

Final



THE SECRETARY OF EDUCATION  
WASHINGTON, D.C. 20202

August 24, 1999

Honorable Henry J. Hyde  
House of Representatives  
Washington, DC 20515

Dear Congressman Hyde:

I am writing to express my serious concerns relating to certain provisions of the two juvenile crime bills recently passed by the House of Representatives and the Senate, respectively, H.R. 1501, the "Juvenile Justice Reform Act of 1999" and S. 254, the "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999." Improving the effectiveness of the Nation's juvenile justice system is a goal we all share, and is vitally important to the maintenance of our schools as safe and orderly centers of learning. Because the overwhelming majority of the provisions of both bills relate directly to the operation of the juvenile justice system, I defer overall to the Attorney General with respect to both bills.

However, both bills also contain a variety of provisions, added during floor debate, that would directly affect the administration of Federal education programs at the elementary and secondary education level as well as the ability of local school systems throughout the Nation to provide a safe, high-quality education. I urge the conferees not to include these provisions in the final bill, but to consider them, instead, as part of a more comprehensive and deliberate review of Federal elementary and secondary education programs that will occur as the Congress debates the upcoming reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). In this connection, I urge the Congress to act favorably on the President's ESEA reauthorization proposal, the "Educational Excellence for All Children Act of 1999," and, in particular, the many improvements that proposal would make to Title IV of the ESEA, the "Safe and Drug-Free Schools and Communities Act." If, however, the conferees feel compelled to address these issues in conference, I urge you to delete or modify the provisions described below.

**IDEA.** My strongest objections are to the amendments in both bills to the Individuals with Disabilities Education Act (IDEA). These amendments would allow school personnel in public elementary and secondary schools, for the first time, to suspend or expel children with disabilities from their schools for unlimited periods of time, without any educational services (including behavioral intervention services), and without the impartial hearing now required by the IDEA for carrying or possessing a "gun or firearm" (Senate) or a "weapon" (House) to, or at, school or a school function. Congress need not, and should not, make these changes. Just two years ago, Congress, after thoughtful deliberation, amended the IDEA to give school

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officials new tools to address the issue of children with disabilities bringing such weapons to school, or otherwise threatening teachers and other students. For example, school officials may remove, for up to 45 days, a child with a disability who takes a weapon to school, and may request a hearing officer to similarly remove a child who is substantially likely to injure himself or others, if the child's parents object to the removal. Furthermore, the IDEA currently allows hearing officers to keep these students out of the regular educational environment beyond 45 days if they continue to pose a threat to the rest of the student body. Finally, the 1997 amendments to the IDEA help prevent dangerous situations from arising, by encouraging schools to address misbehavior before it becomes serious, through the provision of behavioral interventions and other appropriate services. I am convinced that these new tools will be effective if given a chance to work.

In contrast, the amendments now under consideration would deny vital educational services to children with disabilities who are removed from school, including behavioral interventions that are designed to prevent dangerous behavior from recurring. Continued provision of educational services, including these behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuing educational services is the wrong decision in the short run, and, in the long run, will result in significant costs in terms of increased crime, dependency on public assistance, unemployment, and alienation from society.

Also, the applicable definition of "weapon" (current section 615(k)(10)(D) of the IDEA), as used in the House bill, is very broad and open to subjective application -- covering anything, such as a rock picked up on the way to school or a baseball bat intended for an after-school ball game -- that is "readily capable of causing death or serious bodily injury," whether or not it is designed as a weapon and without regard to the student's intention in bringing it to school. A statutory standard this broad is sure to lead to inconsistent application at the local level and widespread confusion.

The exclusion of children with disabilities from school -- without the impartial due-process hearing and the continued services that the IDEA now requires -- is the wrong response. I urge you to reject these amendments to the IDEA.

