

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

May 31, 1994

LEGISLATIVE REFERRAL MEMORANDUM

*Reed
File:
Crime:
Views Letter
LRM #I-2844*

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

OMB CONTACT: ~~C. C. CHRISTAKOS (395-3386)~~ *Jim Jukes (395-3458)*
Secretary's line (for simple responses): 395-3454

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

DEADLINE: 10:00 THURSDAY June 2, 1994

COMMENTS: This revision reflects Justice's reactions to the agency comments received in response to the prior draft (circulated under LRMs I-2714 and I-2618). We intend to clear this letter by the end of the week; accordingly, the deadline is firm. IF YOUR AGENCY STILL HAS CONCERNS THAT ARE LIKELY TO REQUIRE RESOLUTION AT THE POLITICAL LEVEL, PLEASE SUPPLY THE NAME, TITLE, AND PHONE NUMBER OF THE APPROPRIATE POLITICAL APPOINTEE BY THE DEADLINE. Thank you.

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.

CC:

Rahm Emanuel
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RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: ~~C. C. CHRISTAKOS~~ *JIM JUKES*
 Office of Management and Budget
 Fax Number: (202) 395-3109
 Analyst/Attorney's Direct Number: (202) 395-~~3386~~ ³⁴⁵⁸
 Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

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

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No objection
- _____ No comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT 05/31/94 10:24am

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
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

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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 Violent Crime Reduction Trust Fund in the final legislation; a specific legislative draft for such a Fund will be provided separately. 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 would be used to fund programs authorized in H.R. 3355. This Fund will provide over \$28 billion for the next five years, sufficient to fund the most important priority programs.

Further, to help fund the important programs included in the Crime Bill, we would propose a sixth year for the Fund, to set aside over \$28 billion for this purpose.

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 for multiple years. 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. We will be providing suggested draft legislative language toward this end.

- 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, 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 § 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 treat 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), 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 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 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:

- 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 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.

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 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 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.

- 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 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.

• 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.

* * * * *

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 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 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, 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.

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 generally prefer the 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. 3543 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.

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

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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 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, 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.¹ Moreover, the currently authorized OJJDP anti-gang program incorporates

¹ 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.

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.² 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 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

² 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.

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.

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).

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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.

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 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 allocution 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 allocution 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 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' 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 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. 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 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 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 must be harmonized 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, 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 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. 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 its utility could be enhanced by changing its 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. 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, 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.³

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

³ 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.

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 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 would be difficult to ensure funding more than a small fraction of the expenditures contemplated by the pending Bills could be funded.

We are providing a specific text to the Committee setting aside almost \$28 billion in a fund for crime control and prevention over six years (1995-2000). 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 Glyhco (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

will have to be mindful of the newly enacted ceilings on Federal employment contained in the _____ Act.

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.

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, 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 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. 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 this provision crafted to insure that these provisions are 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 he or she 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 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 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 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 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 some concerns about § 2932 of the Senate Bill.

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.⁴ 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

⁴ 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).

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.

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 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. [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 § 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. 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 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.

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 § 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 support with some modifications of § 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. 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.

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. 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. We support the objectives of this proposal, but recommend substituting the version passed by the House in H.R. 4278.

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 increases 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 section 5124 are partially duplicative in relation to § 712 of the Senate Bill, and that the increases in maximum criminal fines in § 5124 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 § 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 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 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. 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, 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. **OMB NOTE TREASURY REQUESTED INSERT** :The funding authorized in this section for ATF would enable ATF to carry out the federal firearms license program authorized in title III of the Senate bill, and would enhance the firearms enforcement branch so it can handle an increased workload resulting from the new firearms legislation in the bill. The funds authorized for the Secret Service would primarily be used for counterfeit currency enforcement.

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), 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.

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 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.

Anti-Crime 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 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 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.

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 § 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 section 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. 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 not required at all 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.

CRIME VIEWS LETTER



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:

- 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 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.

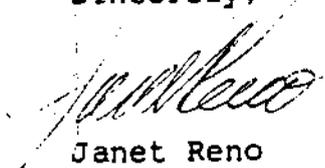
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Honorable Jack Brooks
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As noted above, accompanying this letter are detailed comments containing the Administration's specific recommendations for reconciling the House and Senate Bills in the critical 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,



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.¹ 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.² 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

¹ 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.

² 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. 715 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.³

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

³ 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.⁴ 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.

⁴ 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 appears 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).

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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.



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

November 2, 1993 (SENT 11/3/93)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3355 - Public Safety and Policing Grants
(Brooks (D) Texas and 2 others)

The Administration strongly supports H.R. 3355.

H.R. 3355 authorizes appropriations of \$3.48 billion over FYs 1994-1999 to allow States and localities to provide more law enforcement officers and to support programs where police work with community residents to reduce and prevent crime. It represents a vital step in putting more police on the streets. Increasing police presence and expanding community policing efforts are an integral part of the Administration's anti-crime and anti-drug efforts.

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

November 2, 1993 (SENT 11/3/93)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3354 - Drug Treatment and Corrections Grants
(Brooks (D) Texas and 2 others)

The Administration strongly supports H.R. 3354, which provides for substance abuse treatment in State and local correctional facilities. The Administration believes such programs will be most effective if coordinated with existing substance abuse treatment programs funded by the Department of Health and Human Services which can provide necessary community-based aftercare services.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20563

November 2, 1993 (SENT 11/3/93)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3353 - Juvenile Drug Trafficking and Gang Prevention Grants
(Brooks (D) Texas and 2 others)

The Administration supports H.R. 3353 and believes that the grants authorized by the bill should be coordinated with similar programs currently being funded by the Department of Health and Human Services in order to maximize their impact.

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

November 2, 1993 (SENT 11/3/93)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3351 - Alternative Methods of Punishment Grants
(Brooks (D) Texas and 3 others)

The Administration strongly supports H.R. 3351 and believes that programs providing alternative punishment for young offenders will be most effective if designed and implemented in coordination with existing substance abuse treatment programs and aftercare services for young people funded by the Department of Health and Human Services.

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

November 2, 1993 (SENT 11/3/93)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3350 - To Establish a Program of Residential Substance Abuse
Treatment within Federal Prisons
(Brooks (D) Texas and 2 others)

The Administration supports H.R. 3350.

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

November 3, 1993
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1607 - Violent Crime Control and Law Enforcement Act of 1993
(Biden (D) Delaware)

The Administration strongly supports S. 1607.

S. 1607 represents an important first step in putting more police on the streets, taking guns out of the hands of criminals, and ensuring that all criminals are punished for their crimes. It authorizes new and innovative crime control and prevention programs as part of a comprehensive strategy to address the problems of crime, drugs, and violence in our society.

Specifically, the Administration strongly supports the following in S. 1607:

- o Assistance for States and localities to increase police presence and expand community policing. Putting more police on the streets working with community residents to reduce and prevent crime is an integral part of the Administration's anti-crime and anti-drug efforts -- and must be included in comprehensive crime legislation.
- o Assistance to States to expand the use of boot camps for non-violent offenders and promote "certainty of punishment" for young offenders. Too often, the lack of prison space or juvenile detention facilities forces a choice between prison and no punishment at all. Boot camps and other innovative means of punishment must be used to promote swift and certain punishment when an offender first encounters the criminal justice system, not after it is too late.
- o Expanded use of "Drug Courts." Successful drug court programs utilize drug testing and the various components of the criminal justice system -- enforcement, prosecution, adjudication, and corrections, including probation, parole, and innovative programs such as boot camps -- to promote drug treatment. Without such programs, more hard-core drug users would be on our streets or taking up valuable space in our prisons that should be reserved for violent offenders. The Administration is committed to focusing on hard-core drug use, and drug courts are an important step in addressing this problem.

- o Provisions which ensure tough penalties for violent and gun-related crimes and which expand the Federal death penalty to include 47 new crimes.
- o Title III, which limits inmates to filing a single, Federal habeas corpus appeal within a six-month time limit and assures that indigent capital defendants are represented by qualified counsel who meet specific, rigorous experience and qualification standards. The Administration strongly supports these tough, but fair, death penalty provisions.

Pay-As-You-Go Scoring

S. 1607 would increase receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimates of this bill are presented below. Final scoring of this legislation may deviate from these estimates.

PAY-AS-YOU-GO ESTIMATES
(receipts in millions)

<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1994-1998</u>
*	*	*	*	*	*

* less than \$500,000

* * * * *



U. S. Department of Justice

Grace Mastalli
Rm 4237

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 1994

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

Dear Mr. Chairman:

This letter presents the views of the Department of Justice and the Administration concerning a number of issues and pending bills within the jurisdiction of the Judiciary Committee that are currently under consideration by the Subcommittee on Crime and Criminal Justice. We wish to address specifically the following topics or legislative proposals:

- Selected crime prevention provisions falling within the committee's jurisdiction;
- Drug courts and other supervised released programs for substance abusing offenders;
- "Three strikes and you're out" mandatory life imprisonment provisions;
- Federal death penalty offenses;
- Broadened adult prosecution for violent juvenile offenders;
- Victims' rights provisions;
- Provisions related to drug law mandatory penalties; and
- Police Corps and related programs.

