases.

- Controlling the Border and Removing Criminal and Other Illegal Aliens and Combatting Terrorism.

The Administration strongly supports §§ 5158-5160 of the Senate bill and §§ 2411-2413 of the House Bill providing for the improvement of border controls, deportation of criminal aliens, and the removal of denied asylum applicants. These provisions are very important to the President's FY 1995 budget request and represent an important component of the overall strategy to combat crime and improve the Government's ability to control illegal immigration.

We also generally support Senate Bill Title VII provisions and related House language that would strengthen efforts to combat domestic and international terrorism, especially by implementing international counterterrorism conventions, bolstering the counterterrorism rewards information program, creating an offense of providing material support for terrorist attacks, and increasing the penalties for passport and visa fraud. We have a few recommendations concerning specifics in formulation, and would be pleased to assist the Committee in finalizing these important measures to help combat the growing problem of terrorism.

- The Violence Against Women Act and Related Provisions.

The Administration strongly supports enactment of the Violence Against Women Act (Senate Bill Titles XXXII-XXXVII and House Bill Title XVI). We prefer certain key elements of the Senate version of that legislation, including among others, Title XXXIV, a civil rights remedy for victims of gender-motivated crimes of violence. We also prefer some aspects of the House

Bill, including some grant program formulations. In conference, we believe that conforming changes can eliminate duplication and improve coordination and integration of the many new funding programs proposed in this area. Above all, we believe it is important that the Bill take a comprehensive, cost-beneficial, and well-coordinated approach to this escalating crime problem.

- Treatment of Indian Tribes.

The President has issued a directive to all government Departments and agencies to "be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized Indian Tribes." The Administration will deal with Tribes in the spirit of the President's directive regarding the crime legislation upon its enactment and supports a number of related provisions. For example, we endorse the House bill's provisions requiring State Tribal Courts to extend full faith and credit to protection orders issued by other State and Tribal Courts, and the House's "interstate" domestic violence provisions which include movement across State-Indian Country boundaries.

- Federalization of Violent Crimes Involving Firearms.

Sections 2405-06 of the Senate Bill would extend Federal jurisdiction over almost all crimes involving the use or threat of force against a person or property in which the offender has a firearm. We oppose these provisions, which would largely obliterate the distinction between Federal and state criminal jurisdiction. They represent a false promise of action in fighting violent crime -- a promise that will not be realized, given limited Federal resources -- and divert attention from our critical Federal role in the fight against violent and drug crime.

Extending Federal jurisdiction over hundreds of thousands of local offenses, which state and local law enforcement is generally best-situated to deal with, will not increase the public's security against these crimes. At best, these provisions would be ineffectual -- at worst, they would divert Federal resources from dealing with the distinctively Federal matters and interstate criminal activities that Federal law enforcement is uniquely competent to handle.

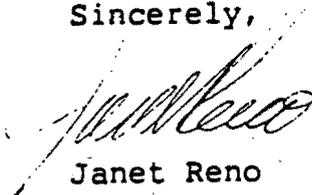
\* \* \* \* \*

Honorable Jack Brooks  
Page 11

As noted above, accompanying this letter are detailed comments containing the Administration's specific recommendations for reconciling the House and Senate Bills in the critical areas discussed above and elsewhere. The organization of the attachment generally follows the order of titles in the Senate Bill, with parallel House Bill provisions noted as appropriate. Additional House Bill provisions that have no counterpart in the Senate Bill are addressed in the final sections of the attached detailed comments.

The Office of Management and Budget advises that there is no objection to the presentation of these views to the Congress, and that enactment of H.R. 3355 with the modifications proposed herein would be in accord with the program of the President. We urge the Conference Committee to report legislation expeditiously so that omnibus anti-crime legislation can be enacted as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", is written over a horizontal line.

Janet Reno

## DETAILED CRIME BILL COMMENTS

### Title I -- Police Hiring/Community Policing

Both the Senate Bill (Title I) and the House Bill (Title XIV) include versions of the President's "Public Safety Partnership and Community Policing Act." This major grant program is the centerpiece of the President's legislative anti-crime program and the primary vehicle for putting 100,000 additional officers on the Nation's streets to help prevent and control crime. We strongly recommend that the Committee include as effective a formulation of this police hiring/community policing proposal as possible in the final Bill.

We urge that the Committee adopt the higher (\$8.995 billion) funding authorization levels of the Senate version. We strongly urge adoption of the House Bill's waivable overall cap of \$75,000 per officer for police hiring in lieu of the Senate Bill's waivable annual cap of \$50,000 per officer for police hiring. These choices are necessary to realize the proposal's objective of increasing the number of police officers on the street by 100,000.

We also endorse the House Bill's minimum state allocation of 0.25%, in lieu of the Senate Bill's minimum 0.6% allocation, as promoting a more effective allocation of funding among the various states. We believe that the related concerns of smaller jurisdictions may be better addressed by deleting § 1703 of the proposed new part Q, the State Review requirement. Doing so would increase the Attorney General's flexibility to meet the needs of, and assure equitable treatment of, all eligible applicants -- particularly the large number of lower population counties, municipalities, and rural law enforcement jurisdictions.

In addition, we have a number of other suggestions to help resolve differences between the House and Senate versions and improve the formulation based, among other things, upon our recent experience in implementing the Police Hiring Supplement program. We look forward to working closely with you to assure the success and effectiveness of this critically important initiative.

### Title I -- Ounce of Prevention

Provisions at the end of Title I of the Senate Bill authorize grants to support youth-oriented prevention programs, to be administered by a Cabinet-level Ounce of Prevention

Council. Sections 5142-43 of the Senate Bill authorize additional programs to be administered by the same Council.

Subtitle B of Title X of the House Bill contains provisions that are substantially parallel to the Ounce of Prevention programs in Title I and § 5142 of the Senate Bill, but with the primary role in program administration assigned to the Secretary of Health and Human Services and the Secretary of Education.

The Administration strongly supports the creation of an Ounce of Prevention Council and the authorization of the related youth development and crime prevention programs (comments on other related programs are included below). A strong Ounce of Prevention Council that can help coordinate the various prevention programs in the Bills is essential to assuring that money we spend on crime prevention is spent well. To achieve such a strong Council, we recommend several revisions necessary to facilitate better administration and coordination of certain of the proposed youth-oriented prevention programs contained in the House and Senate Bills.

Specifically, the Administration recommends that the President be authorized to designate the chair of a slightly reformulated cabinet-level Council. The membership of the Ounce of Prevention Council should include: the Attorney General; the Secretaries of the Departments of Health and Human Services, Housing and Urban Development, Labor, Education, Agriculture, Interior, and Treasury; the Director of the Office of National Drug Control Policy; and one or more other officials as the President may deem appropriate. The interdepartmental Council should be authorized to help maximize the impact of the Crime Bill's youth-oriented crime prevention initiatives through collaboration and consultation with other agencies and entities (such as the Juvenile Justice Coordinating Council), coordinated planning, development of a computer-based program catalog, technical assistance, and other program integration and grant simplification strategies. The Council's direct funding should be authorized at the House level of \$25 million per annum. Furthermore, we recommend that the Council be authorized to accept and to help administer specified related program funds upon request by the relevant agency, and to hire staff and to develop guidelines for joint application and administration procedures, in order to maximize flexibility and avoid duplication.

Prevention programs make sense and are a critical part of any balanced attack on the crime, violence, and drug abuse that plague our cities, towns, neighborhoods, and rural communities. However, in order to ensure that these programs both have meaningful impact and are cost-effective, we must insist that they be coordinated and integrated and that we have the flexibility and tools necessary to avoid duplication and wasted

effort. We believe that our plan for the Ounce of Prevention Council will achieve this vital end, and we would be pleased to work with the Committee in finalizing this priority proposal.

## Title II -- Death Penalty

Title II of the Senate Bill and Title VII of the House Bill contain proposals to provide an effective Federal death penalty for the most heinous Federal crimes. This is a major element of the President's program. We generally approve of the proposed procedures and the range of homicidal offenses for which capital punishment would be authorized.

With respect to the standards governing the jury's decision concerning a capital sentence, we generally prefer proposed 18 U.S.C. 3593(e) of the House Bill over the corresponding Senate Bill provision. The House version provides more effective safeguards against inconsistency in capital sentencing by providing better guidance for the jury concerning the circumstances in which a capital sentence should or should not be imposed.

We have the following additional recommendations:

(1) The separate death penalty procedures under 21 U.S.C. 848 should be repealed, to make it clear that the new procedures apply uniformly to all Federal capital offenses. We note that the legislation does repeal the other existing set of separate death penalty procedures (for fatal aircraft piracy, in 49 U.S.C. 1473).

(2) Proposed 18 U.S.C. 3593 should be amended to require the defense to give notice of the mitigating factors it will rely on, just as the Government is now required to give notice of aggravating factors. Defense notice is important, for example, in relation to mental status mitigating factors (such as impaired capacity and mental or emotional disturbance), for which the Government will often need time to employ its own experts.

(3) The final sentence of proposed 18 U.S.C. 3595(c)(2) in the Senate Bill should be deleted, since it could be construed as limiting findings of harmless error based on non-constitutional violations to instances in which the Chapman harmless-beyond-a-reasonable-doubt standard is satisfied. Under general standards of appellate review, the Chapman standard only applies to constitutional error, and claims of non-constitutional error are assessed under the Kotteakos harmless error standard.

(4) The proposed procedures contemplate a return to an earlier system in which the Federal Government does not directly carry out executions, but makes arrangements with states to carry

out capital sentences in Federal cases. We recommend amendment of the legislation to perpetuate the current approach, under which the execution of capital sentences in Federal cases is carried out by Federal officials pursuant to uniform regulations issued by the Attorney General.

(5) The use-of-a-firearm aggravating factor in the Senate Bill (proposed 18 U.S.C. 3592(c)(2)(A)) should be included in the final Bill.

(6) Finally, we note that some changes are needed in the proposal for technical or drafting reasons. For example, the amendment to the penalty provision of 18 U.S.C. 1114 in the Bills is not properly drafted, and some of the language in proposed 18 U.S.C. 3593 relating to victim impact information has been placed in the wrong subsection.

We would be pleased to assist the Committee in finalizing this proposal.

### Title III -- Firearms

Firearms Disqualification. The Senate Bill contains two provisions extending firearms disqualification for persons who threaten or endanger others -- § 301, which would apply to persons under certain types of restraining orders, and § 4203, which applies to domestic violence perpetrators. Section 1625 of the House Bill contains a provision similar to § 301 of the Senate Bill, but limited in scope to persons subject to orders issued for the benefit of "intimate partners."

We support these provisions, and in fact, want to see them strengthened in some respects. For example, § 301 of the Senate Bill defines the types of orders to which it would apply narrowly, and does not readily apply to the common formulation of protective orders as directives to stay away from a person or location. Section 4203 of the Senate Bill covers domestic violence convictions and a more broadly defined class of protective orders in the domestic violence context, but does not cover situations involving stalkers or other offenders who have not had a domestic relationship with their victims. Likewise, the House Bill provision would not apply to persons who stalk strangers.

The optimum formulation would combine the stronger features of all of these proposals. We would be pleased to assist the Committee in developing such a formulation.

Firearms Licensing. Subtitle B of Title III of the Senate Bill includes provisions to strengthen the licensing and regulatory system for firearms dealers. The Department of Justice supports the enactment of this proposal.

Definition of Conviction. We recommend adoption of an amendment to existing firearms statutes that is essential to the effective enforcement of certain provisions of the crime bill as well as to the Armed Career Criminal Act. The most serious impediment to the prosecution of armed criminal recidivists under Federal firearms statutes arises from the definition of "conviction" in 18 U.S.C. 921(a)(20). The definition of conviction determines the applicability of the prohibition of possession of firearms by convicted felons (18 U.S.C. 922(g)) and the applicability of the mandatory penalties of the Armed Career Criminal provision (18 U.S.C. 924(e)). These provisions are two of our strongest weapons against dangerous armed offenders. However, the operation of these provisions has been impeded or clouded by the current definition, which can remove Federal firearms disabilities on the basis of state rules or procedures that indiscriminately restore rights for convicted felons.

Thus, in states that automatically restore a defendant's civil rights upon the completion of a sentence, the felon in possession and armed career criminal statutes are virtually unenforceable. As a result, persons who have committed murder and other serious violent crimes in many instances may not be prosecuted under Federal firearms statutes.

We can not over-emphasize what a critical law enforcement issue this presents. We can do so much to keep guns out of the hands of criminals, and to fulfill the promise of the Brady Bill, if this defect in our Federal laws is corrected. Otherwise, each year, thousands of convicted felons will be legally eligible to purchase firearms, notwithstanding past crimes.

The Administration strongly urges the Committee to include a provision in the final Bill to resolve this problem, in order to ensure our ability to prosecute armed career criminals. Furthermore, should the final Bill enlarge the reach of 18 U.S.C. 922(g), for example, by adding a domestic violence category to the list of firearms disqualifications, this recommended amendment would be essential to enforcement of the new provision.

The Administration would be pleased to assist the Committee in developing an appropriate formulation.

#### Title IV -- Gun Crime Penalties

Title IV of the Senate Bill contains various provisions to strengthen Federal firearms offenses and penalties. The Administration supports almost all of these provisions, and recommends that they be included in a final Bill.

However, the study of incendiary ammunition required by

§ 416 of the Senate Bill is unnecessary, since it can be determined on the basis of currently available information that the referenced ammunition has no reasonable sporting or law enforcement use. We also have concerns about the scope of the "sporting purposes" proviso to § 414's prohibition on receipt of firearms by persons who do not reside in any state. The concern is that the proviso will result in circumvention of the prohibition by aliens who acquire firearms through intermediaries and then smuggle them out of the country. We believe that an alternative formulation of § 414 may be possible which avoids these concerns, while also avoiding interference with the legitimate business of providing hunting trips for foreign tourists.

#### Title V -- Obstruction of Justice

Title V of the Senate Bill includes several provisions that generally increase maximum penalties for serious violence against witnesses, jurors, and court officers, and enhance protection for witnesses and jurors in capital cases. The same provisions appear in the death penalty title (Title VII) of the House Bill. The Administration supports the enactment of these provisions.

We recommend, however, that § 504 of the Senate Bill -- which extends Federal jurisdiction over certain murders of state or local officers who are assisting Federal officers -- be supplemented or replaced with a provision that explicitly adds state and local officers assisting Federal officers to the list of protected persons under 18 U.S.C. 1114. This would provide greater protection for such officers, protection that is fully commensurate with the protection provided for Federal officers themselves. It would also foreclose arguments that protection for state and local officers assisting Federal officers under existing provisions should be limited to murder cases within the scope of § 504.

#### Title VI -- Gangs and Juveniles

We believe that strong action must be taken to combat gang crimes and youth violence in our country. Among those provisions that we would like to see included in the Conference Report are:

Criminal Youth Gangs. Subtitle A of Title VI of the Senate Bill includes several provisions that are intended to strengthen Federal prosecution of youth gangs and juvenile offenders. We particularly recommend including in the final Bill versions of §§ 613-14 (armed career criminal predicates and predicates for adult prosecution), 615 (strengthening penalties for using minors to distribute drugs), 616 (increased penalties for drug trafficking near public housing), 617 (increased penalties for violent Travel

Act violations), and 618 (juvenile records). We also have no objection to § 619 of the Senate Bill, which adds a separate anti-gang funding objective to the Byrne Grant program.

Section 611 of the Senate Bill creates a series of offenses covering criminal street gangs activities, with broad jurisdiction and high penalties, some of a mandatory nature. We agree that the criminal activities of street gangs are a major concern of law enforcement, but believe that many of these offenses are better handled at the state and local level, and that federalizing all offenses of this type would be counterproductive. We would, however, support a provision of this type if its scope were defined to encompass gang offenses of a truly interstate or international character, such as those involving interstate or foreign travel.

We note also that § 611 of the Senate Bill does not explicitly address enforcement responsibility under the provision, though the proposed offenses implicate the responsibilities of both the Justice Department (general criminal law enforcement) and the Treasury Department (firearms enforcement). We recommend restoring a provision -- included in the 102d Congress version of this proposal -- which gives the Attorney General and the Secretary of the Treasury joint investigative authority under this section "pursuant to an agreement that will be concluded between them." Finally, some revision of the formulation of the forfeiture provision in § 611 is desirable. We would be pleased to assist the Committee in developing a final formulation of this proposal.

We do not support § 612 of the Senate Bill, which adds as RICO predicates all felonies in which persons below the age of 18 are used in committing the offense, since this would include some offenses that are unrelated to RICO's purpose of targeting organized criminal enterprises that engage in certain serious crimes. We note that this provision is not needed to reach the major forms of organized criminality that frequently involve the use of minors -- such as drug trafficking -- since these crimes are already covered by RICO, whether or not minors are involved.

Gang Prosecution. We support the authorization of funding for gang prosecutions in § 621 of the Senate Bill, but the authorization should be stated in broader terms.

We would want to be able to allocate some of these funds to a broader array of activities within both the U.S. Attorneys and the Criminal Division's budgets. For example, we may wish to apply funds to improve equipment with which the productivity of U.S. Attorneys may be improved. We have no objection to § 622 of the Senate Bill relating to Federal anti-gang strategy and information collection, with the exception of subsection (c). Section 623 of the Senate Bill, which attempts to extend the 25%

matching funds level under the Byrne Grant program for a year, is obsolete since legislation has been enacted that permanently sets the matching funds level at 25%. We support § 624 of the Senate Bill (and the similar provision in § 1098 of the House Bill), which waives the four-year limit on Byrne Grant funding in relation to grants for multi-jurisdictional gang task forces.

Grant Programs. Title XXII of the House Bill proposes the creation of a new juvenile drug trafficking and gang prevention grant program. The Senate has also passed a version of this proposal in §§ 631-32 of its Crime Bill, and proposes to substitute it for a currently authorized anti-gang program administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which would be repealed. In addition, § 633 of the Senate Bill proposes a separate youth violence prevention grant program, and another gang prevention program appears in Title X.M of the House Bill.

The Department of Justice supports the objectives of these programs, but notes that the proposed programs largely overlap with existing programs administered by OJJDP.<sup>1</sup> Moreover, the currently authorized OJJDP anti-gang program incorporates important elements that would be lost if it were replaced by the new program proposed in Senate Bill § 631.

We accordingly recommend combining the juvenile drug trafficking and gang prevention program proposed in § 631 of the Senate Bill with the current Gang-Free Schools and Communities Program (JJDP Act Part D), by enlarging the list of program objectives to incorporate objectives from the proposed new program.<sup>2</sup> Likewise, the youth violence prevention program in § 633 of the Senate Bill should be melded with the JJDP Act's Title V Delinquency Prevention Program. We would be pleased to

---

<sup>1</sup> There are also intrinsic design problems in the Senate Bill provisions. For example, the program in § 631 of the Senate Bill would require that each state receive at least 1% of the authorized funding, resulting in unfairly large shares for the less populous states. The program in § 633 requires that grants be administered by the state office responsible for Byrne Grant program administration, though this responsibility would more sensibly be assigned to the state juvenile justice agencies that administer JJDP Act (Part B) formula grants.

<sup>2</sup> In defining the scope of this program, however it may be formulated, we endorse § 5167 of the Senate Bill which states that grants authorized to reduce and prevent juvenile drug and gang-related activity in "public housing" may also be used for such purposes in federally assisted, low-income housing. We also suggest that the formulation be expanded to include federally assisted Indian housing as well.

provide the Committee with language that would accomplish these consolidations.

Section 631 of the Senate Bill also includes a directive to the Departments of Justice and Health and Human Services, subject to appropriations, to study and develop a model for dealing with mental health matters in juvenile justice systems. This is unrelated to the proposed grant program, and should be set up as a separate provision with its own authorization.

Adult Prosecution. Both the Senate Bill (§ 651) and the House Bill (§ 1101) contain provisions for broadened adult prosecution of certain juvenile offenders down to the age of 13. We support the objective of broadening the authorization of adult prosecution, and generally prefer the House formulation to the Senate's approach.

The Senate Bill provision mandates adult prosecution of all juveniles charged with certain offenses down to the age of 13, subject to possible resentencing at the age of 16. The selection of predicate offenses for mandatory adult prosecution under the Senate Bill provision is inconsistent -- for example, bank robbery (18 U.S.C. 2113) would be covered, but murder for hire (18 U.S.C. 1958) would not be covered. The provision also departs from normal adult prosecution under Federal law in that the juvenile would be resentenced and possibly released within a few years. In comparison, normal adult prosecution results in a prison term that must actually be served (subject to a maximum 15% "good time" credit reduction). Thus, ironically, proceeding against an offender as a juvenile may result in a longer period of assured detention than "adult prosecution" under § 651 of the Senate Bill, since a juvenile adjudicated delinquent may be confined until he or she reaches the age of 21 (see 18 U.S.C. 5037(c)(1)).

The House version of this proposal would lower the minimum age for transfer for adult prosecution to 13, in relation to juveniles charged with certain offenses. This avoids some of the problems with the Senate Bill provision, including its mandatory character and the unique resentencing provisions.

We generally support the House version, but would prefer to see it amended further to ensure that the appropriate violent felony offenses are included within its scope. We would be pleased to provide the Committee with appropriate legislative language.

We also recommend that the Committee include in the final Bill an unrelated, non-controversial provision that appears in § 1102 of the House Bill, relating to the production of a juvenile's record prior to proceedings.

Youth Handgun Safety Act. Title XIX of the House Bill and § 662 of the Senate Bill contain the Youth Handgun Safety Act, which would enact a general ban on handguns for juveniles. The Administration supports enactment of this critical crime-fighting proposal, which has won bipartisan support. The growing problem of juvenile crime and violence is one from which no community in our nation is immune. Keeping handguns out of the hands of unsupervised minors is one important component of an overall strategy to deal with youth violence.

#### Title VII -- Terrorism

Both Title VII of the Senate Bill and the death penalty title (Title VII) of the House Bill include the following provisions relating to terrorism or other international matters: implementing legislation for the maritime, maritime platform, and airport anti-terrorism conventions (Senate Bill §§ 701, 719) and an offense of using weapons of mass destruction (Senate Bill § 711). We strongly recommend that the Committee include these important provisions in the final Bill, as critical measures to help combat the growing problem of terrorism. Passage of the implementing legislation is also necessary to help the United States live up to its treaty obligations under the conventions which received the Senate's approval in 1989.

With respect to formulation, the Senate and House versions of this legislation are largely identical, but the following differences should be noted: Proposed 18 U.S.C. 2280(e) in § 712 of the House Bill contains a provision, omitted in the Senate Bill, that authorizes the master of a ship to deliver a captured terrorist to the authorities of a party to the convention. Inclusion of this provision is necessary for conformity to the convention. Proposed 18 U.S.C. 2280(d) and proposed 18 U.S.C. 2281(d) in § 712 of the House Bill, and proposed 18 U.S.C. 35(c) in § 711 of the House Bill, contain exemptions from the proposed offenses for conduct in the course of domestic disputes and labor disputes, where the conduct is prohibited as a felony by state law. (The corresponding Senate Bill provisions only have the exemption for conduct during labor disputes.) If the House version is used, the placement of the language relating to punishability as a felony under state law must be changed to make it clear that it is a condition on the applicability of both of the exemptions (domestic disputes as well as labor disputes). This is required for conformity to the conventions.

We also recommend including in the final Bill the following additional provisions in Title VII of the Senate Bill: §§ 712 (increased penalties for certain travel document offenses), 713-14 (territorial sea provisions), 715 (crimes on certain foreign ships), 717 (extended statute of limitations for certain terrorism offenses), 723 (terrorist death penalty), 724 (guidelines increase for terrorist crimes), and 726 (offense of

providing material support to terrorists). With respect to the material support offense in § 726, we have been informed that Representative Edwards might offer an amendment that would add a new subsection (c) relating to investigative authority. The Administration is strongly opposed to this amendment.

We recommend the following amendments to these provisions: Section 713 should be amended to provide that the territorial sea is part of the United States for purposes of Federal criminal jurisdiction, since there are other purposes for which the territorial sea is not considered to be part of the United States (including certain purposes under the immigration laws). In § 714, references to areas that are not within or are outside of the "territory" of any state should be replaced with references to areas that are not within or are outside of the "jurisdiction" of any state, and the term "Commonwealth" should be added to the passages including "State, Territory, etc." to ensure coverage of the expanded territorial sea around Puerto Rico and the Northern Mariana Islands. We would be pleased to provide the Committee with specific amendatory language for these purposes. Also, in proposed 18 U.S.C. 7(8) in § 715, the words "To the extent permitted by international law" should be deleted. Section 715 will not achieve its purpose of resolving problems in establishing jurisdiction over crimes committed on foreign cruise ships that operate out of the United States, if case-by-case litigation is required concerning conformity to international law. Congress has not imposed such a requirement in other analogous contexts. See 18 U.S.C. 1203(b)(1), 2332.

We note the following specific points in support of the offense of providing material support to terrorism in § 726 of the Senate Bill: This provision was passed by the House of Representatives in its 102d Congress Crime Bills (the original and Conference Committee versions of H.R. 3371). The Senate has passed this provision in the FY95 State Department authorization bill, as well as in § 726 of the general Crime Bill. It was dropped from the State Department authorization bill in conference in deference to the House Judiciary Committee, because it was expected to be a Crime Bill conference item.

We strongly urge the Conference Committee to include this provision again in a final Bill for enactment. It is aimed at the knowing furnishing of support for acts of terrorism that are criminal under other provisions of law. As the Senate conferees to the State Department authorization bill noted, this is an important provision to deter those who knowingly assist terrorist acts by creating an appropriate standard of Federal liability for such conduct. The provision would be of direct value in strengthening the legal tools against terrorism in the United States, and would help to encourage other countries to take similar steps against the provision of material support to terrorist activities.

As indicated earlier, we support enactment of the material support offense in Senate bill § 726 without change, and strongly oppose the amendment relating to investigative authority for this offense which may be offered by Representative Edwards.

Sections 716 of the Senate Bill and 713 of the House Bill contain the implementing legislation for the convention against torture. This legislation has recently been enacted in the State Department authorization bill. Hence, these sections should be replaced with amendments that add a death penalty authorization for fatal cases and correct a typographical error in the enacted version of this proposal. We would be pleased to provide the Committee with appropriate language for this purpose.

We recommend against inclusion of provisions establishing an Economic Terrorism Task Force (Senate Bill § 722). There is no clear definition of the notion of economic terrorism, and extending the concept of "terrorism" to include non-violent acts with adverse economic impact could dilute efforts to build an international consensus against terrorist violence. Moreover, the high-level statutory task force proposed in § 722 of the Senate Bill is unnecessary for study of these issues, since they can be addressed by existing interagency mechanisms.

We also recommend against criminalizing certain violations of airport security regulations (Senate Bill § 720), since such violations are more appropriately and effectively addressed by existing civil sanctions.

We support the objective of the cooperating alien admission provisions in §§ 725 and 5117 of the Senate Bill, but do not believe that the current formulation of these provisions is satisfactory. We would be pleased to assist the Committee in developing an adequate formulation of these proposals.

Title VIII -- Sexual Violence and Abuse of Children,  
the Elderly, and Persons with Disabilities

Sex Crimes Against Young Victims and Child Pornography. Child sexual exploitation and pornography are abhorrent and should be attacked at every opportunity. To assist in the fight against these evils, the Administration strongly supports § 801 of the Senate Bill, which effectively increases the maximum penalties for certain sex crimes against victims below the age of 16. We also support Title XII of the House Bill and §§ 824-25 of the Senate Bill, which create a new extraterritorial child pornography offense where importation of the pornography into the United States is intended; adopt several amendments to strengthen child pornography penalty provisions; create an offense of traveling in interstate or foreign commerce for the purpose of engaging in sexual acts with minors; and express the sense of Congress that states should have child pornography laws. The

proposed international child pornography offense should be amended to make it clear that intended importation by computer is covered. Also, an amendment which adds the new offense as a RICO predicate needs to be corrected to avoid the inadvertent elimination of 18 U.S.C. 2251A as a RICO predicate.

Extended Background Checks for Child Care Workers. Congress enacted last year the "Oprah Winfrey" proposal, which established a national background check system to enable child care employers to determine whether prospective employees have histories of child abuse. Subtitle B of Title VIII of the Senate Bill would extend the background check system to include elder care and disabled care, and would broaden the class of background check crimes.

We support the proposed extension of the background check system. Some changes in the formulation of the proposal would be desirable. For example, authorization language should be added to cover the general costs of administering the system, and a study of child abuse offenders required by the proposal should be carried out by the Bureau of Justice Statistics, rather than the Office of Juvenile Justice and Delinquency Prevention. We would be pleased to work with the Committee in finalizing this proposal.

Registration Systems for Convicted Sex Offenders. Title XIII of the House Bill and Title VIII.C of the Senate Bill contain the "Jacob Wetterling" proposal, which is designed to promote the establishment by states of registration systems for convicted child molesters. We support the enactment of this proposal. However, we recommend deletion of provisions designating registration information as "private data" -- House Bill § 1301(b)(5) and Senate Bill § 822(e) -- since this could interfere with state discretion to use the data for other legitimate purposes, such as notifying school authorities of victims of earlier offenses that a child molester has moved nearby.

Subtitle F of Title VIII of the Senate Bill contains a second registration system proposal, for "sexually violent predators." We favor in concept encouraging the establishment of registration systems for violent sex offenders who prey on adult victims. However, more definite criteria are desirable concerning the class of covered offenders and the duration of registration requirements, and it would make sense to combine this proposal with the Jacob Wetterling proposal for child molester registration. We would be glad to assist the Committee on questions of formulation if it includes some version of this proposal in the final Bill.

#### Title IX -- Crime Victims

For too long, our Federal laws did not give adequate protection to crime victims, and did not do enough to promote their interests in the criminal justice system. Congress has responded by adopting since the early 1980's several important acts to redress the traditional neglect of victims and protect their rights and interests. We urge the Committee to carry this critical process of reform further by including in the final Bill the victim-oriented measures in the pending legislation.

Victims' Right of Allocation and Crime Victims Fund. Title I.A-B of the House Bill and Title IX.A-B of the Senate Bill include provisions that will: (1) amend Fed.R.Crim.P. 32 to give victims of Federal violent and sexual abuse crimes a right to address the court concerning the sentence to be imposed (right of allocation), parallel to the existing right of the offender to make such a statement, and (2) improve the administration of the Crime Victims Fund and the programs it supports. We support the enactment of these provisions.

Technical changes are needed in the victim allocation provision (§§ 901 and 3264 of the Senate Bill and § 101 of the House Bill) because the Supreme Court has recently transmitted to Congress a revision of Fed.R.Crim.P. 32 (effective Dec. 1, 1994). The allocation provision, which is formulated as an amendment to the current version of that rule, will be repealed when the new version of Rule 32 takes effect, unless specific language is included to prevent that from happening. We would be pleased to provide the Committee with language which ensures that the proposed reform will remain in effect.

Victims' Right of Allocation in State Cases. We support § 903 of the Senate Bill, which encourages the states to give victims of violent and sexual abuse crimes a right to be heard in sentencing and parole hearings. For consistency with the proposed Federal rule in § 901 of the Senate Bill and § 101 of the House Bill, the provision in § 903 of the Senate Bill should refer to an opportunity for the victim to speak that is equivalent to that of the offender, rather than equivalent to that of the offender's counsel.

Mandatory Restitution. Section 902 of the Senate Bill amends the restitution statute (18 U.S.C. 3663) to require the issuance by the court of a full order of restitution in cases under the Criminal Code. The amendments would preserve the court's authority to consider the offender's economic circumstances in specifying the manner and timing of payment of restitution, e.g., in setting up a payment schedule that is consistent with the offender's actual ability to pay. We generally support this proposal, and recommend that it be included in a final Bill. We have a few recommendations concerning specifics in the formulation of the proposal, and would be pleased to assist the Committee in finalizing it.

TRIAD Programs (Crimes Against Elderly). Title X.H of the House Bill and Title IX.C of the Senate Bill authorize support for TRIAD programs -- involving cooperative efforts of police, sheriffs, and seniors' organizations to prevent crimes against the elderly -- and related research, training, technical assistance, and publicity efforts. We support this proposal, but believe that its value could be enhanced by giving the Attorney General the authority to support a broader range of programs relating to prevention of crimes against elderly persons. We also support the provision in the House version for consultation with the Assistant Secretary of Aging in the administration of the proposed program.

#### Title X -- State and Local Enforcement

DNA identification. Title X.A of the Senate Bill and Title XV of the House Bill contain a proposed DNA identification program. We support this proposal. The general design of the Senate version is preferable. We recommend the following amendments: (1) Language should be added to make it clear that the proposal may not be construed to limit the admissibility of DNA evidence. (2) As with other provisions in the pending Bills that will entail substantial expense, "subject to appropriations" language should be included in the part of the proposal that assigns additional responsibilities to the FBI.

Department of Justice Community Substance Abuse Prevention. Title X.B of the Senate Bill authorizes grants for community-based substance abuse prevention initiatives. We support the objectives of this proposal. However, this proposal substantially duplicates an existing program, the Community Partnership Program, which is administered by the Department of Health and Human Services. Additional funds made available for these activities should be appropriated to the existing program.

Racial and Ethnic Bias Study Grants. The Administration supports § 1021 of the Senate Bill, which authorizes \$2 million for each of the fiscal years 1995 through 1999 for grants to study racial and ethnic bias in state criminal justice systems and to develop recommendations correcting such bias.

Grants for Technological Improvements and Law Enforcement Training. Section 1031 of the Senate Bill authorizes grants by the Attorney General for computerized automation and technological improvements in law enforcement and for expansion of Federal training programs for state and local law enforcement officers. We support the authorization of funding for these purposes, and would be pleased to assist the Committee in developing the most effective formulation of this proposal.

## Title XI -- Provisions Relating to Police Officers

Law Enforcement Family Support Grant Program. Title X.A of the Senate Bill proposes a law enforcement family support program. We support this program, and believe that the administering authority for it should be the Attorney General. (As currently drafted, the proposal appears to give the Director of the Bureau of Justice Assistance some degree of supervisory authority over the Justice Department's law enforcement agencies.) As with other provisions of the pending Bills that will entail substantial expense, "subject to appropriations" language should be added to the part of the proposal that requires the study and development of family support policies and related issues.

Police Misconduct. Section 1111 of the Senate Bill provides that it is unlawful for a Government or Government official to engage in a pattern or practice of denying constitutionally protected rights through the activities of law enforcement or juvenile justice officials. The provision authorizes the Attorney General to bring civil actions to enforce the prohibition. The Administration supports inclusion of this provision in the final Bill.

Section 1112 of the Senate Bill requires the Attorney General to collect data on excessive police use of force through the National Crime Victimization Survey (NCVS). However, the NCVS is not a suitable instrument for obtaining data of this type. We recommend substituting a provision for surveys by the Bureau of Justice Statistics covering excessive force complaints submitted to police departments, the disposition of such complaints, and police use-of-force policies, with appropriate authorization language.