Religious Expression. Both bills contain amendments relating to the expression of religious beliefs at public schools. This Administration has a strong record of protecting religious expression in schools. In 1995, the President directed the Attorney General and me to issue guidelines that would help schools preserve the religious freedom of students. I sent these guidelines to every school district in the Nation in 1995 and again last year, to ensure that parents, teachers, students, and school officials understand that schools need not be religion-free zones. These guidelines make clear that schools may not forbid students from expressing their religious views or beliefs solely because of their religious nature, and that any student in an American public school may pray, bring a Bible to school, say grace at lunch, or voluntarily participate in "see you at the flagpole" gatherings. In addition, I share the Department of Justice's concerns over the constitutionality of the provisions in H.R. 1501 and S. 254.

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Internet Filtering. The House bill contains an amendment that would require elementary and secondary schools and libraries receiving universal-service assistance to select, install, and use filters that block access to child pornographic and obscene materials, as well as materials deemed harmful to minors, on computers with Internet access and to certify to the Federal Communications Commission that they have done so. A school or library that fails to meet these requirements would be liable to repay immediately the full amount of all universal-service assistance it received after the date of its failure to comply.

I strongly support the goal of protecting children from inappropriate material on the Internet. However, I do not believe the House provision would effectively accomplish this goal. As written, the House provision could result in the blocking of material that may be appropriate for educational and other uses, raising constitutional concerns, and would place a disproportionate burden on our poorest and most rural schools and libraries.

Appropriately crafted legislation would empower schools to protect children from unsuitable material while also protecting First Amendment values. Accordingly, I support a provision that would require every school and library that receives assistance from the universal service fund to certify that it has developed and implemented a plan to protect children from inappropriate material on the Internet. These plans should be developed in consultation with parents and other interested parties so that schools and libraries can adopt local approaches that best serve the needs of their students and communities. I would be pleased to work with the conferees to develop such a provision.

Safe Schools. The Senate bill would expand the Gun-Free Schools Act of 1994 -- which requires school districts to expel from school for at least one year any student who brings a firearm to school -- to require States to pass a law that would compel the same punishment for students who possess at school a "felonious quantit[y] of an illegal drug." Clearly, the presence of illegal drugs at school is unacceptable. However, I oppose this provision as drafted. First, I do not favor expanding the number of students who are expelled from school for long periods of time -- for the sake of the students themselves, and their communities. Many students who are expelled for a long period of time never return to school, which ends their education and casts them troubled and ill-prepared onto the streets. We cannot afford to lose these children. Secondly, expelling students in this manner based on whether the amount of illegal drugs they possessed at school did, or did not, constitute a felony under State or Federal law would not only lead to inconsistent results -- and confusion -- across the country in the application of this Federal requirement, it would force school administrators to become expert in the application of criminal law and to function, in effect, as prosecutors.

I believe that the criminal justice system should be brought to bear vigorously on any student who brings illegal drugs to school. Accordingly, I believe a better approach would be to require schools that have not already done so to adopt and enforce sanctions against students who bring

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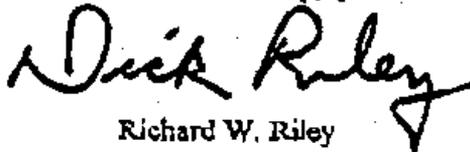
illegal drugs to school, and to make it mandatory that school authorities refer to the appropriate law-enforcement authorities any student who brings an illegal drug to school, whether felonious or not.

The Senate bill would also amend current Titles IV and VI of the ESEA to expressly permit school districts to use an unlimited amount of their resources under those two titles to "purchase school security equipment," such as metal detectors. While such equipment can be an important part of local efforts to make schools safe, it is vital that school districts continue to look at a variety of other approaches to addressing their individual needs, because we know that metal detectors alone will not make schools safe. Our reauthorization proposal for the Safe and Drug-Free Schools program would provide school districts additional flexibility to purchase such equipment. I urge the conferees to omit the Senate provision from the final bill, so that the Congress and the Administration can work together to address this issue as part of the pending reauthorization of the entire Safe and Drug-Free Schools program and the rest of the ESEA.