I. Crime Prevention Proposals

The President strongly believes that our attack on crime must be balanced between tough punishment for criminals who deserve it and efforts to prevent crimes before they occur. The Administration has worked hard to develop and advance sound

programs to prevent crime, including the following individual initiatives, among others:

A. "Ounce of Prevention" and Sports League Anticrime Programs

The problem of crime -- and particularly the likelihood of involvement in crime by juveniles and young adults -- is strongly linked to hopelessness and an absence of constructive alternatives to criminal activity. If young people in distressed communities have no hope for a better future and nothing to do with their time but hang out on the street, increased criminality, delinquency, involvement in gangs, and drug abuse are predictable consequences.

The old adage that idle hands do the devil's work captures the point precisely. We should not be too sophisticated or cynical to learn from this ancestral wisdom, or to take advantage of its insight in devising new programs to combat crime.

In line with this objective, the Administration is supportive of initiatives to reduce crime by enlarging educational, recreational, and vocational opportunities.

We specifically urge favorable action by Congress on the Administration's version of two "Ounce of Prevention" programs, to be administered by the Attorney General with the assistance of an interdepartmental Ounce of Prevention Council. These programs will involve \$600 million in grants, targeted on distressed communities and at-risk youth. The proposed programs are specifically designed to: (1) provide constructive alternatives to idleness and involvement in delinquency, gangs, and substance abuse, and (2) promote employability and employment. The programs, which involve a simplified and better-integrated formulation of proposals that have appeared in earlier legislation, are as follows:

- An Ounce of Prevention Grant Program, which will support summer and after-school (including weekend and holiday) education and recreation programs; mentoring and tutoring programs and other programs involving adult role models; employment-oriented programs; and prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy. This is based on a proposal that was passed by the Senate in title I of H.R. 3355.
- A Community Youth Services and Supervision Grant Program, involving support for programs conducted by "community-based organizations" that are run by consortia of service providers and involve broad

private and public participation. This is based on a proposal that was passed by the Senate in § 5142 of H.R. 3355.

We also support the enactment of a sports league anticrime program that involves participation in competitive sports, with mandatory involvement by participants in related programs (such as education and job training) that promote employability and employment. We understand that the subcommittee will be considering a program of this type, as proposed by Representative Washington in § 311 of H.R. 3315. This initiative has our strong endorsement.

B. Police Partnerships for Children

The Administration supports a proposed \$20 million grant program to support partnerships between police agencies and child or family services agencies. The program is designed to provide support for cooperative police-social services teams or units that deal with violent incidents involving juveniles as perpetrators, witnesses, or victims, and related prevention programs. We have been working with Members of Congress to develop this modified version of a proposal passed by the Senate in title XLVIII of H.R. 3355.

C. Community Justice Grant Program

We commend the spirit and intent behind Subcommittee Chairman Schumer's proposal for a new Community Justice Grant Program for cities, and want to continue to work closely with him and others on the Committee to develop this or some other appropriate alternative. We would hope to work with Members of the Committee to develop an appropriately designed crime prevention and reduction initiative specifically targeted on areas with high crime rates.

D. Community Youth Academies

The "Community Youth Academies" proposal would provide support for special educational programs for delinquent and at-risk youth. We support the objectives of this proposal, but recommend that it be combined with other existing or proposed programs relating to provision of educational opportunities and supervision for delinquent and at-risk youth. We look forward to working with the committee in further developing this proposal.

E. TRIAD Programs

Subtitle C of title IX of the Senate crime bill (H.R. 3355) proposes grants to support TRIAD programs and related activities. The programs receiving support would involve cooperative activities of police, sheriffs, and seniors' organizations to

prevent crimes against the elderly. We support the objectives of this proposal, but believe that it would be preferable to give the Attorney General broader latitude to support various types of prevention programs combatting crimes against the elderly. We would be pleased to work with Members of the Committee in further developing this proposal.

II. Drug Courts and other Supervised Release Programs for Drug Abusing Offenders

We strongly recommend the adoption of legislation authorizing federal support for specially designed supervised release programs for substance abusing offenders. The Attorney General has been a pioneer in developing these programs and one of the nation's leading advocates for their adoption. Her experience in Florida, and available information from about 20 other cities, shows the establishment of "drug courts" -- involving a central role for judicial supervision of participating offenders can be very useful in preventing drug offenders from becoming more dangerous criminals and helping them to become productive members of society. We support legislation to promote the establishment of a much larger number of drug courts and supervised release programs in the near future.

Important elements that we support in these programs include the following:

- (1) Continuing supervision of drug-abusing offenders in specified categories.
- (2) Information systems that provide the supervising judges or other supervising personnel with complete and prompt information about participating offenders' history and status.
- (3) Objective measurement of progress through frequent drug-testing of participants, with prompt reaction to relapses or failure to meet program requirements, and positive encouragement of progress and success.
- (4) The prompt application of measured sanctions for violations, including the threat of prosecution or incarceration for participants who do not comply with program requirements or "drop out" of the program.
- (5) Mandatory participation in drug abuse treatment.
- (6) Integration of other programmatic or "aftercare" services for participants, such as education, vocational training, job placement, housing placement, health care, and parenting or family support services.

Programs of this type offer an alternative to the revolving door of repeated prosecution for drug-abusing offenders, and to relatively meaningless sanctions such as minimally supervised probation. They create a situation in which drug abusers cannot escape the consequences of their actions, and are provided with the necessary motivation for changing their behavior by the threat of penal sanctions for failing to cooperate or make progress. The possibilities for offenders to manipulate the system are foreclosed through continuing oversight, close cooperation among the supervising agencies, and prompt negative consequences for lapses. At the same time, related problems that contribute to drug abuse are addressed through the integrated administration of social services, tailored to the needs of individual participants.

While both the House of Representatives and the Senate have recently passed provisions authorizing support for certain correctional drug treatment and "intermediate sanctions" programs, the pending bills do not include provisions that are tailored to or adequate for the support of drug court programs and other supervised release programs of this type. We have conveyed to the Committee our recommendations for legislative language to provide support for drug courts and other comparable programs, and look forward to working with interested members of Congress in securing the enactment of this important proposal.

III. "Three Strikes and You're Out" Mandatory Life Imprisonment

President Clinton has proposed the adoption of "three strikes and you're out" mandatory life imprisonment laws to protect the public from the most dangerous and incorrigible violent offenders. On March 1, 1994, we transmitted to Congress our proposals for a statutory enactment of this policy.

As explained at that time in the testimony of Acting Deputy Attorney General Jo Ann Harris before the House Judiciary Subcommittee on Crime and Criminal Justice, the objectives of this proposal are to incapacitate permanently the most dangerous violent felons who account for a large proportion of all violent crime and provide a strong deterrent for offenders who have already been convicted of serious violent crimes and may contemplate a return to criminal activity.

We strongly urge the adoption of the President's legislative proposal, as set out in Acting Deputy Attorney General Harris' testimony. It is targeted to focus on the most dangerous felons who commit crimes against people, excluding those whose crimes -- while also meriting stiff punishment -- should not be brought within the scope of this statute.

IV. Federal death penalty offenses

The President has stated that restoration of an enforceable death penalty for the most heinous federal offenses is an important element of a comprehensive legislative anti-crime program. We understand that the Subcommittee on Crime and Criminal Justice will be considering the issue of death penalty offenses -- not including procedural provisions -- and that the list of capital offenses in title II of H.R. 3131 will provide the basis for the Subcommittee's proposal.

We support making the crimes listed eligible for the death penalty but would like to see one substantive amendment. For while the proposed offense in § 214 of H.R. 3131 does cover certain murders of state and local officers who are assisting federal officers, we believe it should be supplemented or replaced with a provision that adds state and local officers assisting federal officers to the list of protected persons under 18 U.S.C. 1114. Such an addition would provide federal protection for state and local officers assisting federal officers that is fully co-extensive with that provided for federal officers. It would also guard against "negative implication" arguments for overturning caselaw which has already applied 18 U.S.C. 1114 to cases involving state and local officers who are assisting federal officers.

We otherwise support the capital offenses specified in title II of H.R. 3131. We may have some technical or drafting corrections that are needed in some other offense provisions and will work with the Committee in refining this proposal.

VI. Drug Law Mandatory Penalties

The Administration believes that mandatory minimum sentences for certain drug trafficking offenses are an important law enforcement tool which should be maintained, and therefore supports retention of such penalties (and opposes legislative efforts that broadly repeals them). Those who are violent offenders, use firearms, and lead drug conspiracies should know that severe penalties, including appropriate mandatory penalties, will apply to their actions.

At the same time, we recognize that in particular cases involving non-violent offenders, mandatory minimum sentences are inappropriate. Accordingly, the Administration supports inclusion of a so called "safety valve" or "carve out" provision such as that contained in Chairman Schumer's proposal and §2404 of H.R. 3355 as passed by the Senate, or S. 1607. We believe that any of these proposals -- which while differing in some respects share the same fundamental structure -- would be a sound improvement in federal law, allowing us to target our

valuable and limited resources to the incapacitation of the most serious offenders.

VII. Broadened Adult Prosecution for Violent Juvenile Offenders

The problem of violence by -- and against -- our youth is one of the most vexing in our country today. It is not surprising that the rising tide of youth violence has invited a sharp response -- and it is a problem that we are working to combat as well. The President's Violent Crime Initiative, for example, a joint project of all relevant federal enforcement agencies -- including the Treasury Department's Bureau of Alcohol, Tobacco and Firearms and state and local law enforcement -- has as a major component an attack on youth gang violence.

On the legislative front, a number of proposals have been advanced to permit adult prosecution of certain violent juvenile offenders down to the age of 13. We support reforms, but note that the proposals that have been introduced thus far have problematic features.