Police Corps and Law Enforcement Training and Education. Title XXVII of the House Bill and Title XI.C of the Senate Bill contain the Police Corps and Law Enforcement Training and Education proposal. We support the core of this proposal-- the provision of training and educational assistance for Police Corps cadets and in-service law enforcement -- but we believe that the proposal to provide direct payments to local police departments is unnecessary given the Community Policing program found in Title I of the Senate Bill and Title XIV of the House Bill.

## Title XII -- "Drug Court" Programs

The Drug Courts Proposal. Title X.E of the House Bill contains the Attorney General's proposal to authorize support for drug court programs. The proposal authorizes grants to support programs involving continuing judicial supervision over drug abusing offenders, with the integrated administration of drug testing, substance abuse treatment, potential prosecution or

incarceration for non-compliance with program requirements, and related programmatic and aftercare services.

The Department of Justice strongly supports the inclusion in the final Bill of the drug courts proposal of Title X.E of the House Bill. The proposal requires an amendment, however, to permit support as well for comparable drug rehabilitation offender management programs involving non-judicial supervision of offenders.

Intermediate Sanctions, Prison Drug Treatment, and Pre-Trial Drug Testing Programs. Title XXI of the House Bill and § 1203 of the Senate Bill authorize grants supporting intermediate sanctions for youthful offenders. Subject to the comments below, the Administration prefers the House formulation. Title XXIII of the House Bill and § 1204 of the Senate Bill authorize grants to support certain substance abuse programs in state correctional facilities. Section 1202 of the Senate Bill authorizes grants for drug testing before trial and during diversion programs.

We support the objectives of these programs, but believe that their utility could be enhanced by changing their approach to the distribution of funding, deleting the age limits on offenders who can participate in funded intermediate sanctions programs, and avoiding a narrowly prescriptive approach concerning the types of correctional substance abuse treatment programs that can receive assistance. We urge the conferees to adopt more flexible formulations of these programs, and would be glad to provide assistance in doing so.

### Title XIII -- Prisons

We support the efforts in both the House and Senate Bills to incarcerate more violent offenders and criminal aliens.

Prison Assignments. Section 1301 of the Senate Bill prohibits favoritism based on high social or economic status in Federal prison assignments. We do not object to this provision as formulated in § 1301 of the Senate Bill, but note that it is unnecessary, since there is no improper consideration of social or economic status in Federal prison assignments.

Impact Statements. Section 1302 of the Senate Bill requires prison and criminal justice impact statements for legislation. The complex assessments and consultations required by this section could not be carried out within the 14 day time-frame it specifies. Forty-five days would be a more reasonable period. As with other provisions that will entail substantial expense, authorization and "subject to appropriations" language should be included in this provision, if the Committee retains it in a final Bill.

Drug Testing of Federal Offenders on Post-Conviction Release. We support § 1303 of the Senate Bill, which provides for drug testing of Federal offenders on post-conviction release. We note with approval that the provision contains an authorization of necessary funding for the Judiciary support agencies to carry out this responsibility (in proposed 18 U.S.C. 3608). With respect to drug testing standards, we think that a formulation along the lines of § 1305(c)-(e) of H.R. 3131 would be preferable, to provide a clearer statement of the standards governing revocation of release based on positive drug tests.

Federal Prisoner Drug Treatment. Title XX of the House Bill and § 1304 of the Senate Bill establish schedules for getting all eligible Federal prisoners into residential substance abuse treatment programs by the end of FY97.

We support the objective of expanded drug treatment for Federal prisoners, but in order to assure the most effective use of limited resources somewhat greater flexibility in the proposal's specific requirements would be highly desirable. For example, the Senate Bill requires that the drug treatment programs be residential programs in facilities set apart from the general prison population that last between 6 and 12 months -- though not all prisoners who need drug treatment need this particular type of program, and mandating it might unnecessarily interfere with accomplishing other correctional, therapeutic, or individual goals. Moreover, absent flexibility, this mandate would effectively require that in some cases prisoners receive treatment many years before their release dates rather than when they might want it, need it, and be better able to benefit from it. Treatment provided without the benefit of immediate planned community transition is not an effective use of resources. The House version reflects some effort to moderate these problems, but does not succeed in avoiding them. We urge the Committee to adopt a more flexible and cost-effective final version of this proposal -- one that ensures that inmates will receive drug treatment at the times when it is most likely to meet their needs and the community's needs in the best manner possible. We would be glad to work with you to develop legislative language for that purpose.

Inclusion of Correctional Costs in Criminal Fines. We support § 1305 of the Senate Bill, which authorizes the inclusion of correctional costs in criminal fines. This is necessary to correct the effect of an appellate decision that invalidated a guideline including correctional costs in fines as beyond existing statutory authority.

Correctional Capacity Expansion. Section 1321 of the Senate Bill authorizes \$3 billion, to remain available until expended for grants to construct prisons and boot camps and otherwise expand correctional capacity at the state and local levels.

Title VI of the House Bill contains a correctional capacity grant program (with \$600 million authorized for each of FY95-99, for a total of \$3 billion) which is more narrowly focused on ensuring adequate prison space for violent repeat offenders. Section 1331 of the Senate Bill authorizes \$100 million in each of FY94-98 for grants for facilities for violent and chronic juvenile offenders.

The Department of Justice supports the goals of these provisions: to help states house the growing population of offenders, including criminal illegal aliens, and to ensure that the public's security is not threatened through the release of dangerous offenders because of inadequate prison space. We believe that a program to provide state funding for prisons is an important component of the anti-crime legislation under consideration by the Committee. There are over 15,000 prison beds that lie empty because states lack necessary operational funds. Federal funding will help states to fill these beds without delay.

With respect to the specific design of a grant program and the conditions for state participation, we support those programs that make funds available on a discretionary basis to those states that need the greatest assistance.

We look forward to working with the Committee to develop a state prison grant program that realizes the objectives of §§ 1321 and 1331 of the Senate Bill and Title VI of the House Bill.<sup>3</sup>

Notification of Release of Prisoners. Sections 1324-25 of the Senate Bill require the Bureau of Prisons (BOP) to notify state and local law enforcement about release to their areas of violent and drug offenders on supervised release, and changes of residence by such offenders. We support this provision, but believe it should be changed so that the probation service is responsible for giving notice about post-release changes of address, since probation officers -- not BOP -- supervise released offenders at that stage. The provision that the notice may be used solely for law enforcement purposes should be deleted, since it could impede legitimate uses of the information (such as warning potential victims, or employers who should not

---

<sup>3</sup> As a specific design point, we note that Senate Bill § 1331 is problematic in requiring that a grant program for juvenile facilities be administered through the Bureau of Prisons. The Bureau of Prisons does not currently handle grant programs, and lacks experience with juvenile facilities. The final formulation of these programs should give the Attorney General the flexibility to utilize the appropriate components in administering grant funding.

be hiring violent or drug offenders considering the nature of the employment).

Regional Federal Prisons for State Offenders and Truth in Sentencing. Section 1341 of the Senate Bill requires the Attorney General to establish and operate at least 10 regional prisons, each having space for at least 2,500 inmates. The prisons would be used primarily to house state offenders in certain categories, from states that have adopted "truth in sentencing" for felony crimes of violence and other specified reforms. The authorization is \$600 million in each of FY94-FY98.

The Administration strongly opposes the inclusion in the final Bill of § 1341 of the Senate Bill -- or any other proposal involving Federal regional prisons for state offenders -- for several reasons. First, the regional prisons plan would involve a massive and uncontrolled expenditure of funds. Current estimates suggest that the plan would cost at least \$6 billion over the first six years and at least an additional \$1 billion every year thereafter.

Second, it would take several years to build and open regional prisons. Hence, states could realize no benefit from this proposal for at least several years. By contrast, a state grant program would put more violent offenders behind bars immediately.

Finally, there are serious difficulties involved in the operation of a regional prison system. As the Director of the Federal Bureau of Prisons testified before the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, differences in state correctional policies, the difficulties and risks of transporting inmates to and from centralized Federal facilities, and various other problems would make the administration and safe operation of a system of Federal regional prisons for state offenders extraordinarily difficult and expensive.

Overall, this proposal has no advantages and many gross disadvantages in comparison with directly providing assistance to the states for expansion of their correctional capacities. In sum, we believe that our proposal will incarcerate more violent offenders, more quickly, and at less cost than the regional prison plan.

The House has included in Title VIII of its Bill a formula grant program for correctional capacity expansion, with some incentive for adoption of "truth in sentencing" reforms. The amendment authorizes \$2.5 billion in FY95 and \$2 billion for each of FY96-99. We also believe that, in part, grant funds should be apportioned to states that adopt "truth in sentencing" measures

and make other improvements in their criminal justice systems to assure that the most violent offenders are kept behind bars.

Studies. Section 1322 of the Senate Bill requires an NIJ feasibility study on establishing a prisoner transfer clearinghouse. Section 1323 of the Senate Bill requires a study of correctional alcohol abuse treatment and a nationwide assessment of the role of alcohol in crime by the National Institute of Justice. As each of these proposals will entail substantial expense, they should include authorization and "subject to appropriations" language.

Violent Crime Reduction Trust Fund. Title XIII.E of the Senate Bill proposes to fund the Bill through the creation of a Violent Crime Reduction Trust Fund, which would be funded through mandated ceilings on Federal employment. Federal workforce reductions have already been mandated in law, however.

As noted in our cover letter, we strongly urge the Committee to include a Violent Crime Reduction Trust Fund in the final Bill. In the absence of such a mechanism, it would be difficult to ensure funding of more than a small fraction of the expenditures contemplated by the pending Bills.

We have recommended setting aside almost \$28 billion in a Violent Crime Reduction Trust Fund over six years (1995-2000). We believe this is the best way to fund the highest priority programs.

#### Title XIV -- Rural Crime

Drug Trafficking in Rural Areas. Title XXV of the House Bill and Title XIV of the Senate Bill include provisions that would (1) authorize an aggregate amount of \$250 million for rural enforcement grants, (2) require the establishment of rural crime and drug enforcement task forces in all districts with significant rural lands, and (3) require the establishment of a specialized drug enforcement training program for rural officers at the Glynco (Treasury Department) training facility.

We support the increased authorization of grant funding to support rural enforcement efforts. We also support the objectives of the task force and training program proposals in this part, but believe that they could be achieved more effectively by other approaches. The problem of rural trafficking would be addressed more effectively by expanding DEA's existing task force program into rural areas than by establishing a new system of task forces with an exclusively rural focus; drug trafficking networks do not respect the boundaries between urban and rural areas. Any requirement that task forces be established or extended into rural areas should be

made "subject to appropriations," since substantial costs will result. In any expansion of federal presence, the Administration and Congress will have to be mindful of the newly enacted ceilings on Federal employment contained in the Federal Workforce Restructuring Act of 1994.

Rural State Domestic Violence and Child Abuse. Title XXV of the House Bill and Title XIV of the Senate Bill include a grant program for enforcement and prevention efforts relating to domestic violence and child abuse in rural states. We support the objectives of this proposal, and may have some suggestions regarding formulation.

#### Title XV -- Drug Control

Title XV of the Senate Bill contains various provisions to strengthen Federal drug laws. We recommend specifically that the final Bill include provisions increasing the maximum penalties for drug trafficking in Federal prisons (§ 1501), increasing penalties for drug trafficking in or near public housing (§ 1503), creating an offense covering coaches and trainers who encourage persons in their charge to use steroids (§ 1504), increasing penalties for drug trafficking in drug-free zones (§ 1505), prohibiting advertising for transactions in Schedule I controlled substances (§ 1534), providing civil remedies for drug paraphernalia violations (§ 1537), and effecting minor or technical changes in drug laws (§§ 1502, 1531-32).

Section 1506 of the Senate Bill declares a Federal policy that drug offenses in Federal prisons are to be prosecuted to the fullest extent of the law; directs guidelines enhancement for drug offenses in prisons; and prohibits probation for such offenses. We support the objectives of this provision, but have reservations concerning the requirement of maximum prosecution of prison drug offenses, since there are other means of punishing such offenses (including denying good time credits and transfer to less desirable facilities).

Title XV.B of the Senate Bill, relating to precursor chemicals, has already been enacted.

Section 1533 of the Senate Bill directs the Attorney General, in consultation with the Secretary of Transportation, to implement a national awareness program to notify governors and state representatives about a highway funding reduction provision for states that do not revoke driver's licenses for drug offenders. If a notice requirement of this type is to be enacted, we recommend that responsibility for carrying it out be assigned exclusively to the Department of Transportation. The citation to the pertinent provision should be updated (§ 327 of P.L. 102-388).

Section 1535 of the Senate Bill requires that the goals of the next drug strategy include expanded drug treatment, and expresses the sense of Congress that the long-term goals of the drug strategy should include drug treatment for everyone who needs it. We support this provision in concept, but note that the 1995 drug strategy already includes an objective of expanded drug treatment.

#### Title XVI -- Drunk Driving Provisions

We support the provision in this Title for increasing penalties for drunk driving that endangers minors in areas under Federal jurisdiction. We also support the provision expressing the sense of Congress that a history of drunk driving should be considered in child custody and visitation decisions.

#### Title XVII -- Commissions

There are a number of Commissions, committees, and studies proposed in both Bills, and while each of them is different, all share a common aim: trying to achieve a better understanding of the causes and remedies for crime and violence in America. While these multiple Commissions can be attacked as duplicative, or as serving particular interests, a single, comprehensive Commission could play a constructive role in shaping our national response to the epidemic of crime and violence that plagues our country. Such a Commission should include persons from a wide range of backgrounds, including all of the communities encompassed within the numerous commissions in the Bills. We therefore strongly suggest that most of the provisions relating to studies and commissions be consolidated in this way.

#### Title XVIII -- Bail Posting Reporting

Title XVIII of the Senate Bill requires state and Federal criminal court clerks to notify the IRS and state and Federal prosecutors about the posting of large cash bail by defendants in drug trafficking and organized crime cases. We generally support this proposal, but note that constitutional questions may be raised about the authority of the Federal Government to require state court clerks to report to state prosecutors concerning these matters. We would be happy to work with the Conference Committee to address this concern.

#### Title XIX -- Motor Vehicle Theft Prevention

Title XIX of the Senate Bill requires the Attorney General to develop a decal system for motor vehicle theft prevention. We support this intelligent crime-fighting idea, and recommend

including "subject to appropriations" language in this proposal, since the development of the program may require expense.

#### Title XX -- Protections for the Elderly

Section 2001 of the Senate Bill authorizes a grant by the Attorney General to help locate missing Alzheimer's disease patients. In light of the need that will exist for coordination with medical care providers and organizations, we believe that a grant of this type could be administered more effectively by the Department of Health and Human Services.

Section 2002 of the Senate Bill essentially directs a review by the Sentencing Commission of guidelines for certain violent crimes against elderly victims in areas under Federal territorial jurisdiction to ensure adequate penalties. We support this provision.

#### Title XXI -- Consumer Protection

Section 2101 of the Senate Bill and Title IV of the House Bill broadly create Federal jurisdiction over insurance business crimes. Section 2102 of the Senate Bill extends Federal jurisdiction over credit card fraud. We have general concerns about federalization of traditionally local matters, as we have expressed in relation to other parts of the Bill, and want to see any version of these provisions crafted to ensure a wise use of Federal law enforcement resources.

We support § 2103 of the Senate Bill, which includes mail carried by private and commercial interstate carriers under the mail fraud statute.

#### Title XXII -- Financial Institutions Fraud Prosecutions

We support the strengthened disqualification of certain offenders from participation in banking that is proposed in Title XXII of the Senate Bill. We have no objection to the provision in the title that encourages the Attorney General to submit a report on the collapse of private deposit insurance corporations based on the findings of the financial institutions fraud task forces.

#### Title XXIII -- S&L Prosecution Task Force

Title XXIII of the Senate Bill directs the Attorney General to establish a savings and loan prosecution task force. We believe that the task forces that the Department has already

established are adequate to address the goals of this provision.

#### Titles XXIV, XXV -- Sentencing and Magistrate Provisions

Sentencing and Magistrate Improvements. We support §§ 2401-03, 2501-02 of the Senate Bill, which contain modest, non-controversial improvements in Federal laws relating to sentencing, supervised release, and magistrates.

Drug Law Mandatories Carve-Out. Title II of the House Bill and § 2404 of the Senate Bill propose an exception to drug law mandatory penalties for certain low-level, nonviolent offenders without serious records. We generally prefer the standards of the House version, and urge the Conferees to adopt it as a sound step toward insuring that our limited Federal prison space is used to incarcerate violent and dangerous offenders for the long sentences they deserve. While we generally prefer the House provision, we urge adoption of the Senate's position that does not extend retroactive application of this "carve-out."

The House Bill provision applying the carve-out to persons sentenced ten days or more after enactment would produce arbitrary results. For example, a person who committed an offense a year ago and has already been tried and sentenced would not be covered, but a person who committed a like offense at the same time or earlier would be covered if he or she had not yet been sentenced by ten days after enactment. The fairest and most practical solution is to have the provision apply prospectively, that is, to offenses committed after the date of enactment.

Federalization of Violent Crimes Involving Firearms. Sections 2405-06 of the Senate Bill would extend Federal jurisdiction over almost all crimes involving the use or threat of force against a person or property in which the offender has a firearm. We oppose these provisions, which would largely obliterate the distinction between Federal and state criminal jurisdiction. They represent a false promise of action in fighting violent crime -- a promise that will not be realized, given limited Federal resources -- and divert attention from our critical Federal fight against violent and drug crime.

Extending Federal jurisdiction over hundreds of thousands of local offenses, which state and local law enforcement is generally best-situated to deal with, will not increase the public's security against these crimes. At best, these provisions would be ineffectual -- at worst, they would divert Federal resources from dealing with the distinctively Federal matters and interstate criminal activities that Federal law enforcement is uniquely competent to handle.

Increase of Drug Law Mandatories for Offenses Involving Minors. Section 2407 of the Senate Bill provides mandatory minimum prison terms of ten years for distributing drugs to a person under 18 or using such a person in drug trafficking, where the offender is at least 21 years old. This means, for example, that a 21-year-old who passed a marijuana cigarette to a 17-year-old companion would have to be imprisoned for at least ten years. The offender in such circumstances should be punished, but it is hardly obvious that such an offender needs to be incarcerated until he or she is over 30 in every case. We recommend against enactment of this provision as overly broad and indiscriminate.

Three Strikes and You're Out. President Clinton has proposed the enactment of "three strikes and you're out" mandatory life imprisonment provisions, which target the most dangerous and incorrigible violent offenders for permanent incapacitation. Title V of the House Bill is generally based on the President's proposal, but incorporates certain amendments that we do not favor. Sections 2408 and 5111 of the Senate Bill incorporate "three strikes" proposals that were developed independently.

We recommend that the Committee adopt a formulation that reflects the essence of the President's original proposal, i.e., that is targeted to ensure that truly violent repeat offenders are locked up for life. The President's approach is largely reflected in Title V of the House Bill, but we recommend deleting from the specification of predicate offenses certain non-violent crimes involving controlled substances. Current law already provides severe penalties for recidivist drug offenders.

Hate Crimes Sentencing Enhancement. Title XVII of the House Bill and § 2409 of the Senate Bill generally require a three level enhancement in sentencing for "hate crimes." We support this proposal, but have some concerns regarding its formulation. In particular, we are concerned about the requirement that the sentencing enhancement factor be found by a jury beyond a reasonable doubt. We would be pleased to assist the Committee in developing a better formulation of this proposal.

#### Title XXVI -- Computer Crimes

Title XXVI of the Senate Bill contains provisions that are intended to strengthen computer crimes provisions. They include some desirable features, but also features that would inadvertently have the effect of weakening existing law. We recommend against enacting these provisions as currently formulated, but would be glad to assist the Committee in developing a final formulation that preserves their positive features and increases the effectiveness of the law in this area.

### Title XXVII -- International Parental Kidnapping

The provisions in this title of the Senate Bill have already been enacted.

### Title XXVIII -- Safe Schools

The Administration supports this title, provided that it is modified to focus on school security needs assistance administered by the Education Department. This title would provide for hardware that would complement the school violence prevention programs funded under the recently-enacted Safe Schools Act.

### Title XXIX -- Miscellaneous

Increased Penalties. Title XXIX.A of the Senate Bill includes provisions to increase penalties for various Federal crimes, including assaults, manslaughter, civil rights offenses, trafficking in counterfeit goods and services, conspiracy to commit murder for hire, violent Travel Act violations, and arson. We support the increases in maximum penalties proposed in this subtitle, and recommend that they be included in the final Bill.

We note, however, that § 2904 of the Senate Bill increases maximum prison terms for trafficking in counterfeit goods and services, but has the unintended effect of reducing maximum fines for that offense. The Committee should adopt instead the version of this proposal in § 3051 of the House Bill, which increases both imprisonment and fine maxima.

Extension of Civil Rights Statutes. We support Title XXIX.B of the Senate Bill, which extends the protection of certain civil rights provisions to all persons in the United States (not just "inhabitants").

Audits and Reports. We oppose subtitle C of Title XXIX of the Senate Bill as currently formulated. The subtitle imposes audit and reporting requirements relating to asset forfeiture which are burdensome and unworkable. The problems include: (1) For agencies that receive small amounts of asset forfeiture funds, the costs of the required audits could exceed the costs of the funds they have received. (2) Detailing the uses to which the funds were dedicated would involve a departure from standard audit procedures (which permit auditors to review a random sample of expenditures), and could cost tens of thousands of dollars for larger agencies. (3) The requirement that all local audit reports be included in annual reports to Congress would have absurd effects, considering that assets are usually shared with

over 1,000 agencies each year. (4) The required annual reporting on payment of administrative and contracting expenses from the Department of Justice Asset Forfeiture Fund is unnecessary; information of this type is available on request to Members of Congress. We recommend substituting a provision directing the Attorney General to establish appropriate audit requirements for agencies receiving equitable sharing funds, and to make the resulting audit reports available on request for review by Congress.

Gambling-Related Provisions. We have significant concerns about § 2931 of the Senate Bill as currently formulated. This provision would give the New Jersey gaming agency a right of access to the Interstate Identification Index (III) for licensing purposes. The provision would avoid the normal limitation of III to criminal justice uses, exempt this user of the system from the fees charged for background checks conducted through the normal route (submission of fingerprints), and allow name checks without fingerprints.

We also have concerns about § 2932 of the Senate Bill, which generally makes the Gambling Ships Act inapplicable to ships operating outside of the territorial sea.

We would encourage the Committee to craft carefully any final version of § 2932 to minimize any possible concerns about infiltration by organized crime and other potential problems. We would be glad to provide the Committee with any desired assistance in developing such a formulation for §2932, and in addressing the formulation of § 2931 as well.

White Collar Crime and Miscellaneous Amendments (Senate Bill Title XXIX.E, .G). We generally support subtitles E and G of Title XXIX of the Senate Bill. These subtitles contain miscellaneous provisions that, for example, fill gaps in Federal "receiving" offenses and attempt liability, facilitate undercover investigations of trafficking in stolen or counterfeit goods, and provide findings supporting an interstate commerce rationale for the gun-free school zones law. We have suggestions for a few amendments that would enhance some of the provisions in these subtitles, and would be pleased to share them with the Committee. For example, in § 2963, the cut-off date of December 31, 1994, for the extension of "churning" authority in undercover investigations would make the authority terminate shortly after enactment; a later date or a permanent extension of churning authority should be substituted.

Prohibition of Byrne Grant Discretionary Grants to Other Federal Agencies. We oppose Subtitle F of Title XXIX of the Senate Bill, which prohibits the award of Byrne Discretionary Grants to other Federal agencies. When such grants are made, the recipient Federal agency typically serves as a conduit to pass

through the funding to state and local agencies. This enables the Bureau of Justice Assistance to draw on the resources and expertise of other Federal agencies in administering grants in their subject matter areas, as illustrated by the grant to the Bureau of Justice Statistics to support the improvement of state criminal records. Subtitle F of Title XXIX of the Senate Bill would impair the Federal justice assistance program by prohibiting such cooperative arrangements in the future.

#### Title XXX -- Technical Corrections

We support the technical corrections in this title of the Senate Bill, but recommend using the more complete set of technical corrections that was proposed by Chairman Brooks in H.R. 3131.

#### Title XXXI -- Driver's Privacy Protection Act

Title XXIX of the House Bill and Title XXXI of the Senate Bill generally require that motor vehicle driver's license and registration information be kept confidential (subject to exceptions for legitimate uses, such as law enforcement and other governmental uses).

The Department of Justice supports a general requirement of confidentiality for this type of motor vehicle record information. This reform is responsive to incidents in which criminals have obtained the addresses of victims from motor vehicle departments, and then used the information to commit crimes against the victims. This reform is also desirable for the general protection of privacy.

Including findings supporting an interstate commerce rationale for the proposal would be advisable in light of this possibility of constitutional challenges. The final formulation of the proposal should also protect the ability of nongovernmental research institutions to conduct traffic safety research by permitting them to contact drivers on the causes and outcomes of accidents. The Senate Bill is deficient in relation to this objective, but the House version is adequate.

#### Titles XXXII through XXXVII -- Violence Against Women Act

Titles XXXII through XXXVII of the Senate Bill contain the current Senate version of the Violence Against Women Act. Title XVI of the House Bill contains the House version. The Administration strongly supports the enactment of the Violence Against Women Act.

The proposed Act contains a wide range of critical provisions to strengthen the response under Federal law to crimes of sexual violence and domestic violence and greatly increases Federal assistance for state and local efforts to control and prevent crimes that particularly affect women, including sexual assaults, stalking, and domestic violence. For example, support would be authorized for dedicated police and prosecution units targeting sexual assaults or domestic violence, improved law enforcement training to deal with such crimes, data and records systems to enable law enforcement to keep track of and apprehend rapists and domestic violence offenders more effectively, and increased assistance and services for victims of sexual assaults and domestic violence offenses.

We believe that the proposed grant authority for criminal justice assistance to combat sexual assaults, domestic violence, and other violence against women could be structured most effectively as a comprehensive grant program under the administration of the Attorney General.<sup>4</sup> The Department of Health and Human Services has also provided recommendations for enhanced integration of some of the proposed prevention and social services programs in this area with existing programs. Our specific recommendations appear in the ensuing discussion of the individual Violence Against Women titles.

#### Title XXXII -- Safe Streets for Women

Federal Penalties for Sex Crimes. Section 3211 of the Senate Bill increases the maximum penalties for recidivist sex offenders; § 3212 directs a review of the sentencing guidelines and Federal sentencing practices for certain serious sex offenses by the Sentencing Commission. We support § 3211 and have no objection to § 3212, but they involve some problems in formulation. We would be pleased to work with the Committee in refining these proposals.

---

<sup>4</sup> We recommend particularly that the following proposed programs be integrated into a comprehensive sexual and domestic violence grant program administered by the Attorney General: Senate Bill § 3221 and House Bill § 1602 (general violence against women enforcement grant program); Senate Bill § 3331 and House Bill § 1623 (grants to encourage spouse abuse prosecution); the criminal justice aspects of Senate Bill § 3341 (domestic violence and family support grant program); Senate Bill § 3713 (supplementary grants for states adopting effective laws relating to sexual violence); and the criminal justice aspects of Senate Bill § 1421 and House Bill § 2521 (domestic violence and child abuse grant program for rural states ).

Mandatory Restitution for Sex Crimes. Section 3213 of the Senate Bill and § 1609 of the House Bill make the award of restitution mandatory in sex offense cases. We support the objective of these provisions, but recommend that they be deleted in favor of the general mandatory restitution provision in § 902 of the Senate Bill, which makes restitution mandatory for all offenses under the criminal code (including sex offenses).

Federal Victim's Counselors. Section 3214 of the Senate Bill authorizes \$1.5 million for U.S. Attorney offices for the purpose of appointing victim/witness counselors in sexual and domestic violence cases in appropriate areas (such as the District of Columbia). We support this provision, but suggest using a more flexible authorization of victim services funding for the Department of Justice for sexual and domestic violence cases.

Grants to Combat Violent Crimes Against Women. Title XXXII.B of the Senate Bill and § 1602 of the House Bill authorize a general grant program supporting enforcement efforts relating to violence against women, including sexual and domestic violence. The Senate Bill version of this program is complex, with separate allocations of funding for grants to the 40 areas with the highest rates of violence against women, general formula grants, and grants to Indian tribes. We have concerns about the feasibility of administering such a formula, and would like to work with the Committee on appropriate changes. As noted earlier, we recommend that this program be combined with a number of other sexual violence and domestic violence grant programs in the pending Bills to achieve a comprehensive and integrated approach to justice assistance funding in this area.

Safety for Women in Public Transit and Public Parks. Title XXXII.C of the Senate Bill allocates Transportation Department and Interior Department funding for security measures in public transportation systems, national parks, and urban parks and recreation areas. The requirement of reports to the Office for Victims of Crime (OVC) as a condition of eligibility for certain grants should be deleted, since OVC would have no role in administering these grants.

National Commission or Task Force on Violence Against Women. Title XXXII.D in the Senate Bill and §§ 1643-51 of the House Bill would each establish a national body (commission or task force) to study violence against women and recommend responses. As noted earlier, we believe that the optimum approach would be to combine the various commission proposals in the bills into a single comprehensive commission. However, if the violence-against-women area is addressed separately, we recommend using the House version of this proposal, which would create a task force appointed and chaired by the Attorney General.

Extension of Rape Shield Law. F.R.E. 412 narrowly limits the admission of evidence of past sexual behavior of the victim in sexual abuse cases brought under Chapter 109A of the Criminal Code. Section 3251 of the Senate Bill is designed to create a new victim shield rule for non-chapter 109A criminal cases. Section 3252 of the Senate Bill proposes a parallel shield rule for civil cases.

We support the extension of the victim shield rule beyond Chapter 109A cases. However, the legislative proposal in § 3251 of the Senate Bill is obsolete in light of a rules change issued by the Supreme Court on April 29, which extends the scope of F.R.E. 412 to all criminal cases involving alleged sexual misconduct (effective Dec. 1, 1994). The Court did not adopt a proposed extension of the shield rule to civil cases due to concerns by some members of the Court concerning its consistency with the scope of the Rules Enabling Act, and thus, a reform of the sort proposed in § 3252 of the Senate Bill remains necessary. We support the version of the rule for civil cases that was presented to the Court by the Judicial Conference, and recommend that it be included in the conference bill.

Section 3253 of the Senate Bill contains miscellaneous amendments to the current version of the shield rule (current F.R.E. 412). We support the central reform proposed in this section of allowing the Government to take an interlocutory appeal of a decision admitting evidence of the victim's past sexual behavior. However, we have concerns about provisions authorizing interlocutory appeals by victims and conditioning the Government's use of certain evidence on victim consent, since this might interfere with the effective prosecution of sexually violent offenders in some cases. Technical changes will be needed to ensure that the reforms adopted will not be effectively repealed when the new version of F.R.E. 412 goes into effect in December. We would be pleased to assist the Committee in finalizing this proposal.

Evidence of Clothing. Section 3254 of the Senate Bill provides that evidence of the victim's clothing is not admissible in a prosecution under Chapter 109A of the Criminal Code to show that she incited or invited the offense. Section 3706 of the Senate Bill provides more broadly that no evidence is admissible in such cases to show that the victim invited or provoked the commission of the offense (as opposed to showing consent). We support these proposals, and recommend that the Committee combine and harmonize the two provisions addressing this issue.

Assistance to Victims of Sexual Assault. Section 3261 of the Senate Bill authorizes funding, under the Public Health and Health Services Act, for rape prevention and education programs conducted by rape crisis centers or similar entities. Section 1606 of the House Bill proposes a more broadly defined program of

this type. Section 3263 of the Senate Bill authorizes grants under the Runaway and Homeless Youth Act to private nonprofit agencies to support services for female runaway, homeless, and street youth who have been subjected to, or are at risk of, sexual abuse. The Department of Health and Human Services, which would be responsible for administering these programs, supports their enactment. In relation to the program in § 3263, the restriction to female runaways, etc., could sensibly be deleted, since runaway boys are also subject to sexual abuse and exploitation.

Section 3262 of the Senate Bill conditions the entitlement of states and other grantees to funds under Title XXXII of the Senate Bill on payment for forensic medical exams for sexual assault victims. Sections 1603-05 of the House Bill similarly condition state entitlement to funding under programs in the House Bill Violence Against Women Act title on payment for forensic medical exams for sexual assault victims, and prescribe additional conditions relating to non-imposition of filing and process costs on victims, and treating sex offenses between acquaintances as severely as sex offenses between strangers.

We support provisions to encourage states to pay for forensic examinations for victims, but would like to work with the Committee to reformulate the provisions.

Sex Offender Supervision and Treatment. Section 1607 of the House Bill directs the National Institute of Justice to establish training programs relating to supervision and treatment of sex offenders, and authorizes funding for that purpose. Section 1608 of the House Bill directs the Attorney General to compile information on sex offender treatment programs and to give Federal sex offenders information about such programs in the communities to which they are released. Both sections should include authorization and "subject to appropriations" language if they are included in the final Bill.

#### Title XXXIII -- Safe Homes for Women

Domestic Violence Hotline. Title XXXIII.A of the Senate Bill and § 1653 of the House Bill authorize a grant for the operation of a national hotline to provide information and assistance to victims of domestic violence. We support the provision authorizing funding for such a hotline and recommend that its operation be assigned to the Department of Health and Human Services.

Interstate Enforcement. Proposed 18 U.S.C. 2261-66 in Title XXXIII.B of the Senate Bill would establish two new Federal offenses -- covering respectively injury to a spouse or intimate partner, and violation of an order protecting a spouse or

intimate partner -- for cases involving travel or movement of the offender or victim across a state line. These sections also contain provisions relating to restitution and protective orders. Similar provisions appear in § 1622 of the House Bill.

We support the objectives of these provisions, but recommend revising this proposal so as to focus it on cases where states are unable to deal adequately with the problem because of the interstate nature of the abuse. We also recommend deleting the mandatory restitution provisions for the proposed new offenses in this subtitle in favor of the general mandatory restitution provisions in § 902 of the Senate Bill.

Proposed 18 U.S.C. 2265 in Title XXXIII.B of the Senate Bill and § 1622 of the House Bill is a "full faith and credit" provision that is intended to ensure nationwide enforcement of protection orders, regardless of which state they are issued in. The associated definition of protection orders (proposed 18 U.S.C. 2266(2)) covers orders issued for the benefit of present and former spouses and similarly situated persons. We support the objective of this proposal, but recommend substituting a broader version like that proposed in § 202 of H.R. 688 and S. 6, which covers all types of protective orders (including orders protecting persons who are stalked by strangers, as well as orders arising from domestic violence situations).

Spouse Abuse Prosecution. Section 3331 of the Senate Bill and § 1623 of the House Bill authorize grants to encourage effective prosecution in cases involving abuse of spouses or other domestic violence. We believe that this program should be merged with several other programs into a comprehensive sexual and domestic violence grant program administered by the Attorney General.