Thank you for the opportunity to present these views.

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.

Yours sincerely,

A handwritten signature in black ink that reads "Dick Riley". The signature is written in a cursive, slightly slanted style. The first name "Dick" is written in a larger, more prominent script than the last name "Riley".

Richard W. Riley

August 5, 1999

The Honorable Orrin G. Hatch  
131 Russell Senate Office Building  
United States Senate  
Washington, D.C. 20515

Dear Senator Hatch:

We understand that in the coming weeks, the Senate and House will be developing a final version of the juvenile justice legislation. We would like to take this opportunity to bring a number of concerns to your attention.

We believe that any final juvenile justice legislation must address the following issues:

- 1) Provide core protections for children in the juvenile justice system.

Issue: JJJPA 'Separation' protection.

For the past 25 years, the Juvenile Justice and Delinquency Prevention Act (JJJPA) has protected children from abuse and assault by adults in adult jails. The House-passed bill would weaken this policy by allowing "incidental" contact between children and adult inmates in the state system, which in many jails will mean that children will be walked down hallways past adult cells and thereby subjected to verbal abuse. Additionally, the House-passed bill weakens protections for children in the federal system as it creates a loophole which could allow youth who are prosecuted in federal court to have unlimited exposure to adult inmates. Under the House bill, children as young as age 13 could be placed in cells with adult inmates in the federal system. This is of grave concern, since research has shown that children commit suicide in adult jails eight times as often as children held in juvenile detention facilities, and children housed in adult prisons are five times more likely to be sexually assaulted, two times more likely to be assaulted by staff, and 50% more likely to be attacked with a weapon compared to children in juvenile facilities.

Recommendation:

We strongly recommend that you adopt the Senate provisions which essentially maintain the protection to separate juveniles from adults in adult jails in both the state and federal systems.

Issue: JJJPA 'Removal' protection.

Both the House and Senate bills significantly weaken the requirement to keep children out of adult jails by including provisions to allow parental consent to place children in adult jails. The Senate bill would allow children to be placed in adult facilities with parental consent indefinitely. The parental consent exception is a radical change from current law and will result in children being placed in adult jails for unacceptably long periods.

Recommendation:

We urge you to drop these provisions from the final bill, and instead, maintain current law protections.

Issue: Dangerous conditions for incarcerated children.

The House-passed bill contains a provision which will seriously harm children by terminating consent decrees which existed before the passage of the Prison Litigation Reform Act (PLRA). Under this language, dozens of consent decrees which have kept children out of adult jails and prohibited abusive practices, including beatings, tying children to beds, and locking them in isolation rooms for days and weeks at a time, would be abolished.

Recommendation:

We urge you to not include this provision in the final bill.

**Issue:** Prosecutorial discretion, trying children as adults, and federalizing juvenile crimes  
Both bills propose drastic changes in the way that children are prosecuted in the federal system, changes which are opposed by prominent federal officials including Chief Justice Rehnquist and former Attorney General Edwin Meese III. Among some of the changes we oppose are: the presumption that children will be prosecuted in the federal system contrary to current law which assumes prosecution in the state system; prosecuting and sentencing children as young as 13 as adults; giving prosecutors unfettered discretion to prosecute children as adults without judicial review; subjecting children both in the juvenile and adult system to mandatory sentencing; and removing confidentiality protections in juvenile court by opening juvenile court proceedings to the public and making juvenile records available.

**Recommendation:**

We urge you to drop these provisions from the final legislation.

**Issue:** Reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJJPA).  
The House-passed bill includes a provision which would sunset the Juvenile Justice and Delinquency Prevention Act (JJJPA) in 2004. The JJJPA includes the core requirements that have provided the most basic protections against harm to children in correctional facilities for the last 25 years. Sunsetting JJJPA would also eliminate critical funding under the Act to states and communities for improvements to their juvenile justice systems.

**Recommendation:**

We urge you to not include this provision in the final bill.