Specifically, we oppose the provision that appears in § 651 of H.R. 3355 as passed by the Senate. This provision requires 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 this provision does not reflect any clear principle -- 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). Even proceeding against an offender as a juvenile may result in a much 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)).

We have been working with Members of the Committee to develop an alternative proposal. One proposal, which has been circulated in draft form, would simply 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. However, the draft proposal also suffers from certain problems, including an arbitrariness similar to the Senate provision in the specification of predicate offenses.

We will continue to work with the Committee, toward development of a formulation that would lower the general threshold for discretionary transfer for adult prosecution to the age of 13 and create a presumption in favor of transfer for adult prosecution of juveniles aged 15 and over who are charged with serious violent felonies. We would be pleased to work with interested Members of Congress in further developing this proposal.

VIII. Help for the Victim

The Administration believes that our criminal justice system must fully respect the rights and needs of crime victims -- as much as possible. The tragedy of crime victimization is only compounded when the system that is supposed to vindicate a victim's rights alienates or mistreats that victim. Several reforms which we support can help to alleviate this harm. They include:

A. Victim's Right of Allocation in Sentencing.

A number of pending bills contain provisions to give victims of federal violent and sexual abuse crimes a right of allocation in sentencing, parallel to the existing right of allocation of the offender under Fed. R. Crim. P. 32(a)(1)(C). We have strongly supported this provision, which has previously passed by both Houses of Congress -- by the House of Representatives in § 1004 of the conference committee version of H.R. 3371 in the 102d Congress, and by the Senate in § 901 of H.R. 3355.

This proposal is responsive to an imbalance in current procedures, under which the convicted offender has a right to address the court in relation to the sentence, but the innocent victim of the crime has no right to make such a statement. As we have before, the Department of Justice supports the enactment of this provision.

B. Victims of Crime Act Amendments.

We are advised that amendments to the Victims of Crime Act, which have been circulated in draft form, will be considered. Among other reforms, these amendments would mitigate the effects of year-to-year fluctuations in revenues to the Crime Victims Fund, make federally assisted victim compensation programs the last-recourse compensator vis-a-vis other federally supported programs, and permit the use of up to 5% of VOCA grants to defray the administrative costs of state victim compensation and victim assistance programs.

The Department of Justice supports the thrust of this proposal, and believes that certain additional amendments could further improve the operation of the VOCA program. We note,

however, that as drafted the proposal may raise "pay as you go" issues, and we look forward to working with the Committee in this area.

C. Report on "Battered Women's Syndrome".

The Senate has passed a provision in § 2964 of H.R. 3355 which requires a report on "battered women's syndrome" and its use in criminal trials. We are advised that the same provision will be considered in the Subcommittee on Crime and Criminal Justice.

This issue merits study. Preliminary information indicates that expert testimony concerning the characteristic behavior and psychology of victims may be of substantial value in the prosecution of domestic violence cases. See generally Bowman, A Matter of Justice: Overcoming Juror Bias in Prosecutions of Batterers Through Expert Witness Testimony of the Common Experiences of Battered Women, 2 Southern California Review of Law and Women's Studies 219 (1992):

As with other provisions in the pending bills that will entail substantial expense, the provision requiring a report on battered women's syndrome should include authorization and "subject to appropriations" language.

X. Police Corps and Related Programs

A. Police Corps and Law Enforcement Scholarships.

Numerous bills over the past several Congresses have included versions of the Police Corps proposal and the Law Enforcement Scholarships proposal. In all versions, the Police Corps proposal has involved the idea of providing higher education assistance to students who make a commitment to work in law enforcement following graduation. The Law Enforcement Scholarships proposal involves scholarships for in-service officers, and summer and part-time employment for high school students in law enforcement agencies.

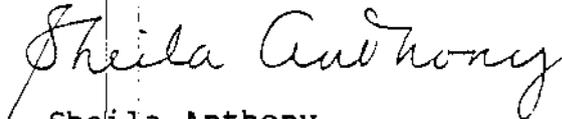
We strongly support the concept of Police Corps and in-service educational assistance to police officers, and look forward to working with Members of the Committee on this issue.

B. Police Recruitment.

A related proposal that will be before the Subcommittee on Crime and Criminal Justice would authorize assistance to community organizations to recruit and train individuals from under-represented areas for police work. We support the objectives of this proposal, but recommend in terms of formulation and administration that it be combined with the police corps and scholarships programs described in the earlier parts of this section. The objectives of these proposals are largely overlapping and coordination among them would enhance their effectiveness. We would be pleased to work with the Committee in further developing this proposal.

The Office of Management and Budget advises that the views stated in this report are in accord with the program of the President.

Sincerely,



Sheila Anthony
Assistant Attorney General



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

March 22, 1994
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 4092 - Violent Crime Control and Law Enforcement Act of 1994 (Brooks (D) TX and 3 others)

The Administration strongly supports prompt passage of H.R. 4092, which embodies the central elements of the President's anti-crime legislative agenda. This critical legislation 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. 4092 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. 4092 will provide necessary tools to Federal law enforcement officials, improving their effectiveness in combating violent crime. The bill will expand and advance proven crime prevention programs in an unprecedented way.

H.R. 4092 contains key elements of the President's anti-crime program, including:

- o A Substantial Start Towards Putting 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 illegal drug use, 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.
- o Launching a "Smart and Tough" Approach to Youth Crime and Violence. This bill focuses our efforts to combat youthful violence with:
 - Proven and extensive crime prevention programs, to give kids something to say "yes" to (discussed below);
 - Boot camps for youthful offenders, as a second-chance for kids who get off-track;
 - Drug courts to get drug users turned around before they commit more serious crimes;
 - A ban on juvenile gun possession; and

-- For hardened young criminals, the authority to try 13-year olds as adults for serious violent offenses.

- o Measures to Stiffly Punish Violent Crime. In addition to the vital prison program discussed below, the bill contains several measures to ensure that violent offenders cannot continue to prey upon our communities. These 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 violent harm.

-- Reinstating the Federal death penalty for the most heinous offenses, including the killing of Federal law enforcement officers.

- o 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. Among the prevention programs in the bill that the Administration strongly supports are:

-- The President's "YES" program (Youth Employment and Skills), to give employment opportunities to kids in hard-hit, high-crime areas;

-- "Ounce of Prevention" programs to keep schools open after hours and to expand after-school activities, like Boys and Girls clubs, that keep kids off the streets; and

-- Innovative alternatives like Midnight sports and Police Partnerships with Youths.

Prevention programs make sense, and are an important part of any balanced attack on the crime and violence that plague our cities, towns, neighborhoods, and rural communities.

- o Assisting the States in Building and Operating More Prison Cells 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 are not being released prematurely for lack of space. The Federal Government has built the prisons 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.

- o Attack on Violence Against Women. The bill includes a plan, strongly supported by the President, to increase penalties and prevention efforts aimed at domestic violence and sexual assaults that make American women unsafe in their homes or on the street.
- o Other Initiatives. Among the other Administration-supported provisions of H.R. 4092 are those that would promote victims' rights, prevent child abuse, provide a "safety-valve" from mandatory minimum sentences for non-violent offenders, and increase penalties for hate crimes.

The Administration supports Rep. Moyer's amendment to authorize funds for increased Treasury law enforcement activities. Treasury's law enforcement bureaus have a crucial role to play in fighting street crime, gang violence, and smuggling, and in supporting gun control and State and local law enforcement. The inclusion of this amendment will complement the other provisions of H.R. 4092.

While the Administration does not agree with every program or provision in H.R. 4092, it firmly believes that, taken as a whole, the bill is a balanced approach to the problem of crime, and contains many much-needed crime-fighting measures. The Administration looks forward to working with the House to obtain prompt passage of this important legislation.

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U. S. Department of Justice

FINAL *Cerde*

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 26, 1995

Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

This letter presents the views of the Department of Justice and the Administration concerning H.R. 3, the "Taking Back Our Streets Act of 1995." This bill is framed as a response to the Violent Crime Control and Law Enforcement Act of 1994, a bipartisan triumph that represents the culmination of six years of legislative work on anti-crime measures, and that provides a blueprint for a comprehensive crime-fighting effort for six years to come. In some areas, H.R. 3 seeks to strengthen or supplement measures in the 1994 Act, but in others it seeks to undo or limit what the 1994 Act has done. It is this distinction that should guide the Congress in acting on this bill: measures that advance the progress made by the 1994 Act should be adopted; measures that reverse these gains should not.

The bipartisan Violent Crime Control and Law Enforcement Act of 1994 enacted much of President Clinton's sweeping legislative anti-crime program. The Act includes federal initiatives of unprecedented scope that will expand community policing by putting an additional 100,000 police officers on our nation's streets, increase prison space for the incarceration of 100,000 more violent offenders, expand drug courts and work to stop crime before it starts through effective prevention programs. The Act also includes an enormous range of important reforms in federal criminal law, including creation of an effective death penalty for the most heinous crimes; a "three-strikes-and-you're-out" law to permanently incapacitate the most incorrigible serious violent offenders; a ban on assault weapons; and other measures to combat firearms violence, violence against women, and terrorism.

In part, H.R. 3 would supplement the 1994 Act by adding provisions relating to matters that were set aside last year. Such matters include strengthening federal death penalty procedures, habeas corpus and exclusionary rule reform, increased penalties for firearms offenses, mandatory restitution,

deportation of criminal aliens, and limiting abusive prisoner litigation. We support the objective of strengthening the law in these areas, and we are pleased to see the bill's support for many of the specific reforms we have previously proposed.