Domestic Violence and Family Support Grant Program. Section 3341(a)-(i) of the Senate Bill proposes a general grant program supporting enforcement and prevention efforts relating to domestic violence and child support. As discussed earlier, the criminal justice aspects of this program should be merged with several other programs into a comprehensive sexual and domestic violence grant program administered by the Attorney General. The prevention and social services aspects of this program should be merged with existing HHS programs (particularly the Family Violence Prevention and Services Act and the Center for Disease Control's anti-violence initiative).

Family Violence Prevention and Services Act authorizations. Section 3341(j) of the Senate Bill contains authorizations of funding for the Family Violence Prevention and Services Act. The Administration strongly supports increased funding to combat and prevent domestic violence under existing and proposed programs in this area.

Family Violence Prevention and Services Act amendments. We support subtitles E and H of Title XXXIII of the Senate Bill, which contain a number of amendments to the Family Violence Prevention and Services Act.

Youth Education and Domestic Violence. Title XXXIII.F of the Senate Bill directs the Secretary of Health and Human Services to delegate her powers to the Secretary of Education for the purpose of selecting, implementing, and evaluating four model programs (addressed to different age groups) for educating young people about domestic violence and violence among intimate partners. The Administration supports the objective of educating youth for the prevention of such violent crimes, but believes that programs of this type should be developed at the state and local level, informed by local needs and circumstances, and integrated with comprehensive school reform plans that include school health education programs.

Confidentiality of Addresses. Section 3371 of the Senate Bill contains provisions which prescribe confidentiality requirements for the Postal Service relating to the addresses of abused persons and domestic violence shelters. The Postal Service has submitted comments indicating that these provisions are unclear in some respects and would be difficult to implement as currently formulated. We recommend that the Committee consult with the Postal Service and attempt to resolve any problems.

Community Programs on Domestic Violence. Sections 5122 and 5140 of the Senate Bill and § 1654 of the House Bill authorize grants by HHS supporting community initiatives against domestic violence. (These provisions appear in the last title of the Senate Bill, but logically belong with the Violence Against Women Act provisions.) We support the objectives of this proposal, but the Department of Health and Human Services advises that it is redundant in relation to the existing Family Violence Prevention and Services Act.

Data and Research. Section 3391 of the Senate Bill directs the development of a research agenda on violence against women through a National Institute of Justice contract with the National Academy of Sciences or some other entity. We support the objective of this provision, but recommend converting it into a more flexible authorization for the Attorney General to develop or arrange for the development of such a research agenda.

Section 3392 of the Senate Bill directs the National Institute of Justice in conjunction with the Bureau of Justice Statistics (BJS) to study how states may collect centralized databases on the incidence of domestic violence. BJS should be the lead agency in a study of this type, and "subject to appropriations language" should be added. It would also be desirable to coordinate or consolidate this provision with other

provisions in the Bills that address related issues (particularly the domestic violence and stalking records provisions in Title XXVIII of the House Bill). We would be pleased to assist the Committee in making such changes.

The Department of Health and Human Services (HHS) advises us that it supports § 3393 of the Senate Bill, which authorizes funding for HHS to study domestic violence injuries and related health care issues.

Battered Alien Spouses. Sections 1626-28 of the House Bill contain provisions that are primarily designed to protect abused alien spouses and to enable them to stay in the United States. We strongly support the objectives of this proposal, and would be pleased to assist the Committee in developing the optimum approach to promoting the effective protection of abused alien spouses and the fair administration of the immigration laws.

#### Title XXXIV -- Civil Rights

Sections 3402-03 of the Senate Bill would create a Federal cause of action for gender-motivated felony crimes of violence. The Department of Justice supports the enactment of this proposal.

We have some limited recommendations concerning the formulation of the proposal, which have previously been stated in testimony by our Civil Rights Division: Findings concerning the inadequacy of state civil remedies to afford equal protection should be added, and possible ambiguities concerning the burden of proof in establishing a predicate state or Federal crime should be resolved. We would be pleased to work with the Committee in finalizing this proposal.

#### Title XXXVI -- Equal Justice for Women in the Courts Act

Title XXXVI of the Senate Bill and §§ 1661-66 of the House Bill authorize funding to support training of state court personnel relating to gender-related violence, and funding for the Federal judiciary for studies of gender-bias in the Federal courts and related training and information programs. We have no objection to these provisions.

Section 1667 of the House Bill expresses the sense of Congress that the executive branch, working through the State Justice Institute, should examine programs which would allow the states to consider the admission of expert testimony concerning domestic violence ("battered women's syndrome" evidence) when offered by criminal defendants, and related issues. The State Justice Institute is an independent organization that is not

subject to control by the executive branch. The Administration has proposed that Federal funding for the Institute be terminated. We agree, however, with the objective of exploring the expanded use of "battered women's syndrome" evidence, and believe that study of this issue should include prosecutorial uses of such evidence as well as defensive uses. We note that the provisions for study of "battered women's syndrome" evidence that appear elsewhere in the Bills -- §§ 2964 and 3708 of the Senate Bill and § 121 of the House Bill -- are broad enough to cover both prosecutorial and defensive uses of this type of evidence. The provision in § 1667 of the House Bill should be consolidated with these other provisions addressing the same subject.

### Title XXXVII -- Violence Against Women Act Improvements

Miscellaneous Improvements. We support several provisions in this title of the Senate Bill that strengthen Federal laws relating to sex offenses or victims' rights: §§ 3701 (pre-trial detention in sex offense cases), 3702 (effective increase of maximum penalties for certain sex crimes against young victims), 3704-05 (amendments strengthening restitution and enforcement of restitution).

HIV Testing and Related Provisions. Section 3703 of the Senate Bill contains provisions relating to testing for human immunodeficiency virus (HIV) in sex offense cases.

Section 3703(a) of the Senate Bill directs the Attorney General to authorize the Office for Victims of Crime (OVC) to pay the cost of HIV testing and a related counseling session for victims of sexual assaults. The corresponding provision in § 1652 of the House Bill provides more broadly for payment of the cost of testing of victims for sexually transmitted diseases. We support these provisions, but there is no reason to require the Attorney General to channel the payments through OVC; other arrangements may be more convenient.

Section 3703(b) of the Senate Bill, relating to HIV testing and medical care for victims, is partially duplicative in relation to subsection (a), and otherwise ineffective, since it includes no assignment of responsibility for carrying out its provisions.

Section 3703(c)-(g) primarily relates to HIV testing of defendants. We oppose these provisions because they would not be of any value to victims, and contain features that are oppressive to victims. The Committee should adopt instead the HIV testing and penalty enhancement provisions that the House of Representatives passed in the 102d Congress, in § 531 of the first version of H.R. 3371.

The version passed by the House in H.R. 3371 provided for HIV testing of sexual abuse defendants (with disclosure of the test results to the victim) in the course of the criminal proceedings. In contrast, § 3703 of the Senate Bill requires the victim to initiate an adversarial proceeding to obtain an order for testing the defendant, limits this option to victims who have first undergone "appropriate counseling," and conditions the issuance of a testing order on an affirmative finding of necessity by the court under restrictive standards. This procedure would have no real value to victims, considering the requirement of initiating a separate proceeding, the cost of retaining counsel for that purpose, the need to submit beforehand to counseling, and the restrictive standards for issuing a testing order.

Other provisions in § 3703(c)-(g) state that a victim who obtains test results on the defendant may not disclose this information to anyone but a personal physician or a sexual partner, and authorize contempt sanctions for other disclosure. In other words, a rape victim informed that the man who raped her was HIV-positive could be punished for contempt, if she shared this information with her sister or her best friend, confided in her priest or minister, or talked to her (non-physician) counselor or psychotherapist about it.

There is also language in § 3703 which implies that this procedure for a Federal court HIV testing order will be available to victims of state -- not just Federal -- sexual abuse offenses (§ 3703(c)(2)(A) -- "the defendant has been charged with the offense in a State o[r] Federal court"). This is a departure from the earlier House-passed HIV-testing provisions, and raises questions of possible Federal pre-emption of state procedures in this area. We oppose any provision that might undermine state procedures that set more reasonable standards for HIV testing of defendants.

In sum, the Committee should substitute § 531 of the first version of H.R. 3371 passed by the House of Representatives in the 102d Congress for § 3703(c)-(g) of the Senate Bill.

Reports and Studies. The studies proposed in §§ 3707, 3708 and 2964, and 3709 of the Senate Bill, concerning campus sexual assaults, battered women's syndrome, and confidentiality of addresses for abused persons, should be amended to include both authorization and "subject to appropriations" language, since these studies will entail substantial expense. The same point applies to the corresponding provisions in § 1610 (campus sexual assaults), § 1641 (confidentiality of abused persons' addresses), and § 121 (battered women's syndrome) of the House Bill.

The authorization figure of \$200,000 in the campus sexual assaults study provision (Senate Bill § 3707 and House Bill §

1610) is inadequate, since a very large sample would need to be surveyed to provide a reliable basis for estimates concerning the incidence of campus sexual assaults. We recommend substituting an authorization of necessary sums.

Section 3710 of the Senate Bill and § 1642 of the House Bill direct a report to Congress on Federal recordkeeping relating to domestic violence. The issues covered by these provisions are already being addressed through the implementation of the National Incident Based Reporting System.

Supplementary Grants. Section 3713 of the Senate Bill authorizes necessary sums in each fiscal year for grants to states whose laws relating to sexual violence are reasonably comparable to Federal law in specified areas. This proposal is flawed in its current formulation; there is no specification of what the grant money would be used for, and the requirement of similarity to Federal law includes references to some areas that have no counterpart in Federal law. As discussed earlier, this proposal should be folded into a comprehensive sexual and domestic violence grant program administered by the Attorney General.

#### Title XXXVIII -- Health Care Fraud

While the Administration supports the objectives of this proposal, it would be preferable to deal with this issue in the context of health care legislation. Should the Committee decide to retain the proposal, it would need to be revised to deal with various problems, including basic flaws in the forfeiture provisions. We would be pleased to help the Committee revise the proposal if it so chooses.

#### Title XXXIX -- Senior Citizens Against Marketing Scams

This title of the Senate Bill is generally designed to strengthen Federal laws relating to telemarketing scams, particularly as they affect elderly victims. We agree with the objectives of this proposal, and support it with some changes in its design and formulation.

The supplementary penalties for fraud offenses involved in telemarketing scams should be a supplementary range, rather than an all-or-nothing authorization of an additional five or ten years (proposed 18 U.S.C. 2326 in § 3903). An alternative approach would be to direct a guidelines enhancement for fraud offenses involving telemarketing, instead of creating a new offense for this purpose. The offense-specific mandatory restitution provision in proposed 18 U.S.C. 2327 in § 3903 is comprised in the general mandatory restitution provision in § 902 of the Senate Bill. If the criminal forfeiture provision in

§ 3904 is retained, civil forfeiture should be authorized as well. Authorization and "subject to appropriations" language should be added to the provision requiring the establishment of a hotline (§ 3910), since the authorization language in § 3907 does not appear to cover it. Two sections in the title -- § 3908 (extension of mail fraud statute to include mail sent by private carriers) and § 3909 (broadened Federal jurisdiction relating to credit card fraud) -- duplicate provisions that appear elsewhere in the Senate Bill (§§ 2102-03).

#### Title XL -- Supervised Visitation Centers

This title of the Senate Bill would establish a program of support for supervised visitation centers, to be administered by the Department of Health and Human Services. The Administration supports the objectives of this proposal. The Administration believes that the concept of supervised visitation centers should be further demonstrated and supports a program focused on the design and testing of models for possible replication.

#### Title XLI -- Family Unity Demonstration Projects

Title XLI of the Senate Bill authorizes support for family unity demonstration projects in which certain offenders would be allowed to live with their children in community correctional facilities. We support the objectives of this proposal, but would recommend a simplified and more flexible formulation authorizing the Attorney General to provide support for programs of this type. For example, there does not appear to be any reason for limiting participation to children under the age of six, and authority to make direct grants to local correctional agencies (not just states) would be useful. We would be pleased to assist the Committee in finalizing this proposal.

#### Title XLIII -- Missing and Exploited Children Task Force

Title XLIII of the Senate Bill requires the establishment of a task force composed of representatives of several Federal law enforcement agencies to assist state and local authorities in investigating the most difficult cases of missing and exploited children. We support the objectives of this proposal.

#### Title XLIV -- Public Corruption

We support this title of the Senate Bill, and would prefer to see the Committee include it in the final Bill.

### Title XLV -- Assault Weapons

For years, law enforcement officers and victims of crime have been calling on us to take action to ban the further manufacture of "assault weapons": guns intended, not for sport or hunting, but for killing and maiming people.

We strongly believe that such deadly weapons can be limited without infringing on the rights of hunters and sportsmen. Specifically, the language found in Title XLV of the Senate Bill, and in H.R. 4296 as recently passed, bans the further manufacture of certain semi-automatic assault weapons -- and the large-capacity magazines that have played a role in so many tragedies around our nation -- while also specifically protecting over 650 hunting and sporting guns.

The President supports prompt enactment of this provision, approved by both the House and Senate, and backed by the nation's leading police organizations and victims groups. We would also support modifying the proposal, to delete its paperwork requirement, found in § 3 of the House Bill, and § 4506 of the Senate Bill.

### Title XLVII -- Correctional Job Training and Placement

This title of the Senate Bill requires the establishment of a new office of correctional job training and placement in the Department of Justice. We strongly support efforts to increase employability and employment for prisoners and ex-offenders, but have reservations concerning the idea of attempting to promote this objective through the creation of a separate office in the Justice Department. As currently formulated, this proposal is an unfunded mandate on the Department.

### Title XLVIII -- Police Partnerships for Children

This title of the Senate Bill authorizes support for partnerships between police agencies and child and family services organizations, which deal with children involved in violent incidents and carry out related prevention programs.

The Department of Justice supports this proposal, and specifically recommends that the Committee adopt the House version (House Bill Title X.C), which also authorizes support for police residence in high crime areas.

### Title XLIX -- National Community Economic Partnership

We support this title of the Senate Bill, which focuses on helping community development corporations that promote business and employment opportunities in economically distressed areas. The Administration would be pleased to work with conferees to address the relationship of the "nonrefundable lines of credit" authorized by this title to the budget concepts established by the Federal Credit Reform Act of 1990.

#### Title L -- Criminal Aliens

This title of the Senate Bill contains provisions which are generally designed to facilitate efforts to get criminal aliens out of the country, and to keep them out after they have been deported. We support the objective of more effective removal of criminal aliens. We have the following observations and recommendations concerning particular provisions in this title:

Section 5001 proposes a broadened definition of "aggravated felony." The inclusion of some of the less serious offenses in the proposed new definition presents problems of inconsistency with treaty obligations that bar the return of certain refugees unless they have been convicted of "particularly serious crimes." In order to address this concern, we recommend that the definition of "aggravated felony" be revised to delete certain less serious, non-violent offenses from the list of "aggravated felonies" that would justify denying withholding of deportation on account of persecution or fear of persecution if the person is returned to the home country, or imposing some limit on the scope of the definition in terms of the length of the sentence imposed for the offense. We would be pleased to assist the Committee in making such a revision.

We support § 5002 of the Senate Bill, which would permit the Attorney General to enter an order of deportation for non-permanent resident aliens convicted of aggravated felonies, with judicial review limited to the issues of identity, alienage, and conviction of an aggravated felony. However, we believe that safeguards are necessary to protect against the mistaken deportation of U.S. citizens and permanent residents.

We support with some modifications § 5003, which creates authority to seek judicial orders of deportation for certain criminal aliens in conjunction with sentencing proceedings. We think this provision should apply only to non-lawful permanent resident aliens, who are accorded no relief from deportation under existing immigration law. This would simplify the court's role by eliminating consideration of eligibility for relief under section 212(c) of the Immigration and Nationality Act. We also recommend certain other changes such as strengthening provisions to ensure that the outcome of judicial proceedings will not interfere with later administrative deportation proceedings. We

would be pleased to provide the committee with specific amendatory language to implement these changes.

Section 5004 of the Senate Bill eliminates 212(c) relief for those aliens sentenced to at least five years for an aggravated felony or felonies. Current law eliminates such relief for aliens who serve five years. We support this provision, but recommend that it be revised to exempt those aliens whose sentences have been suspended in their entirety.

We support § 5005 of the Senate Bill, which increases maximum penalties and broadens the scope of the offense covering aliens who refuse to depart or unlawfully re-enter following deportation.

Section 5006 effectively gives specific statutory authority to the Attorney General to conduct deportation hearings by electronic or telephonic means "with the consent of the alien." We recommend deleting "with the consent of the alien" from this provision, since this proviso could potentially halt numerous on-going electronic hearings where the alien objects, and could invite challenges to orders already entered.

We support § 5007 of the Senate Bill, which authorizes the Immigration and Naturalization Service, in cooperation with other agencies, to operate a criminal alien tracking center. The purpose of the center would be to assist law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of conviction of aggravated felonies. The function of the proposed tracking center might be defined more broadly to include assistance in identifying and locating all types of deportable criminal aliens.

In addition to the provisions in Title L relating to criminal aliens, § 215 of the Senate Bill increases the criminal penalties for smuggling aliens when death or injury results. The Department of Justice agrees that these criminal penalties should be increased. Indeed, we support a broader increase in penalties to encompass all smuggling activities, not only those activities that result in death or injury. There is specific evidence that leaders of smuggling rings take careful note of the relatively light penalties under current law before embarking on such ventures. Moreover, in some cases foreign jurisdictions have declined to let us prosecute their nationals for alien smuggling because our penalties lacked sufficient severity.

We would further urge the Committee to include additional provisions to confront the growing problem of alien smuggling. In particular, the Administration supports an expansion of seizure and forfeiture authority in order to seize the vehicles or vessels used to smuggle aliens; wiretap authority for alien smuggling investigations; and the inclusion of alien smuggling as

a predicate offense under RICO. Alien smuggling is a global, criminal problem involving highly organized syndicates that traffic in illegal immigrants for enormous profits. Smugglers operate without regard for the migrants' safety, often forcing them to endure inhumane treatment in transit or forced servitude to pay for their passage. Of particular concern is the smuggling of Chinese illegal migrants which has increased at an alarming rate over the past four years. We would be pleased to work with the Committee in finalizing the anti-smuggling provisions to be included in the final Bill.

#### Title LI -- General Provisions

The final title of the Senate Bill collects Senate floor amendments that were not put elsewhere in the Bill. We have already commented on a number of the provisions in this title in earlier sections of these comments. Our views on other provisions in the last part of the Senate Bill and parallel House Bill provisions are as follows:

"Good Time" Credits for Violent Offenders. We do not object in concept to § 5101 of the Senate Bill, which limits the availability of "good time" credits to Federal violent offenders who are serving prison terms that exceed one year. The purpose of the provision is to enable the Bureau of Prisons to require serious violent offenders to earn their good time credits, by holding them to more exacting standards than non-violent offenders. Thus, for example, BOP could punish a violation of prison rules by a violent offender by withholding a larger portion of his good time credits than would be the case with a like violation by a non-violent offender.

Alien Benefits Ineligibility. Section 5102 of the Senate Bill denies eligibility to "persons not lawfully present in the United States" for certain Federal benefits -- AFDC, SSI, food stamps, non-emergency Medicaid, etc. -- and limits eligibility for unemployment compensation to aliens who have employment authorization. The Administration opposes this section because it appear to have unintended pay-as-you-go costs for AFDC and food stamps which exceed estimated savings in SSI. The provision appears to extend eligibility for certain immigrants currently ineligible for AFDC and food stamps. Its fiscal impact on other programs, such as Medicaid, has not yet been estimated.

The Administration recognizes recent rapid growth in the number of noncitizen beneficiaries and supports clarification of the categories of aliens who are ineligible for Federal benefits. The Administration recommends that the objectives of section 5102 be addressed by amending specific benefit program statutes, as opposed to attempting a cross-cutting provision. These issues are being addressed in the context of health care and welfare

reform, and are more likely to receive comprehensive and consistent treatment in those measures than in the Crime Bill.

Non-Indigenous Species in Hawaii. Section 5105 of the Senate Bill authorizes the Attorney General to convene a task force on the introduction of non-indigenous species in Hawaii, and creates a criminal offense of mailing legally prohibited organisms (animals, plant pests, etc.). We have no objection to the proposed reforms, but authorization and "subject to appropriations" language should be added to the task force proposal.

Prison Construction Standards. Sections 5107, 5112, and 5165 of the Senate Bill require overlapping studies of prison construction and related standards. Section 3046 of the House Bill requires study of related issues. If a study of this sort is to be required, it would make sense to consolidate it into a single provision, and authorization and "subject to appropriations" language should be included.

Report on Hiring of Hong Kong Police Officers. We do not object to § 5108 of the Senate Bill, which directs the Attorney General to report on efforts to recruit former Hong Kong police officers for Federal law enforcement agencies. We note that hires of this type may create problems in conducting necessary background checks, and that Federal law enforcement hiring is now generally limited by budgetary constraints.

Lottery Tickets. We support § 5109 of the Senate Bill, which closes a loophole in the prohibition of interstate trafficking in lottery tickets.

Terrorist Alien Removal. Section 5110 of the Senate Bill authorizes special judicial procedures for the removal of alien terrorists from the United States. The proposed procedures are generally more favorable to the alien than normal immigration proceedings -- including a public hearing before a district judge and right to appointment of counsel -- with the major exception that the court could withhold evidence on which the action is based from the alien in certain circumstances.

This proposal is responsive to a real problem under current law. There are cases in which it is not possible to remove known alien terrorists from the United States because disclosure of the information establishing this fact would compromise sources. The procedures proposed in § 5110 are constitutionally permissible, including the authority for the court to withhold evidence from the alien. We would be pleased to work with the Committee in developing as fair and effective an approach to this problem as possible.

Social Security Benefits for Insanity Acquittees. Section 5113 of the Senate Bill prohibits social security (disability and old-age) benefits for confined insanity acquittees, unless the benefits are paid directly to the confining institution to compensate it for its expenses. We support the objectives of this proposal, but note that related provisions have passed the House and Senate in H.R. 4278. We recommend that this matter be addressed in H.R. 4278, which is currently in a House-Senate conferee, rather than in the Crime bill.

Parental Kidnapping. We support § 5114 of the Senate Bill, which makes the parental exemption under the kidnapping statute inapplicable to parents whose parental rights have been terminated by court order.

Drunk Driving Enforcement Funding. We support § 5115 of the Senate Bill and § 1801 of the House Bill, which add drunk driving enforcement as a Byrne Grant funding objective.

Parental Liability. Section 5116 of the Senate Bill creates parental liability for civil sanctions based on their children's commission of Federal offenses. We are concerned that this provision does not provide adequate safeguards against the imposition of liability on parents who have no fault for their children's misconduct. The section's "reasonable care and supervision" defense for parents should be defined more broadly, and made available in all cases.

Violent Crime and Drug Emergency Areas. We support § 5118 of the Senate Bill, which authorizes the President to channel Federal assistance and resources to areas he declares to be violent crime or drug emergency areas. However, we recommend deleting the provision that limits assistance to any particular area to a year or a year and a half, since this would interfere with the President's ability to deploy resources in the most effective manner to address violent crimes and drug crimes.

State and Local Cooperation with INS. Section 5119 of the Senate Bill directs state and local Governments and agencies to cooperate with the INS in the effort to deport illegal aliens as a condition for receipt of Federal funds disbursed pursuant to the Crime Bill. We oppose this provision because we believe that it is unnecessary and, as currently drafted, could have unintended consequences that would impede law enforcement activities.

Correctional Literacy Programs. Section 5120 authorizes the Secretary of Education to convene and consult with a panel of experts in correctional education regarding the implementation of literacy programs for incarcerated persons under the National Literacy Act of 1991. The Administration supports this provision.

Tuberculosis in Prisons. As with other provisions that will entail substantial expense, "subject to appropriations" language should be included in § 5121, which directs the Attorney General to develop guidelines and make grants for dealing with tubercular prisoners.

Hate Crimes Statistics Amendment. We have no objection to § 5123 of the Senate Bill, which amends the Hate Crimes Statistics Act to include disability.

Document Fraud Penalties. Section 5124 of the Senate Bill increases civil and criminal penalties for certain document fraud offenses. We support the increases in maximum penalties proposed in this section, but note that they partially overlap with § 712 of the Senate Bill. We also support § 2431 of the House Bill, which contains important increases in maximum penalties for visa and passport crimes. We recommend that the committee harmonize and combine these related provisions (House Bill § 2431 and Senate Bill §§ 712 and 5124), and would be pleased to provide assistance in doing so.

Model Anti-Loitering Statute. Section 5125 of the Senate Bill directs the Attorney General to develop and disseminate a model anti-loitering statute and related enforcement guidelines. We would not understand this provision as requiring the Attorney General to prepare or promote legislation which the Administration does not support. Like other provisions in the Bill that may require substantial expense, this section should include authorization and "subject to appropriations" language.

Victims of Child Abuse Act Amendments. Section 5126 of the Senate Bill makes various amendments to the Victims of Child Abuse Act provisions. We recommend adding an additional amendment (to 18 U.S.C. 3509(d)(4)) to ensure that confidentiality requirements for cases involving children will not prevent the release of the names of child victims to crime victim compensation programs, so that they can receive compensation.

Law Day. We have no objection to § 5127 of the Senate Bill, which declares May 1 of each year to be "Law Day U.S.A.".

Indian Tribes Matching Funds. We support § 5128 of the Senate Bill, which allows Indian tribes to use their Federally appropriated law enforcement money for matching funds under certain grant programs, parallel to an existing provision of this type for the District of Columbia.

Parent Locator Services Access. Section 5129 is intended to broaden access to the services of the Parent Locator Service to locate missing children who may have been abducted by non-custodial parents. The section provides access for the Office of

Juvenile Justice and Delinquency Prevention (OJJDP), but OJJDP has no responsibility for locating missing children. An appropriate formulation would provide access for the Attorney General in the investigation of cases of missing children or child abduction and for child support enforcement purposes.

Guidelines Enhancement for Offenses Involving Minors. We support § 5130 of the Senate Bill, which directs a sentencing guidelines enhancement for involving minors in the commission of Federal offenses.

Asylum Abuse. Section 5131 of the Senate Bill makes various findings with respect to asylum abuse and declares the sense of Congress that asylum laws should be streamlined. We note that the Administration has already proposed legislation to address the problems identified by this section, and that the section's assertions concerning asylum law are in some respects inaccurate.

Crime Bill Implementation Funding for Department of Justice and Judiciary. We strongly support the proposed authorization in § 5132 of the Senate Bill of an aggregate amount of \$1 billion for the Department of Justice and its agencies, to meet the increased demands resulting from enactment of the Crime Bill. This funding is a necessary complement to the increased responsibilities for administering new grant programs and carrying out numerous important law enforcement initiatives that the Bill contemplates. The provisions of the pending legislation will largely be illusory if adequate resources are not provided to carry them out.

The pending Bills create new Federal offenses and increase penalties for many Federal offenses, and clearly envision an expansion of Federal efforts to combat violent crime, gun crime, and drug trafficking. Enacting the authorizations that will give Federal law enforcement the resources it needs to successfully implement these initiatives is essential, if they are not to be merely empty promises. If Congress is going to set aside substantial resources over the next several years to fight crime -- as we believe it should and must -- it is critical that an adequate portion of these resources be made available for the Federal law enforcement functions that are contemplated as part of the program.

Indian Tribe Funding Provisions. Section 5133 of the Senate Bill does the following: (1) stipulates that "states" in the Bill includes Indian tribes and the larger territories; (2) allows the use of Federally appropriated Indian law enforcement money for matching funds in programs funded under "this title" [should be: "this Act"]; and (3) provides that funds made available to Indian tribes shall supplement their Interior Department funding.

We support the provisions in § 5133, except for the stipulation that Indian tribes and territories are "states" for purposes of the Bill. The latter provision has unintended consequences. Consider, for example, the effect of this provision under a formula grant program that allocates for each state at least .25% of total funding. Since there are about 550 officially recognized Indian tribal governments, there would be a total of about 600 entities that would each have to receive at least .25%, giving a total of 150%. However, it is not possible to give away more than 100% of anything. This provision should be deleted.

Prohibition of Pell Grants for Prisoners. Section 5135 of the Senate Bill and § 3089 of the House Bill prohibit the award of Pell Grants (for higher education) for prisoners. While we recognize that both Chambers have approved this provision, we still oppose it since it would undermine efforts to reduce recidivism through prisoner education. We hope the Committee will consider alternatives to ensure that, so long as no eligible law-abiding citizen is denied such grants, some such support is available to rehabilitate prisoners.

Cost of Incarcerating Criminal Aliens. Section 5136 of the Senate Bill provides that the Attorney General may, subject to appropriations, house state-convicted criminal aliens in Federal prisons, or pay for their incarceration by the states. Section 2403 of the House Bill requires the Attorney General to compensate states for incarcerating criminal aliens or take custody of such aliens (subject to appropriations until October 1, 1998).

We support Federal defrayal of the costs of incarcerating criminal aliens. However, we object to the 1998 cut-off of the "subject to appropriations" condition on the mandatory (House) version of this proposal. Inclusion of this provision may subject the Conference Report to a point of order in the Senate. We further believe that Congress should commit the funds needed to carry out such mandates out of the sums provided in the Trust Fund.

Report on Fingerprint Automation. Section 5138 of the Senate Bill requires a report to Congress by June 1994 about how the FBI can accelerate and improve Federal and state automatic fingerprint systems for investigative purposes. If such a report is to be required, the deadline should be set at some later date in light of the time that has passed since Senate passage of this provision.

Prison Crowding Remedies. Section 5139 of the Senate Bill and § 3080 of the House Bill provide that a Federal court may not hold prison or jail crowding unconstitutional under the eighth amendment unless an individual plaintiff proves that the crowding

causes him to suffer cruel and unusual punishment, and that a Federal court may not place a ceiling on inmate population unless crowding is inflicting cruel and unusual punishment on particular identified prisoners. It further provides that the relief in a prison crowding case may not extend any further than necessary to remove the conditions that are causing cruel and unusual punishment of the plaintiff, and that consent decrees in eighth amendment cases shall be reopened at the behest of the defendant at minimum two year intervals.

These provisions are most obviously directed against the imposition of population caps in prison conditions litigation, where other remedial measures may be sufficient. We agree with the objective of ensuring, as far as possible, that the remedies imposed in prison conditions cases will not result in the release of criminals. However, the standards of these provisions are unclear in some respects, and may extend beyond a rule of avoiding population caps where other measures will suffice. The uncertainties include the intended impact of the provisions on class actions and on the permissible scope of consent decrees. We would be pleased to work with the Committee in developing the most effective approach to addressing this issue.

Access to Legalization Files. Section 5144 of the Senate Bill authorizes access to information in immigration legalization files for certain criminal law enforcement purposes and certain other purposes. We agree that the issue raised by this proposal merits attention, and would be pleased to assist the Committee in developing the optimum approach to addressing law enforcement concerns and legitimate confidentiality concerns in this area.

Children and Youth Utilizing Federal Land. Section 5145 of the Senate Bill expresses the sense of the Senate that executive departments and agencies should make properties and resources available (if they have them) for children and youth programs, and that a nationwide network of children and youth programs should be established and supported. We note that practical mechanisms for establishing a network of children and youth programs appear in various other provisions of the pending Bills, including the "Ounce of Prevention" programs which are included in both the Senate and House Bills.

Bankruptcy Fraud. Section 5146 is based on the Administration's bankruptcy fraud proposal, but has been modified in a manner that is unhelpful. We oppose the enactment of § 5146 in its current form, and urge Congress to restore the original version of this proposal by deleting the language in proposed § 157(b) ("Requirement of Intent").

Handguns in Schools. Section 5147 of the Senate Bill is a fragmentary provision, intended for insertion in a funding program, which authorizes additional funds for states that revoke

or deny driver's licenses for people who have handguns in schools. The intermediate sanctions grant program in Title XXI of the House Bill includes a somewhat comparable provision that identifies school and driver's license suspension for juveniles who possess weapons in schools as an "important factor" in the award of grants. If a provision of this type is included in the final Bill, we recommend using a formulation along the lines of that appearing in the House Bill.

Study of Out-of-Wedlock Births. The Department of Health and Human Services (HHS) advises us that it supports the study of out-of-wedlock births and possible remedial measures, whose conduct by HHS is encouraged in § 5148 of the Senate Bill.

ONDCP Reauthorization. Section 5150 of the Senate Bill extends the authorization for the Office of National Drug Control Policy (until September 30, 1994). The House of Representatives has separately passed language reauthorizing that office. The extension to September 30 of this year in the Senate Bill provision is too short in light of the time that has elapsed since its passage by the Senate. The Administration has serious concerns about the national security and budget provisions of the House bill, which would interfere with the role and responsibilities of the President and Cabinet officers, and are unnecessary to the effectiveness of ONDCP. We strongly urge the Committee to include a reauthorization provision for a period of five years for ONDCP in the final Bill, in the form proposed by the Administration, to ensure that the objectives of the National Drug Control Strategy are met, and to reduce the drug-related crime and violence that are inundating our communities.

Supreme Court Police. We have no objection to § 5151 of the Senate Bill, which extends the authority of the Supreme Court police (until 1996) to carry out protective functions away from the Court's building, though already enacted.

Full-time Status of Sentencing Commissioners. We support § 5152 of the Senate Bill, which extends the full-time status of the members of the Sentencing Commission for a year.

Prisoner Work. Section 5153 of the Senate Bill expresses the sense of the Senate that all able-bodied Federal prisoners should work, and that the Attorney General shall submit a report to Congress by March 31, 1994 [sic] that describes a strategy for employing more Federal prisoners. The deadline for this report needs to be updated.

Domestic Violence Offender Rehabilitation. We have no objection to § 5154 of the Senate Bill, which generally requires participation in rehabilitation programs for first-time Federal domestic violence offenders.

Payment of Property Taxes. We support § 5155 of the Senate Bill, which authorizes payment from the Department of Justice Asset Forfeiture Fund of property taxes on forfeited real property which accrued between the offense and the time of forfeiture.

Definition of Courts. We support § 5156 of the Senate Bill, which includes certain territorial courts as "courts of the United States" for purposes of the Criminal Code.

Extradition. We support § 5157 of the Senate Bill, which authorizes the surrender of persons who have committed crimes against U.S. nationals in foreign countries in certain circumstances, even in the absence of an extradition treaty.

Deportation and Border Control. Sections 5158-61 of the Senate Bill and §§ 2411-14 of the House Bill contain provisions to strengthen deportation of criminal aliens and denied asylum applicants and border control activities. We strongly support the enactment of these provisions.

AUSA Residency. We support § 5162 of the Senate Bill, which allows Assistant United States Attorneys to live within 50 miles of their districts.