## 2) Support state efforts to reduce disproportionate confinement of minority youth.

**Issue:** Disproportionate confinement of minority youth in the juvenile justice system  
In virtually every state, minority youth are over-represented at every stage of the juvenile justice system, particularly in secure confinement. Current law directs states generally to "address" this issue, without requiring release of juveniles or incarceration quotas or any other specific change of policy or practice. The Senate-passed bill, however, deletes all reference to "minority" or "race" and instead refers to "segments of the juvenile population." This minimizes an important issue, is offensive to many, and hinders efforts to remedy the disparate treatment of minority youth.

**Recommendation:**

We urge adoption of the House-passed provision which maintains a requirement to address disproportionate minority confinement under the JJJPA.

## 3) Significantly invest in juvenile crime prevention.

**Issue:** Prevention funding set-aside and programs.

Although both bills contain a "prevention block grant," there is no set-aside for prevention funding. Without a significant guarantee of funding, there is no assurance that any funds will ever be appropriated for prevention programs.

**Recommendation:**

We strongly recommend that you adopt the Senate provisions which add further prevention activities as allowable uses under the Juvenile Accountability Block Grant (JABG) and set-aside a minimum of 25% of the Juvenile Accountability Incentive Block Grant for prevention purposes and to establish a new 'Parenting as Prevention' program.

4) Take serious steps to reduce gun violence.

Issue: Availability of and access to guns to children and people who kill children.

The House-passed bill fails to take any significant action to make guns safer or less accessible to children or people who kill children. At a time when, on average, nearly 13 children and young people are killed by firearms every day, it is critically important that the final bill address gun violence in a meaningful way.

Recommendation:

We urge you to adopt at a minimum the Senate-passed provisions to close the gun-show loophole, require child safety locks, and ban the importation of high capacity ammunition clips.

5) Provide appropriate support services for at-risk and delinquent youth.

Issue: Graduated sanctions

Both bills allow Juvenile Accountability Incentive Block Grant (JAIBG) funds to be used to implement graduated sanctions or a system of graduated sanctions in order to assure a consequence for every delinquent act by a youth. The House bill provides states with some discretion in implementing graduated sanctions, while the Senate bill restricts states' discretion, and instead mandates this as a condition of receiving JAIBG funds.

Recommendation:

We recommend adoption of the House language which allows states the discretion to implement graduated sanctions as a condition of receipt of JAIBG funds, and adoption of the House Title XIII definition.

Issue: Intervention services to children with disabilities who bring firearms to school

The Senate and House bills amend current law by allowing school personnel to discipline and to cease educational services to students with disabilities who possess or carry a firearm or weapon to school. The Senate bill requires that immediate mental health intervention services be provided for children removed from school for any violent acts, including carrying or possessing a weapon.

Recommendation:

We oppose the cessation of educational services to students with disabilities and urge that this provision be removed. We support the Senate provision which provides for immediate mental health services as this would better assure that schools are safe learning environments and reduce future violence.

Issue: Mental health services to at-risk and delinquent youth.

The Senate and House bills, respectively, include a number of similar provisions which focus on assessing and providing mental health services to at-risk and delinquent youth. In addition, the House bill allows Juvenile Accountability Incentive Block Grant (JAIBG) funds to be used for mental health screening and services, and requires the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to conduct research on mental health services for juveniles, providing training and technical assistance to mental health and law enforcement personnel, and to conduct a comprehensive study on the mental health needs of juveniles in the juvenile justice system. Also, the Senate bill allows funds to be used to train justice system personnel and probation officers with these funds, authorizes a demonstration program on violence prevention, and reauthorizes the Elementary School Counseling Demonstration Act.

Recommendation:

We urge inclusion of the screening, research, training, and study provisions contained in the House bill and the training, violence prevention and counseling program provisions in the Senate bill.

6) Focus federal support, technical assistance and research on children and youth.

Issue: Reorganization of the Office of Juvenile Justice and Delinquency Prevention.