We also recommend that H.R. 3 be expanded to include a broader range of measures to strengthen law enforcement, including measures addressing such issues as public corruption, preventing dangerous convicted felons from possessing firearms, additional improvements in federal death penalty procedures, and additional reforms to combat terrorism and other international crime. We have previously stated our support for a wide range of measures in these areas and others -- many of which have already been separately passed by one or both Houses of Congress in earlier Congresses -- but which are not presently included in H.R. 3. More detailed accounts of our recommendations for additional reforms appear below in this letter.

While the administration supports efforts to advance our federal attack on crime, we strongly oppose efforts to undo or repeal the important gains made in last year's bill. In other words, while we support efforts to enhance, supplement, and carry further the important reforms achieved in the 1994 Act, we vigorously oppose efforts to take us back or reverse the gains that have already been made. Proposals to reverse the progress started by the bipartisan efforts of the Congress and the President threaten to undermine the ongoing work of federal, state, and local law enforcement agencies to make our streets and neighborhoods safer.

Specifically, we strenuously oppose provisions of H.R. 3 that would fundamentally alter the Public Safety Partnership and Community Policing Act ("COPS") program and the prison funding program, and that indiscriminately repeal most of the crime prevention programs in the 1994 Act. It would be a tragic mistake to repeal a program to put 100,000 new police officers on the streets, and replace it with a plan to pass out \$10 billion of taxpayers' funds with no assurance that any specific improvement in public safety will result. To draw upon a phrase too often misused during last year's debates, the proposal to replace the 100,000 cops program with a fuzzy plan that authorizes spending \$10 billion for any purported "crime reduction" purpose is a plan for "super pork" of the first order.

Similarly, it would be foolish to slash virtually all of the bipartisan crime prevention programs included in the 1994 Act. It is mystifying why anyone would advance an ill-advised proposal to repeal wholesale programs supported by police, prosecutors, and parents that implement common sense measures to protect our children from crime -- such as keeping schools open after hours and on weekends as safe havens, or getting tough on drug abusing

offenders through coerced abstinence and mandatory drug-testing. While these programs account for about one-fifth of the Act's funding, in the view of police officers around the country, they are a critical aspect of the Act's comprehensive attack on crime.

The proposals to repeal or fundamentally revise these programs in H.R. 3 are in many respects illogical and ineffective, and would disserve anti-crime objectives. Passage of these aspects of H.R. 3 would mean fewer police officers on the streets, fewer violent criminals behind bars, and significantly less assistance to state and local governments that are trying to take proactive measures to prevent crime.

In sum, while there are some aspects of H.R. 3 that would be helpful to law enforcement and our anti-crime efforts, too much of the bill would undermine the work of our police and our communities who are fighting so hard to combat violent crime. It reopens settled issues and revisits for no good reason areas that are more effectively addressed under current law.

Finally, we are concerned by reports that some members of the House of Representatives are intent on repealing the ban on semi-automatic assault weapons that was enacted last year. Such a repeal would put in danger countless police officers and innocent civilians, and put back in production new weapons of choice for drug dealers and gang-affiliated criminals. To repeal this crime-fighting law is to break a solemn contract between the Congress and America's law enforcement agents and officers merely to appease the demands of a special interest group.

I. Death Penalty

A. Habeas Corpus Reform

Subtitle A of title I contains reforms affecting federal habeas corpus review of state criminal judgments and collateral review in federal criminal cases.

Chapter 1 of subtitle A contains general habeas corpus reforms that are essentially the same as those passed by the Senate in S. 1763 of the 98th Congress and title XI.A of S. 1241 of the 102d Congress, except that they do not include a rule of deference to "full and fair" state adjudications. Chapter 2 of subtitle A contains a version of the "Powell Committee" recommendations for capital collateral litigation; somewhat different versions of this proposal were previously passed by the Senate in title XI.B of S. 1241 of the 102d Congress, and by the House of Representatives in H.R. 5269 of the 101st Congress. Chapter 3 in subtitle A requires funding for the states for capital habeas litigation (from discretionary Byrne Grant funds) in an amount equal to federal appropriations for capital resource

centers. The same provision was passed by the Senate in § 4923 of S. 1241, and by the House of Representatives in § 1108 of the first version of H.R. 3371 and § 208 of the conference committee version of H.R. 3371 in the 102d Congress.

We share the objectives of curbing the abuse of habeas corpus and other collateral remedies -- including the particularly the acute problems of delay and prolonged litigation in capital cases -- and of ensuring adequate representation for defendants who face capital sentences. We believe, however, that these objectives would be better accomplished through enactment of the reforms proposed in title III of S. 1607 of the 103d Congress.

Both the proposal in H.R. 3 and the proposal of S. 1607 contain provisions designed to reduce delay and redundancy in collateral litigation, primarily by imposing time limits for federal habeas filing, and by limiting successive habeas filings following the federal courts' rejection of an initial petition. Both proposals also would correct an imbalance in current federal funding by providing that states are to be given funding for capital habeas litigation in an amount equal to the federal funding of capital resource centers. However, in S. 1607, these measures are conjoined with measures that will improve this process further, promoting both fairness and finality by ensuring competent legal representation for defendants.

For example, under the provisions of S. 1607, the creation of a time limitation rule for federal habeas filing in non-capital cases is contingent on a state's appointment of counsel to represent defendants pursuing state collateral remedies. In contrast, the proposal of the current bill simply imposes a general one-year time limit for federal habeas filing, and does not prescribe any correlative obligation on states to go beyond current practices in providing representation for defendants.

Similarly, S. 1607 prescribes necessary minimum counsel standards for the representation of capital defendants in state proceedings; otherwise, a defendant could be put on trial for his life with limited appeal rights and with only an inexperienced, recent law school graduate to provide a defense. In contrast, H.R. 3 does not prescribe any counsel standards for the states in capital cases. H.R. 3 does provide an incentive for states to extend appointment of counsel to collateral proceedings in capital cases -- and to set some type of competency standards for such counsel -- by affording states which do so a stronger rule limiting successive federal habeas petitions and time limits for concluding the litigation of federal habeas petitions. However, at the end of the day, states are free to decide whether they wish to accept this "deal" at all -- removing any "mandate" from the states.

Competent representation at trial and on appeal not only provides essential safeguards of fairness for defendants, but also constitutes a critical element in ensuring the integrity and finality of judgments. Effective counsel at the primary stages of litigation promotes error-free proceedings, and reduces the likelihood that reversible error will be found at later stages, potentially after years of protracted litigation. Conversely, a failure to provide effective representation for the defendant at the initial, critical stages is a false economy that complicates and undermines the proceedings, and jeopardizes the finality of any resulting judgment on review. The proposal of S. 1607 embodies a highly effective approach to minimizing the likelihood of error and resulting jeopardy to the integrity of judgments through provision of effective counsel at trial and on appeal, while the proposal in H.R. 3 does not move beyond existing law and practice in this area.

Hence, since we believe that sound reforms should effectively further all the important objectives in this area -- increased finality and assurance of fairness to defendants -- we recommend that the habeas reform provisions of S. 1607 be enacted in lieu of those proposed in this bill.

B. Federal Death Penalty Procedures Reform

Subtitle B of Title I amends the death penalty provisions enacted by the Violent Crime Control and Law Enforcement Act of 1994, to direct the jury to impose a capital sentence if it finds that the aggravating factors in the case outweigh any mitigating factors. As we have previously stated, we support this approach as providing "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." Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr., Detailed Comments at 3 (June 13, 1994).

However, the amendment in § 111(a) of subtitle B does not fully delete inconsistent language in the enacted version of 18 U.S.C. 3593(e). A technically correct formulation of this amendment would read as follows:

Subsection (e) of section 3593 of title 18, United States Code, is amended by striking "shall consider" and all that follows through the end of the subsection and inserting the following:

"shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating

factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants. The jury shall be instructed that its recommendation concerning a sentence of death is to be based on the aggravating factor or factors and any mitigating factors which have been found, but that the final decision concerning the balance of aggravating and mitigating factors is a matter for the jury's judgment."

Beyond the amendment in subtitle B of title I of the current bill, our communication to the conference committee on the 103d Congress crime bills recommended several additional amendments which remain relevant to the enacted death penalty provisions. Specifically, we continue to recommend that the following changes also be made to strengthen and clarify these provisions:

(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 in capital sentencing, 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) . . . 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) [L]anguage in proposed 18 U.S.C. 3593 relating to victim impact information has been placed in the wrong subsection.

Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr., Detailed Comments at 3-4 (June 13, 1994).

We would be pleased to work with interested members of Congress to develop this more complete set of death penalty amendments, as discussed in our letter to the 1994 crime bill conference committee.

II. Deterring Gun Crimes

Title II would generally create federal jurisdiction to prosecute cases involving violent crimes under state law where a firearm is involved in the commission of the offense. It would require mandatory prison terms of at least five years where the offense involves knowingly carrying a firearm, at least 10 years where the offense involves knowingly using a firearm, and at least 20 years where the offense involves discharge of a firearm with intent to injure another person. This proposal is loosely based on the gun crime provisions that the Senate passed in the 102d Congress (§ 1213 of S. 1241) and the 103d Congress (§ 2405 of the first version of H.R. 3355 passed by the Senate). The proposal also includes conforming changes in the mandatory penalty provisions for carrying or using a firearm during a federal crime of violence or drug trafficking crime (current 18 U.S.C. 924(c)).