Treasury Authorizations. Section 5163 of the Senate Bill includes authorizations for additional Gang Resistance Education and Training (GREAT) projects, for the Bureau of Alcohol, Tobacco, and Firearms, and for the Secret Service. (The portions of the section relating to GREAT programs do not include any overall authorization figures, and need to be corrected.) We support the objectives of § 5163. GREAT programs teach children alternatives to violence in solving conflicts, enhance children's self-esteem, are an integral part of the community policing concept and teach children to set both short and long term goals. The funding authorized in this section for ATF would enable ATF to enhance the level of firearms law enforcement and compliance.

Coordination of Drug Treatment and Prevention Programs. We support § 5166 of the Senate Bill, which directs the Attorney General to consult with the Secretary of Health and Human Services in carrying out drug treatment and prevention aspects of the Crime Bill to assure coordination and effectiveness. We would also anticipate the involvement of the Director of the Office of National Drug Control Policy.

Armor Piercing Ammunition. We support § 5168 of the Senate Bill, which broadens the definition of prohibited armor-piercing ammunition.

Additional House Bill Provisions -- Prevention Programs

Policing, punishment, and prevention are the keys to a balanced Crime Bill reflecting the President's agenda. Some prevention programs have been discussed previously, but many additional critical programs which we strongly support are found in Title X of the House Bill.

These include model intensive grants (Subtitle A), family and community endeavor schools (Subtitle B), midnight sports (Subtitle D), residential services for delinquent and at-risk youth (Subtitle F), recruiting and training persons from underrepresented areas for police employment (Subtitle G), local partnership act (Subtitle I), youth employment and skills -- "YES" (Subtitle J), hope in youth (Subtitle L), anti-crime youth councils (Subtitle N), urban recreation and at-risk youth (Subtitle O), Boys' and Girls' Clubs in public housing (Subtitle P), and community-based justice grants for prosecutors relating to young violent offenders (Subtitle Q). We discuss our views on each of these programs below:

Model Intensive Grant Programs. Subtitle A authorizes the Attorney General, in consultation with the Secretaries of HHS and HUD, to award up to 15 highly targeted grants to support comprehensive crime prevention programs in "chronic high intensity crime areas." The Administration supports authorization of this initiative as an innovative effort to focus prevention activities where they are needed most.

At the same time, we would like to see this program revised to better assure effective coordination and an appropriately balanced distribution of resources among this and other Administration initiatives. Toward that end, we would suggest adoption of an amendment providing for consultation with the Ounce of Prevention Council.

In addition, we would urge the inclusion of specific references to Public Housing Authorities (PHAs), and the tenants and owners of publicly assisted housing, and other factors, in §§ 1001-1003 in reference to the consultation and planning requirements. For example, we recommend § 1003(a) refer to "job training and employment programs" instead of to "employment services offices." Other recommendations address the need to have flexibility to support proven strategies as well as innovative approaches and related concerns.

Finally, we would propose to reduce the funding for this program to provide for an increase in the "Y.E.S." program discussed below. We look forward to working with you to address these suggestions.

Family and Community Endeavor Schools Grant Program. Subtitle B authorizes grants for after-school, weekend, and summer sports, extracurricular, and academic programs. A related

provision is contained in section 5142 of the Senate bill. The Administration supports the House version of this program, with the funding level authorized by the House. Eligible applicants should include all nonprofit community-based organizations, not just consortia of service providers organized into a single nonprofit organization. Collaborative community planning should be required.

Midnight Sports. Subtitle D authorizes the Secretary of Housing and Urban Development, in consultation with the Attorney General and Secretaries of Labor and Education, to make grants for midnight sports league anti-crime programs. The Administration supports authorizing this important crime prevention activity and has several suggestions to improve the coordination and administration of this program and clarify its relationship to other related initiatives.

Assistance for Delinquent and At-Risk Youth. Subtitle F authorizes the Attorney General to make grants to public or private entities to support the development and operation of programs providing residential services to delinquent and at-risk youth. The Administration supports the goals of this program but believes that they would best be achieved by combining this program with the gang and violence programs in Title VI of the Senate Bill and Title XXII of the House Bill discussed above. We would be pleased to suggest language to the Committee to achieve that result.

Police Recruitment. Subtitle G authorizes the Attorney General to provide grants to community organizations to assist in the recruitment of police officers from underrepresented neighborhoods and localities. The Administration supports this program's goal of broadening and diversifying the pool of persons who can successfully enter into police departments. However, we want to ensure that the programs envisioned here would work with and not duplicate other efforts to increase the number and diversity of police officers such as those found in Title I of the Senate Bill and Title XIV of the House Bill. We would be pleased to work with the Committee to ensure that this program is designed to function well in coordination with those other efforts.

Local Partnership Act. Subtitle I, authorizes the Secretary of the Treasury to make direct payment to qualifying units of general local government which would use the money to fund crime prevention activities including the coordination of other prevention programs in the Bill with existing Federal programs. The Administration supports efforts to assist local governments, which are on the front line of the fight against crime, with prevention efforts as well as police and prisons. We have a number of concerns, however, including (inter alia) whether the distribution formula contained in the subtitle could be

efficiently administered, the availability of accurate related data, and about the efficacy of the program as currently configured. We look forward to working with you to address these concerns.

Youth Employment Skills (Y.E.S.) The Administration strongly supports the Y.E.S. program contained in Subtitle J and urges the Committee to include it in the final legislation. Y.E.S. is a Presidential initiative that targets job training and creation efforts on youth and young adults in high crime, hard-hit neighborhoods, including public and federally assisted housing. The program is premised on the simple notion that one effective way of keeping young people away from criminal activity is to give them meaningful work opportunities that serve as an alternative, that help instill the discipline and habits necessary for productive lives, and that are linked to future jobs and adult employment.

The Administration believes that the Y.E.S. program is sufficiently promising that it should receive a larger share of the overall dollars directed to prevention programs; specifically, we seek a \$1 billion authorization for this program. We also would be pleased to work with the Committee to sharpen the targeting provisions of the program and to ensure that it is well coordinated with the other prevention programs in the final legislation.

Hope In Youth. The Administration supports the Hope In Youth program contained in Subtitle L. This program authorizes the Secretary of Health and Human Services to make grants to community organizations in units of local government which contain an empowerment zone. The grants would be used to establish advisory organizations to engage in strategic planning and evaluation of programs serving low income communities. As with other prevention programs, we believe that the Hope In Youth program would be strengthened by providing that the Secretary of HHS also should coordinate with the Ounce of Prevention Council.

Anti-Crime Youth Councils. Subtitle N authorizes the Administrator of the Office of Juvenile Justice and Delinquency Prevention to make grants to public and private agencies to fund anti-crime youth councils. These councils would provide a mechanism by which the views of youth who are the focus of prevention programs can be taken into consideration in the grant review process. The Administration supports authorization of this provision and has suggested language changes to improve the coordination of the provision with existing programs.

Urban Recreation and At-Risk Youth. Subtitle O amends the Urban Park and Recreation Recovery Act of 1978 to provide for grants to improve and expand recreation facilities and programs in high crime areas. Central to the Administration's approach to

preventing crime is the proposition that we must give young people positive alternative activities. Recreation programs and facilities are one such alternative, and we support efforts, targeted at high-crime areas, to improve and expand such programs. However, we also believe that all Administration efforts must be carefully coordinated to eliminate duplication of effort and assure the most cost-effective use of available resources. Hence, we urge that this program also provide for coordination through the Ounce of Prevention Council.

Boys' and Girls' Clubs in Public Housing. Subtitle P, authorizes the Secretary of Housing and Urban Development to enter into contracts to establish Boys' and Girls' Clubs in public housing. The Administration supports this program authorization which would provide youth in public housing, which is all too often located in high crime areas, with a meaningful alternative to gangs, crime, and violence. We believe that the utility of this program would be strengthened if it were amended to authorize Boys' and Girls' Clubs in Public, Indian and Assisted Housing. We would be pleased to work with the Committee to effectuate this change.

Community-Based Justice Grants for Local Prosecutors. Subtitle Q authorizes the Attorney General to make grants to local prosecutors who may use the funds for programs that: (1) coordinate local resources to identify and prosecute young violent offender; (2) focus prosecutorial effort on making the punishment of juveniles fit their offense; and (3) coordinate criminal justice resources with other community resources to develop alternatives to crime. Local prosecutors play a critical role in fighting crime and the Administration supports efforts to assist them in dealing with the serious and growing problem of juvenile violence. Given its focus on the efforts of prosecutors, we believe that this program should be coordinated with the gangs and juveniles programs in Title VI of the Senate Bill and Title XXII of the House Bill. We would be pleased to work with the Committee to achieve this result.

#### Other House Bill Provisions

Byrne Grant Authorization. We strongly support § 1098A of the House Bill, which authorizes necessary sums for the Byrne Grant program through 1999. The inclusion of this provision in a final Bill will make it possible to draw on the Trust Fund established to fund the Bill to support the Byrne Grant program.

Assaults Against Children. Title III of the House Bill increases maximum penalties for assaults against children in areas under Federal jurisdiction. We support the enactment of this proposal.

Assistance in Deportation. We have no objection to § 2401 of the House Bill, which authorizes the Attorney General to accept property and services to assist the Immigration and Naturalization Service in deporting aliens subject to criminal charges.

Increase of Border Patrol Agents. We have no objection to § 2421 of the House Bill which authorizes necessary sums in the next five years to increase the number of Border Patrol agents by 6,000. However, we note that the Administration's Border Control Strategy provides substantial funding assistance to the Border Patrol. Also, an increase of the magnitude authorized may not be possible because of the constraints of the Federal Workforce Restructuring Act of 1994.

Stalking and Domestic Violence Records. Title XXVIII of the House Bill contains various measures to improve the quality and availability of records relating to stalking and domestic violence. We support the objectives of this proposal, but note the need for corrections and revisions in its formulation. For example, the proposal refers to a bar on juvenile records in the national criminal records system that no longer exists. The Bureau of Justice Statistics, rather than the Bureau of Justice Assistance, would be the appropriate administering agency for a proposed grant program in this area, and the formulaic requirements for distributing funds should be modified. The section lacks needed authorization and "subject to appropriations" language for many of the functions it requires. We would be pleased to assist the Committee in developing a final version of this proposal.

Flag at Half-Staff on Peace Officers Memorial Day. We support § 3001 of the House Bill, which provides that the flag is to be flown at half-staff on Peace Officers Memorial Day.

Treasury Authority to Investigate Financial Institutions Fraud. We support § 3011 of the House Bill, which will enable the Secret Service to continue its successful program of financial institutions fraud investigation.

Treasury Department Funding. Section 3016 of the House Bill authorizes additional funding for law enforcement components and functions of the Treasury Department, to help meet increased law enforcement responsibilities -- such as anti-gang enforcement activities, assistance to state and local law enforcement relating to illegal gun trafficking and related violence, providing training for federal, state and local law enforcement agents with respect to crimes under Treasury's jurisdiction, money laundering and other financial crime enforcement, anti-smuggling activities, investigating car theft for illegal export operations, and modernizing data, communications, and crime laboratory systems.

We strongly support this provision, and urge the Committee to include it in the final Bill.

Conversion of Military Installations into Prisons for Violent Offenders. We oppose § 3021 of the House Bill, which requires the conversion of three closed military installations into prisons for violent felons. Existing military structures are typically designed for non-secure uses and it is extremely expensive to convert them to house high-security offenders of this type.

Thus, while it may be counter-intuitive or ironic, we find it less expensive and more secure to construct a new facility to house high-security inmates, rather than convert military bases for this purpose. We do not support spending more taxpayer dollars than are needed for this purpose. Experience has shown that most military facilities are appropriate for conversion only to facilities for minimum and low security offenders who present minimal risk to institutional and community safety.

Explosives Offenses. Title XXX.G of the House Bill incorporates an amendment offered by Representative Slaughter that contains several provisions to strengthen Federal explosives laws. The same provisions are also included in various sections of Title IV of the Senate Bill. We support the enactment of these provisions.

Crimes Against Travelers. We have no objection to § 3041 of the House Bill, which authorizes Federal assistance in the investigation and prosecution of crimes against travelers.

Congressional Medal of Honor. We have no objection to § 3056 of the House Bill, which provides a higher maximum penalty for unauthorized wearing, manufacturing, or selling of military decorations and medals, if the medal is the Congressional Medal of Honor. We recommend, however, that any definition of the term "sells" in this statute (18 U.S.C. 704) apply uniformly to all medals and decorations covered by the statute.

Age Discrimination Exemption for Law Enforcement Agencies. Title XXX.M of the House Bill renews (without any time limit) an exemption from age discrimination prohibitions for law enforcement officers and firefighters. We would prefer a temporary four-year extension of the exemption, similar to that contained in § 3 of the Age Discrimination in Employment Amendments of 1986. This would allow for necessary further study of age restriction policies for public safety workers. It would also be more consistent with the intent of the original Act, which sought to promote the employment of capable older persons and prohibit arbitrary age discrimination in employment.

Prohibition of Strength-Training and Martial Arts for Federal Prisoners. We oppose Title XXX.N of the House Bill insofar as it prohibits weight lifting activities for Federal prisoners. Weight lifting reduces inmate idleness and helps to relieve tension and stress. It is a valuable management tool whose benefits far outweigh any potential dangers. Prohibiting it would seriously impede -- not enhance -- prison security.

We know of no evidence that banning weight training in prisons will make prisoners less dangerous upon release -- and the dedicated men and women of our prison system, who stand guard over criminals, believe this provision will make inmates more dangerous during the period of their incarceration.

"Made in America" Labels. Section 3086 of the House Bill requires registration with the Commerce Department of all products bearing "made in America" labels, and a determination by the Commerce Department that 60% of the product was manufactured in the United States and that final assembly took place in the United States. We oppose § 3086 of the House bill. The requirements of this section are inconsistent with existing rules requiring accurate country-of-origin labeling, and would impose unnecessary burdens on American businesses.

Country-of-origin regulations for products are currently enforced by the Customs Service of the Treasury Department and by the Federal Trade Commission (FTC). Under current law, a "Made in USA" label must be truthful, and imported products must contain a label indicating country of origin. Imported products must undergo substantial transformation in the United States before they can bear a "Made in USA" label.

The new standards proposed in § 3086 of the House bill would give consumers less information than existing rules: Currently, if a manufacturer chooses to label a product "Made in USA," the label must disclose the source of any foreign components -- in contrast to § 3086 of the House bill, which does not require disclosure of the origin of components. Also, even if substantial transformation has taken place, products that have less than 50% U.S. value-added must bear a label disclosing foreign-source content, whereas country-of-origin labeling is apparently completely optional under § 3086 of the House bill.

The requirements of § 3086 would also be burdensome for American businesses, since they would be required to register in advance and obtain validation from the Commerce Department for every product they manufacture to which they want to affix a "Made in USA" label. The burden would be increased by the need to re-register and seek new validations as manufacturing processes and product lines change in the course of time.

Other problems could arise from the application of these requirements to products intended for export. For example, domestic manufacturers of goods that qualify as U.S. goods under the rules of origin in foreign markets -- but do not meet the "made in America" standards of § 3086 of the House bill -- could lose the potential business benefit of such a label advertising the American quality of the product.

Finally, the pending anti-crime legislation is an unsuitable vehicle for addressing this issue, even if changes are thought to be needed. The proposal does not contain any criminal provisions, and Congress has not explored the many problems and issues it raises. We recommend that any consideration of reforms in this area be reserved for the proper forums, and be preceded by appropriate opportunities for hearing and public comment.

Study of Cocaine Penalties. We support § 3092 of the House Bill, which provides for a study of cocaine offense penalties by the Sentencing Commission.

Restriction of Good Time Credits. We oppose Title XXX.U of the House Bill, which conditions the already restricted Federal awards of "good time" credits on a prisoner's earning a high school diploma or its equivalent. The Bureau of Prison's regimented literacy program already encourages inmates to receive a minimum level of education.

Denying already limited good time credits to prisoners who have not achieved high school equivalency would deprive the Bureau of Prisons of a critical management tool in relation to such prisoners, resulting in increased problems of misconduct and disorder.

#### Other Matters

There are a number of additional, non-controversial measures which we believe should be incorporated in the proposed anti-crime legislation prior to enactment. These measures do not have a high level of visibility, but would be of practical value to Federal law enforcement. We have prepared a package of recommended provisions and amendments to implement these proposals, which we would be pleased to provide to the Committee.

The subjects addressed in the package include: coverage of crimes in territories and possessions by a number of statutes that are currently ambiguous, the scope of Federal jurisdiction over kidnapping, protection of state and local officers assisting Federal officers, elimination of anomalous gaps in coverage under the "violent crimes in aid of racketeering" statute (18 U.S.C. 1959), elimination of anomalous gaps in coverage under a statute addressing violence against Federal officials and their families

(18 U.S.C. 115), consistency in dollar amounts used to distinguish grades of offenses, grand jury access to educational records, personnel authorized to approve wiretap and immunity order applications, authority for the FBI to assist in the investigation of serial killings, availability of supervised release and fines for juvenile offenders, service by senior and retired Federal judges on the D.C. Superior Court, motions to reduce sentence based on assistance to the Government, increase of certain RICO penalties, filling gaps in liability for attempted theft and counterfeiting, the scienter requirement for receiving property stolen from an Indian tribal organization, larceny of post office boxes and postal stamp vending machines, interstate transportation of stolen vessels, elimination of the certification requirement in a Government appeals statute (18 U.S.C. 3731), grand jury access to cable television records, conforming amendments relating to supervised release, and a conforming amendment to an obstruction of justice statute (18 U.S.C. 1510).

\* \* \* \* \*

The foregoing comments present the recommendations of the Department of Justice and the Administration concerning many of the issues raised by the pending Bills. Certain issues raised by these proposals remain under study, and we may have further comments as the Committee's work proceeds. We appreciate the Committee's attention to our views.



BRUCE REED from Rahm

Draft #2 -- Sat., 3:15pm

July 13, 1994

Crime - Conference  
Report

The Honorable Jack Brooks  
The Honorable Joseph R. Biden, Jr.  
U.S. Capitol  
Washington, D.C. 20515

Dear Chairmen Brooks and Biden:

One month ago, Attorney General Reno wrote to you, describing in extensive detail -- more than 70 pages -- my administration's positions on the issues confronting you in the Conference on the Crime Bill. Since that time, you have made substantial progress towards completing work on this vital legislation -- progress that I enthusiastically applaud.

Now, as the Congress returns to Washington, I am writing to urge you to reconvene the Conference to complete work on this legislation as quickly as possible -- so that it can be presented to me for my signature at the soonest possible date.

Working with my administration, the joint "Chairmen's Mark" you have produced offers the prospect for landmark anti-crime legislation, consistent with the goals and priorities we announced together last year when this bill was first introduced. Among my most critical priorities you have included are:

- Putting 100,000 more police on our streets, engaged in community policing;
- Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"
- An attack on youth crime, including boot camps, drug courts, and anti-gang measures;
- New crime prevention programs, including the "YES" program that my administration has proposed; *after school*
- Initiatives to combat violence against women, illegal immigration and asylum abuse, rural crime, and protect victims' rights; and *protection*
- Funding for states to increase certainty of punishment, and build prisons to lengthen sentences for violent criminals.

The Chairmen's Mark funds all of these priorities without deficit spending or new taxes -- but rather, with a Crime Trust Fund funded with the savings from my proposal to cut federal employment by 252,000 persons in the next five years.

This plan should be adopted by the Conferees; it is a sound and balanced plan to combat crime in our country -- and it is far superior to the alternative put forward by the Republican Conferees.

Compared to our plan, the Republican plan proposes to do less in the way of supporting our police and community policing; the result will be many fewer police on the street if their plan is adopted rather than ours. In addition, the Republican plan does less to prevent crime, by dropping numerous crime-fighting programs; less to fund a combined Byrne Grant/Alien Incarceration program; less to combat violence against women; and less to keep our borders secure and prevent illegal immigration.

Moreover, the Republican plan drops altogether several vital proposals in the Chairmen's Mark. This includes the bipartisan supported Police Corps, which provides college scholarships for young people who agree to spend six years as police officers; the plan for Drug Courts, where non-violent offenders are turned around before they commit more serious crimes; and the Local Partnership Act, a crime-prevention program overwhelmingly endorsed by the House of Representatives just a few weeks ago.

In sum, I strongly urge the Conferees to adopt your Mark, which we have developed together, in lieu of the Republican proposal. Our plan will do more to catch criminals, and more to prevent crime, than their alternative. *punishment & prevention*

In addition to the matters discussed above, there are several provisions which are not yet addressed by the Mark. While the Attorney General's earlier letter outlines our position on many of these questions in detail, there are three that I want to comment on as well.

First, the Mark contains no provisions regarding firearms control. Obviously, several proposals with broad bipartisan support -- the ban on juvenile gun ownership, the limitation on gun ownership by stalkers and convicted spouse abusers, federal firearms license reforms -- should be included in the Conference Report.

But most importantly, I urge the Conferees to include in the Bill the ban on semi-automatic assault weapons that has now passed both the House and the Senate, and which our nation's police officers so strongly support. Banning these guns, which have no legitimate sporting or hunting purposes, would be a modest, but sound step, towards ending the unacceptable situation that our law enforcement officers face when they are outgunned by gang thugs and vicious killers.

Second, the Mark as yet contains no specific proposal for helping states to incarcerate more violent criminals and criminal aliens. I urge the Conferees to adopt a program that rejects the wasteful and inefficient plan for regional prisons, and instead,

allows us to lock up the maximum number of violent criminals at the least possible cost. At the same time, the program should allow for the funding of new alternatives, such as boot camps, where appropriate -- and it should encourage states to practice "truth in sentencing," without being so rigid as to defeat the very purpose of any such initiative.

Finally, the Mark contains no provision regarding discrimination in the imposition of the death penalty. While I believe that our, across our country, the nation's criminal justice system is fundamentally a fair one, I also know that in some jurisdictions, racial discrimination remains a sad reality. No person should be punished more severely because of the color of their skin -- nor should any person be punished less severely because of the color of their victim's skin.

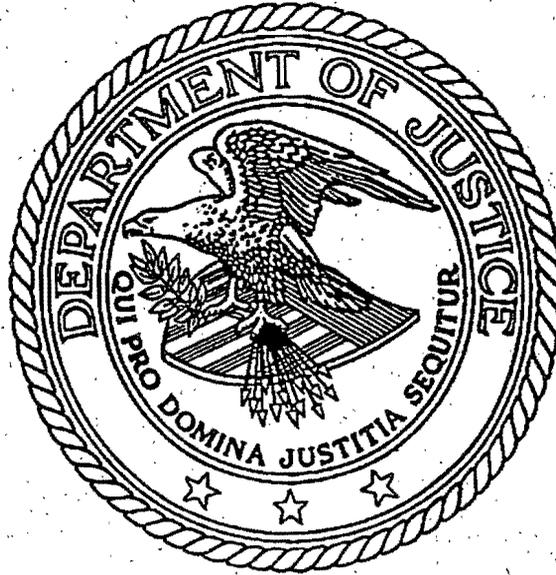
For some weeks, my administration has worked to develop a legislative proposal that would attack this problem of discrimination where it does exist, without impacting generally on the fair and effective imposition of the death penalty. Regrettably, the inclusion in the Crime Bill of any of the proposals we have developed would, in our view, generate such opposition that the Bill as a whole would be blocked from enactment. Given the urgent need for this Crime Bill, and the many important and beneficial provisions in it, I believe that we cannot delay action further on the bill on account of this issue. Thus, I call on the Conferees to move ahead now, and adopt a final bill, without any such provision.

*Blackman*  
At the same time, I will direct the Attorney General to develop and promulgate procedures with respect to the federal death penalties adopted in this bill to guard against any racial discrimination in the imposition of that penalty. And I will also appoint a "blue-ribbon" Commission to further study and propose future proposals in this area.

In sum, Chairmen Brooks and Eiden, let me again applaud you on the work you have done today -- and again urge the Conference to resume work this week and finish this vital legislation at the earliest possible date. While it is no cure-all, it offers the best prospect of reducing violence, and regaining control of our streets and communities of any legislation considered by Congress in recent years.

Sincerely,

*People the Fool  
change family*



~~Crime~~  
 Conference  
 Report

**OFFICE OF THE ATTORNEY GENERAL**

**FACSIMILE TRANSMITTAL COVER SHEET**

**DATE:** 7/11/94

**TO:** Bruce Reed

**FACSIMILE NO.** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_

**FROM:** Ron Klain

**FACSIMILE NO.** (202) 514-9077

**TELEPHONE NO.** (202) 514-6909

**NUMBER OF PAGES INCLUDING COVER SHEET** 4

**COMMENTS:** \_\_\_\_\_

Bruce  
Call me if you view

Draft #2 -- Sat., 3:15pm

July 13, 1994

The Honorable Jack Brooks  
The Honorable Joseph R. Biden, Jr.  
U.S. Capitol  
Washington, D.C. 20515

Dear Chairmen Brooks and Biden:

One month ago, Attorney General Reno wrote to you, describing in extensive detail -- more than 70 pages -- my administration's positions on the issues confronting you in the Conference on the Crime Bill. Since that time, you have made substantial progress towards completing work on this vital legislation -- progress that I enthusiastically applaud.

Now, as the Congress returns to Washington, I am writing to urge you to reconvene the Conference to complete work on this legislation as quickly as possible -- so that it can be presented to me for my signature at the soonest possible date.

Working with my administration, the joint "Chairmen's Mark" you have produced offers the prospect for landmark anti-crime legislation, consistent with the goals and priorities we announced together last year when this bill was first introduced. Among my most critical priorities you have included are:

- Putting 100,000 more police on our streets, engaged in community policing;
- Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"
- An attack on youth crime, including boot camps, drug courts, and anti-gang measures;
- New crime prevention programs, including the "YES" program that my administration has proposed;
- Initiatives to combat violence against women, illegal immigration and asylum abuse, rural crime, and protect victims' rights; and
- Funding for states to increase certainty of punishment, and build prisons to lengthen sentences for violent criminals.

The Chairmen's Mark funds all of these priorities without deficit spending or new taxes -- but rather, with a Crime Trust Fund funded with the savings from my proposal to cut federal employment by 252,000 persons in the next five years.

priority

This plan should be adopted by the Conferees; it is a sound and balanced plan to combat crime in our country -- and it is far superior to the alternative put forward by the Republican Conferees.

Compared to our plan, the Republican plan proposes to do less in the way of supporting our police and community policing; the result will be many fewer police on the street if their plan is adopted rather than ours. In addition, the Republican plan does less to prevent crime, by dropping numerous crime-fighting programs; less to fund a combined Byrne Grant/Alien Incarceration program; less to combat violence against women; and less to keep our borders secure and prevent illegal immigration.

Moreover, the Republican plan drops altogether several vital proposals in the Chairmen's Mark. This includes the bipartisan supported Police Corps, which provides college scholarships for young people who agree to spend six years as police officers; the plan for Drug Courts, where non-violent offenders are turned around before they commit more serious crimes; and the Local Partnership Act, a crime-prevention program overwhelmingly endorsed by the House of Representatives just a few weeks ago.

In sum, I strongly urge the Conferees to adopt your Mark, which we have developed together, in lieu of the Republican proposal. Our plan will do more to catch criminals, and more to prevent crime, than their alternative.

In addition to the matters discussed above, there are several provisions which are not yet addressed by the Mark. While the Attorney General's earlier letter outlines our position on many of these questions in detail, there are three that I want to comment on as well.

First, the Mark contains no provisions regarding firearms control. Obviously, several proposals with broad bipartisan support -- the ban on juvenile gun ownership, the limitation on gun ownership by stalkers and convicted spouse abusers, federal firearms license reforms -- should be included in the Conference Report.

But most importantly, I urge the Conferees to include in the Bill the ban on semi-automatic assault weapons that has now passed both the House and the Senate, and which our nation's police officers so strongly support. Banning these guns, which have no legitimate sporting or hunting purposes, would be a modest, but sound step, towards ending the unacceptable situation that our law enforcement officers face when they are outgunned by gang thugs and vicious killers.

Second, the Mark as yet contains no specific proposal for helping states to incarcerate more violent criminals and criminal aliens. I urge the Conferees to adopt a program that rejects the wasteful and inefficient plan for regional prisons, and instead,

allows us to lock up the maximum number of violent criminals at the least possible cost. At the same time, the program should allow for the funding of new alternatives, such as boot camps, where appropriate -- and it should encourage states to practice "truth in sentencing," without being so rigid as to defeat the very purpose of any such initiative.

Finally, the Mark contains no provision regarding discrimination in the imposition of the death penalty. While I believe that our, across our country, the nation's criminal justice system is fundamentally a fair one, I also know that in some jurisdictions, racial discrimination remains a sad reality. No person should be punished more severely because of the color of their skin -- nor should any person be punished less severely because of the color of their victim's skin.

For some weeks, my administration has worked to develop a legislative proposal that would attack this problem of discrimination where it does exist, without impacting generally on the fair and effective imposition of the death penalty. Regrettably, the inclusion in the Crime Bill of any of the proposals we have developed would, in our view, generate such opposition that the Bill as a whole would be blocked from enactment. Given the urgent need for this Crime Bill, and the many important and beneficial provisions in it, I believe that we cannot delay action further on the bill on account of this issue. Thus, I call on the Conferees to move ahead now, and adopt a final bill, without any such provision.

At the same time, I will direct the Attorney General to develop and promulgate procedures with respect to the federal death penalties adopted in this bill to guard against any racial discrimination in the imposition of that penalty. And I will also appoint a "blue-ribbon" Commission to further study and propose future proposals in this area.

In sum, Chairmen Brooks and Biden, let me again applaud you on the work you have done today -- and again urge the Conference to resume work this week and finish this vital legislation at the earliest possible date. While it is no cure-all, it offers the best prospect of reducing violence, and regaining control of our streets and communities of any legislation considered by Congress in recent years.

Sincerely,

week

SUBSTITUTE GRAPHS FOR PAGE 3 OF "MARK" LETTER:

"Finally, the Mark contains no provision regarding fairness in the imposition of the death penalty. I believe that our nation's criminal justice system is fundamentally fair. But some jurisdictions have not yet achieved our common goal of justice without regard to color, class, or creed. No person should be punished more severely because of the color of their skin -- nor should any person be punished less severely because of the color of their victim's skin.

"For some weeks, my administration has worked to develop a way to attack discrimination where it exists without impacting generally on the fair and effective imposition of the death penalty. In extensive discussions on this issue -- with interested Conferees, other members of Congress, civil rights leaders, the criminal defense and prosecutorial bars, and the law enforcement community -- we have been unable to find common ground on a way that in their collective judgment would satisfactorily address these two concerns. Given the urgent need for this Crime Bill, and the many important and beneficial provision in it, I believe that we cannot delay action further on account of this issue. Thus, I call on the Conferees to move ahead now, and adopt a final bill, without any such provision.

"In an effort to continue this dialogue, I will appoint a "blue-ribbon" Commission to further study this issue and make recommendations in this area. At the same time, I will direct the Attorney General to ensure that as we expand the federal penalty in implementing this legislation, we develop and promulgate procedures to guard against discrimination."

Crime Bill -  
Conference Report

Draft #7A -- 7/20 (11:00am)

July 20, 1994

The Honorable Jack Brooks  
The Honorable Joseph R. Biden, Jr.  
U.S. Capitol  
Washington, D.C. 20515

Dear Chairmen Brooks and Biden:

One month ago, Attorney General Reno wrote to you, describing in extensive detail -- more than 70 pages -- my administration's positions on the issues confronting you in the Conference on the Crime Bill. Since that time, you have made substantial progress towards completing work on this vital legislation -- progress that I enthusiastically applaud.

Now, I am writing to urge you to reconvene the Conference and complete work on this legislation as quickly as possible -- so that it can be presented to me for my signature at the soonest possible date.

Working with my administration, the joint "Chairmen's Mark" you have produced offers the prospect for landmark anti-crime legislation, consistent with the goals we announced together last year when this bill was first introduced. Among my most critical priorities you have included are:

- Putting 100,000 more police officers on our streets, engaged in community policing;
- Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"
- An attack on youth crime, including boot camps, drug courts, and anti-gang measures;
- New crime prevention programs, including the "YES" program that my administration has proposed;
- Initiatives to combat violence against women, illegal immigration and asylum abuse, rural crime, and protect victims' rights; and
- Funding for states to increase certainty of punishment, and build prisons to lengthen sentences for violent criminals.

The Chairmen's Mark funds all of these priorities without deficit spending or new taxes -- but rather, with a Crime Trust Fund funded with the savings from my proposal to cut federal employment by 252,000 positions in the next five years.

This plan should be adopted; it is far superior to the alternative put forward by some Republican Conferees. By comparison, the Republican plan proposes to do less in the way of supporting our police and community policing; the result will be many fewer police on the street if their plan is adopted rather than ours. In addition, their plan does less to prevent crime, by dropping numerous crime-fighting programs; less to fund a combined Byrne Grant/Alien Incarceration program; less to combat violence against women; and less to keep our borders secure and prevent illegal immigration.

In sum, I strongly urge the Conferees to adopt your Mark, which we have developed together, in lieu of the Republican proposal. Our plan will do more to catch criminals, and more to prevent crime, than their alternative.

In addition to the matters discussed above, there are several provisions which are not yet addressed by the Mark. While the Attorney General's earlier letter outlines our position on many of these questions in detail, there are three that I want to comment on as well.

First, the Mark contains no provisions regarding firearms. Obviously, several proposals with broad bipartisan support -- the ban on juvenile gun ownership, the limitation on gun ownership by stalkers and convicted spouse abusers, federal firearms license reforms -- should be included in the Conference Report.

But most importantly, I urge the Conferees to include in the Bill the ban on semi-automatic assault weapons that has now passed both the House and the Senate, and which our nation's police officers so strongly support. Banning these guns, which have no legitimate sporting or hunting purposes, would be a modest, but sound step, towards ending the unacceptable situation that our law enforcement officers face when they are outgunned by gang thugs and vicious killers.

Second, the Mark as yet contains no specific proposal for helping states to incarcerate more violent criminals and criminal aliens. I urge the Conferees to adopt a program that rejects the ineffective plan for regional prisons, and instead, allows us to lock up the more violent criminals at less cost. At the same time, the program should fund new alternatives, such as boot camps, where appropriate -- and it should encourage states to practice "truth in sentencing," without being so rigid as to defeat the very purpose of any such initiative.

Finally, the Mark contains no provision regarding discrimination in the imposition of the death penalty. I firmly believe that no person should be punished more severely because of the color of their skin -- nor should any person be punished less severely because of the color of their victim's skin.

For some weeks, my administration has worked to develop a proposal to attack discrimination where it exists, without impacting generally on the fair and effective imposition of the death penalty. Last week, we endorsed a compromise provision that would insure that the federal death penalty operates without discrimination, particularly as we move to expand that penalty in the Crime Bill. I support enactment of such a provision, because I believe that there is no conflict between our goals of equal justice for all Americans, and doing justice to those who are the victims of violent crime.

Contrary to criticism of it, the compromise would not result in "quotas" or unduly burden prosecutors. It has the support of the Attorney General, who believes it would not impede her ability to seek and win the death penalty in appropriate cases.