Superficially, this proposal is more restrictive than earlier versions in that it requires that a predicate state violent crime must be a "serious violent felony." However, this restriction is illusory, because later definitions in the proposal define "serious violent felony" to include all felony crimes of violence. Hence, like earlier versions, the proposal in H.R. 3 would extend federal jurisdiction over hundreds of thousands of local offenses each year which are now dealt with by

state and local law enforcement, judicial and prison systems.

We oppose the provisions of this title, 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 can never be realized, given limited federal resources -- and divert attention from the critical role that the federal government does play in the fight against violent and drug crimes.

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.

Moreover, even when considered on their own terms, the provisions of title II of this bill have many anomalous features. They would require federal prosecutors to prove the commission of state crimes, and could also be construed to require federal judges to impose state law sentences for the underlying offenses. Since it is state -- not federal -- prosecutors and judges who have the pertinent experience and expertise in this area, they should continue to be responsible for handling these cases.

Moreover, the proposed conforming changes in current 18 U.S.C. 924(c), which provides mandatory penalties for federal violent and drug trafficking offenses involving firearms, have the presumably unintended effect of weakening existing law in some respects.

Current 18 U.S.C. 924(c) generally provides a five year mandatory penalty for cases in which the offender "uses or carries" a firearm during and in relation to a federal crime of violence or drug trafficking offense. Under the existing language, the notion of "use" of a firearm has not been limited to cases in which the firearm is brandished or displayed during a drug trafficking crime, but has been construed broadly to cover virtually any occasion where a firearm facilitates a drug trafficking offense, or is employed in any manner or placed so as to be available for the purpose of protecting the cache of drugs or drug proceeds. See generally Smith v. United States, 113 S.Ct. 2050, 2057-58 (1993); United States v. Bailey, 36 F.3d 106, 113-14 (D.C. Cir. 1994) (en banc).

This broad construction of "uses" would almost certainly be lost under the proposed revision in H.R. 3, since "uses" would be treated as a more aggravated type of conduct that carries a higher mandatory penalty than "carrying" (10 years vs. five

years). Thus, the statute would be narrowed in comparison with current law so as to cover only cases in which the offender carries, brandishes, or discharges a firearm, excluding other cases (now covered) in which a firearm is kept available to protect the cache or proceeds.

The proposed revision also weakens existing law in other respects: While all second and subsequent convictions under 18 U.S.C. 924(c) are subject to at least a mandatory 20 year penalty, under the revision in H.R. 3, a second "carrying" offense would only be subject to a 10 year minimum. Moreover, in Deal v. United States, 113 S.Ct. 1993 (1993), the Supreme Court held that multiple convictions resulting from a single proceeding in which the counts were joined for trial constituted a "second or subsequent conviction" within the meaning of § 924(c), bringing into play the mandatory 20 year penalty provision. In contrast, the revision proposed in H.R. 3 uses different language ("has been convicted") which would probably be construed to limit the higher penalty to cases where the offender has been separately tried and convicted for another violation. A further potential problem is the proposal's new requirement that the offender must "knowingly" carry or use a firearm. Depending on how this is construed, it could, for example, limit liability in aiding and abetting cases if knowledge is required as to the specific manner of use of the firearm.

Finally, the general definitions in this part of H.R. 3 are peculiar and confusing. As noted earlier, where the underlying offense is a violent state crime, the proposal superficially limits this to "serious violent felonies," but the later definition of this term encompasses all felony crimes of violence, as well as the narrower definition of "serious violent felony" from the "three strikes" provision. The definition of "serious drug offense" is likewise peculiar, including both a broad definition encompassing any federal drug felony, as well as a narrower definition covering certain offenses involving large quantities of drugs.

Therefore, in lieu of this provision loaded with false promise and potentially weakening effect, we would recommend that Congress adopt the provisions passed by the House of Representatives in § 2011 of H.R. 3371 of the 102d Congress and, in part, by the Senate in § 1238 of S. 1241 of the 102d Congress. These provisions mandate five year and ten year terms for firearms possession by offenders with one or two prior convictions for violent felonies or serious drug offenses, supplementing the fifteen year mandatory term provided for offenders with at least three prior convictions of this type under the Armed Career Criminal provisions (18 U.S.C. 924(e)).

In contrast to the hollow and ineffectual provisions of title II, the sentencing provisions we are advancing would not

extend federal jurisdiction over any conduct that is not currently a federal crime, but would ensure that penalties are available which are proportionate to the danger posed to the public by offenders with serious criminal records who possess firearms in violation of federal law. Provisions of this type could help to strengthen the federal role in assisting state and local enforcement efforts by targeting the most dangerous and incorrigible offenders for prosecution and incapacitation under the federal firearms laws.

III. Mandatory Victim Restitution

Title III of H.R. 3 contains amendments that would make the issuance of a full order of restitution mandatory in all cases under the federal criminal code, and would otherwise strengthen the restitution statute. The amendments would preserve the court's authority to consider the offender's economic circumstances in specifying the manner and timing of payment, e.g., in setting up a payment schedule that is consistent with the offender's actual ability to pay. The Senate passed similar provisions in § 902 of the first version of H.R. 3355 that it passed in the 103d Congress, and in § 2003 of S. 1241 of the 102d Congress.

As we have previously stated, we support these provisions. See Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr., Detailed Comments at 14 (June 13, 1994). We believe strongly that all offenders should be forced to repay their victims for the harm they have caused.

On a technical level, we have a few recommendations concerning the formulation of this proposal. For example, proposed new paragraph (5) in 18 U.S.C. 3663(b), relating to reimbursement of the victim for costs associated with participation in the investigation or prosecution, has already been enacted in a stronger form (including coverage of the victim's lost income) by § 40504 of the Violent Crime Control and Law Enforcement Act of 1994. We would be pleased to assist Congress in finalizing this proposal.

IV. Law Enforcement Block Grants

Title IV would repeal the Public Safety Partnership and Community Policing Act ("COPS") program enacted by title I of the Violent Crime Control and Law Enforcement Act of 1994, and replace it with a formula grant program supporting any crime reduction purpose, including but not limited to police staffing, overtime, equipment, school security measures, and neighborhood watch programs. The only limitation on the expenditure of these funds would be a local governments creativity in labelling a particular expenditure as serving the purpose of "reducing crime"

or "improving public safety" -- in short, no limitation at all. This formula grant program would be administered by the Bureau of Justice Assistance. Funding would generally be disbursed directly and exclusively to local governments, primarily in proportion to their respective shares of reported part I violent crimes. The aggregate funding authorization for the new program would be \$10 billion over five years.

The administration strongly opposes this change, which would effectively destroy the highly successful COPS program that we have already begun to implement, and replace it with a poorly conceived and designed program that would not guarantee any specific gains in public safety. Our larger concerns about this ill-advised proposal include the following:

First and foremost, we are very concerned that the proposed law enforcement block grant program design proposes to turn the clock back by ignoring almost everything learned from the Law Enforcement Assistance Administration (LEAA) experience. Money alone -- not even \$10 billion dollars -- will not result in an improvement in public safety without accountability measures to assure results. In fact, a key lesson of the LEAA experience was that although more resources may be needed by criminal justice agencies and communities, too often unrestricted funds such as the proposed block grant, will be dissipated by scattering them widely or applying them to unwise, frivolous, or routine expenditures, with the result that their impact was scattershot, short-term and diluted. Another critical lesson of LEAA was, that absent clear specific statutory guidance about priorities, programs and policies that work, shifting priorities and untargeted block grant funding resulted in many dollars spent -- including much wasted on hardware -- with no discernible impact on crime or the administration of justice.

Second, the proposed replacement fails to achieve the existing program's critical objective of promoting community policing ("cops on the beat"). Limited federal resources should be targeted on what works. Under the existing program, the vast majority of the grant funds are employed to put 100,000 new police officers on the street, with the remainder of the grant funds designed to promote and strengthen police presence in the community and the ability of police officers to work effectively with their communities to stop crime. The existing COPS program is an example of applying the lessons learned from LEAA to help implement a proven program nationwide while assuring accountability, flexibility, and results.

This is an absolutely fundamental feature of the existing program. Crime cannot be effectively abated if the nation's communities view the police at best as outsiders who appear briefly in the aftermath of particular criminal incidents, or at worst as an occupying army that becomes the target of racial,

ethnic, and class antagonisms.

The experience of community policing -- stationing police in the communities they serve, on the beat -- offers enormous benefits from every perspective. On the side of the community, it enables citizens to learn to know and trust the police, to assist them in carrying out their mission, and to acquire the sense of security that comes from the regular presence of familiar officers in their neighborhoods and the knowledge that those officers are personally committed to protecting them and their families from crime. Similarly, it enables police officers to know the members of the communities they serve as human beings, to obtain specific intelligence from their community contacts concerning criminal activities, and to develop an understanding of the general nature and causes of a community's crime problems and the ability to devise proactive strategies to mitigate or eliminate these causes.

Third, the formulaic approach to the distribution of funds under this proposal will produce misallocations of resources, both because the incidence of reported part I violent crimes is an imperfect measure of the overall crime problem in local areas and, more importantly, because the proposed formula takes no account of the adequacy or inadequacy of existing police staffing levels in particular areas, or the ability or inability of such areas to effectively utilize additional police resources. Hence, the proposal will deny needed funds to hard-pressed areas that would receive greater funding under the existing program, and will wastefully confer unneeded windfalls on other areas.

In light of these considerations, the alternative program proposed in this bill is fundamentally deficient. It does not guarantee that a single new police officer would be put on our streets -- or any other specific improvement in public safety would be made. Instead, it potentially spends billions of dollars on wasteful programs or unfocused initiatives -- or any use, no matter how frivolous -- of federal taxpayers dollars that can be claimed to "reduc[e] crime." Local officials would be free to engage in a 100% federally-funded "spending spree," with no guidance as to how these funds should be spent -- or what results that spending should achieve.

In sum, the Congress is faced with a very clear choice: continue with the President's plan to put 100,000 more police on our streets, or replace that program with a \$10 billion handout of taxpayer funds. It is a choice between making every American safer by putting 20% more police on our streets -- or putting every American's pocketbook at risk with a 100% federally-funded giveaway of \$10 billion.

It is a choice between what experience tells us will make citizens more secure -- an increase of cops-on-the-beat -- and what experience tells us will make taxpayers more enraged -- the use of federal funds to purchase tanks, to lease needless aircraft, and to support any far-fetched pet projects that can be called "crime reduction."

For these reason, we strongly oppose Title IV of H.R. 3.

V. Truth in Sentencing Grants

Title V of H.R. 3, in conjunction with § 901 of the bill, would repeal the prison funding program enacted by title II of the Violent Crime Control and Law Enforcement Act of 1994, and replace it with a new program involving different standards.¹ Under the new prison grants program, funding could only be used to increase, directly or indirectly, prison space for persons convicted of "serious violent felonies," which are essentially defined as violent crimes carrying a maximum prison term of 10 years or more.²

Fifty percent of the funds ("general grants") would be reserved for states that, since 1993, have increased the incarceration rate, average time served, and percentage of sentence served for convicted violent offenders, or that have average times served for murder, rape, robbery, and assault which exceed the national average by at least ten percent. The other fifty percent of grant funds ("truth in sentencing grants") would be reserved for states that have enacted truth in sentencing laws requiring persons convicted of serious violent felonies to serve at least 85% of their sentences, and that give victims an opportunity to be heard regarding the sentence and any post-conviction release. For eligible states in either category, funds would be disbursed primarily in proportion to their general populations. The aggregate authorization for the program would be \$10,499,600,000 over six years.

Before addressing the substantive provisions of the Title, a bizarre funding limitation contained in it merits comment. Under this provision, no funds may be spent for any other Crime Bill purpose unless Congress appropriates the full \$10.5 billion for

¹ Title V of H.R. 3 also repeals the drug courts program in title V of the 1994 Act.

² In addition to including violent crimes with maxima of ten years or more, the bill's definition appears to stipulate that certain offenses -- murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery -- are automatically included.

the prison grants.

This means that not a dollar can be spent to hire new police, add new FBI agents, fund Byrne Grants, fight rape or domestic violence, strengthen the border patrol, or keep schools open after-hours, unless the Congress commits the entire \$10.5 billion sum proposed for the prison grants.

Thus, even if there are only a few qualifying applications for prison grant funds in a given year; even if no state or locality asks for funding to build new prisons; even if billions of dollars for prison construction remains unspent, year-after-year -- Congress must continue to appropriate an average of \$2 billion a year for more prison grants, every year, for the next five years, if it wants to have funding for even a single new police officer or federal law enforcement officer released.

Why Congress would want to hold thousands of police departments, prosecutors' officers, victims groups, and school districts hostage to its own future decisions about the level of appropriations for prison grants seems unclear. Why 100% of funding for new police should be cut-off if 1% of the funding for prison grants is reduced is a mystery. Why funding for a well-established program like the Byrne Grants should be slashed -- as it would be under Title V of H.R. 3 -- if Congress chooses only to slow down the growth of a brand new program is unclear.

In addition to this strange funding rule, we oppose the substantive changes in this Title because we believe, in the end, they will result in fewer violent criminals being put behind bars than would implementation of the program enacted by the 1994 Crime Act.

First, in contrast to the enacted program's objective of increasing prison space and ensuring appropriate incarceration for all violent offenders, the proposed new program only authorizes funding to increase prison space for persons convicted of "serious violent felonies." It also only conditions eligibility for "truth in sentencing" grants (under proposed § 503) on the state's requiring that persons convicted of "serious violent felonies" serve at least 85% of the sentence. This approach effectively rewards states with lower statutory maxima for violent crimes, since in these states the category of offenders convicted of violent crimes with maxima of ten years or more ("serious violent felonies") is smaller, and hence they need to do less to satisfy the funding eligibility condition. In relation to the objective of ensuring adequate penalties for violent offenders, this approach of favoring states with lower maximum sentences is perverse.

This approach also places undue emphasis on the current

conviction offense. The conviction offense often does not fully reflect the actual offense conduct because of plea bargaining, and an offender with a serious history of criminal violence may pose a grave threat to the public, even if his current conviction offense carries a statutory maximum of less than ten years. These points are appropriately recognized in the enacted legislation, which conditions eligibility for truth in sentencing grants on laws which require that at least 85% of the sentence be served for all violent offenders, or laws requiring that at least 85% of the sentence be served for all violent recidivists, together with actual increases in incarceration rate, time served, and percentage of sentence served for the full class of violent offenders. In contrast, the proposed new program requires nothing with respect to the incarceration of violent offenders as a condition of eligibility for truth in sentencing grants, other than those whose current conviction is for a "serious violent felony" in the defined sense.

The eligibility criteria for general grants under proposed § 502 are also problematic in relation to the proposed limitations on the use of grant funds, because grant funds could only be used to increase prison space for persons convicted of "serious violent felonies," but eligibility for the general grants would depend on increasing incarceration or having relatively high average time served for more broadly defined categories of violent offenders. However, the authorized use of grant funds should be commensurate with the class of offenders for whom increased incarceration is required.

Second, the proposed new program is inferior to the existing program in its conditions regarding recognition of victims' rights. Under the existing program, eligibility for both general grants and truth in sentencing grants is conditioned on "policies that provide for the recognition of the rights and needs of crime victims." The Department of Justice has identified the following areas as implicating important rights and needs of crime victims: (1) notice to victims concerning case and offender status; (2) providing victims the opportunity to be present at all public court proceedings in their cases; (3) providing victims the opportunity to be heard at sentencing and parole hearings; (4) providing for restitution to victims; and (5) establishing administrative or other mechanisms to effectuate these rights. The need to provide appropriate recognition for victims' rights in these areas is being emphasized and elaborated in regulations and guidelines under the existing program.

In contrast, the proposed new program does not include any victims rights condition for general grants, and only requires an opportunity to be heard regarding sentencing and release as a condition for truth in sentencing grants. Under this formulation, the Department of Justice would have no authority to impose the more far-reaching victims rights requirements that are

being implemented under the existing program.

Third, the existing program provides for the disbursement of funds to eligible states primarily in proportion to part I violent crimes. In contrast, the proposed new program provides for the disbursement of such funds primarily in proportion to general population. This approach of disbursing funds for violent offender incarceration in proportion to general population, without regard to the incidence of violent crimes in the affected areas, will produce gross misallocations of resources in relation to actual need.

Hence, the proposed rewriting of the prison grants program in this title is an aggravated case of attempting to fix something that is not broken, and making it worse in the process.

VI. Exclusionary Rule Reform

Title VI creates an exception to the search-and-seizure exclusionary rule by providing that evidence is not subject to suppression on fourth amendment grounds if it was obtained in circumstances justifying an objectively reasonable belief that the search or seizure was in conformity with the fourth amendment. The title also prohibits the creation of exclusionary rules based on non-constitutional violations, except by statute or by rules promulgated by the Supreme Court.

The House of Representatives has previously passed the same or similar reforms on a number of occasions, most recently in § 1720 of H.R. 3371 of the 102d Congress, and the Senate passed a similar provision in S. 1764 of the 98th Congress. In United States v. Leon, 468 U.S. 897 (1984), the Supreme Court held that evidence is not subject to suppression if obtained in objectively reasonable reliance on a warrant, and the "objective reasonableness" standard is applied in determining the personal liability of officers in Bivens actions and § 1983 suits, in both warrant and non-warrant cases.

The federal courts in the Fifth and Eleventh Circuits have gone further, and have applied a "reasonableness" standard in ruling on the suppression of evidence, in both warrant and non-warrant cases, following the decision in United States v. Williams, 622 F.2d 830 (5th Cir. 1980). However, this is a minority position, which has not been adopted by most courts or state legislatures.

The caselaw in the Fifth and Eleventh Circuits does not show a large number of reported decisions applying the broader "reasonableness" exception for non-warrant cases, which suggests that proponents of this type of legislative reform overestimate its value to law enforcement. In most cases in which a court

would find officers' conduct to be objectively reasonable, the court would find in any event that there was no fourth amendment violation.

The prevailing approach of recognizing a "reasonableness" exception for warrant cases only provides the strongest incentive for officers to obtain warrants before carrying out searches and seizures. We support an exclusionary rule exception in such cases because it insures that guilty criminals do not escape punishment - without undermining the goal of encouraging police officers to obtain search warrants before abridging personal freedoms. By contrast, a "reasonableness" exception for non-warrant cases would reduce the relative advantage of the practice of seeking a warrant whenever it is feasible to do so.

Hence, we believe that it would be unwarranted to attempt to resolve this issue legislatively, in the direction of narrowing the exclusionary rule's application. We believe that ensuring the permanence of the Leon exception for warrant cases through a statutory codification is a preferable alternative, if Congress believes that legislation in this area is desirable.