After an intense and personal effort to win support for this compromise -- involving myself, my Chief of Staff, and the Attorney General --- we have concluded that a Crime Bill containing this provision cannot win passage in the Congress. Given the urgent need for this Crime Bill, and the many important and beneficial provisions in it, I believe that we cannot delay action further on the bill on account of this issue. Thus, I call on the Conferees to move ahead now, and adopt a final bill, without any such provision.

In an effort to continue our work on this issue, I will appoint a "blue-ribbon" Commission to further study this issue and make recommendations in this area. At the same time, I will direct the Attorney General to ensure that as we expand the federal death penalty in implementing this legislation, we develop and promulgate administrative procedures to guard against discrimination in the imposition of that penalty.

In sum, Chairmen Brooks and Biden, let me again applaud you on the work you have done -- and again urge the Conference to resume work to finish this vital legislation at the earliest possible date. For over five years, partisan wrangling and the forces of gridlock have kept comprehensive anti-crime legislation from becoming law. In that time, the names of Polly Klass, Christy Hamilton, James Jordan, Jason White and so many others, have been etched in our national conscience, as victims of senseless crimes.

Most recently, a young boy, James Darby, became another victim of this epidemic; he was shot and killed just a few days after he wrote to me, pleading for action to reduce the killing in his neighborhood. New figures just released show that young people are the most likely to be killed and assaulted in our society. How many more such murders must we endure before we take responsibility for doing everything that we can to reduce the bloodshed among our nation's youth?

For their sake, we cannot let this bill go the way of crime bills stymied in 1990, 1991, and 1992. We cannot permit gridlock to prevail, while the roll call of young crime victims and slain law enforcement officers grows and grows and grows.

For while this bill is no cure-all, it offers the best prospect of regaining control of our streets and communities of any legislation considered by Congress in recent years. And if, in the wake of its passage, all Americans work together to take responsibility for their own communities -- to teach children the difference between right and wrong; to promote positive values in schools and among young people; to become more active in making their own neighborhoods more secure -- it will be a significant step toward ending the siege of crime and violence that has gripped our land.

Sincerely,

Draft #7B -- 7/20 (11:00am)

July 20, 1994

The Honorable Jack Brooks  
The Honorable Joseph R. Biden, Jr.  
U.S. Capitol  
Washington, D.C. 20515

Dear Chairmen Brooks and Biden:

One month ago, Attorney General Reno wrote to you, describing in extensive detail -- more than 70 pages -- my administration's positions on the issues confronting you in the Conference on the Crime Bill. Since that time, you have made substantial progress towards completing work on this vital legislation -- progress that I enthusiastically applaud.

Now, I am writing to urge you to reconvene the Conference and complete work on this legislation as quickly as possible -- so that it can be presented to me for my signature at the soonest possible date.

Working with my administration, the joint "Chairmen's Mark" you have produced offers the prospect for landmark anti-crime legislation, consistent with the goals we announced together last year when this bill was first introduced. Among my most critical priorities you have included are:

- Putting 100,000 more police officers on our streets, engaged in community policing;
- Stiffer punishments for violent criminals, including a federal death penalty and "three strikes and you're out;"
- An attack on youth crime, including boot camps, drug courts, and anti-gang measures;
- New crime prevention programs, including the "YES" program that my administration has proposed;
- Initiatives to combat violence against women, illegal immigration and asylum abuse, rural crime, and protect victims' rights; and
- Funding for states to increase certainty of punishment, and build prisons to lengthen sentences for violent criminals.

The Chairmen's Mark funds all of these priorities without deficit spending or new taxes -- but rather, with a Crime Trust Fund funded with the savings from my proposal to cut federal employment by 252,000 positions in the next five years.

This plan should be adopted; it is far superior to the alternative put forward by some Republican Conferees. By comparison, the Republican plan proposes to do less in the way of supporting our police and community policing; the result will be many fewer police on the street if their plan is adopted rather than ours. In addition, their plan does less to prevent crime, by dropping numerous crime-fighting programs; less to fund a combined Byrne Grant/Alien Incarceration program; less to combat violence against women; and less to keep our borders secure and prevent illegal immigration.

In sum, I strongly urge the Conferees to adopt your Mark, which we have developed together, in lieu of the Republican proposal. Our plan will do more to catch criminals, and more to prevent crime, than their alternative.

In addition to the matters discussed above, there are several provisions which are not yet addressed by the Mark. While the Attorney General's earlier letter outlines our position on many of these questions in detail, there are three that I want to comment on as well.

First, the Mark contains no provisions regarding firearms. Obviously, several proposals with broad bipartisan support -- the ban on juvenile gun ownership, the limitation on gun ownership by stalkers and convicted spouse abusers, federal firearms license reforms -- should be included in the Conference Report.

But most importantly, I urge the Conferees to include in the Bill the ban on semi-automatic assault weapons that has now passed both the House and the Senate, and which our nation's police officers so strongly support. Banning these guns, which have no legitimate sporting or hunting purposes, would be a modest, but sound step, towards ending the unacceptable situation that our law enforcement officers face when they are outgunned by gang thugs and vicious killers.

Second, the Mark as yet contains no specific proposal for helping states to incarcerate more violent criminals and criminal aliens. I urge the Conferees to adopt a program that rejects the ineffective plan for regional prisons, and instead, allows us to lock up the more violent criminals at less cost. At the same time, the program should fund new alternatives, such as boot camps, where appropriate -- and it should encourage states to practice "truth in sentencing," without being so rigid as to defeat the very purpose of any such initiative.

Finally, the Mark contains no provision regarding discrimination in the imposition of the death penalty. I firmly believe that no person should be punished more severely because of the color of their skin -- nor should any person be punished less severely because of the color of their victim's skin.

For some weeks, my administration has worked to develop a proposal to attack discrimination where it exists, without impacting generally on the fair and effective imposition of the death penalty. Last week, we endorsed a compromise provision that would insure that the federal death penalty operates without discrimination, particularly as we move to expand that penalty in the Crime Bill. I support enactment of such a provision, because I believe that there is no conflict between our goals of equal justice for all Americans, and doing justice to those who are the victims of violent crime.

Contrary to criticism of it, the compromise would not result in "quotas" or unduly burden prosecutors. It has the support of the Attorney General, who believes it would not impede her ability to seek and win the death penalty in appropriate cases.

We have been working hard to win support for this compromise -- in an effort involving myself, my Chief of Staff, and the Attorney General -- and we will continue to do so. Moreover, I will shortly appoint a "blue-ribbon" Commission to further study this issue and make recommendations in this area. Finally, I will direct the Attorney General to ensure that as we expand the federal death penalty in implementing this legislation, we develop and promulgate administrative procedures to guard against discrimination in the imposition of that penalty. I believe that such actions by her can serve to achieve much the same purpose as the legislative compromise we are working to enact.

In sum, Chairmen Brooks and Biden, let me again applaud you on the work you have done -- and again urge the Conference to resume work to finish this vital legislation at the earliest possible date. For over five years, partisan wrangling and the forces of gridlock have kept comprehensive anti-crime legislation from becoming law. In that time, the names of Polly Klass, Christy Hamilton, James Jordan, Jason White and so many others, have been etched in our national conscience, as victims of senseless crimes.

Most recently, a young boy, James Darby, became another victim of this epidemic; he was shot and killed just a few days after he wrote to me, pleading for action to reduce the killing in his neighborhood. New figures just released show that young people are the most likely to be killed and assaulted in our society. How many more such murders must we endure before we take responsibility for doing everything that we can to reduce the bloodshed among our nation's youth?

For their sake, we cannot let this bill go the way of crime bills stymied in 1990, 1991, and 1992. We cannot permit gridlock to prevail, while the roll call of young crime victims and plain law enforcement officers grows and grows and grows.

For while this bill is no cure-all, it offers the best prospect of regaining control of our streets and communities of any legislation considered by Congress in recent years. And if, in the wake of its passage, all Americans work together to take responsibility for their own communities -- to teach children the difference between right and wrong; to promote positive values in schools and among young people; to become more active in making their own neighborhoods more secure -- it will be a significant step toward ending the siege of crime and violence that has gripped our land.

Sincerely,

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503

Crime Bill -  
Conference  
Report

May 13, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2714

TO: Legislative Liaison Officer -

TREASURY - Richard S. Carro - (202)622-1146 - 228  
ONDCP - Babette Hankey - (202)395-6739 - 257  
STATE - Julia C. Norton - (202)647-4463 - 225  
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215  
EDUCATION - John Kristy - (202)401-2670 - 207  
COMMERCE - Michael A. Levitt - (202)482-3151 - 324  
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325  
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226  
LABOR - Robert A. Shapiro - (202)219-8201 - 330  
INTERIOR - Danny Conenstein - (202)208-6706 - 329  
HHS - Frances White - (202)690-7760 - 328  
AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312  
OCA - Polly Baca - (202)634-9610 - 286  
RTC, FDIC

FROM: JAMES J. JUKES (for) *Ji*  
Assistant Director for Legislative Reference

OMB CONTACT: C. C. CHRISTAKOS (395-3386)  
Secretary's line (for simple responses): 395-3454

SUBJECT: Proposed Report RE: HR 3355, Violent Crime  
Control and Law Enforcement Act of 1994

DEADLINE: 12 NOON TUESDAY May 17, 1994

COMMENTS: This is the attachment to the letter that was  
circulated on May 5th as LRM I-2618.

OMB requests the views of your agency on the above subject before  
advising on its relationship to the program of the President, in  
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or  
receipts for purposes of the the "Pay-As-You-Go" provisions of  
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

NOTE: Immediately behind this LRM is a  
one-page summary of the sections commented  
on in the attachment for which Justice requests  
inserts from the agencies. Please give us  
any proposed inserts by the deadline. Thanks.

CC:

C. Walden/J.Cerda  
Clarissa Cerda  
Ken Schwartz  
Jim Duke  
Harry Meyers  
Chris Brown  
Lin Liu  
Jeff Ashford  
Mark Schwartz  
Jim Fish  
Jill Blickstein  
Cynthia Brown  
Barry White

Irene James  
Keith Fontenot  
Roger Adkins  
Mark Weatherly  
Steve Redburn  
Alan Rhinesmith  
Bob Damus  
Adrien Silas  
Tracey Thornton  
Karen Hancox  
Larry Matlack  
Maureen Walsh



\*

Provisions Flagged for Review by other Departments

Section 1533 -- awareness program for highway funds reduction. OMB asked to coordinate proposed transfer of responsibility to DOT with DOT.

DOT Section 1536 -- notifying law enforcement about cash and drugs found in airport security screenings. Views of FAA and OMB requested.

Section 3341(j) -- Family Violence Prevention and Services Act authorizations. HHS should provide comments.

Title XXXIII, subtitles E and H -- Family Violence Prevention and Services Act amendments. HHS should provide comments.

Title XXV -- authorization for campus sexual assaults program administered by DoEd. Views of Education needed.

Title XL -- grants for supervised visitation centers, to be administered by HHS. HHS should provide comments.

Section 5106 -- role of U.N. in organized crime control. Request concurrence or comments from State Department. (State has provided negative comments on this, but they were characterized as tentative).

Section 5108 -- report on efforts to hire former Hong Kong police officers in federal law enforcement agencies. Request concurrence or comments from Customs/Treasury, since Customs would be one of the agencies covered by the report.

Section 5113 -- ineligibility of insanity acquittees for social security benefits. Request comments from HHS and OMB.

[Section 5134 -- provisions affecting RTC suits. Not addressed in letter at this point, but Treasury/RTC/FDIC may have views.]

Section 5163 -- Treasury authorizations for GREAT programs, ATF, and Secret Service. Treasury should provide additional text explaining importance of the provision.

House bill § 3086 -- "made in America" labels. Commerce strongly opposes but we are politically committed to a supportive position. Also affects FTC and Customs Service.

\* Please refer to the appropriate section numbers in the attachment and provide the requested inserts. Thanks.

**DRAFT 05/13/94 3:54pm**

Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20515

Dear Chairman Biden:

This letter, in combination with the attached detailed comments, presents the recommendations of the Administration concerning the reconciliation of the final House and Senate versions of H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1994.

The Administration strongly supports prompt passage of H.R. 3355, which embodies the central elements of the President's anti-crime legislative agenda. This critical legislation sets forth a balanced and intelligent approach that will enable the Federal Government to play a significantly enhanced role in the nation's fight against the crime and violence that plague too many of our communities.

Passage of H.R. 3355 will assist the states and localities in their efforts against violent crime -- particularly in the critical areas of police, prisons and prevention. In addition, H.R. 3355 will provide necessary tools to federal law enforcement officials, improving their effectiveness in combating violent crime.

Both the Senate and House versions of H.R. 3355 contain provisions addressing the key elements of police, prisons and prevention, which, while they differ at times in their specific approaches, are in many respects quite similar. In order to take advantage of the historic opportunity to enhance public safety presented by this legislation, the conference committee must act promptly and wisely to craft the final legislation.

While we have a historic opportunity to act, we also have a tremendous responsibility to act wisely. Both the House and Senate bills include unprecedented efforts to provide the police, prisons and prevention necessary for a serious attack on crime. This is money needed to address this critical national issue, but in these times of fiscal restraint, we must ensure that the money is spent well. Spending our money well requires that we effectively coordinate and integrate the federal government's

**DRAFT 05/13/94 3:54pm**

crime-fighting efforts. Thus, many of the views we express in the attached statement are aimed at assuring that we avoid the duplication, waste and bureaucratic battles that too often accompany government programs.

The Administration believes that the final version of H.R. 3355 should contain the following key provisions, among others:

- A Funding Mechanism to Make the Promise of the Crime Bill a Reality.

The promise of the crime bill -- more police on our nation's streets, prisons to house violent offenders, and prevention programs to keep kids from starting a life of crime -- can only be realized if there is funding for these initiatives. To insure adequate funding for these priority programs, the Administration strongly supports inclusion of a Crime Control Fund in the final legislation; a specific legislative draft for such a Fund is attached. Like the Violent Crime Reduction Trust Fund contained in the Senate bill (title XIII.E), the Crime Control Fund provides a mechanism by which the savings attributable to the Administration-initiated reductions in the Federal workforce would be used to fund programs authorized in H.R. 3355.

Further, to fully fund the important programs included in the crime bill, we would propose a sixth year for the fund, to set aside over \$29 billion for this purpose. Only through the inclusion of a Crime Control Fund can we honestly say to the American people that we have delivered on the promise to seriously address crime and violence.

- Help for Communities to Put an Additional 100,000 Police Officers on Our Streets Engaged in Community Policing.

This is the centerpiece of the President's anti-crime program. Putting more officers on the street, working with communities, is the best way to prevent crime and illicit drug trafficking, to ensure that criminals are apprehended when crimes occur, and to return to our citizens the sense of security that has been taken from them.

To accomplish the critical goal of putting 100,000 officers on our streets and to help implement community policing nationwide, the Administration strongly recommends that the conference committee authorize full and adequate funding for this

program. Specifically, we support the Senate authorization level of \$8.9 billion, which will support hiring 100,000 officers, if the conferees also adopt the House bill's funding-per-officer cap (which we support with waiver authority for the Attorney General in appropriate cases). We will have some additional, technical changes to this important proposal as well.

- Protecting our Police and our Communities from Weapons of War.

For years, law enforcement officers and victims of crime have been calling on us to take action to ban the further manufacture of "assault weapons:" guns intended, not for sport or hunting, but for killing and maiming people.

We strongly believe that such deadly weapons can be limited without infringing on the rights of hunters and sportsmen. Specifically, the language found in title XLV of the Senate Bill, and in H.R. 4296 as recently passed, bans the further manufacture of assault weapons -- and the large-capacity magazines that have played a role in so many tragedies around our nation -- while also specifically protecting over 650 hunting and sporting guns.

We support prompt enactment of this provision, approved by both the House and Senate, and backed by the nation's leading police organizations and victims groups. We would also support modifying the bill, to delete the paperwork requirement found in Sec. 3 of the House bill, and Sec. 4506 of the Senate bill.

- Launching a "Smart and Tough" Approach to Youth Crime and Violence.

One of the most disturbing aspects of the nation's crime problem is the significant increases in the crime, particularly violent crime, being committed by juveniles and young adults. The Administration urges the conference committee to include in the final legislation programs designed to combat this growing trend including:

- o Proven and extensive drug and crime prevention programs -- discussed below -- to "give kids something to say yes" to (including House bill title X.J);
- o Smart incarceration and alternative programs such as: Boot Camps that provide the discipline and training

that will prevent them from embarking on a life of crime; Drug Courts, to intensively supervise drug offenders and get them turned around before they commit more serious crimes; and Intermediate Sanctions, that provide certainty of punishment for young offenders so that they learn early that there will be consequences for criminal behavior (House bill titles XXI and X.E, and Senate bill title XII);

- o The Youth Handgun Safety Act, to get guns out of the hands of young people. This law, with certain exceptions, prohibits handguns from being possessed by or transferred to juveniles (House bill title XIX and Senate bill § 662); and
- o Measures to combat Youth Gangs and facilitate Gang Prosecutions, such as those found in Title VI of the Senate bill. We particularly recommend including in a final bill §§ 613-14 (Armed Career Criminal predicates and predicates for adult prosecution), 615 (strengthening penalties for using minors to distribute drugs), 616 (increased penalties for drug trafficking near public housing), 617 (increased penalties for violent Travel Act violations), and 618 (juvenile records). However, the authorization of funding for more prosecutors for gang prosecutions should be stated in broader terms.
- o To deal with hardened young criminals, the discretionary authority to try 13 year olds as adults for serious violent offenses. We generally prefer the approach of House bill § 1101 to Senate bill § 651, which unduly restricts the ability of judges to make case-appropriate transfer decisions.
- Significant and Innovative Crime Prevention Programs that Give Our Young People "Something to Say Yes" To.

While we must -- and will -- insist upon personal responsibility and punish those who commit crimes regardless of their circumstances, we must also do what we can to keep young people from beginning to engage in crime.

To achieve this objective, the Administration strongly supports the full authorization level contained in the House bill

for prevention programs. Among the prevention programs included in the House and/or Senate bills which the Administration urges be included in the final legislation are:

- o The President's Y.E.S. program (Youth Employment and Skills) which gives employment opportunities to kids in hard hit, high-crime areas (House bill title X.J), and which we believe should be funded at a level of \$1 billion;
- o The Ounce of Prevention Council (Title I and §§ 5142-43 of the Senate bill and Subtitle B of Title X of the House bill) and related programs to keep schools open after hours (Senate bill §5142 and House bill §1015), expand activities such as Boys and Girls Clubs (House bill §1099 H and parallel Senate bill provisions) that keep kids off the streets, and better coordinate the efforts of the Federal Government to assist communities prevent crime;
- o Comprehensive prevention programs such as the House's Model Intensive Grant Programs (title X.A); and
- o Innovative alternatives like Midnight Sports and Police Partnerships for Youth (various House bill title X programs and parallel Senate bill programs).

Prevention programs make sense, and are a critical part of any balanced attack on the crime, violence, and drug abuse that plague our cities, towns, neighborhoods, and rural communities. However, in order to insure that these programs both have meaningful impact and are cost-effective, we must insist that they be coordinated and integrated and that we have the flexibility and tools necessary to avoid duplication and wasted effort.

• Measures to Stiffly Punish Violent Crime.

To deal with the problem of repeat violent offenders, the Administration urges the conference committee to include several measures to stiffly punish those who prey upon our communities in addition to the prison program discussed below. The punishments which should be part of the final legislation include:

- o The President's "three strikes and you're out" life imprisonment provision, which is targeted on the career violent offenders who do so much harm to society (House bill title V, with certain modifications); and
- o Reinstating the federal death penalty for the most heinous offenses, including the killing of Federal law enforcement officers, fatal drive-by shootings, and the other capital crimes in the pending proposals (House bill title VII and Senate bill title II).

As we punish violent criminals more severely, we must not squander always limited resources on lengthy prison terms for low-level, non-violent criminals. Consequently, we support the House version of the so-called "safety valve" (title II), modified to be exclusively prospective in effect, as in the Senate bill version (§ 2404).

- Authorizations for the Departments of Justice and Treasury to support federal law enforcement initiatives and implementation of crime bill related programs.

The primary focus of the crime bill -- as it should be -- is on bolstering state and local efforts to increase the number of police on our streets, the number of violent criminals behind bars, and the scope and extent of efforts to prevent crime and give young people something to say "yes" to. But the bill also stiffens penalties for many federal offenses -- such as the "three strikes" law and the federal death penalty -- and clearly envisions an expansion of federal efforts to combat violent crime, gun crime, and drug trafficking.

Consequently, we consider it essential that the crime bill provide additional support to federal law enforcement agencies who lead our national attack on crime and violence. Particularly if Congress is going to set aside substantial resources over the next five or six years to fight crime, some share of those resources should bolster our principal federal law enforcement efforts in this regard.

Thus, we support the inclusion of § 3016 of the House bill, which authorizes approximately \$1 billion for Treasury Department law enforcement activities, and the inclusion of the various Justice Department authorizations in the Senate bill, totalling \$1.25 billion (which appear in §§ 5132, 1405, 621, and 3907).

Only in this way can the principal federal crime fighting agencies -- FBI, DEA, ATF, USMS, Customs, and others -- keep up the needed efforts and carry out the additional responsibilities envisioned by the crime bill.

Furthermore, we urge that all new Administration responsibilities and mandates, including but not limited to commissions, task forces, guidelines and standards development, model statutes, reports, and studies, be made explicitly subject to the availability of appropriations and contain appropriate authorization language. Otherwise, these provisions may have the unintended effect of requiring the Justice Department to cut law enforcement agents or prosecutors to conduct studies, convene commissions, or prepare reports.

- Assisting the States Build and Operate More Correctional and Detention Facility Space to Get More Violent Offenders and Criminal Aliens Off Our Streets.

It is incumbent upon the Federal Government to aid states that are struggling to make sure that violent criminals and criminal aliens are not being released prematurely for lack of space. The Federal Government is building the prisons and detention facilities necessary to ensure that Federal offenders are not being prematurely released, and this Administration is committed to maintaining the necessary capacity. However, none of us will be safe until the states can do the same.

The Administration believes that the best way to accomplish this objective in H.R. 3355 is for the conference committee to adopt an overall authorization level for state prison and jail assistance which approximates that contained in title XIII of the Senate bill -- \$6.5 billion.

In particular, we support versions of two sorts of plans to help states incarcerate offenders. First, we support a combination of the prison grant programs authored by Senator Biden and Representative Hughes -- § 1321 of the Senate bill and title VI of the House bill -- because we believe that some federal funds should be made available on a discretionary basis to states to build and operate appropriate facilities for housing serious drug and violent offenders -- including bootcamps, prisons, jails and community detention facilities.

Second, we also believe that another pool of federal grant funds should be used, in part, to encourage states to adopt "truth in sentencing" policies and to make other improvements in their criminal justice systems that will insure that the most violent offenders are kept behind bars. Title VIII of the House bill -- a "Truth in Sentencing" measure sponsored by Rep. Chapman -- intends to do just that; and does so in a manner superior to that found in the Regional Prisons program in § 1341 of the Senate bill. As compared to the Senate provision, the House proposal will incarcerate more violent criminals, more quickly, at less cost. The Regional Prisons proposal is unduly expensive, has significant operational problems, and will take too long to get violent criminals off the streets.

The Administration's objective in this area is clear: the Crime Bill should adopt the plan that most effectively -- within funding constraints -- locks up the largest number of violent criminals and criminal aliens, as quickly as possible, at the lowest possible cost, while encouraging innovation and creativity in this area that consumes so much of our resources. A formulation combining the House and Senate bill provisions outlined above will achieve this result.

- Crime Victims Rights and Protections.

We need to make sure that the scales of justice give full weight to the interests of the victims of crime. Therefore, we strongly support enactment of provisions to give victims of federal violent and sexual abuse crimes a right to address the court concerning the sentence to be imposed (right of allocution), parallel to the existing right of the offender to make such a statement, and improve the administration of the Crime Victims Fund and the programs it supports (Title I.A-B of the House bill and title IX.A-B of the Senate bill). We urge enactment of these provisions with some necessary technical changes to ensure that the proposed allocution reform will remain in effect after December 1, 1994.

We also generally support the mandatory restitution provisions (§ 902 of the Senate bill) to require the issuance by the court of a full order of restitution in cases under the criminal code and recommend that it be included in a final bill. We have a few recommendations concerning specifics in the formulation of the proposal, and would be pleased to assist the committee in finalizing it.

- Controlling the Border and Removing Criminal and Other Illegal Aliens.

The Administration supports §§ 5158-5160 of the Senate bill and §§ 2411-2413 of the House bill providing for the improvement of border controls, deportation of criminal aliens and the removal of denied asylum applicants. These provisions are consistent with the President's FY 1995 budget request and represent an important component of the overall strategy to combat crime.

- The Violence Against Women Act and Related Provisions.

The Administration strongly supports enactment of the Violence Against Women Act (Senate bill titles XXXII-XXXVII and House bill title XVI). We prefer certain key elements of the Senate version of that legislation, including among others, Title XXXIV, a civil rights remedy for victims of gender-motivated crimes of violence. We also support some aspects of the House bill including some grant program formulations. In conference, we believe that conforming changes can eliminate duplication and improve coordination and integration of the many new funding programs proposed in this area. Above all, we believe it is important that the bill take a comprehensive, cost-beneficial and well-coordinated approach to this escalating crime problem.

\* \* \* \* \*

As noted above, accompanying this letter are detailed comments containing the Administration's specific recommendations for reconciling the House and Senate bills in the critical areas discussed above and elsewhere. The organization of the attachment generally follows the order of titles in the Senate bill, with parallel House bill provisions noted as appropriate. Additional House bill provisions that have no counterpart in the Senate bill are addressed in the final section of the attached detailed comments.

The Office of Management and Budget advises that the views expressed in this letter are in accord with the program of the President. We urge the conference committee to report legislation expeditiously so that omnibus anti-crime legislation can be enacted as soon as possible.

Sincerely,

## DETAILED CRIME BILL COMMENTS

### Title I -- Police Hiring/Community Policing

Both the Senate bill (title I) and the House bill (title XIV) include versions of the President's "Public Safety Partnership and Community Policing Act". This major grant program is the centerpiece of the President's legislative anticrime program and the primary vehicle for putting 100,000 additional officers on the nation's streets to help prevent and control crime. We strongly recommend that the committee include as effective a formulation of this police hiring/community policing proposal as possible in the final bill.

We urge that the committee adopt the higher (\$8.995 billion) funding authorization levels of the Senate version. We strongly urge adoption of the House bill's waivable overall cap of \$75,000 per officer for police hiring, in lieu of the Senate bill's waivable annual cap of \$50,000 per officer for police hiring. These choices are necessary to realize the proposal's objective of increasing the number of police officers on the street by 100,000.

We also endorse the House bill's minimum state allocation of 0.25%, in lieu of the Senate bill's minimum 0.6% allocation, as promoting a fairer allocation of funding among the various states. We believe that the related concerns of smaller jurisdictions may be better addressed by deleting SEC. 1703 of the proposed new part Q, the State Review requirement. Doing so would increase the Attorney General's flexibility to meet the needs of, and assure equitable treatment of, all eligible applicants -- particularly the large number of lower population counties, municipalities, and rural law enforcement jurisdictions.

In addition, we have a number of other suggestions to help resolve differences between the House and Senate versions and improve the formulation based, among other things, upon our recent experience in implementing the Police Hiring Supplement program. We look forward to working closely with you to assure the success and effectiveness of this critically important initiative.

### Title I -- Ounce of Prevention

Provisions at the end of title I of the Senate bill authorize grants to support youth-oriented prevention programs, to be administered by a Cabinet-level Ounce of Prevention Council. Sections 5142-43 of the Senate bill authorize additional programs to be administered by the same Council.

Subtitle B of title X of the House bill contains provisions that are substantially parallel to the Ounce of Prevention programs in title I and § 5142 of the Senate bill, but with the primary role in program administration assigned to the Secretary of Health and Human Services.

The Administration strongly supports the creation of an Ounce of Prevention Council and the authorization of the related youth development and crime prevention programs (comments on other related programs are discussed below). A strong Ounce of Prevention Council that can help coordinate the various prevention programs in the bills is essential to assuring that money we spend on crime prevention is spent well. To achieve such a strong Council, we recommend several revisions necessary to facilitate better administration and coordination of certain of the proposed youth-oriented prevention programs contained in the House and Senate bills.

Specifically, the Administration recommends that the President be authorized to designate the chair of a slightly reformulated cabinet-level Council. The membership of the Ounce of Prevention Council should include the Attorney General, the Secretaries of the Departments of Health and Human Services, Housing and Urban Development, Labor, Education, Agriculture, Interior, Treasury, the Director of the Office of National Drug Control Policy, and one or more other officials as the President may deem appropriate. The interdepartmental Council should be authorized to help maximize the impact of the crime bills' youth-oriented crime prevention initiatives through collaboration and consultation with other agencies and entities, (such as the Juvenile Justice Coordinating Council), coordinated planning, development of a computer-based program catalog, technical assistance, and other program integration and grant simplification strategies. The Council's direct funding should be authorized at the Senate level. Furthermore, we recommend that the Council be authorized to accept and to help administer specified related program funds upon request by the relevant agency.

Prevention programs make sense, and are a critical part of any balanced attack on the crime, violence, and drug abuse that plague our cities, towns, neighborhoods, and rural communities. However, in order to insure that these programs both have meaningful impact and are cost-effective, we must insist that they be coordinated and integrated and that we have the flexibility and tools necessary to avoid duplication and wasted effort. We believe that our plan for the Ounce of Prevention Council will achieve this vital end, and we would be pleased to work with the committee in finalizing this priority proposal.

## Title II -- Death Penalty

Title II of the Senate bill and title VII of the House bill contain proposals to provide an effective federal death penalty for the most heinous federal crimes. This is a major

element of the President's program. We generally approve of the proposed procedures and the range of homicidal offenses for which capital punishment would be authorized.

With respect to the standards governing the jury's decision concerning a capital sentence, we recommend using proposed 18 U.S.C. 3593(e) of the House bill, rather than the corresponding Senate bill provision. The House version provides the most effective safeguards against capriciousness and inconsistency in capital sentencing by providing the most definite guidance for the jury concerning the circumstances in which a capital sentence should or should not be imposed.

We have the following additional recommendations:

(1) The separate death penalty procedures under 21 U.S.C. 848 should be repealed, to make it clear that the new procedures apply uniformly to all federal capital offenses.

(2) Proposed 18 U.S.C. 3593 should be amended to require the defense to give notice of the mitigating factors it will rely on, just as the government is now required to give notice of aggravating factors. Defense notice is important, for example, in relation to mental status mitigating factors (such as impaired capacity and mental or emotional disturbance), for which the government will often need time to employ its own experts.

(3) The final sentence of proposed 18 U.S.C. 3595(c)(2) in the Senate bill should be deleted, since it could be construed as limiting findings of harmless error based on non-constitutional violations to instances in which the Chapman harmless-beyond-a-reasonable-doubt standard is satisfied. Under general standards of appellate review, the Chapman standard only applies to constitutional error, and claims of non-constitutional error are assessed under the Kotteakos harmless error standard.

(4) The proposed procedures contemplate a return to an earlier system in which the federal government does not directly carry out executions, but makes arrangements with states to carry out capital sentences in federal cases. We recommend amendment of the legislation to perpetuate the current approach, under which the execution of capital sentences in federal cases is governed by uniform regulations issued by the Attorney General.

(5) The use-of-a-firearm aggravating factor in the Senate bill (proposed 18 U.S.C. 3592(c)(2)(A)) should be included in the final bill.

(6) Finally, we note that some changes are needed in the proposal for technical or drafting reasons. For example, the amendment to the penalty provision of 18 U.S.C. 1114 in the bills is not properly drafted, and some of the language in proposed 18 U.S.C. 3593 relating to victim impact information has been placed in the wrong subsection.

We would be pleased to assist the committee in finalizing this proposal.

### Title III -- Firearms

Firearms disqualification. The Senate bill contains two provisions extending firearms disqualification for persons who threaten or endanger others -- § 301, which would apply to persons under certain types of restraining orders, and § 4203, which applies to domestic violence perpetrators. Section 1625 of the House bill contains a provision similar to § 301 of the Senate bill, but limited in scope to persons subject to orders issued for the benefit of "intimate partners."

We support these provisions, and in fact, want to see them strengthened in some respects. For example, § 301 of the Senate bill defines the types of orders to which it would apply narrowly, and does not readily apply to the common formulation of protective orders as directives to stay away from a person or location. Section 4203 of the Senate bill covers domestic violence convictions and a more broadly defined class of protective orders in the domestic violence context, but does not cover situations involving stalkers or other offenders who have not had a domestic relationship with their victims. Likewise, the House bill provision would not apply to persons who stalk strangers.

The optimum formulation would combine the stronger features of all of these proposals. We would be pleased to assist the committee in developing such a formulation.

Firearms licensing. Subtitle B of title III of the Senate bill includes provisions to strengthen the licensing and regulatory system for firearms dealers. The Department of Justice supports the enactment of this proposal.

Definition of Conviction. The most serious problem today hindering enforcement of federal firearms statutes arises from the definition of "conviction" in 18 U.S.C. 921(a)(20). The definition of conviction determines the applicability of the prohibition of possession of firearms by convicted felons (18 U.S.C. 922(g)) and the applicability of the mandatory penalties of the Armed Career Criminal provision (18 U.S.C. 924(e)). However, the operation of these provisions has been impeded or clouded by the current definition, which can remove federal firearms disabilities on the basis of state rules or procedures that indiscriminately restore rights for convicted felons.

We can not emphasize what a critical law enforcement issue this presents. We can do so much to keep guns out of the hands of criminals, and to fulfill the promise of the Brady Bill, if this defect in our federal laws is corrected. Otherwise, each year, thousands of convicted felons will be legally eligible to purchase firearms, notwithstanding past crimes.

We recommend that the committee include a provision in the final bill to resolve this problem, and would be pleased to assist the committee in developing an appropriate formulation.

#### Title IV -- Gun Crime Penalties

Title IV of the Senate bill contains various provisions to strengthen federal firearms offenses and penalties. The Administration supports almost all of these provisions, and recommends that they be included in a final bill.

However, the study of incendiary ammunition required by § 416 of the Senate bill is unnecessary, since it can be determined on the basis of currently available information that the referenced ammunition has no reasonable sporting or law enforcement use. We also have concerns about the scope of the "sporting purposes" proviso to § 414's prohibition on receipt of firearms by persons who do not reside in any state. The concern is that the proviso will result in circumvention of the prohibition by aliens who acquire firearms through intermediaries and then smuggle them out of the country. We believe that an alternative formulation of § 414 may be possible which avoids these concerns, while also avoiding interference with the legitimate business of providing hunting trips for foreign tourists.

#### Title V -- Obstruction of Justice

Title V of the Senate bill includes several provisions that generally increase maximum penalties for serious violence against witnesses, jurors, and court officers, and enhance protection for witnesses and jurors in capital cases. The same provisions appear in the death penalty title (title VII) of the House bill. The Administration supports the enactment of these provisions.

We recommend, however, that § 504 of the Senate bill -- which extends federal jurisdiction over certain murders of state or local officers who are assisting federal officers -- be supplemented or replaced with a provision that explicitly adds state and local officers assisting federal officers to the list of protected persons under 18 U.S.C. 1114. This would provide greater protection for such officers, protection that is fully commensurate with the protection provided for federal officers themselves. It would also foreclose arguments that protection for state and local officers assisting federal officers under existing provisions should be limited to murder cases within the scope of § 504.

#### Title VI -- Gangs and Juveniles

We believe that strong action must be taken to combat gang crimes and youth violence in our country. Among those provisions that we would like to see included in the Conference Report are:

Criminal youth gangs. Subtitle A of title VI of the Senate bill includes several provisions that are intended to strengthen federal prosecution of youth gangs and juvenile offenders. We particularly recommend including in a final bill §§ 613-14 (Armed Career Criminal predicates and predicates for adult prosecution), 615 (strengthening penalties for using minors to distribute drugs), 616 (increased penalties for drug trafficking near public housing), 617 (increased penalties for violent Travel Act violations), and 618 (juvenile records). We also have no objection to § 619 of the Senate bill, which adds a separate anti-gang funding objective to the Byrne Grant program.

Section 611 of the Senate bill creates a series of offenses covering criminal street gangs activities, with broad jurisdiction and high penalties, some of a mandatory nature. We agree that the criminal activities of street gangs are a major concern of law enforcement, but believe that many of these offenses are better handled at the state and local level, and that federalizing all offenses of this type would be counterproductive. We would, however, support a provision of this type if its scope were defined to encompass gang offenses of a truly interstate or international character, such as those involving interstate or foreign travel, or use of facilities of interstate or foreign commerce. We would be pleased to assist the committee in developing such a formulation.

We note also that § 611 of the Senate bill does not explicitly address enforcement responsibility under the provision, though the proposed offenses implicate the responsibilities of both the Justice Department (general criminal law enforcement) and the Treasury Department (firearms enforcement). We recommend restoring a provision -- included in the 102d Congress version of this proposal -- which gives the Attorney General and the Secretary of the Treasury joint investigative authority under this section "pursuant to an agreement that will be concluded between them."

We do not support § 612 of the Senate bill, which adds as RICO predicates all felonies in which persons below the age of 18 are used in committing the offense, since this would include some offenses that are unrelated to RICO's purpose of targeting organized criminal enterprises that engage in certain serious crimes. We note that this provision is not needed to reach the major forms of organized criminality that frequently involve the use of minors -- such as drug trafficking -- since these crimes are already covered by RICO, whether or not minors are involved.

Gang Prosecution. We support the authorization of funding for more prosecutors for gang prosecutions in § 621 of the Senate bill, but the authorization should be stated in broader terms.

We would want to be able to allocate some of these funds to the Criminal Division, and hiring more prosecutors will entail a need to obtain more support staff and resources. We have no objection to § 622 of the Senate bill, relating to federal anti-gang strategy and information collection. Section 623 of the Senate bill, which attempts to extend the 25% matching funds level under the Byrne Grant program for a year, is obsolete, since legislation has been enacted that permanently sets the matching funds level at 25%. We support § 624 of the Senate bill (and the similar provision in § 1098 of the House bill), which waives the four-year limit on Byrne Grant funding in relation to grants for multi-jurisdictional gang task forces.

Grant Programs. Title XXII of the House bill proposes the creation of a new juvenile drug trafficking and gang prevention grant program. The Senate has also passed a version of this proposal in §§ 631-32 of its crime bill, and proposes to substitute it for a currently authorized anti-gang program administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which would be repealed. In addition, § 633 of the Senate bill proposes a separate youth violence prevention grant program as does Subtitle M of Title X of the House bill.

The Department of Justice supports the objectives of these programs and increased funding in this area, but notes that the proposed programs largely overlap with existing programs administered by OJJDP.<sup>1</sup> Moreover, the currently authorized OJJDP anti-gang program incorporates important elements that would be lost if it were replaced by the new program proposed in Senate bill § 631.

We accordingly recommend combining the juvenile drug trafficking and gang prevention program proposed in § 631 of the Senate bill with the current Gang-Free Schools and Communities program (JJDP Act Part D), by enlarging the list of program objectives to incorporate objectives from the proposed new program.<sup>2</sup> Likewise, the youth violence

---

<sup>1</sup> There are also intrinsic design problems in the Senate bill provisions. For example, the program in § 631 of the Senate bill would require that each state receive at least 1% of the authorized funding, resulting in unfairly large shares for the less populous states. The program in § 633 requires that grants be administered by the state office responsible for Byrne Grant program administration, though this responsibility would more sensibly be assigned to the state juvenile justice agencies that administer JJDP Act (Part B) formula grants.

<sup>2</sup> In defining the scope of this program, however it may be formulated, we endorse § 5167 of the Senate bill which states that grants authorized to reduce and prevent juvenile drug and gang-related activity in "public housing" may also be used for such purposes in federally assisted, low-income housing. We also suggest that formulation be expanded to include federally assisted Indian housing as well.

prevention program in 633 of the Senate bill should be melded with the JJDP Act's Title V Delinquency Prevention Program. We would be pleased to provide the committee with language that would accomplish these consolidations.

Section 631 of the Senate bill also includes a directive to the Departments of Justice and Health and Human Services, subject to appropriations, to study and develop a model for dealing with mental health matters in juvenile justice systems. This is unrelated to the proposed grant program, and should be set up as a separate provision with its own authorization.

Adult prosecution. Both the Senate bill (§ 651) and the House bill (§ 1101) contain provisions for broadened adult prosecution of certain juvenile offenders down to the age of 13. We support the objective of broadening the authorization of adult prosecution, and prefer the House formulation to the Senate's approach.

The Senate bill provision mandates adult prosecution of all juveniles charged with certain offenses down to the age of 13, subject to possible resentencing at the age of 16. The selection of predicate offenses for mandatory adult prosecution under the Senate bill provision is inconsistent -- for example, bank robbery (18 U.S.C. 2113) would be covered, but murder for hire (18 U.S.C. 1958) would not be covered. The provision also departs from normal adult prosecution under federal law in that the juvenile would be resentenced and possibly released within a few years. In comparison, normal adult prosecution results in a prison term that must actually be served (subject to a maximum 15% "good time" credit reduction). Thus, ironically, proceeding against an offender as a juvenile may result in a longer period of assured detention than "adult prosecution" under § 651 of the Senate bill, since a juvenile adjudicated delinquent may be confined until he reaches the age of 21 (see 18 U.S.C. 5037(c)(1)).

The House version of this proposal would lower the minimum age for transfer for adult prosecution to 13, in relation to juveniles charged with certain offenses. This avoids some of the problems with the Senate bill provision, including its mandatory character and the unique resentencing provisions.

We generally support the House version, but would prefer to see it amended further to ensure that the appropriate violent felony offenses are included within its scope. We also recommend that the committee include in the final bill an unrelated, non-controversial provision that appears in § 1102 of the House bill, relating to the production of a juvenile's record prior to proceedings. We would be pleased to provide the committee with appropriate legislative language.

Youth Handgun Safety Act. Title XIX of the House bill and section 662 of the Senate bill contain the Youth Handgun Safety Act, which would enact a general ban on handguns for juveniles. The Administration supports enactment of this critical crime-fighting proposal, which has won bipartisan support. The growing problem of juvenile crime and violence is one from which no community in our nation is immune. Keeping handguns out of the hands of unsupervised minors is one important component of an overall strategy to deal with youth violence.

### Title VII -- Terrorism

Both title VII of the Senate bill and the death penalty title (title VII) of the House bill include the following provisions relating to terrorism or other international matters: Implementing legislation for the maritime, maritime platform, and airport anti-terrorism conventions (Senate bill §§ 701, 719); and an offense of using weapons of mass destruction (Senate bill § 711). We strongly recommend that the committee include these important provisions in the final bill, as critical measures to help combat the growing problem of terrorism.

With respect to formulation, the Senate and House versions of this legislation are largely identical, but the following differences should be noted: Proposed 18 U.S.C. 2280(e) in § 712 of the House bill contains a provision, omitted in the Senate bill, that authorizes the master of a ship to deliver a captured terrorist to the authorities of a party to the convention. Inclusion of this provision is necessary for conformity to the convention. Proposed 18 U.S.C. 2280(d) and proposed 18 U.S.C. 2281(d) in § 712 of the House bill, and proposed 18 U.S.C. 36(c) in § 711 of the House bill, contain exemptions from the proposed offenses for conduct in the course of domestic disputes and labor disputes, where the conduct is prohibited as a felony by state law. (The corresponding Senate bill provisions only have the exemption for conduct during labor disputes.) If the House version is used, the placement of the language relating to punishability as a felony under state law must be changed to make it clear that it is a condition on the applicability of both of the exemptions (domestic disputes as well as labor disputes). This is required for conformity to the conventions.

We also recommend including in the final bill the following additional provisions in title VII of the Senate bill: §§ 712 (increased penalties for certain travel document offenses), 713-14 (territorial sea provisions), 715 (crimes on certain foreign ships), 717 (extended statute of limitations for certain terrorism offenses), 723 (terrorist death penalty), 724 (guidelines increase for terrorist crimes), and 726 (offense of providing material support to terrorists).

We recommend the following amendments to these provisions: Section 713 should be amended to provide that the territorial sea is part of the United States for purposes of federal

criminal jurisdiction, since there are other purposes for which the territorial sea is not considered to be part of the United States (including certain purposes under the immigration laws). In § 714, references to areas that are not within or are outside of the "territory" of any state should be replaced with references to areas that are not within or are outside of the "jurisdiction" of any state, and the term "Commonwealth" should be added to the passages including "State, Territory, etc." to ensure coverage of the expanded territorial sea around Puerto Rico and the Northern Mariana Islands. We would be pleased to provide the committee with specific amendatory language for these purposes. Also, in proposed 18 U.S.C. 7(8) in § 715, the words "To the extent permitted by international law" should be deleted. Section 715 will not achieve its purpose of resolving problems in establishing jurisdiction over crimes committed on foreign cruise ships that operate out of the United States, if case-by-case litigation is required concerning conformity to international law. Congress has not imposed such a requirement in other analogous contexts. See 18 U.S.C. 1203(b)(1), 2332.

We note the following specific points in support of the offense of providing material support to terrorism in § 726 of the Senate bill: This provision was passed by the House of Representatives in its 102d Congress crime bills (the original and conference committee versions of H.R. 3371). The Senate has passed this provision in the FY95 State Department authorization bill, as well as in § 726 of the general crime bill. It was dropped from the State Department authorization bill in conference in deference to the House Judiciary Committee, because it was expected to be a crime bill conference item.

We strongly urge the conference committee to include this provision again in a final bill for enactment. It is aimed at the knowing furnishing of support for acts of terrorism that are criminal under other provisions of law, and has been carefully drafted to avoid any infringement of legitimate activities protected by the First Amendment. It does not interfere in any manner with fund-raising by law-abiding organizations. As the Senate conferees to the State Department authorization bill noted, this is an important provision to deter those who knowingly assist terrorists by creating an appropriate standard of federal liability for such conduct. The provision would be of direct value in strengthening the legal tools against terrorism in the United States, and would help to encourage other countries to take similar steps against the provision of material support to terrorist activities.

Section 716 of the Senate bill and 713 of the House bill contain the implementing legislation for the convention against torture. This legislation has recently been enacted in the State Department authorization bill. Hence, these sections should be replaced with amendments that add a death penalty authorization for fatal cases and correct a typographic error in the enacted version of this proposal. We would be pleased to provide the committee with appropriate language for this purpose.

We recommend against inclusion of provisions establishing an Economic Terrorism Task Force (Senate bill § 722). There is no clear definition of the notion of economic terrorism, and extending the concept of "terrorism" to include non-violent acts with adverse economic impact could dilute efforts to build an international consensus against terrorist violence. Moreover, the high-level statutory task force proposed in § 722 of the Senate bill is unnecessary for study of these issues, since they can be addressed by existing interagency mechanisms.

We also recommend against criminalizing certain violations of airport security regulations (Senate bill § 720), since such violations are more appropriately and effectively addressed by existing civil sanctions.

We support the objective of the cooperating alien admission provisions in §§ 725 and 5117 of the Senate bill, but do not believe that the current formulation of these provisions is satisfactory. We would be pleased to assist the committee in developing an adequate formulation of these proposals.

Title VIII -- Sexual Violence and Abuse of Children, the Elderly, and Persons with Disabilities

Sex crimes against young victims and child pornography. Child sexual exploitation and pornography are abhorrent and should be attacked at every opportunity. To assist in the fight against these evils, the Administration strongly support § 801 of the Senate bill, which effectively increases the maximum penalties for certain sex crimes against victims below the age of 16. We also support title XII of the House bill and §§ 824-25 of the Senate bill, which create a new extraterritorial child pornography offense where importation of the pornography into the United States is intended; adopt several amendments to strengthen child pornography penalty provisions; create an offense of traveling in interstate or foreign commerce for the purpose of engaging in sexual acts with minors; and express the sense of Congress that states should have child pornography laws. The proposed international child pornography offense should be amended to make it clear that intended importation by computer is covered. Also, an amendment which adds the new offense as a RICO predicate needs to be corrected to avoid the inadvertent elimination of 18 U.S.C. 2251A as a RICO predicate.

In addition, we have recently transmitted to Congress a child exploitation initiative that we would like to see included in the Conference Report.

Extended Background Checks for Child Care Workers. Congress enacted last year the "Oprah Winfrey" proposal, which established a national background check system to enable child care employers to determine whether prospective employees have histories of

child abuse. Subtitle B of title VIII of the Senate bill would extend the background check system to include elder care and disabled care, and would broaden the class of background check crimes.

We support the proposed extension of the background check system. Some changes in the formulation of the proposal would be desirable. For example, authorization language should be added to cover the general costs of administering the system, and a study of child abuse offenders required by the proposal should be carried out by the Bureau of Justice Statistics, rather than the Office of Juvenile Justice and Delinquency Prevention. We would be pleased to work with the committee in finalizing this proposal.

Registration systems for convicted sex offenders. Title XIII of the House bill and title VIII.C of the Senate bill contain the "Jacob Wetterling" proposal, which is designed to promote the establishment by states of registration systems for convicted child molesters. We support the enactment of this proposal. However, we recommend deletion of provisions designating registration information as "private data" -- House bill § 1301(b)(5) and Senate bill § 822(e) -- since this could interfere with state discretion to use the data for other legitimate purposes, such as notifying school authorities or victims of earlier offenses that a child molester has moved nearby.

Subtitle F of title VIII of the Senate bill contains a second registration system proposal, for "sexually violent predators." We favor in concept encouraging the establishment of registration systems for violent sex offenders who prey on adult victims. However, more definite criteria are desirable concerning the class of covered offenders and the duration of registration requirements, and it would make sense to combine this proposal with the Jacob Wetterling proposal for child molester registration. We would be glad to assist the committee on questions of formulation if it includes some version of this proposal in the final bill.

#### Title IX -- Crime Victims

For too long, our federal laws did not give adequate protection to crime victims, and did not do enough to promote their interests in the criminal justice system. Congress has responded by adopting since the early 1980's several important acts to redress the traditional neglect of victims and protect their rights and interests. We urge the committee to carry this critical process of reform further by including in the final bill the victim-oriented measures in the pending legislation.

Victims' right of allocution and Crime Victims Fund. Title I.A-B of the House bill and title IX.A-B of the Senate bill include provisions that will: (1) amend Fed.R.Crim.P. 32 to give victims of federal violent and sexual abuse crimes a right to address the court

concerning the sentence to be imposed (right of allocution), parallel to the existing right of the offender to make such a statement, and (2) improve the administration of the Crime Victims Fund and the programs it supports. We support the enactment of these provisions.

Technical changes are needed in the victim allocation provision (§§ 901 and 3264 of the Senate bill and § 101 of the House bill) because the Supreme Court has recently transmitted to Congress a revision of Fed.R.Crim.P. 32 (effective Dec. 1, 1994). The allocation provision, which is formulated as an amendment to the current version of that rule, will be repealed when the new version of Rule 32 takes effect, unless specific language is included to prevent that from happening. We would be pleased to provide the committee with language which ensures that the proposed reform will remain in effect.

Victim's right of allocution in state cases. We support § 903 of the Senate bill, which encourages the states to give victims of violent and sexual abuse crimes a right to be heard in sentencing and parole hearings. For consistency with the proposed federal rule in § 901 of the Senate bill and § 101 of the House bill, the provision in § 903 of the Senate bill should refer to an opportunity for the victim to speak that is equivalent to that of the offender, rather than equivalent to that of the offender's counsel.

Mandatory restitution. Section 902 of the Senate bill amends the restitution statute (18 U.S.C. 3663) to require the issuance by the court of a full order of restitution in cases under the criminal code. The amendments would preserve the court's authority to consider the offender's economic circumstances in specifying the manner and timing of payment of restitution, e.g., in setting up a payment schedule that is consistent with the offender's actual ability to pay. We generally support this proposal, and recommend that it be included in a final bill. We have a few recommendations concerning specifics in the formulation of the proposal, and would be pleased to assist the committee in finalizing it.

Triad programs (crimes against elderly). Title X.H of the House bill and title IX.C of the Senate bill authorize support for TRIAD programs -- involving cooperative efforts of police, sheriffs, and seniors's organizations to prevent crimes against the elderly -- and related research, training, technical assistance, and publicity efforts. We support this proposal, but believe that its value could be enhanced by giving the Attorney General the authority to support a broader range of programs relating to prevention of crimes against elderly persons.

#### Title X -- State and Local Enforcement

DNA identification. Title X.A of the Senate bill and title XV of House bill contain a proposed DNA identification program. We support this proposal. The general design of the Senate version is preferable; the version in the House bill is an earlier formulation which

does not include a necessary authorization of a new grant program (distinct from the Byrne formula grants) to support DNA analysis. We recommend the following amendments: (1) Language should be added to make it clear that the proposal may not be construed to limit the admissibility of DNA evidence. (2) As with other provisions in the pending bills that will entail substantial expense, "subject to appropriations" language should be included in the part of the proposal that assigns additional responsibilities to the FBI.

Department of Justice Community Substance Abuse Prevention. Title X.B of the Senate bill authorizes grants for community-based substance abuse prevention initiatives. We support the objectives of this proposal. However, this proposal substantially duplicates an existing program, the Community Partnership Program, administered by the Department of Health and Human Services.

Racial and Ethnic Bias Study Grants. The Administration supports Section 1021 of the Senate bill that authorizes \$2 million for each of the fiscal years 1995 through 1999, for grants to study racial and ethnic bias in state criminal justice systems, and to develop recommendations correcting such bias.

Grants for technological improvements and law enforcement training. Section 1031 of the Senate bill authorizes grants by the Attorney General for computerized automation and technological improvements in law enforcement, and for expansion of federal training programs for state and local law enforcement officers. We support the authorization of funding for these purposes, and would be pleased to assist the committee in developing the most effective formulation of this proposal.

#### Title XI -- Provisions Relating to Police Officers

Law Enforcement Family Support Grant Program. Title X.A of the Senate bill proposes a law enforcement family support program. We support this program, and believe that the administering authority for it should be the Attorney General. (As currently drafted, the proposal appears to give the Director of the Bureau of Justice Assistance some degree of supervisory authority over the Justice Department's law enforcement agencies.) As with other provisions of the pending bills that will entail substantial expense, "subject to appropriations" language should be added to the part of the proposal that requires the study and development of family support policies and related issues.

Police Misconduct. Section 1111 of the Senate bill provides that it is unlawful for a government or government official to engage in a pattern or practice of denying constitutionally protected rights through the activities of law enforcement or juvenile justice

officials. The provision authorizes the Attorney General to bring civil actions to enforce the prohibition. The Administration supports inclusion of this provision in the final bill.

Section 1112 of the Senate bill requires the Attorney General to collect data on excessive police use of force through the National Crime Victimization Survey (NCVS). However, the NCVS is not a suitable instrument for obtaining data of this type. We recommend substituting a provision for surveys by the Bureau of Justice Statistics covering excessive force complaints submitted to police departments, the disposition of such complaints, and police use-of-force policies, with appropriate authorization language.

Police Corps and Law Enforcement Training and Education. Title XXVII of the House bill and title XI.C of the Senate bill contain the Police Corps and Law Enforcement Training and Education proposal. We support this proposal, and look forward to working with the conferees to harmonize this program with the Community Policing program found in Title I.

### Title XII -- "Drug Court" Programs

The drug courts proposal. Title X.E of the House bill contains the Attorney General's proposal to authorize support for drug court programs. The proposal authorizes grants to support programs involving continuing judicial supervision over drug abusing offenders, with the integrated administration of drug testing, drug treatment, potential prosecution or incarceration for non-compliance with program requirements, and related programmatic and aftercare services.

The Department of Justice strongly supports the inclusion in the final bill of the drug courts proposal of title X.E of the House bill. The proposal requires an amendment, however, to permit support as well for comparable drug rehabilitation programs involving non-judicial supervision of offenders.

Intermediate sanctions, prison drug treatment, and pre-trial drug testing programs. Title XXI of the House bill and section 1203 of the Senate bill authorize grants supporting intermediate sanctions for youthful offenders. Title XXIII of the House bill and section 1204 of the Senate bill authorize grants to support certain substance abuse programs in state correctional facilities. Section 1202 of the Senate bill authorizes grants for drug testing before trial and during diversion programs.

We support the objectives of these programs, but believe that their utility could be enhanced by changing their approach to the distribution of funding, deleting the age limits on offenders who can participate in funded intermediate sanctions programs, and avoiding a narrowly prescriptive approach concerning the types of correctional substance abuse

treatment programs that can receive assistance. We urge the conferees to adopt more flexible formulations of these programs, and would be glad to provide assistance in doing so.

### Title XIII -- Prisons

We support the efforts in both the House and Senate bills to incarcerate more violent offenders and criminal aliens.

Prison assignments. Section 1301 of the Senate bill prohibits favoritism based on high social or economic status in federal prison assignments. We do not object to this provision as formulated in § 1301 of the Senate bill, but note that it is unnecessary, since there is no improper consideration of social or economic status in federal prison assignments.

Impact statements. Section 1302 of the Senate bill requires prison and criminal justice impact statements for legislation. The complex assessments and consultations required by this section could not be carried out within the 14 day time-frame it specifies. Ninety days would be a more reasonable period. As with other provisions that will entail substantial expense, authorization and "subject to appropriations" language should be included in this provision, if the committee retains it in a final bill.

Drug testing of federal offenders on postconviction release. We support section 1303 of the Senate bill, which provides for drug testing of federal offenders on postconviction release. We note with approval that the provision contains an authorization of necessary funding for the Judiciary support agencies to carry out this responsibility (in proposed 18 U.S.C. 3608). With respect to drug testing standards, we think that a formulation along the lines of § 1305(c)-(e) of H.R. 3131 would be preferable, to provide a clearer statement of the standards governing revocation of release based on positive drug tests.

Federal prisoner drug treatment. Title XX of the House bill and section 1304 of the Senate bill establish schedules for getting all eligible federal prisoners into residential substance abuse treatment programs by the end of FY97.

We support the objective of expanded drug treatment for federal prisoners, but in order to assure the most effective use of limited resources somewhat greater flexibility in the proposal's specific requirements would be highly desirable. For example, the Senate bill requires that the drug treatment programs be residential programs in facilities set apart from the general prison population that last between 6 and 12 months -- though not all prisoners who need drug treatment need this particular type of program, and mandating it might unnecessarily interfere with accomplishing other correctional, therapeutic, or individual goals. Moreover, absent flexibility, this mandate would effectively require that in some

cases prisoners receive treatment many years before their release dates rather than when they might want it, need it, and be better able to benefit from it. The House version reflects some effort to moderate these problems, but does not succeed in avoiding them. We urge the committee to adopt a more flexible and cost-effective final version of this proposal -- one that ensures that inmates will receive the right form of drug treatment for them at the times when it is most likely to meet their needs in the best manner possible. We would be glad to work with you to develop legislative language for that purpose.

Inclusion of correctional costs in criminal fines. We support § 1305 of the Senate bill, which authorizes the inclusion of correctional costs in criminal fines. This is necessary to correct the effect of an appellate decision that invalidated a guideline including correctional costs in fines as beyond existing statutory authority.

Correctional Capacity Expansion. Section 1321 of the Senate bill authorizes \$3 billion, to remain available until expended, for grants to construct prisons and boot camps and otherwise expand correctional capacity at the state and local levels. Title VI of the House bill contains a correctional capacity grant program (with \$600 million authorized for each of FY95-99, for a total of \$3 billion) which is more narrowly focused on ensuring adequate prison space for violent repeat offenders. Section 1331 of the Senate bill authorizes \$100 million in each of FY94-98 for grants for facilities for violent and chronic juvenile offenders.

The Department of Justice supports the goals of these provisions: to help states house the growing population of offenders, and to ensure that the public's security is not threatened through the release of dangerous offenders because of inadequate prison space. We believe that a program to provide state funding for prisons is an important component of the anti-crime legislation under consideration by the committee. There are over 15,000 prison beds that lie empty because states lack necessary operational funds. Federal funding will help states to fill these beds immediately.

With respect to the specific design of a grant program and the conditions for state participation, we support those programs that make funds available on a discretionary basis to those states that need the greatest assistance.

We look forward to working with the committee to develop a state prison grant program that realizes the objectives of §§ 1321 and 1331 of the Senate bill and Title VI of the House bill.

Notification of release of prisoners. Sections 1324-25 of the Senate bill require the Bureau of Prisons (BOP) to notify state and local law enforcement about release to their areas of violent and drug offenders on supervised release, and changes of residence by such

offenders. We support this provision, but believe it should be changed so that the probation service is responsible for giving notice about post-release changes of address, since probation officers -- not BOP -- supervise released offenders at that stage. The provision that the notice may be used solely for law enforcement purposes should be deleted, since it could impede legitimate uses of the information (such as warning potential victims, or employers who should not be hiring violent or drug offenders considering the nature of the employment).

Regional federal prisons for state offenders and Truth in Sentencing. Section 1341 of the Senate bill requires the Attorney General to establish and operate at least 10 regional prisons, each having space for at least 2,500 inmates. The prisons would be used primarily to house state offenders in certain categories, from states that have adopted truth in sentencing for felony crimes of violence and other specified reforms. The authorization is \$600 million in each of FY94-FY98.

The Department of Justice strongly opposes the inclusion in the final bill of section 1341 of the Senate bill -- or any other proposal involving federal regional prisons for state offenders -- for several reasons. First, the regional prisons plan would involve a massive and uncontrolled expenditure of funds. Current estimates suggest that the plan would cost at least \$6 billion over the first six years and at least an additional \$1 billion every year thereafter.

Second, it would take several years to build and open regional prisons. Hence, states could realize no benefit from this proposal for at least several years. By contrast, a state grant program would put more violent offenders behind bars immediately.

Finally, there are serious difficulties involved in the operation of a regional prison system. As the Director of the Federal Bureau of Prisons testified before the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, differences in state correctional policies, the difficulties and risks of transporting inmates to and from centralized federal facilities, and various other problems would make the administration and safe operation of a system of federal regional prisons for state offenders extraordinarily difficult and expensive.

Overall, this proposal has no advantages and many gross disadvantages in comparison with directly providing assistance to the states for expansion of their correctional capacities. In sum, we believe that our proposal will incarcerate more violent offenders, more quickly, and at less cost than the regional prison plan.

The House has also included in title VIII of its bill a formula grant program for correctional capacity expansion, with some incentive for adoption of "truth in sentencing"

reforms. The amendment authorizes \$2.5 billion in FY95 and \$2 billion for each of FY96-99. However, we also believe that, in part, grant funds should be apportioned to states that adopt "truth in sentencing" measures and make other improvements in their criminal justice systems to assure that the most violent offenders are kept behind bars.

Studies. Section 1322 of the Senate bill requires an NIJ feasibility study on establishing a prisoner transfer clearinghouse. Section 1323 of the Senate bill requires a study of correctional alcohol abuse treatment and a nationwide assessment of the role of alcohol in crime by the National Institute of Justice. As each of these proposals will entail substantial expense, they should include authorization and "subject to appropriations" language.

Violent Crime Reduction Trust Fund. Title XIII.E of the Senate bill proposes to fund the bill through the creation of a Violent Crime Reduction Trust Fund, which would be funded through mandated ceilings on federal employment.

As noted in our cover letter, we strongly urge the committee to include a funding mechanism of this type in the final bill. In the absence of such a mechanism, it is unlikely that more than a small fraction of the expenditures contemplated by the pending bills could be funded.

We have provided a specific text to the Committee, setting aside \$29 billion in a fund for crime fighting. We believe this is the best way to fund these vital programs.

#### Title XIV -- Rural Crime

Drug Trafficking in Rural Areas. Title XXV of the House bill and title XIV of the Senate bill include provisions that would (1) authorize an aggregate amount of \$250 million for rural enforcement grants, (2) require the establishment of rural crime and drug enforcement task forces in all districts with significant rural lands, and (3) require the establishment of a specialized drug enforcement training program for rural officers at the Glyncro (Treasury Department) training facility.

We support the increased authorization of grant funding to support rural enforcement efforts. We also support the objectives of the task force and training program proposals in this part, but believe that they could be achieved more effectively by other approaches. The problem of rural trafficking would be addressed more effectively by expanding DEA's existing task force program into rural areas than by establishing a new system of task forces with an exclusively rural focus; drug trafficking networks do not respect the boundaries between urban and rural areas. Any requirement that task forces be established or extended into rural areas should be made "subject to appropriations," since substantial costs will

result. With respect to rural drug enforcement training, any enlarged program should be assigned to the Justice Department, consistent with existing responsibility for this area.

DEA resources and drug-free zone extension. Title XXV of the House bill and title XIV of the Senate bill also authorize \$100 million over five years to hire additional Drug Enforcement Administration (DEA) agents, and extend "drug-free" zone increased maximum penalties to drug trafficking near highway truck stops and rest areas. We strongly support the proposed increase in DEA resources, and support the drug-free truck stops and rest areas proposal.

Rural state domestic violence and child abuse. Title XXV of the House bill and title XIV of the Senate bill include a grant program for enforcement and prevention efforts relating to domestic violence and child abuse in rural states. We support the objectives of this proposal, but believe that the proposed program should be consolidated with other existing and proposed programs addressing domestic and sexual violence. The desirability of consolidating programs in this area is further discussed below in connection with the proposed Violence Against Women Act (titles XXXII-XXXVII of the Senate bill and title XVI of the House bill).

#### Title XV -- Drug Control

Title XV of the Senate bill contains various provisions to strengthen federal drug laws. We recommend specifically that the final bill include provisions increasing the maximum penalties for drug trafficking in federal prisons (§ 1501), increasing penalties for drug trafficking in or near public housing (§ 1503), creating an offense covering coaches and trainers who encourage persons in their charge to use steroids (§ 1504), increasing penalties for drug trafficking in drug-free zones (§ 1505), prohibiting advertising for transactions in Schedule I controlled substances (§ 1534), providing civil remedies for drug paraphernalia violations (§ 1537), and effecting minor or technical changes in drug laws (§§ 1502, 1531-32).

Section 1506 of the Senate bill declares a federal policy that drug offenses in federal prisons are to be prosecuted to the fullest extent of the law; directs guidelines enhancement for drug offenses in prisons; and prohibits probation for such offenses. We support the objectives of this provision, but have reservations concerning the requirement of maximum prosecution of prison drug offenses, since there are other means of punishing such offenses (including denying good time credits and transfer to less desirable facilities).

Title XV.B of the Senate bill, relating to precursor chemicals, has already been enacted.

Section 1533 of the Senate bill directs the Attorney General, in consultation with the Secretary of Transportation, to implement a national awareness program to notify governors and state representatives about a highway funding reduction provision for states that do not revoke driver's licenses for drug offenders. If a notice requirement of this type is to be enacted, we recommend that responsibility for carrying it out be assigned exclusively to the Department of Transportation. [OMB: PLEASE COORDINATE WITH DOT ON THIS.]

Section 1535 of the Senate bill requires that the goals of the next drug strategy include expanded drug treatment, and expresses the sense of Congress that the long-term goals of the drug strategy should include drug treatment for everyone who needs it. We support this provision in concept, but note that the 1995 drug strategy already includes an objective of expanded drug treatment.

Section 1536 of the Senate bill directs the Federal Aviation Administration to issue regulations requiring employees to notify appropriate law enforcement authorities about discovery of drugs or large amounts of cash in airport security screenings. [FAA AND OMB SHOULD ADVISE AS TO POSITION.]

#### Title XVI -- Drunk Driving Provisions

We support the provision in this title for increasing penalties for drunk driving that endangers minors in areas under federal jurisdiction. We also support the provision expressing the sense of Congress that a history of drunk driving should be considered in child custody and visitation decisions.

#### Title XVII -- Commissions

There are a number of Commissions proposed in both bills, and while each of them is different, all share a common aim: trying to achieve a better understanding of the causes and remedies for crime and violence in America. While these multiple Commission can be attacked as duplicative, or serving particular interests, a single, comprehensive Commission could play a constructive role in shaping our national response to the epidemic of crime and violence that plagues our country. Such a Commission should include persons from a wide range of backgrounds, including all of the communities encompassed within the numerous Commissions in the bills.

#### Title XVIII -- Bail Posting Reporting

Title XVIII of the Senate bill requires state and federal criminal court clerks to notify the IRS and state and federal prosecutors about the posting of large cash bail by defendants

in drug trafficking and organized crime cases. We generally support this proposal, but note that constitutional questions may be raised about the authority of the federal government to require state court clerks to report to state prosecutors concerning these matters. We would be happy to work with the Conference Committee to address this concern.

#### Title XIX -- Motor Vehicle Theft Prevention

Title XIX of the Senate bill requires the Attorney General to develop a decal system for motor vehicle theft prevention. We support this intelligent crime-fighting idea, and recommend including "subject to appropriations" language in this proposal, since the development of the program may require expense.

#### Title XX -- Protections for the Elderly

Section 2001 of the Senate bill authorizes a grant by the Attorney General to help locate missing Alzheimer's disease patients. In light of the need that will exist for coordination with medical care providers and organizations, we believe that a grant of this type could be administered more effectively by the Department of Health and Human Services.

Section 2002 of the Senate bill essentially directs a review by the Sentencing Commission of guidelines for certain violent crimes against elderly victims in areas under federal territorial jurisdiction to ensure adequate penalties. We support this provision.

#### Title XXI -- Consumer Protection

Section 2101 of the Senate bill and title IV of the House bill broadly create federal jurisdiction over insurance business crimes. Section 2102 of the Senate bill extends federal jurisdiction over credit card fraud. We have general concerns about the excessive federalization of traditionally local matters, and do not believe that the extensions contemplated by these provisions would be a wise use of federal law enforcement resources.