We do support the feature of this proposal that limits the creation of exclusionary rules based on non-constitutional violations. Because of the importance of the truth-finding function in litigation, and particularly in criminal proceedings, it is reasonable to require Congress (or the Supreme Court) to indicate affirmatively when it wishes courts to apply an exclusionary sanction for statutory or rule violations that do not infringe upon the constitutional rights of the defendant.

VII. Stopping Abusive Prisoner Lawsuits

This title contains a set of reforms to help control abusive prisoner litigation. We support enactment of these provisions.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997e) currently authorizes federal courts to suspend § 1983 suits by prisoners for up to 180 days in order to require exhaustion of administrative remedies. Section 701 of this bill strengthens the administrative exhaustion rule in this context -- and brings it more into line with administrative exhaustion rules that apply in other contexts -- by generally prohibiting prisoner § 1983 suits until administrative remedies are exhausted. The amendments in § 701 do not change the existing provisions that administrative remedies need be exhausted only if they are "plain, speedy, and effective," and satisfy minimum standards set out in the statute or are otherwise fair and effective. Hence, these amendments do not raise concerns that prisoners will be

shut off from access to a federal forum by ineffectual or unreasonably slow administrative review processes.

Section 702 directs a court to dismiss a prisoner § 1983 suit if the court is satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious. A rule of this type is desirable to minimize the burden on states of responding unnecessarily to prisoner suits, which typically lack merit and are often brought for purposes of harassment or recreation.

Section 703 deletes from the minimum standards for prison grievance systems in 42 U.S.C. 1997e(b)(2) the requirement of an advisory role for employees and inmates (at the most decentralized level as is reasonably possible) in the formulation, implementation, and operation of the system. This removes the condition that has been the greatest impediment in the past to the willingness of state and local jurisdictions to seek certification for their grievance systems. It should be noted that this change will not necessarily require exhaustion of administrative remedies in prisoner § 1983 suits where exhaustion would not be required under existing law, since exhaustion can be required where the administrative remedies are "otherwise fair and effective" -- even if the statutory minimum standards are not satisfied -- and an advisory role for employees and inmates as provided in 42 U.S.C. 1997e(b)(2)(A) is not essential for fair and effective grievance systems.

Section 704 strengthens safeguards against and sanctions for false allegations of poverty by prisoners who seek to proceed in forma pauperis. Subsection (d) of 28 U.S.C. 1915 currently reads as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." Section 704(a) of the bill amends that subsection to read as follows: "The court may request an attorney to represent any such person unable to employ counsel and shall at any time dismiss the case if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief may be granted or is frivolous or malicious even if partial filing fees have been imposed by the court."

Section 704(b) of the bill adds a new subsection (f) to 28 U.S.C. 1915 which states that an affidavit of indigency by a prisoner shall include a statement of all assets the prisoner possesses. The new subsection further directs the court to make inquiry of the correctional institution in which the prisoner is incarcerated for information available to that institution relating to the extent of the prisoner's assets. This is a reasonable precaution, because candor by prisoners on this subject cannot reliably be expected. The new subsection

concludes by stating that the court "shall require full or partial payment of filing fees according to the prisoner's ability to pay." We would not understand this language as limiting the court's authority to require payment by the prisoner in installments, up to the full amount of filing fees and other applicable costs, where the prisoner lacks the means to make full payment at once.

VIII. Streamlining Deportation of Criminal Aliens

Various provisions relating to criminal aliens were enacted by the Violent Crime Control and Law Enforcement Act of 1994 and by the Immigration and Nationality Technical Corrections Act of 1994 (INTCA). However, the enactments do not include all of the provisions relating to criminal aliens that were included in title L of the version of H.R. 3355 passed by the Senate in 1993. This title of H.R. 3 is designed to restore a number of provisions that were in the 1993 Senate-passed bill but were not included in the enacted legislation. We generally support the reforms proposed in this title, with some qualifications discussed below.

INTCA broadened the definition of "aggravated felony" for purposes of the immigration laws. Section 801 of H.R. 3 adds several additional offenses to the expanded definition, which were in the 1993 Senate-passed bill version, including interstate transportation of persons for purposes of prostitution or other sex crimes; commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers punishable by five or more years of imprisonment; perjury punishable by five or more years of imprisonment; and failure to appear before a court in relation to a felony charge punishable by two or more years of imprisonment.

We favor this strengthening of our immigration laws with respect to these dangerous felons. We note, however, that some limited adjustment of the revised definition may be necessary to assure consistency with treaty obligations and would be pleased to work with Congress in refining this proposal. In addition, we believe that the provision should be augmented to include additional offenses relating to travel documents, and that a few technical changes to simplify its implementation -- such as providing a single effective date for its application -- should be adopted.

Section 802, following provisions that were included in the 1993 Senate-passed bill, makes some amendments to strengthen provisions for expedited deportation of certain non-permanent resident aliens that were enacted by the 1994 Crime Act. The substantive changes include: (1) extending the authority to conditionally permanent resident aliens, (2) allowing the alien

to be removed from the United States 14 days (rather than 30) after the issuance of the order, and (3) narrowing judicial review to the question whether the person is in fact a non-permanent resident or conditionally permanent resident alien who has been convicted of an aggravated felony (where current law also permits review of conformity to required procedures). The reference in the amendment to the judicial review provisions to "section 242A(c)" should be to "section 242A(b)." We generally support this section, but do not believe that conditionally permanent resident aliens should be covered.

Section 803, which we support, eliminates § 212(c) relief under the Immigration and Nationality Act for aliens sentenced to at least five years for an aggravated felony, and effectively provides that asylum may be denied on the basis of conviction of an aggravated felony.

Section 804, which we support, limits collateral attacks on deportation orders in prosecutions for unlawful reentry following deportation.

Section 805 adds more detailed language relating to the operation and function of the criminal alien tracking center. The changes from current law are providing that INS is to operate the center in cooperation with the Director of the FBI and the heads of other agencies, and that the function of the center is to assist in identifying and locating aliens who may be subject to deportation by reason of conviction of aggravated felonies. The function of the center might be defined more broadly to include assistance in identifying and locating all types of deportable criminal aliens.

Section 806(a) effectively gives specific statutory authority to the Attorney General to conduct deportation hearings by electronic or telephonic media "with the consent of the alien." The proviso "with the consent of the alien" should be deleted with regard to electronic media, since this proviso could potentially halt numerous ongoing electronic hearings where the alien objects, and could invite challenges to orders already entered.

Sections 806(b), which we support, primarily enacts protective language to foreclose an interpretation of existing provisions authorizing expedited deportation procedures as creating legally enforceable rights in criminal aliens to expedited proceedings. Section 807 enacts similar language for the amendments proposed in this title of the bill.

IX. Amendments to Violent Crime Control and Law Enforcement Act

Section 901 in this title repeals the prison grants program in title II.A of the Violent Crime Control and Law Enforcement Act of 1994. As noted earlier, title V of H.R. 3 proposes a defective substitute for that program, and also covertly repeals the drug courts funding program enacted by title V of the 1994 Act. Section 902 repeals the funding programs enacted by subtitles A through S and subtitle X of title III of that Act.

Repeal of Drug Courts Program. Drug abuse is inherently criminogenic, and a large proportion of all crime is drug-related. For too many drug abusing offenders, a normal probationary sentence or bout of confinement is likely to be just another shove through the revolving door. Conventional approaches to punishment have largely proven to be neither certain nor effective in this context.

In response to these realities, there has been a dramatic growth of interest in the past few years -- by judges, prosecutors, and others on the front lines of the criminal drug abuse problem -- in the development of special programs which combine criminal sanctions with coerced abstinence for drug abusing offenders. These programs collectively known as "Drug Courts" typically include: (1) close continuing supervision of participating offenders with the threat and reality of more onerous conditions and criminal sanctions ("graduated punishment") for participants who do not comply with program requirements or fail to show satisfactory progress; (2) mandatory periodic drug testing which provides participants with the certain knowledge that they cannot escape the consequences of their actions, and affords an objective measurement of progress; (3) mandatory participation in drug treatment; and (4) follow-up measures which help to prevent relapses after the conclusion of the main part of the program, and facilitate the transition to a law-abiding, productive existence.

These programs offer a critical alternative to the criminal justice system's failure to subject drug abusing offenders to measures that are necessary to alter their behavior. The results suggest that these initiatives have enhanced the likelihood that the cycle of substance abuse and crime will be broken. Indeed, long-term research and evaluation of these approaches have demonstrated that they can be effective in reducing both drug abuse and drug-related crime. Programs involving these elements of intervention, close supervision, and coerced abstinence through mandatory drug testing and graduated punishment are the approaches that the drug court grant program of title V of the 1994 Crime Act will support.

Considering the seriousness of the criminal drug abuse problem, the limited efficacy of conventional measures in this

area, and the promising results under drug court programs that have already been established, it is non-sensical to propose that the support that Congress has recently approved for these programs should be totally eliminated, and replaced with nothing. Hence, we oppose the proposal to repeal title V of the enacted legislation.

We believe, however, that the formulation of the drug courts program might legitimately be revised to permit the use of funds for more effective conventional prosecution in drug cases, rather than exclusively for programs that focus on controlling and altering the behavior of drug abusers. Effective enforcement requires not only efforts to reform drug abusers, but also aggressive measures to arrest, prosecute, and incapacitate the traffickers who prey on their addictions and weaknesses, and who account for so much of the criminal violence that mars the life of our nation. In furtherance of this objective, some jurisdictions have established or experimented with differentiated case management techniques or specialized courts that expedite drug case dispositions and otherwise enhance the effectiveness of prosecution.