We support section 2103 of the Senate bill, which includes mail carried by private and commercial interstate carriers under the mail fraud statute.

#### Title XXII -- Financial Institutions Fraud Prosecutions

We support the strengthened disqualification of certain offenders from participation in banking that is proposed in title XXII of the Senate bill. We have no objection to the provision in the title that encourages the Attorney General to submit a report on the collapse

of private deposit insurance corporations based on the findings of the financial institutions fraud task forces.

Title XXIII -- S.&L. Prosecution Task Force

Title XXIII of the Senate bill directs the Attorney General to establish a savings and loan prosecution task force. We believe that the task forces that the Department has already established are adequate to address the goals of this provision.

Titles XXIV, XXV -- Sentencing and Magistrate Provisions

Sentencing and magistrate improvements. We support §§ 2401-03, 2501-02 of the Senate bill, which contain modest, non-controversial improvements in federal laws relating to sentencing, supervised release, and magistrates.

Drug law mandatories carve-out. Title II of the House bill and § 2404 of the Senate bill propose an exception to drug law mandatory penalties for certain low-level, nonviolent offenders without serious records. We generally prefer the standards of the House version, and urge the Conferees to adopt it as a sound step toward insuring our limited federal prison space is used to incarcerate violent and dangerous offenders for the long sentences they deserve. While we generally prefer the House provision, we urge adoption of the Senate's position that does not extend retroactive application of this "carve-out."

The House bill provision applying the carve-out to persons sentenced ten days or more after enactment would produce arbitrary results. For example, a person who committed an offense a year ago and has already been tried and sentenced would not be covered, but a person who committed a like offense at the same time or earlier would be covered if he had not yet been sentenced by ten days after enactment. The fairest and most practical solution is to have the provision apply prospectively, that is, to offenses committed after the date of enactment.

Federalization of violent crimes involving firearms. Sections 2405-06 of the Senate bill would extend federal jurisdiction over almost all crimes involving the use or threat of force against a person or property in which the offender has a firearm. We oppose these provisions, which would largely obliterate the distinction between federal and state criminal jurisdiction. They represent a false promise of action in fighting violent crime -- a promise that will not be realized, given limited federal resources -- and divert attention from our critical federal fight against violent and drug crime.

Extending federal jurisdiction over hundreds of thousands of local offenses, which state and local law enforcement is generally best-situated to deal with, will not increase the

public's security against these crimes. At best, these provisions would be ineffectual -- at worst, they would divert federal resources from dealing with the distinctively federal matters and interstate criminal activities that federal law enforcement is uniquely competent to handle.

Increase of drug law mandatories for offenses involving minors. Section 2407 of the Senate bill provides mandatory minimum prison terms of ten years for distributing drugs to a person under 18 or using such a person in drug trafficking, where the offender is at least 21 years old. This means, for example, that a 21 year old who passed a marijuana cigarette to a 17 year old companion would have to be imprisoned for at least ten years. The offender in such circumstances should be punished, but it is hardly obvious that he needs to be incarcerated until he is over 30 in every case. We recommend against enactment of this provision as overly broad and indiscriminate.

Three strikes and you're out. President Clinton has proposed the enactment of "three strikes and you're out" mandatory life imprisonment provisions, which target the most dangerous and incorrigible violent offenders for permanent incapacitation. Title V of the House bill is generally based on the President's proposal, but incorporates certain amendments that we do not favor. Sections 2408 and 5111 of the Senate bill incorporate "three strikes" proposals that were developed independently.

We recommend that the committee adopt a formulation that reflects the essence of the President's original proposal, i.e., that is targeted to insure that truly violent repeat offenders are locked up for life. The President's approach is largely reflected in title V of the House bill, but we recommend deleting from the specification of predicate offenses certain non-violent crimes involving controlled substances. Current law already provides severe penalties for recidivist drug offenders.

Hate crimes enhancement. Title XVII of the House bill and section 2409 of the Senate crime bill generally require a three level enhancement in sentencing for "hate crimes." We support this proposal, but have some concerns regarding its formulation. In particular, we are concerned about the requirement that the sentencing enhancement factor be found by a jury beyond a reasonable doubt. We would be pleased to assist the committee in developing a better formulation of this proposal.

#### Title XXVI -- Computer Crimes

Title XXVI of the Senate bill contains provisions that are intended to strengthen computer crimes provisions. They include some desirable features, but also features that would inadvertently have the effect of weakening existing law. We recommend against enacting these provisions as currently formulated, but would be glad to assist the committee

in developing a final formulation that preserves their positive features and increases the effectiveness of the law in this area.

Title XXVII -- International Parental Kidnapping

The provisions in this title of the Senate bill have already been enacted.

Title XXVIII -- Safe Schools

The provisions in this title of the Senate bill are obsolete in light of the recently enacted Safe Schools Act.

Title XXIX -- Miscellaneous

Increased penalties. Title XXIX.A of the Senate bill includes provisions to increase penalties for various federal crimes, including assaults, manslaughter, civil rights offenses, trafficking in counterfeit goods and services, conspiracy to commit murder for hire, violent Travel Act violations, and arson. We support the increases in maximum penalties proposed in this subtitle, and recommend that they be included in a final bill.

We note, however, that § 2904 increases maximum prison terms for trafficking in counterfeit goods and services, but has the unintended effect of reducing maximum fines for that offense. The committee should adopt instead the version of this proposal in § 3051 of the House bill, which increases both imprisonment and fine maxima.

Extension of Civil Rights Statutes. We support title XXIX.B of the Senate bill, which extends the protection of certain civil rights provisions to all persons in the United States (not just "inhabitants").

Audits and reports. We oppose subtitle C of title XXIX of the Senate bill as currently formulated. The subtitle imposes audit and reporting requirements relating to asset forfeiture which are burdensome and unworkable. The problems include:

(1) For agencies that receive small amounts of asset forfeiture funds, the costs of the required audits could exceed the costs of the funds they have received. (2) Detailing the uses to which the funds were dedicated would involve a departure from standard audit procedures (which permit auditors to review a random sample of expenditures), and could cost tens of thousands of dollars for larger agencies. (3) The requirement that all local audit reports be included in annual reports to Congress would have absurd effects, considering that assets are usually shared with over 1,000 agencies each year. (4) The required annual reporting on payment of administrative and contracting expenses from the Department of Justice Asset Forfeiture Fund is unnecessary; information of this type is available on request to Members

of Congress. We recommend substituting a provision directing the Attorney General to establish appropriate audit requirements for agencies receiving equitable sharing funds, and to make the resulting audit reports available on request for review by Congress.

Gambling-related Provisions . We have significant concerns about § 2931 of the Senate bill as currently formulated. This provision would give the New Jersey gaming agency a right of access to the Interstate Identification Index (III) for licensing purposes. The provision would avoid the normal limitation of III to criminal justice uses, exempt this user of the system from the fees charged for background checks conducted through the normal route (submission of fingerprints), and allow name checks without fingerprints, which are highly inaccurate.

We also have significant concerns about § 2932 of the Senate bill. As currently formulated, this provision would effectively repeal the Gambling Ships Act (18 U.S.C. 1081-83), which prohibits anyone from operating gambling ships out of the United States or transporting people from the United States to gambling ships. Specifically, the section exempts from the Act gambling on a ship outside of the territorial waters on a "covered voyage," which is defined by the pertinent provision of the Internal Revenue Code (26 U.S.C. 4472) to include any voyage of "a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States . . . during which passengers embark or disembark the vessel in the United States."

Hence, the Gambling Ships Act would generally be inapplicable to gambling on ships outside of the territorial sea. We are concerned that this would result in too many floating casinos operating just outside the territorial waters of the United States, free from both federal and state regulation. In the absence of governmental regulatory authority, there is a risk of such gambling ships and related shore operations becoming particularly attractive enterprises for organized crime involvement as well as of providing fertile ground for the support industries of unregulated gambling, such as loansharking, prostitution, and drug trafficking.

We would encourage the committee to craft carefully any final version of § 2932 to minimize concerns about infiltration by organized crime and other potential problems. We would be glad to provide the committee with any desired assistance in developing such a formulation for §2932, and in addressing the formulation of § 2931 as well to avoid unintended adverse consequences.

White Collar Crime and Miscellaneous Amendments (Senate bill title XXIX.E. .G). We generally support subtitles E and G of title XXIX of the Senate bill. These subtitles contain miscellaneous provisions that (for example) fill gaps in federal "receiving" offenses and attempt liability, and facilitate undercover investigations of trafficking in stolen or

counterfeit goods, and provide findings supporting an interstate commerce rationale for the gun-free school zones law. We have suggestions for a few amendments that would enhance some of the provisions in these subtitles, and would be pleased to share them with the committee. For example, in § 2963, the cut-off date of December 31, 1994, for the extension of "churning" authority in undercover investigations would make the authority terminate shortly after enactment; a later date or a permanent extension of churning authority should be substituted.

Prohibition of Byrne Grant discretionary grants to other federal agencies. We oppose subtitle F of title XXIX of the Senate bill, which prohibits the award of Byrne discretionary grants to other federal agencies. When such grants are made, the recipient federal agency typically serves as a conduit to pass through the funding to state and local agencies. This enables the Bureau of Justice Assistance to draw on the resources and expertise of other federal agencies in administering grants in their subject matter areas, as illustrated by the grant to the Bureau of Justice Statistics to support the improvement of state criminal records. Subtitle F of title XXIX of the Senate bill would impair the federal justice assistance program by prohibiting such cooperative arrangements in the future.

#### Title XXX -- Technical Corrections

We support the technical corrections in this title of the Senate bill, but recommend using the more complete set of technical corrections that was proposed by Chairman Brooks in H.R. 3131.

#### Title XXXI -- Driver's Privacy Protection Act

Title XXIX of the House bill and title XXXI of the Senate bill generally require that motor vehicle driver's license and registration information be kept confidential (subject to exceptions for legitimate uses, such as law enforcement and other governmental uses).

The Department of Justice supports a general requirement of confidentiality for this type of motor vehicle record information. This reform is responsive to incidents in which criminals have obtained the addresses of victims from motor vehicle departments, and then used the information to commit crimes against the victims. This reform is also desirable for the general protection of privacy. Including findings supporting an interstate commerce rationale for the proposal would be advisable in light of the possibility of constitutional challenges.

Titles XXXII through XXXVII -- Violence Against Women Act

Titles XXXII through XXXVII of the Senate bill contain the current Senate version of the Violence Against Women Act. Title XVI of the House bill contains the House version. The Department of Justice strongly supports the enactment of the Violence Against Women Act.

The proposed Act contains a wide range of critical provisions to strengthen the response under federal law to crimes of sexual violence and domestic violence, and greatly increases federal assistance for state and local efforts to control and prevent crimes that particularly affect women, including sexual assaults, stalking, and domestic violence. For example, support would be authorized for dedicated police and prosecution units targeting sexual assaults or domestic violence, improved law enforcement training to deal with such crimes, data and records systems to enable law enforcement to keep track of and apprehend rapists and domestic violence offenders more effectively, and increased assistance and services for victims of sexual assaults and domestic violence offenses.

We believe that the proposed grant authority for criminal justice assistance to combat sexual assaults, domestic violence, and other violence against women could be structured most effectively as a comprehensive grant program under the administration of the Attorney General.<sup>3</sup> The Department of Health and Human Services has also provide recommendations for enhanced integration of some of the proposed prevention and social services programs in this area with existing programs. Our specific recommendations appear in the ensuing discussion of the individual Violence Against Women titles.

Title XXXII -- Safe Streets for Women

Federal Penalties for Sex Crimes. Section 3211 of the Senate bill increases the maximum penalties for recidivist sex offenders; § 3212 directs a review of the sentencing guidelines and federal sentencing practices for certain serious sex offenses by the Sentencing Commission. We support section 3211 and have no objection to section 3212, but they involve some problems in formulation. We would be pleased to work with the committee in refining these proposals.

---

<sup>3</sup> We recommend particularly that the following proposed programs be integrated into a comprehensive sexual and domestic violence grant program administered by the Attorney General: Senate bill § 3221 and House bill § 1602 (general violence against women enforcement grant program); Senate bill § 3331 and House bill § 1623 (grants to encourage spouse abuse prosecution); the criminal justice aspects of Senate bill § 3341 (domestic violence and family support grant program); Senate bill § 3713 (supplementary grants for states adopting effective laws relating to sexual violence); and the criminal justice aspects of Senate bill § 1421 and House bill § 2521 (domestic violence and child abuse grant program for rural states ).

Mandatory restitution for sex crimes. Section 3213 of the Senate bill and § 1609 of the House bill make the award of restitution mandatory in sex offense cases. We support the objective of these provisions, but recommend that they be deleted in favor of the general mandatory restitution provision in § 902 of the Senate bill, which makes restitution mandatory for all offenses under the criminal code (including sex offenses).

Federal victim's counselors. Section 3214 of the Senate bill authorizes \$1.5 million for U.S. Attorney offices for the purpose of appointing victim/witness counselors in sexual and domestic violence cases in appropriate areas (such as the District of Columbia). We support this provision, but suggest using a more flexible authorization of victim services funding for the Department of Justice for sexual and domestic violence cases.

Grants to Combat Violent Crimes Against Women. Title XXXII.B of the Senate bill and § 1602 of the House bill authorize a general grant program supporting enforcement efforts relating to violence against women, including sexual and domestic violence. The Senate bill version of this program is complex, with separate allocations of funding for grants to the 40 areas with the highest rates of violence against women, general formula grants, and grants to Indian tribes. We have concerns about the feasibility of administering such a formula, and would like to work with the Committee on appropriate changes. As noted earlier, we recommend that this program be combined with a number of other sexual violence and domestic violence grant programs in the pending bills to achieve a comprehensive and integrated approach to justice assistance funding in this area.

Safety for Women in Public Transit and Public Parks. Title XXXII.C of the Senate bill allocates Transportation Department and Interior Department funding for security measures in public transportation systems, national parks, and urban parks and recreation areas. The requirement of reports to the Office for Victims of Crime (OVC) as a condition of eligibility for certain grants should be deleted, since OVC would have no role in administering these grants.

National commission or task force on violence against women. Title XXXII.D in the Senate bill and §§ 1643-51 of the House bill would each establish a national body (commission or task force) to study violence against women and recommend responses. We recommend using the House version of this proposal, which would create a task force appointed and chaired by the Attorney General.

Extension of rape shield law. F.R.E. 412 narrowly limits the admission of evidence of past sexual behavior of the victim in sexual abuse cases brought under chapter 109A of the criminal code. Section 3251 of the Senate bill is designed to create a new victim shield rule

for non-chapter 109A criminal cases. Section 3252 of the Senate bill proposes a parallel shield rule for civil cases.

We support the extension of the victim shield rule beyond chapter 109A cases. However, the legislative proposal in § 3251 of the Senate bill is obsolete in light of a rules change issued by the Supreme Court on April 29, which extends the scope of F.R.E. 412 to all criminal cases involving alleged sexual misconduct (effective Dec. 1, 1994). The Court did not adopt a proposed extension of the shield rule to civil cases, and thus, a reform of the sort proposed in § 3252 of the Senate bill remains necessary.

Section 3253 of the Senate bill contains miscellaneous amendments to the current version of the shield rule (current F.R.E. 412). We support the central reform proposed in this section of allowing the government to take an interlocutory appeal of a decision admitting evidence of the victim's past sexual behavior. However, we have concerns about provisions authorizing interlocutory appeals by victims and conditioning the government's use of certain evidence on victim consent, since this might interfere with the effective prosecution of sexually violent offenders in some cases. Technical changes will be needed to ensure that the reforms adopted will not be effectively repealed when the new version of F.R.E. 412 goes into effect in December. We would be pleased to assist the committee in finalizing this proposal.

Evidence of clothing. Section 3254 of the Senate bill provides that evidence of the victim's clothing is not admissible in a prosecution under chapter 109A of the criminal code to show that she incited or invited the offense. Section 3706 of the Senate bill provides more broadly that no evidence is admissible in such cases to show that the victim invited or provoked the commission of the offense (as opposed to showing consent). We support these proposals, and recommend that the committee combine and harmonize the two provisions addressing this issue.

Assistance to Victims of Sexual Assault. Section 3261 of the Senate bill authorizes funding, under the Public Health and Health Services Act, for rape prevention and education programs conducted by rape crisis centers or similar entities. Section 1606 of the House bill proposes a more broadly defined program of this type. Section 3263 of the Senate bill authorizes grants under the Runaway and Homeless Youth Act to private nonprofit agencies to support services for female runaway, homeless, and street youth who have been subjected to or are at risk of sexual abuse. The Department of Health and Human Services, which would be responsible for administering these programs, supports their enactment. In relation to the program in § 3263, the restriction to female runaways, etc., could sensibly be deleted, since runaway boys are also subject to sexual abuse and exploitation.

Section 3262 of the Senate bill conditions the entitlement of states and other grantees to funds under title XXXII of the Senate bill on payment for forensic medical exams for sexual assault victims. Sections 1603-05 of the House bill similarly condition state entitlement to funding under programs in the House bill Violence Against Women Act title on payment for forensic medical exams for sexual assault victims, and prescribe additional conditions relating to non-imposition of filing and process costs on victims, and treating sex offenses between acquaintances as severely as sex offenses between strangers.

We support provisions to encourage states to pay for forensic examinations for victims, but would like to work with the Committee to reformulate the provisions.

Sex Offender Supervision and Treatment. Section 1607 of the House bill directs the National Institute of Justice to establish training programs relating to supervision and treatment of sex offenders, and authorizes funding for that purpose. Section 1608 of the House bill directs the Attorney General to compile information on sex offender treatment programs and to give federal sex offenders information about such programs in the communities to which they are released. Both sections should include authorization and "subject to appropriations" language if they are included in a final bill.

#### Title XXXIII -- Safe Homes for Women

Domestic Violence Hotline. Title XXXIII.A of the Senate bill and § 1653 of the House bill authorize a grant for the operation of a national hotline to provide information and assistance to victims of domestic violence. We support the provision of funding for such a hotline.

Interstate Enforcement. Proposed 18 U.S.C. 2261-66 in title XXXIII.B of the Senate bill would establish two new federal offenses -- covering respectively injury to a spouse or intimate partner, and violation of an order protecting a spouse or intimate partner -- for cases involving travel or movement of the offender or victim across a state line. These sections also contain provisions relating to restitution and protective orders. Similar provisions appear in § 1622 of the House bill.

We support the objectives of these provisions, but recommend revising this proposal so as to focus it on cases where states are unable to deal adequately with the problem because of the interstate nature of the abuse. We also recommend deleting the mandatory restitution provisions for the proposed new offenses in this subtitle in favor of the general mandatory restitution provisions in § 902 of the Senate bill.

Proposed 18 U.S.C. 2265 in title XXXIII.B of the Senate bill and § 1622 of the House bill is a "full faith and credit" provision that is intended to ensure nationwide

enforcement of protection orders, regardless of which state they are issued in. The associated definition of protection orders (proposed 18 U.S.C. 2266(2)) covers orders issued for the benefit of present and former spouses and similarly situated persons. We support the objective of this proposal, but recommend substituting a broader version proposed in § 202 of H.R. 688 and S. 6, which covers all types of protective orders (including, e.g., orders protecting persons who are stalked by strangers, as well as orders arising from domestic violence situations).

Spouse Abuse Prosecution. Section 3331 of the Senate bill and § 1623 of the House bill authorize grants to encourage effective prosecution in cases involving abuse of spouses and intimate partners. We believe that this program should be merged with several other programs into a comprehensive sexual and domestic violence grant program administered by the Attorney General.

Domestic Violence and Family Support Grant Program. Section 3341(a)-(i) of the Senate bill proposes a general grant program supporting enforcement and prevention efforts relating to domestic violence and child support. As discussed earlier, the criminal justice aspects of this program should be merged with several other programs into a comprehensive sexual and domestic violence grant program administered by the Attorney General. The prevention and social services aspects of this program should be merged with existing HHS programs (particularly the Family Violence Prevention and Services Act).

Family Violence Prevention and Services Act authorizations. Section 3341(j) of the Senate bill contains authorizations of funding for the Family Violence Prevention and Services Act. [HHS SHOULD PROVIDE COMMENTS.]

Family Violence Prevention and Services Act amendments. Subtitles E and H of title XXXIII of the Senate bill contain a number of amendments to the Family Violence Prevention and Services Act. [HHS SHOULD PROVIDE COMMENTS.]

Youth Education and Domestic Violence. Title XXXIII.F of the Senate bill directs the Secretary of Health and Human Services to delegate her powers to the Secretary of Education for the purpose of selecting, implementing, and evaluating four model programs (addressed to different age groups) for educating young people about domestic violence and violence among intimate partners. We support the objective of educating youth for the prevention of such violent crimes. The Department of Education advises, however, that programs of this type should be developed at the state and local level, informed by local needs and circumstances, and integrated with comprehensive school reform plans that include school health education programs.

Confidentiality of addresses. Section 3371 of the Senate bill contains provisions which prescribe confidentiality requirements for the Postal Service relating to the addresses of abused persons and domestic violence shelters. The Postal Service has submitted comments indicating that these provisions are unclear in some respects and would be difficult to implement as currently formulated. We recommend that the committee consult with the Postal Service and attempt to resolve any problems.

Community Programs on Domestic Violence. Sections 5122 and 5140 of the Senate bill and § 1654 of the House bill authorize grants by HHS supporting community initiatives against domestic violence. (These provisions appear in the last title of the Senate bill, but logically belong with the Violence Against Women Act provisions.) We support the objectives of this proposal, but the Department of Health and Human Services advises that it is redundant in relation to the existing Family Violence Prevention and Services Act.

Data and Research. Section 3391 of the Senate bill directs the development of a research agenda on violence against women through a National Institute of Justice contract with the National Academy of Sciences or some other entity. We support the objective of this provision, but recommend converting it into a more flexible authorization for the Attorney General to develop or arrange for the development of such a research agenda.

Section 3392 of the Senate bill directs the National Institute of Justice in conjunction with the Bureau of Justice Statistics (BJS) to study how states may collect centralized databases on the incidence of domestic violence. BJS should be the lead agency in a study of this type, and "subject to appropriations language" should be added. It would also be desirable to coordinate or consolidate this provision with other provisions in the bills that address related issues (particularly the domestic violence and stalking records provisions in title XXVIII of the House bill). We would be pleased to assist the committee in making such changes.

The Department of Health and Human Services (HHS) advises us that it supports section 3393 of the Senate bill, which authorizes funding for HHS to study domestic violence injuries and related health care issues.

Battered alien spouses. Sections 1626-28 of the House bill contain provisions that are primarily designed to protect abused alien spouses and to enable them to stay in the United States. We strongly support the objectives of this proposal, and would be pleased to assist the committee in developing to optimum approach to promoting the effective protection of abused alien spouses and the fair administration of the immigration laws.

Title XXXIV -- Civil Rights

Sections 3402-03 of the Senate bill would create a federal cause of action for gender-motivated felony crimes of violence. The Department of Justice supports the enactment of this proposal.

We have some limited recommendations concerning the formulation of the proposal, which have previously been stated in testimony by our Civil Rights Division: Findings concerning the inadequacy of state civil remedies to afford equal protection should be added, and possible ambiguities concerning the burden of proof in establishing a predicate state or federal crime should be resolved. We would be pleased to work with the committee in finalizing this proposal.

#### Title XXXV -- Safe Campuses for Women

Title XXXV of the Senate bill authorizes \$20 million in FY94 and necessary sums in fiscal years 1995, 1996, and 1997, for an existing campus sexual assaults program administered by the Department of Education. [VIEWS OF DEPARTMENT OF EDUCATION NEEDED.]

#### Title XXXVI -- Equal Justice for Women in the Courts Act

Title XXXVI of the Senate bill and §§ 1661-66 of the House bill authorize funding for the State Justice Institute to support training of state court personnel relating to gender-related violence, and funding for the federal judiciary for studies of gender-bias in the federal courts and related training and information programs. We have no objection to these provisions.

Section 1667 of the House bill expresses the sense of Congress that the executive branch, working through the State Justice Institute, should examine programs which would allow the states to consider the admission of expert testimony concerning domestic violence ("battered women's syndrome" evidence) when offered by criminal defendants, and related issues. The State Justice Institute is an independent organization that is not subject to control by the executive branch. We agree, however, with the objective of exploring the expanded use of "battered women's syndrome" evidence, and believe that study of this issue should include prosecutorial uses of such evidence as well as defensive uses. We note that the provisions for study of "battered women's syndrome" evidence that appear elsewhere in the bills -- §§ 2964 and 3708 of the Senate bill and § 121 of the House bill -- are broad enough to cover both prosecutorial and defensive uses of this type of evidence. The provision in § 1667 of the House bill should be consolidated with these other provisions addressing the same subject.

#### Title XXXVII -- Violence Against Women Act Improvements

Miscellaneous improvements. We support several provisions in this title of the Senate bill that strengthen federal laws relating to sex offenses or victims' rights: §§ 3701 (pre-trial detention in sex offense cases), 3702 (effective increase of maximum penalties for certain sex crimes against young victims), 3704-05 (amendments strengthening restitution and enforcement of restitution).

HIV testing and related provisions. Section 3703 of the Senate bill contains provisions relating to testing for human immunodeficiency virus (HIV) in sex offense cases.

Section 3703(a) of the Senate bill directs the Attorney General to authorize the Office for Victims of Crime to pay the cost of HIV testing and a related counseling session for victims of sexual assaults. The corresponding provision in § 1652 of the House bill provides more broadly for payment of the cost of testing of victims for sexually transmitted diseases. We support these provisions, but there is no reason to require the Attorney General to channel the payments through OVC; other arrangements may be more convenient.

Section 3703(b) of the Senate bill, relating to HIV testing and medical care for victims, is partially duplicative in relation to subsection (a), and otherwise ineffective, since it includes no assignment of responsibility for carrying out its provisions.

Section 3703(c)-(g) primarily relates to HIV testing of defendants. We oppose these provisions because they would not be of any value to victims, and contain features that are oppressive to victims. The committee should adopt instead the HIV testing and penalty enhancement provisions that the House of Representatives passed in the 102d Congress, in § 531 of the first version of H.R. 3371.

The version passed by the House in H.R. 3371 provided for HIV testing of sexual abuse defendants (with disclosure of the test results to the victim) in the course of the criminal proceedings. In contrast, § 3703 of the Senate bill requires the victim to initiate an adversarial proceeding to obtain an order for testing the defendant, limits this option to victims who have first undergone "appropriate counseling," and conditions the issuance of a testing order on an affirmative finding of necessity by the court under restrictive standards. This procedure would have no real value to victims, considering the requirement of initiating a separate proceeding, the cost of retaining counsel for that purpose, the need to submit beforehand to counseling, and the restrictive standards for issuing a testing order.

Other provisions in § 3703(b)-(g) state that a victim who obtains test results on the defendant may not disclose this information to anyone but a personal physician or a sexual partner, and authorize contempt sanctions for other disclosure. In other words, a rape victim informed that the man who raped her was HIV-positive could be punished for contempt, if

she shared this information with her sister or her best friend, confided in her priest or minister, or talked to her (non-physician) counselor or psychotherapist about it.

There is also language in § 3703 which implies that this procedure for a federal court HIV testing order will be available to victims of state -- not just federal -- sexual abuse offenses (§ 3703(c)(2)(A) -- "the defendant has been charged with the offense in a State of[r] Federal court"). This is a departure from the earlier House-passed HIV-testing provisions, and raises questions of possible federal pre-emption of state procedures in this area. We oppose any provision that might undermine state procedures that set more reasonable standards for HIV testing of defendants.

In sum, the committee should substitute § 531 of the first version of H.R. 3371 passed by the House of Representatives in the 102d Congress for § 3703(c)-(g) of the Senate bill.

Reports and studies. The studies proposed in §§ 3707, 3708 and 2964, and 3709 of the Senate bill, concerning campus sexual assaults, battered women's syndrome, and confidentiality of addresses for abused persons, should be amended to include both authorization and "subject to appropriations" language, since these studies will entail substantial expense. The same point applies to the corresponding provisions in § 1610 (campus sexual assaults), § 1641 (confidentiality of abused persons' addresses), and § 121 (battered women's syndrome) of the House bill.

The authorization figure of \$200,000 in the campus sexual assaults study provision (Senate bill § 3707 and House bill § 1610) is inadequate, since a very large sample would need to be surveyed to provide a reliable basis for estimates concerning the incidence of campus sexual assaults. We recommend substituting an authorization of necessary sums.

Section 3710 of the Senate bill and § 1642 of the House bill direct a report to Congress on federal recordkeeping relating to domestic violence. The issues covered by these provisions are already being addressed through the implementation of the National Incident Based Reporting System.

Supplementary Grants. Section 3713 of the Senate bill authorizes necessary sums in each fiscal year for grants to states whose laws relating to sexual violence are reasonably comparable to federal law in specified areas. This proposal is flawed in its current formulation; there is no specification of what the grant money would be used for, and the requirement of similarity to federal law includes references to some areas that have no counterpart in federal law. As discussed earlier, this proposal should be folded into a

comprehensive sexual and domestic violence grant program administered by the Attorney General.

Title XXXVIII -- Health Care Fraud

While the Administration supports the objectives of this proposal, it would be preferable to deal with this issue in the context of health care legislation. Accordingly, we urge the committee to delete this provision from the final legislation. Should the committee decide to retain the proposal, it would need to be revised to deal with various problems, including basic flaws in the forfeiture provisions. We would be pleased to help the committee revise the proposal if it so chooses.

Title XXXIX -- Senior Citizens Against Marketing Scams

This title of the Senate bill is generally designed to strengthen federal laws relating to telemarketing scams, particularly as they affect elderly victims. We agree with the objectives of this proposal, and support it with some changes to its design and formulation.

The supplementary penalties for fraud offenses involved in telemarketing scams should be a supplementary range, rather than an all-or-nothing authorization of an additional 5 or 10 years (proposed 18 U.S.C. 2326 in § 3903). An alternative approach would be to direct a guidelines enhancement for fraud offenses involving telemarketing, instead of creating a new offense for this purpose. The offense-specific mandatory restitution provision in proposed 18 U.S.C. 2327 in § 3903 is comprised in the general mandatory restitution provision in § 902 of the Senate bill. If the criminal forfeiture provision in § 3904 is retained, civil forfeiture should be authorized as well. Authorization and "subject to appropriations" language should be added to the provision requiring the establishment of a hotline (§ 3910), since the authorization language in § 3907 does not appear to cover it. Two sections in the title -- § 3908 (extension of mail fraud statute to include mail sent by private carriers) and § 3909 (broadened federal jurisdiction relating to credit card fraud) -- duplicate provisions that appear elsewhere in the Senate bill (§§ 2102-03).

Title XL -- Supervised Visitation Centers

This title of the Senate bill would establish a program of support for supervised visitation centers, to be administered by the Department of Health and Human Services. [HHS SHOULD PROVIDE COMMENTS]

Title XLI -- Family Unity Demonstration Projects

Title XLI of the Senate bill authorizes support for family unity demonstration projects in which certain offenders would be allowed to live with their children in community correctional facilities. We support the objectives of this proposal, but would recommend a simplified and more flexible formulation authorizing the Attorney General to provide support for programs of this type. For example, there does not appear to be any reason for limiting participation to children under the age of six, and authority to make direct grants to local correctional agencies (not just states) would be useful. We would be pleased to assist the committee in finalizing this proposal.

Title XLIII -- Missing and Exploited Children Task Force

Title XLIII of the Senate bill requires the establishment of a task force composed of representatives of several federal law enforcement agencies to assist state and local authorities in investigating the most difficult cases of missing and exploited children. We support the objectives of this proposal.

Title XLIV -- Public Corruption

We support this title of the Senate bill, which strengthens federal public corruption laws, and urge the committee to include it in the final bill.

Title XLV -- Assault Weapons

For years, law enforcement officers and victims of crime have been calling on us to take action to ban the further manufacture of "assault weapons": guns intended, not for sport or hunting, but for killing and maiming people.

We strongly believe that such deadly weapons can be limited without infringing on the rights of hunters and sportsmen. Specifically, the language found in title XLV of the Senate Bill, and in H.R. 4296 as recently passed, bans the further manufacture of assault weapons -- and the large-capacity magazines that have played a role in so many tragedies around our nation -- while also specifically protecting over 650 hunting and sporting guns.

The President supports prompt enactment of this provision, approved by both the House and Senate, and backed by the nation's leading police organizations and victims groups. We would also support modifying the proposal, to delete its paperwork requirement, found in § 3 of the House bill, and § 4506 of the Senate bill.

Title XLVII -- Correctional Job Training and Placement

This title of the Senate bill requires the establishment of a new officer of correctional job training and placement in the Department of Justice. We strongly support efforts to increase employability and employment for prisoners and ex-offenders, but have reservations concerning the idea of attempting to promote this objective through the creation of a separate office in the Justice Department. As currently formulated, this proposal is an unfunded mandate on the Department.

Title XLVIII -- Police Partnerships for Children

This title of the Senate bill authorizes support for partnerships between police agencies and child and family services organizations, which deal with children involved in violent incidents and carry out related prevention programs.

The Department of Justice supports this proposal, and specifically recommends that the committee adopt the House version (House bill title X.C), which also authorizes support for police residence in high crime areas.

Title XLIX -- National Community Economic Partnership

We support this title of the Senate bill, which focuses on helping community development corporations that promote business and employment opportunities in economically distressed areas.

Title L -- Criminal Aliens

This title of the Senate bill contains provisions which are generally designed to facilitate efforts to get criminal aliens out of the country, and to keep them out after they have been deported. We support the objective of more effective removal of criminal aliens. We have the following observations and recommendations concerning particular provisions in this title:

Section 5001 proposes a broadened definition of "aggravated felony." The inclusion of some of the less serious offenses in the proposed new definition presents problems of inconsistency with treaty obligations that bar the return of certain refugees unless they have been convicted of "particularly serious crimes." In order to address this concern, we recommend that the definition of "aggravated felony" be revised to delete certain less serious, non-violent offenses from the list of "aggravated felonies" that would justify denying withholding of deportation on account of persecution or threat of torture or death if the person is returned to the home country, or imposing some limit on the scope of the definition in terms of the length of the sentence imposed for the offense. We would be pleased to assist the committee in making such a revision.

We support section 5002 of the Senate bill, which would permit the Attorney General to enter an order of deportation for non-permanent resident aliens convicted of aggravated felonies, with judicial review limited to the issues of identity, alienage, and conviction of an aggravated felony.

We recommend against the enactment of § 5003, which creates authority to seek judicial orders of deportation for certain criminal aliens in conjunction with sentencing proceedings. Our concerns include increased burdens for prosecutors and district court judges in investigating and litigating issues that are now handled in proceedings before immigration judges, lack of uniformity by district judges in granting discretionary relief from deportation, problems for criminal defense lawyers in advising their clients on immigration issues, and the need to commit investigative resources relating to deportability at an earlier stage of the criminal process. We think that the proper focus of efforts in this area should be to make the administrative hearing program as effective as possible, rather than potentially diverting resources to support judicial deportation.

Section 5004 of the Senate bill eliminates 212(c) relief for those aliens sentenced to at least 5 years for an aggravated felony or felonies. Current law eliminates such relief for aliens who serve five years. We support this provision, but recommend that it be revised to exempt those aliens whose sentences have been suspended in their entirety.

We support § 5005 of the Senate bill, which increases maximum penalties and broadens the scope of the offense covering aliens who refuse to depart or unlawfully re-enter following deportation.

Section 5006 effectively gives specific statutory authority to the Attorney General to conduct deportation hearings by electronic or telephonic means "with the consent of the alien." We recommend deleting "with the consent of the alien" from this provision, since this proviso could potentially halt numerous on-going electronic hearings where the alien objects, and could invite challenges to orders already entered.

We support § 5007 of the Senate bill, which authorizes the Immigration and Naturalization Service, in cooperation with other agencies, to operate a criminal alien tracking center. The purpose of the center would be to assist law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of conviction of aggravated felonies.

The function of the proposed tracking center might be defined more broadly to include assistance in identifying and locating all types of deportable criminal aliens.

In addition to the provisions in title L relating to criminal aliens, § 215 of the Senate bill increases the criminal penalties for smuggling aliens when death or injury results. The

Department of Justice agrees that these criminal penalties should be increased. Indeed, we support a broader increase in penalties to encompass all smuggling activities, not only those activities that result in death or injury.

We would further urge the committee to include additional provisions to confront the growing problem of alien smuggling. In particular, the Administration supports an expansion of seizure and forfeiture authority in order to seize the vehicles or vessels used to smuggle aliens; wiretap authority for alien smuggling investigations; and the inclusion of alien smuggling as a predicate offense under RICO. We would be pleased to work with the committee in finalizing the anti-smuggling provisions to be included in the final bill.

#### Title LI -- General Provisions

The final title of the Senate bill collects Senate floor amendments that were not put elsewhere in the bill. We have already commented on a number of the provisions in this title in earlier sections of these comments. Our views on other provisions in the last part of the Senate bill and parallel House bill provisions are as follows:

"Good time" credits for violent offenders. We do not object in concept to § 5101 of the Senate bill, which limits the availability of "good time" credits to federal violent offenders who are serving prison terms that exceed one year. The purpose of the provision is to enable the Bureau of Prisons to require serious violent offenders to earn their good time credits, by holding them to more exacting standards than non-violent offenders. Thus, for example, BOP could punish a violation of prison rules by a violent offender by withholding a larger portion of his good time credits than would be the case with a like violation by a non-violent offender.

Alien benefits ineligibility. Section 5102 of the Senate bill denies eligibility to "persons not lawfully present in the United States" for certain federal benefits -- AFDC, SSI, food stamps, non-emergency Medicaid, etc. -- and limits eligibility for unemployment compensation to aliens who have employment authorization. We support clarification of the categories of aliens who are ineligible for federal benefits, but believe it would be preferable to pursue the object of this section by amending specific benefit program statutes, as opposed to attempting a cross-cutting provision. In addition, the issues raised by this proposal are being addressed in the context of health care reform and other contexts that are more likely to result in a comprehensive and consistent treatment of this issue.

Non-indigenous species in Hawaii. Section 5105 of the Senate bill authorizes the Attorney General to convene a task force on the introduction of non-indigenous species in Hawaii, and creates a criminal offense of mailing legally prohibited organisms (animals, plant pests, etc.). We have no objection to the proposed reforms, but authorization and "subject to appropriations" language should be added to the task force proposal.

Role of the United Nations in International Organized Crime Control. We support section 5106 of the Senate bill, which expresses the sense of the Senate that the United Nations should develop an international convention on organized crime, and should enhance the Crime Prevention and Criminal Justice Commission and seek a cohesive approach to international organized crime. [REQUEST CONCURRENCE OR COMMENTS FROM STATE DEPARTMENT.]

Prison construction standards. Sections 5107, 5112, and 5165 of the Senate bill require overlapping studies of prison construction and related standards. Section 3046 of the House bill requires study of related issues. If a study of this sort is to be required, it would make sense to consolidate it into a single provision, and authorization and "subject to appropriations" language should be included.

Report on hiring of Hong Kong police officers. We do not object to § 5108 of the Senate bill, which directs the Attorney General to report on efforts to recruit former Hong Kong police officers for federal law enforcement agencies. We note that hires of this type would create problems in conducting necessary background checks, and that federal law enforcement hiring is now generally limited by budgetary constraints. However, the funds made available by the federal law enforcement authorizations in the pending bills will presumably help to remedy this situation. [REQUEST CONCURRENCE OR COMMENTS FROM CUSTOMS SERVICE (TREASURY) SINCE CUSTOMS WOULD BE COVERED BY THE REPORT ALONG WITH SEVERAL DOJ AGENCIES.]

Lottery tickets. We support § 5109 of the Senate bill, which closes a loophole in the prohibition of interstate trafficking in lottery tickets.

Terrorist alien removal. Section 5110 of the Senate bill authorizes special judicial procedures for the removal of alien terrorists from the United States. The proposed procedures are generally more favorable to the alien than normal immigration proceedings -- including a public hearing before a district judge and right to appointment of counsel -- with the major exception that the court could withhold evidence on which the action is based from the alien in certain circumstances.

This proposal is responsive to a real problem under current law. There are cases in which it is not possible to remove known alien terrorists from the United States because disclosure of the information establishing this fact would compromise sources. The procedures proposed in § 5110 are constitutionally permissible, including the authority for the court to withhold evidence from the alien. We would be pleased to work with the committee in developing as fair and effective an approach to this problem as possible.

Social security benefits for insanity acquittees. Section 5113 of the Senate bill prohibits social security (disability and old-age) benefits for confined insanity acquittees, unless the benefits are paid directly to the confining institution to compensate it for its expenses. The objective of this proposal is to prevent confined insanity acquittees, whose living expenses are taken care of by the institution, from receiving benefits and using them to buy luxuries. There is currently a qualified bar on social security benefits for incarcerated felons. [COMMENTS REQUESTED FROM HHS AND OMB.]

Parental kidnapping. We support § 5114 of the Senate bill, which makes the parental exemption under the kidnapping statute inapplicable to parents whose parental rights have been terminated by court order.

Drunk driving enforcement funding. We support § 5115 of the Senate bill and § 1801 of the House bill, which add drunk driving enforcement as a Byrne Grant funding objective.

Parental liability. Section 5116 of the Senate bill creates parental liability for civil sanctions based on their children's commission of federal offenses. We are concerned that this provision does not provide adequate safeguards against the imposition of liability on parents who have no fault for their children's misconduct. The section's "reasonable care and supervision" defense for parents should be defined more broadly, and made available in all cases.

Violent crime and drug emergency areas. We support § 5118 of the Senate bill, which authorizes the President to channel federal assistance and resources to areas he declares to be violent crime or drug emergency areas. However, we recommend deleting the provision that limits assistance to any particular area to a year or a year and a half, since this would interfere with the President's ability to deploy resources in the most effective manner to address violent crimes and drug crimes.

State and local cooperation with INS. Section 5119 of the Senate bill directs state and local governments and agencies to cooperate with the INS in the effort to deport illegal aliens as a condition for receipt of federal funds disbursed pursuant to the crime bill. We oppose this provision because we believe that it is unnecessary and, as currently drafted, could have unintended consequences that would impede law enforcement activities.

Correctional literacy programs. The Department of Education advises us that § 5120(b) in the Senate bill is unnecessary. The section authorizes the Secretary of Education to convene and consult with a panel of experts in correctional education regarding the implementation of literacy programs for incarcerated persons under the National Literacy Act of 1991. However, the Secretary of Education already has such authority.

Tuberculosis in prisons. As with other provisions that will entail substantial expense, "subject to appropriations" language should be included in § 5121, which directs the Attorney General to develop guidelines and make grants for dealing with tubercular prisoners.

Hate crimes statistics amendment. We have no objection to § 5123 of the Senate bill, which amends the Hate Crimes Statistics Act to include disability.

Document fraud penalties. Section 5124 of the Senate bill increase civil and criminal penalties for certain document fraud offenses. We support the increases in maximum penalties proposed in this section. We note, however, that the increases in maximum prison terms in this section are partially duplicative in relation to § 712 of the Senate bill, and that the increases in maximum criminal fines will have no effect, since the general fine provision of the criminal code (18 U.S.C. § 3571) already sets higher maxima.

We also support § 2431 of the House bill, which contains various increases in maximum penalties for visa and passport crimes.

Model anti-loitering statute. Section 5125 of the Senate bill directs the Attorney General to develop and disseminate a model anti-loitering statute and related enforcement guidelines. We would not understand this provision as requiring the Attorney General to prepare or promote legislation which the President does not support. Like other provisions in the bill that may require substantial expense, this section should include authorization and "subject to appropriations" language.

Victims of Child Abuse Act amendments. Section 5126 of the Senate bill makes various amendments to the Victims of Child Abuse Act provisions. We recommend adding an additional amendment (to 18 U.S.C. 3509(d)(4)) to ensure that confidentiality requirements for cases involving children will not prevent the release of the names of child victims to crime victim compensation programs, so that they can receive compensation.

Law Day. We have no objection to § 5127 of the Senate bill, which declares May 1 of each year to be "Law Day U.S.A.".

Indian tribes matching funds. We support section 5128 of the Senate bill, which allows Indian tribes to use their federally appropriated law enforcement money for matching funds under certain grant programs, parallel to an existing provision of this type for the District of Columbia.

Parent Locator Services access. Section 5129 is intended to broaden access to the services of the Parent Locator Service to locate missing children who may have been

abducted by non-custodial parents. The section provides access for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), but OJJDP has no responsibility for locating missing children. An appropriate formulation would provide access for the Attorney General.

Guidelines enhancement for offenses involving minors. We support § 5130 of the Senate bill, which directs a sentencing guidelines enhancement for involving minors in the commission of federal offenses.

Asylum abuse. Section 5131 of the Senate bill makes various findings with respect to asylum abuse and declares the sense of Congress that asylum laws should be streamlined. We note that the Administration has already proposed legislation to address the problems identified by this section, and that the section's assertions concerning asylum law are in some respects inaccurate.

Crime bill implementation funding for Department of Justice and Judiciary. We strongly support the proposed authorization in § 5132 of the Senate bill of an aggregate amount of \$1 billion for the Department of Justice and its agencies, to meet the increased demands resulting from enactment of the crime bill. This funding is a necessary complement to the increased responsibilities for administering new grant programs and carrying out numerous important law enforcement initiatives that the bill contemplates. The provisions of the pending legislation will largely be illusory if adequate resources are not provided to carry them out.

The pending bills create new federal offenses and increase penalties for many federal offenses, and clearly envision an expansion of federal efforts to combat violent crime, gun crime, and drug trafficking. Enacting the authorizations that will give federal law enforcement the resources it needs to successfully implement these initiatives is essential, if they are not to be merely empty promises. If Congress is going to set aside substantial resources over the next several years to fight crime -- as we believe it should and must -- it is critical that an adequate portion of these resources be made available for the federal law enforcement functions that are contemplated as part of the program.

Section 5132 of the Senate bill also authorizes an aggregate amount of \$300,000,000 for the federal judiciary. We support increased judiciary funding as necessary for effective crime bill implementation. Bottlenecks will result if the number of prosecutions is increased, but the resources of the judiciary are not increased correspondingly.

Indian tribe funding provisions. Section 5133 of the Senate bill does the following: (1) stipulates that "states" in the bill includes Indian tribes and the larger territories, (2) allows the use of federally appropriated Indian law enforcement money for matching funds in

programs funded under "this title" [should be: "this Act"], and (3) provides that funds made available to Indian tribes shall supplement their Interior Department funding.

We support the provisions in § 5133, except for the stipulation that Indian tribes and territories are "states" for purposes of the bill. The latter provision has untenable consequences that were obviously not appreciated by the Senate. Consider, for example, the effect of this provision under a formula grant program that allocates for each state at least .25% of total funding. Since there are about 550 officially recognized Indian tribal governments, there would be a total of about 600 entities that would each have to receive at least .25%, giving a total of 150%. However, it is not possible to give away more than 100% of anything. This provision should be deleted.

Prohibition of Pell Grants for prisoners. Section 5135 of the Senate bill and § 3089 of the House bill prohibit the award of Pell Grants (for higher education) for prisoners. While we recognize that both Chambers have approved this provision, we still oppose it, since it would undermine efforts to reduce recidivism through prisoner education. We hope the Committee will consider alternatives to insure that, so long as no eligible law-abiding citizen is denied such grants, some such support is available to rehabilitate prisoners.

Cost of incarcerating criminal aliens. Section 5136 provides that the Attorney General may, subject to appropriations, house state-convicted criminal aliens in federal prisons, or pay for their incarceration by the states. Section 2403 of the House bill requires the Attorney General to compensate states for incarcerating criminal aliens or take custody of such aliens (subject to appropriations until October 1, 1998).

We support federal defrayal of the costs of incarcerating criminal aliens. However, we object to the 1998 cut-off of the "subject to appropriations" condition on the mandatory (House) version of this proposal. Inclusion of this provision may subject the Conference Report to a point of order in the Senate. We further believe that Congress should commit the funds needed to carry out such mandates.

Report on fingerprint automation. Section 5138 of the Senate bill requires a report to Congress by June 1994 about how the FBI can accelerate and improve federal and state automatic fingerprint systems for investigative purposes. If such a report is to be required, the deadline should be set at some later date in light of the time that has passed since Senate passage of this provision.

Prison crowding remedies. Section 5139 of the Senate bill and § 3080 of the House bill provide that a federal court may not hold prison or jail crowding unconstitutional under the eighth amendment unless an individual plaintiff proves that the crowding causes him to suffer cruel and unusual punishment, and that a federal court may not place a ceiling on

inmate population unless crowding is inflicting cruel and unusual punishment on particular identified prisoners. It further provides that the relief in a prison crowding case may not extend any further than necessary to remove the conditions that are causing cruel and unusual punishment of the plaintiff, and that consent decrees in eighth amendment cases shall be reopened at the behest of the defendant at minimum two year intervals.

These provisions are most obviously directed against the imposition of population caps in prison conditions litigation, where other remedial measures may be sufficient. We agree with the objective of ensuring, as far as possible, that the remedies imposed in prison conditions cases will not result in the release of criminals. However, the standards of these provisions are unclear in some respects, and may extend beyond a rule of avoiding population caps where other measures will suffice. The uncertainties include the intended impact of the provisions on class actions, and on the permissible scope of consent decrees. We would be pleased to work with the committee in developing the most effective approach to addressing this issue.

Access to Legalization Files. Section 5144 of the Senate bill authorizes access to information in immigration legalization files for certain criminal law enforcement purposes and certain other purposes. We agree that the issue raised by this proposal merits attention, and would be pleased to assist the committee in developing the optimum approach to addressing law enforcement concerns and legitimate confidentiality concerns in this area.

Children and youth utilizing federal land. Section 5145 of the Senate bill expresses the sense of the Senate that executive departments and agencies should make properties and resources available (if they have them) for children and youth programs, and that a nationwide network of children and youth programs should be established and supported. We note that practical mechanisms for establishing a network of children and youth programs appear in various other provisions of the pending bills, including the "Ounce of Prevention" programs which are included in both the Senate and House bills.

Bankruptcy fraud. Section 5146 is based on the Administration's bankruptcy fraud proposal, but has been modified in a manner that is unhelpful. We oppose the enactment of § 5146 in its current form, and urge Congress to restore the original version of this proposal by deleting the language in proposed § 157(b) ("Requirement of Intent").

Handguns in schools. Section 5147 of the Senate bill is a fragmentary provision, intended for insertion in a funding program, which authorizes additional funds for states that revoke or deny driver's licenses for people who have handguns in schools. The intermediate sanctions grant program in title XXI of the House bill includes a somewhat comparable provision that identifies school and driver's license suspension for juveniles who possess

weapons in schools as an "important factor" in the award of grants. If a provision of this type is included in a final bill, we recommend using a formulation along the lines of that appearing in the House bill.

Study of out-of-wedlock births. The Department of Health and Human Services (HHS) advises us that it supports the study of out-of-wedlock births and possible remedial measures, whose conduct by HHS is encouraged in § 5148 of the Senate bill.

ONDCP reauthorization. Section 5150 of the Senate bill extends the authorization for the Office of National Drug Control Policy (until September 30, 1994). The House of Representatives has separately passed language reauthorizing that office. The extension to September 30 of this year in the Senate bill provision is too short in light of the time that has elapsed since its passage by the Senate. We strongly urge the committee to include a reauthorization provision for ONDCP in the final bill, in the form proposed by the Administration, to ensure that the objectives of the National Drug Control Strategy are met, and to reduce the drug-related crime and violence that are inundating our communities.

Supreme Court Police. We have no objection to § 5151 of the Senate bill, which extends the authority of the Supreme Court police (until 1996) to carry out protective functions away from the Court's building.

Full-time status of sentencing commissioners. We support § 5152 of the Senate bill, which extends the full-time status of the members of the Sentencing Commission for a year.

Prisoner work. Section 5153 of the Senate bill expresses the sense of the Senate that all able-bodied federal prisoners should work, and that the Attorney General shall submit a report to Congress by March 31, 1994 [sic] that describes a strategy for employing more federal prisoners. The deadline for this report needs to be updated.

Domestic violence offender rehabilitation. We have no objection to § 5154 of the Senate bill, which generally requires participation in rehabilitation programs for first-time federal domestic violence offenders.

Payment of property taxes. We support § 5155 of the Senate bill, which authorizes payment from the Department of Justice Asset Forfeiture Fund of property taxes on forfeited real property which accrued between the offense and the time of forfeiture

Definition of courts. We support § 5156 of the Senate bill, which includes certain territorial courts as "courts of the United States" for purposes of the criminal code.

Extradition. We support § 5157 of the Senate bill, which authorizes the surrender of persons who have committed crimes against U.S. nationals in foreign countries in certain circumstances, even in the absence of an extradition treaty.

Deportation and border control. Sections 5158-61 of the Senate bill and §§ 2411-14 of the House bill contain provisions to strengthen deportation of criminal aliens and denied asylum applicants and border control activities. We strongly support the enactment of these provisions.

AUSA residency. We support § 5162 of the Senate bill, which allows Assistant United States Attorneys to live within fifty miles of their districts.

Treasury authorizations. Section 5163 of the Senate bill includes authorizations for additional Gang Resistance Education and Training (GREAT) projects, for the Bureau of Alcohol, Tobacco, and Firearms, and for the Secret Service. The portions of the section relating to GREAT programs do not include any overall authorization figures, and need to be corrected. [TREASURY SHOULD PROVIDE ADDITIONAL TEXT EXPLAINING IMPORTANCE.]

Coordination of drug treatment and prevention programs. We support § 5166 of the Senate bill, which directs the Attorney General to consult with the Secretary of Health and Human Services in carrying out drug treatment and prevention aspects of the crime bill to assure coordination and effectiveness.

Armor piercing ammunition. We support § 5168 of the Senate bill, which broadens the definition of prohibited armor-piercing ammunition.

#### Additional House Bill Provisions -- Prevention Programs

Policing, punishment, and prevention are the keys to a balanced Crime Bill reflecting the President's agenda. Some prevention programs have been discussed previously, but many additional critical programs which we strongly support are found in Title X of the House Bill.

These include model intensive grants (subtitle A), midnight sports (subtitle D), residential services for delinquent and at-risk youth (subtitle F), recruiting and training persons from underrepresented areas for police employment (subtitle G), local partnership act (subtitle I), youth employment and skills [YES] (subtitle J), hope in youth (subtitle L), anticrime youth councils (subtitle N), urban recreation and at-risk youth (subtitle O), boys and girls clubs in public housing (subtitle P), and community-based justice grants for

prosecutors relating to young violent offenders (subtitle Q). We discuss our views on each of these programs below:

Model Intensive Grant Programs. Subtitle A, authorizes the Attorney General, in consultation with the Secretaries of HHS and HUD, to award up to 15 highly targeted grants to support comprehensive crime prevention programs in "chronic high intensity crime areas". The Administration supports this initiative as an innovative effort to focus prevention activities where they are needed most.

At the same time, we would like to see this program revised to better assure effective coordination and an appropriately balanced distribution of resources among this and other Administration initiatives. Toward that end, we would suggest adoption of an amendment providing for consultation with the Ounce of Prevention Council.

In addition, we would urge the inclusion of specific references to Public Housing Authorities (PHAs), and the tenants and owners of publicly assisted housing and other factors in §§ 1001-1003 in reference to the consultation and planning requirements. For example, we recommend § 1003(a) refer to "job training and employment programs" instead of to "employment services offices". Other recommendations address the need to have flexibility to support proven strategies as well as innovative approaches and related concerns.

Finally, we would propose to reduce the funding for this program to provide for an increase in the "Y.E.S." program discussed below. We look forward to working with you to address these suggestions.

Midnight Sports. Subtitle D, authorizes the Secretary of Housing and Urban Development, in consultation with the Attorney General and Secretaries of Labor and Education, to make grants for midnight sports league anticrime programs. The Administration supports this important crime prevention activity and has several suggestions to improve the coordination and administration of this program and clarify its relationship to other related initiatives.

Assistance for Delinquent and At-Risk Youth. Subtitle F, authorizes the Attorney General to make grants to public or private entities to support the development and operation of programs providing residential services to delinquent and at-risk youth. The Administration supports the goals of this program but believes that they would best be achieved by combining this program with the gang and violence programs in Title VI of the Senate bill and Title XXII of the House bill

discussed above. We would be please to suggest language to the committee to achieve that result.

Police Recruitment. Subtitle G, authorizes the Attorney General to provide grants to community organizations to assist in the recruitment of police officers from underrepresented neighborhoods and localities. The Administration supports this program's goal of broadening and diversifying the pool of persons who can successfully enter into police departments. However, we want to ensure that the programs envisioned here would work with and do not duplicate other efforts to increase the number and diversity of police officers such as those found in Title I of the Senate bill and Title XIV of the House bill. We would be pleased to work with the committee to insure that this program is designed to function well in coordination with those other efforts.

Local Partnership Act. Subtitle I, authorizes the Secretary of Treasury to make direct payment to qualifying units of general local government which would use the money to fund crime prevention activities including the coordination of other prevention programs in the bill with existing federal programs. The Administration supports efforts to assist local governments, which are on the front line of the fight against crime, with prevention efforts as well as police and prisons. We have a number of concerns, however, including among others, whether the distribution formula contained in the subtitle could be efficiently administered, the availability of accurate related data, and about the impact of the allocation of funds in time in relationship to the crime control fund. We look forward to working with you to address these concerns.

Youth Employment Skills (Y.E.S.) The Administration strongly supports the Y.E.S. program contained in Subtitle J and urges the committee to include it in the final legislation. Y.E.S. is a Presidential initiative that targets job training and creation efforts on youth and young adults in high crime, hard-hit neighborhoods. The program is premised on the simple notion that one effective way of keeping young people away from criminal activity is to give them meaningful work opportunities that serve as an alternative, help instill the discipline and habits necessary for productive lives, and that are linked to future jobs and adult employment.

The Administration believes that the Y.E.S. program is sufficiently promising that it should receive a larger share of the overall dollars directed to prevention programs; specifically, we seek a \$1 billion authorization for this program. We also would be pleased to work with the committee to sharpen the targeting provisions of

the program and to insure that it is well coordinated with the other prevention programs in the final legislation.

Hope In Youth. The Administration supports the Hope In Youth program contained in subtitle L. This program authorizes the Secretary of Health and Human Services to make grants to community organizations in units of local government which contain an empowerment zone. The Grants would be used to establish advisory organizations to engage in strategic planning and evaluation of programs serving low income communities. As with other prevention programs, we believe that the Hope In Youth program would be strengthened by providing that the Secretary of HHS also should coordinate with the Ounce of Prevention Council.

Anticrime Youth Councils. Subtitle N authorizes the Administrator of the Office of Juvenile Justice and Delinquency Programs to make grants to public and private agencies to fund anticrime youth councils. These councils would provide a mechanism by which the views of youth who are the focus of prevention programs can be taken into consideration in the grant review process. The Administration supports this provision and has suggested language changes to improve the coordination of the provision with existing programs.

Urban Recreation and At-Risk Youth. Subtitle O amends the Urban Park and Recreation Recovery Act of 1978 to provide for grants to improve and expand recreation facilities and programs in high crime areas. Central to the Administration's approach to preventing crime is the proposition that we must give young people positive alternative activities. Recreation programs and facilities are one such alternative, and we support efforts, targeted at high-crime areas, to improve and expand such programs. However, we also believe that all Administration efforts must be carefully coordinated to eliminate duplication of effort and assure the most cost-effective use of available resources we urge that this program also provide for coordination through the Ounce of Prevention Council.

Boys and Girls Clubs in Public Housing. Subtitle P, authorizes the Secretary of Housing and Urban Development to enter into contracts to establish Boys and Girls Clubs in public housing. The Administration supports this program which would provide youth in public housing, which is all too often located in high crime areas, with a meaningful alternative to gangs, crime and violence. We believe that the utility of this program would be strengthened if it were amended to authorize Boys

and Girls Clubs in Public, Indian and Assisted Housing. We would be pleased to work with the committee to effectuate this change.

Community-Based Justice Grants for Local Prosecutors. Subtitle Q authorizes the Attorney General to make grants to local prosecutors who may use the funds for programs that (1) coordinate local resources to identify and prosecute young violent offenders, (2) focus prosecutorial effort on making the punishment of juveniles fit their offense, and (3) coordinate criminal justice resources with other community resources to develop alternatives to crime. Local prosecutors play a critical role in fighting crime and the Administration supports efforts to assist them in dealing with the serious and growing problem of juvenile violence. Given its focus on the efforts of prosecutors, we believe that this program should be coordinated with the Gangs and Juveniles programs in Title VI of the Senate bill and Title XXII of the House bill. We would be pleased to work with the committee to achieve this result.

#### Other House Bill Provisions

Byrne Grant authorization. We support § 1098A of the House bill, which authorizes necessary sums for the Byrne Grant program through 1999. The inclusion of this provision in a final bill will make it possible to draw on the Trust Fund established to fund the bill to support the Byrne Grant program.

Assaults against children. Title III of the House bill increases maximum penalties for assaults against children in areas under federal jurisdiction. We support the enactment of this proposal.

Racial Justice Act. Title IX of the House bill contains a proposal designed to prevent racial discrimination in the imposition of capital punishment. The Administration abhors discrimination in all aspects of the criminal justice system, including capital punishment. We also support the death penalty as an appropriate sanction for the most heinous cases, such as the murder of law enforcement officers. Accordingly, we would be pleased to work with the committee on provisions that would prevent discrimination while allowing effective use of capital punishment in appropriate cases.

Assistance in deportation. We have no objection to § 2401 of the House bill, which authorizes the Attorney General to accept property and services to assist the Immigration and Naturalization Service in deporting aliens subject to criminal charges.

Increase of Border Patrol agents. We have no objection to

§ 2421 of the House bill, which authorizes necessary sums in the next five years to increase the number of Border Patrol agents by 6,000.

Stalking and domestic violence records. Title XXVIII of the House bill contains various measures to improve the quality and availability of records relating to stalking and domestic violence. We support the objectives of this proposal, but note the need for corrections and revisions in its formulation. For example, the proposal refers to a bar on juvenile records in the national criminal records system that no longer exists. The Bureau of Justice Statistics, rather than the Bureau of Justice Assistance, would be the appropriate administering agency for a proposed grant program in this area, and the formulaic requirements for distributing funds should be modified. The section lacks needed authorization and "subject to appropriations" language for many of the functions it requires. We would be pleased to assist the committee in developing a final version of this proposal.

Flag at half-staff on Peace Officers Memorial Day. We support § 3001 of the House bill, which provides that the flag is to be flown at half-staff on Peace Officers Memorial Day.

Treasury authority to investigate financial institutions fraud. We support § 3011 of the House bill, which will enable the resources of the Treasury Department to be applied to the investigation of financial institutions fraud.

Treasury Department funding. Section 3016 of the House bill authorizes additional funding for law enforcement components and functions of the Treasury Department, to help meet increased law enforcement responsibilities. We strongly support this provision, and urge the committee to include it in the final bill. **[INSERT FURTHER SUPPORTIVE LANGUAGE HERE]**

Conversion of military installations into prisons for violent offenders. We oppose § 3021 of the House bill, which requires the conversion of three closed military installations into prisons for violent felons. Existing military structures are typically designed for non-secure uses and it is extremely expensive to convert them to house high-security offenders of this type.

Thus, while it may be counter-intuitive or ironic, we find it less expensive and more secure to construct a new facility to house high-security inmates, rather than convert military bases for this purpose. We do not support spending more taxpayer dollars than are needed for this purpose. Experience has shown that most military facilities are appropriate for conversion only to facilities for minimum and low security offenders who present minimal risk to institutional and community safety.

Explosives offenses. Title XXX.G of the House bill contains several provisions to strengthen federal explosives laws; this is a collection of provisions that are included in various sections of title IV of the Senate bill. We support the enactment of these provisions.

Crimes against travelers. We have no objection to § 3041 of the House bill, which authorizes federal assistance in the investigation and prosecution of crimes against travelers.

Congressional Medal of Honor. We have no objection to § 3056 of the House bill, which provides a higher maximum penalty for unauthorized wearing, manufacturing, or selling of military decorations and medals, if the medal is the Congressional Medal of Honor. We recommend, however, that any definition of the term "sells" in this statute (18 U.S.C. 704) apply uniformly to all medals and decorations covered by the statute.

Age discrimination exemption for law enforcement agencies. Title XXX.M of the House bill renews (without any time limit) an exemption from age discrimination prohibitions for law enforcement officers and firefighters. We would prefer a temporary four-year extension of the exemption, similar to that contained in section 3 of the Age Discrimination in Employment Amendments of 1986. This would allow for necessary further study of age restriction policies for public safety workers. It would also be more consistent with the intent of the original Act, which sought to promote the employment of capable older persons and prohibit arbitrary age discrimination in employment.

Prohibition of strength-training and martial arts for federal prisoners. We oppose title XXX.N of the House bill insofar as it prohibits weight lifting activities for federal prisoners. Weight lifting reduces inmate idleness and helps to relieve tension and stress. It is a valuable management tool whose benefits far outweigh any potential dangers. Prohibiting it would seriously impede -- not enhance -- prison security.

We know of no evidence that banning weight training in prisons will make prisoners less dangerous upon release -- and the dedicated men and women of our prison system, who stand guard over criminals, believe this provision will make inmates more dangerous during the period of their incarceration.

"Made in America" labels. Section 3086 of the House bill requires registration with the Commerce Department of all products bearing "made in America" labels, and a determination by the Commerce Department that 60% of the product was manufactured in the United States and that final assembly took place in the United States. We support the objectives of this proposal, and would like to work with the committee in developing the most effective possible formulation. We principally recommend certain changes to

harmonize the proposal with existing rules and mechanisms for ensuring accurate country-of-origin labeling.

For example, country-of-origin regulations for products are currently enforced by the Customs Service of the Treasury Department and by the Federal Trade Commission (FTC). Under current law, a "Made in USA" label must be truthful, and imported products must contain a label indicating country of origin. Imported products must undergo substantial transformation in the United States before they can bear a "Made in USA" label. Assigning responsibility for the administration of new standards and procedures to the agencies that are currently responsible for this area (FTC and Customs) would be more efficient than requiring the creation of a new operation for this purpose in the Department of Commerce.

The intent of § 3086 is obviously to enhance the information that will be available to consumers concerning country of origin, and we believe this intent would be realized more fully by ensuring that current rules requiring identification of foreign component parts and foreign-source content are carried forward.

Section 3086 of the House bill also would create certain new requirements for businesses. While the current rules require that "Made in USA" labels be truthful, advance registration and validation by a federal agency is not required. Hence, the provision as currently formulated would create new requirements to register and obtain validation in advance for products that will bear a "Made in USA" label, and the need to re-register and seek new validations may arise as manufacturing processes and product lines change in the course of time. In formulating a final version of this proposal, we recommend that thought be given to means of minimizing any burdens or delays that might result to businesses from these requirements.

We are concerned that other problems would arise if these requirements were applied to products intended for export. For example, domestic manufacturers of goods that qualify as U.S. goods under the rules of origin in foreign markets -- but do not meet the proposed "made in America" standards -- could lose the potential business benefit of such a label advertising the American quality of the product. These potential effects should be considered in defining the scope of application of the proposed labeling standards.

In sum, we support the objectives of § 3086 of the House bill, and believe that their realization could be enhanced by some revision to harmonize them with existing standards and procedures in this area. We would be pleased to assist the committee in finalizing this proposal for enactment.

Study of cocaine penalties. We support § 3092 of the House bill, which provides for a study of cocaine offense penalties by the Sentencing Commission.

Restriction of good time credits. We oppose title XXX.U of the House bill, which conditions the already restricted federal awards of "good time" credits on a prisoner's earning a high school diploma or its equivalent. The Bureau of Prison's regimented literacy program already encourages inmates to receive a minimum level of education.

Denying already limited good time credits to prisoners who have not achieved high school equivalency would deprive the Bureau of Prisons of a critical management tool in relation to such prisoners, resulting in increased problems of misconduct and disorder.

#### Other Matters

There are a number of additional, non-controversial measures which we believe should be incorporated in the proposed anti-crime legislation prior to enactment. These measures do not have a high level of visibility, but would be of practical value to federal law enforcement. We have prepared a package of recommended provisions and amendments to implement these proposals, which we would be pleased to provide to the committee.

The subjects addressed in the package include: coverage of crimes in territories and possessions by a number of statutes that are currently ambiguous, the scope of federal jurisdiction over kidnapping, protection of state and local officers assisting federal officers, elimination of anomalous gaps in coverage under the "violent crimes in aid of racketeering" statute (18 U.S.C. 1959), elimination of anomalous gaps in coverage under a statute addressing violence against federal officials and their families (18 U.S.C. 115), consistency in dollar amounts used to distinguish grades of offenses, grand jury access to educational records, personnel authorized to approve wiretap and immunity order applications, authority for the FBI to assist in the investigation of serial killings, availability of supervised release and fines for juvenile offenders, service by senior and retired federal judges on the D.C. Superior Court, motions to reduce sentence based on assistance to the government, increase of certain RICO penalties, filling gaps in liability for attempted theft and counterfeiting, the scienter requirement for receiving property stolen from an Indian tribal organization, larceny of post office boxes and postal stamp vending machines, interstate transportation of stolen vessels, elimination of the certification requirement in a government appeals statute (18 U.S.C. 3731), grand jury access to cable television records, conforming amendments relating to supervised release, and a conforming amendment to an obstruction of justice statute (18 U.S.C. 1510).

\* \* \* \* \*

The foregoing comments present the recommendations of the Department of Justice and the Administration concerning many of the issues raised by the pending bills. Certain issues raised by these proposals remain under study, and we may have further comments as the committee's work proceeds. We appreciate the committee's attention to our views.