These innovative methods also merit support and encouragement, and we would be amenable to amending the drug courts program to permit support for prosecution-oriented "drug courts" of this type as well. We would be pleased to work with interested members of Congress in so amending the drug courts funding program.

Section 902. Section 902 would repeal all of the funding programs enacted by subtitles A through S and subtitle X of title III of the Violent Crime Control and Law Enforcement Act of 1994. The rationale for this proposal is apparently that these are all "prevention" programs -- and hence bad -- which justifies abolishing them across the board.

However, sound policy cannot be made by a sloganistic approach that indiscriminately equates all crime prevention efforts with "pork." The programs that would be eliminated by this provision include, for example, direct grants to local prosecutors for the more effective prosecution of violent juvenile offenders. As a second example, this provision would also eliminate the local crime punishment block grants program, a bipartisan program and funding efforts to prevent crimes against the elderly, response teams including both police officers and child or family services professionals to deal with violent incidents involving children, and support for police residences to high crime areas. Whatever views one may hold concerning the proper emphasis on "enforcement" versus "prevention," it is hard to see the sense in eliminating any possibility of support for worthwhile programs of these types.

The Community Schools and "FACES" programs are examples of well conceived and coordinated initiatives which should not be repealed or consolidated into a block grant. In a few places around the country, schools are becoming centers of community life -- safe, visible places where children and their families come after school, in the evening, on weekends, and during the summer to participate in academic enrichment, all kinds of recreation, and mentoring as well as to access other resources and services. Although these community schools are beginning in a number of places, there are many more communities where a outside support is needed to get things started. The Community Schools program would provide at least one grant in each state, thereby serving as a catalyst for encouraging states, towns, and cities to invest their own resources. The "FACES" program provides an opportunity for schools and communities to develop neighborhood strategies to curb violence and promote positive academic and social achievement. A systematic national demonstration with rigorous evaluation could help us develop a strong research base that shows which program designs in which setting best improve outcomes for children, families and communities.

The bill's proposal to eliminate these and other prevention programs as well as the President's Prevention Council raises equally serious concerns. These programs are largely targeted on the underlying causes of criminal activity, and particularly the burgeoning problem of youth crime and violence. If young people in distressed communities have no hope for the future and nothing to do but hang out on the street, increases in gang activity, drug trafficking and drug abuse, random violence, and all other forms of criminality and deviance are the inevitable consequence.

The crime prevention provisions of the 1994 Crime Act will support programs that directly address these problems, including after-school and summer programs, academic enrichment, and recreation. The President's Prevention Council helps to assure coordinated and cost-effective administration of these and other prevention programs. When the great majority of funding under the Act is already committed to police, prisons, and other straightforward enforcement assistance, it is penny-wise and pound-foolish to begrudge the more limited sums that a bipartisan majority in Congress approved only a few months ago as an investment in the future of the nation's youth and the security of the public against crime.

America's police, parents, and prosecutors fought hard to win enactment of a balanced attack on crime last year. The 1994 Crime Act devotes about half of its resources to supporting law enforcement, just under a third to expanding state and local prisons, and the smallest share -- about one-fifth -- to funding crime prevention programs. Title IX indiscriminately obliterates this final aspect of the 1994 Act.

In communities across this country, a variety of crime prevention efforts are underway -- efforts that could be expanded tremendously with more resources. In some places, schools, churches, public buildings, and other facilities are being kept open in the afternoons, evenings and on weekends to give kids a safe place to go. In others, police are coming into the classroom to teach kids about the dangers of drugs, gangs, and gun violence. In still other places, Boys and Girls Clubs, little leagues, and other activities are being expanded in areas hardest hit by crime -- giving kids something to belong to, other than gangs. And finally, other programs are providing job training and job skills to teens, getting them prepared for careers on the right side of the law -- in the face of pervasive opportunities on the wrong side.

Though these programs differ in many respects, three common observations are true about all of them. First, they have the support of police, parents, and public officials because these officials -- on the front lines, away from the hot rhetoric of Washington -- know that they work in reducing crime. Second, the relatively small investment in these programs -- just one dollar out of five in the Crime Act -- is likely to save the taxpayers billions in lower police, prosecutorial, and prison costs in the future. And third, the federal role in supporting these efforts is just as necessary -- as just as proper -- as its role in funding local police and local prisons, found elsewhere in the Crime Act.

In addition to wiping out these programs, H.R. 3 takes the largest share of the "savings" from these reductions, and vastly expands the as-yet unfunded prison grant programs. Congress had, in 1994, provided \$2 for prisons for every \$1 for prevention; H.R. 3 changes that ratio to \$6 to \$1.

Even if one accepts the assumption that \$2 billion more should ultimately be moved from prisons to prevention -- an assumption we doubt, given the Act's pre-existing tilt toward the former over the latter -- it would make more sense to do this after several years of experience in funding both of these efforts under the Crime Bill -- and after an assessment can be made of the effectiveness of the prison and prevention programs. There is simply no reason why any reallocation needs to be made now -- or why it would not be sounder to allow both the prison and the prevention programs to get off the ground and then determine if some reallocation between them seems wise.

In sum, in 1994, after six years of wrangling, gridlock, and debate, the Congress finally passed -- and the President signed -- a balanced and comprehensive attack on violent crime. Now, the American people want to see their officials in Washington working in the same bipartisan fashion to implement that Bill, rather than wasting time and energy prematurely reexamining it.

Consequently, we strongly oppose Title IX's proposal repeal of the Act's crime prevention programs.

X. Retention of Assault Weapons Ban

As currently formulated, H.R. 3 as yet includes no provisions to roll back or weaken the ban on semi-automatic assault weapons that was enacted by the 1994 Crime Act. However, as noted earlier, we are deeply concerned by reports that some members of the House of Representatives may attempt to use this bill as a vehicle for undoing that critical reform.

If this is allowed to happen, it will pervert the bill from an anti-crime proposal into an effort to weaken existing law. The victims of such a cynical misuse of this legislation would include law enforcement officers who would again be placed in jeopardy of being outgunned by criminals and, more broadly, all innocent members of the public who are at risk of the indiscriminate violence perpetrated by gangsters, drug traffickers, and other criminals with these weapons.

Hence, we strongly urge Congress to reject any such effort to turn back the clock and reduce the public's security against criminal violence perpetrated with high-powered weaponry.

XI. Other Measures

In addition to the matters discussed above, we strongly recommend that the pending legislation be amended to include additional reforms to strengthen federal criminal laws, as set forth in the Attorney General's communication to the 103d Congress Crime Bill Conference Committee. See generally Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr. (June 13, 1994) (including detailed comments as attachment).

While the bulk of our recommendations were incorporated in the 1994 Crime Act, a number of important reforms still await action by Congress. Specific measures endorsed in our communication to the conference committee include, for example, strengthening federal public corruption laws, terrorist alien removal provisions, other measures to strengthen laws relating to terrorism and international criminal matters, a more coherent approach to adult prosecution of serious juvenile offenders, more adequate provisions for HIV testing of defendants in sexual assault cases, restoring the Gambling Ships Act to avoid a windfall for organized crime, correcting overly burdensome audit and reporting requirements for law enforcement agencies that receive asset forfeiture funds under the equitable sharing program, and clarifying that the new extraterritorial child pornography offense covers cases involving intended importation

of child pornography into the United States by computer.

Our communication to the 103d Congress conference committee also encouraged action on a package of measures that "do not have a high level of visibility, but would be of practical value to Federal law enforcement." (Id. Detailed Comments at 60-61.) These amendments -- together with other reforms endorsed in our communication to the conference committee, and minor and technical corrections to legislation enacted in the last Congress -- have been reformulated in a wide-ranging proposal to strengthen federal law enforcement.

Among other matters, these proposed federal criminal law improvements provide increased protection for state and local law enforcement officers who assist federal officers, FBI investigative authority in serial killing cases, fix a loophole in federal firearms laws that permits dangerous convicted felons to possess firearms, increase penalties for conspiracies to violate federal firearms and explosives laws, strengthen wiretapping provisions in relation to certain terrorism and international criminal cases, and broadened retention and availability of records in relation to federally prosecuted juveniles who commit serious crimes.

We would be pleased to assist Congress in formulating a more comprehensive set of criminal law reforms, as described above, and we strongly recommend that these proposals be incorporated in the pending legislation.

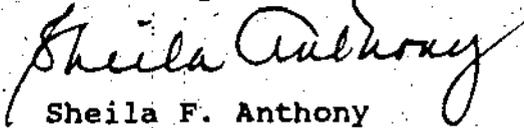
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In sum, we support those proposals in H.R. 3 that will strengthen law enforcement. We also recommend that the pending legislation be expanded to include a wider range of criminal law reform measures that we have proposed or endorsed.

However, we strongly oppose, as currently formulated, several provisions in H.R. 3 that would undermine our comprehensive attack on crime by reversing last year's historic achievements in increasing and strengthening police, prisons, and crime prevention. At a time when significant progress in reducing crime can be made, these aspects of H.R. 3 would set us back and potentially squander billions of taxpayers' dollars in the process.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Anthony". The signature is written in dark ink and is positioned above the typed name.

Sheila F. Anthony
Assistant Attorney General