The Senate-passed bill fails to recognize the importance of juvenile justice research, training, and technical assistance. The bill transfers most of these functions currently supported by the Office of Juvenile Justice and Delinquency Prevention to the National Institute of Justice, an agency primarily responsible for research on adult crime. Juvenile justice research (e.g., on effective delinquency prevention programs), training of juvenile justice personnel, public officials and their staffs, and technical assistance to communities have proved invaluable to public officials, policymakers, and concerned citizens. There is a significant danger that these important activities will inevitably have a lower priority at NIJ, resulting in far fewer resources for communities to use in their juvenile crime control and prevention efforts. The House bill includes no similar provision.

Recommendation:

We urge you to not include these provisions in the final bill.

We appreciate your thoughtful consideration to assure that the final juvenile justice legislation protects children.

Sincerely,

Alliance for Children and Families  
American Academy of Child and Adolescent Psychiatry  
American Academy of Pediatrics  
American Counseling Association  
American Humane Association: Children's Division  
American Probation and Parole Association  
American Psychiatric Association  
The American Psychological Association  
Americans for Democratic Action  
Campaign for an Effective Crime Policy  
Campaign for Equity-Restorative Justice (CERJ)  
Center for Women Policy Studies  
Child Care Law Center  
Child Welfare League of America  
Children's Defense Fund  
Citizens United for Alternatives to the Death Penalty  
Coalition on Human Needs  
Covenant House  
Criminal Justice Ministries program of the Catholic Diocese of Youngstown, OH  
Families of Incarcerated Individuals Inc.  
Family Watch  
Federation of Families for Children's Mental Health  
Friends Committee on National Legislation (Quaker)  
The General Board of Church and Society, United Methodist Church  
Girl Scouts of the USA  
Justice Policy Institute  
Lutheran Office for Governmental Affairs - Evangelical Lutheran Church in America  
Marion County Family Advocacy Center of Indianapolis, IN  
Massachusetts Correctional Legal Services, Inc.  
Mennonite Central Committee U.S., Washington Office  
Minorities in Law Enforcement (MILE)  
National Association for School Psychologists

National Association for Socially Responsible Organizations (NASRO)  
National Association for the Advancement of Colored People  
National Association of Counsels for Children  
National Association of Criminal Defense Lawyers (NACDL)  
National Association of Social Workers  
National Association of State Directors of Special Education  
National Child Rights Alliance, USA  
The National Council for Community Behavioral Health Care  
National Council of Churches  
National Mental Health Association  
National Network for Youth  
Pennsylvania Center for Legal-Related Education  
Plowshare Peace & Justice Center of Roanoke, VA  
Presbyterian Church (USA)  
San Francisco Bay View  
Union of Hebrew Congregations  
Unitarian Universalist Association of Congregations, Washington Office for Faith in Action  
United Church of Christ / Office for Church in Society  
Virginians Against Drug Violence  
Washington Ethical Action Office, American Ethical Union  
Women of Reform Judaism, The Federation of Temple Sisterhoods  
Youth Law Center

CC: U.S. Senate  
U.S. House of Representatives

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JUVENILE DELINQUENCY: COMPARISON OF PRESENT LAW AND  
TWO PROPOSALS IN THE 106<sup>TH</sup> CONGRESS (H.R. 1501 AND S. 254  
AS PASSED BY THE HOUSE AND SENATE RESPECTIVELY)

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## JUVENILE JUSTICE SIDE BY SIDE

### COMPARISON of CURRENT LAW to H.R. 1501 and S. 254, and RECOMMENDATIONS:

(Prepared by the ACLU)

### I. CRIME

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>Disproportionate MINORITY Confinement.</b></p> <p>(42 U.S.C. § 5633(a)(23))</p>	<p>Under current law, states must make efforts to address any disproportionate minority confinement within their juvenile detention facilities. The DMC became a core requirement in 1992 to address a serious problem of overrepresentation of minority youth in juvenile detention centers. States are given broad discretion to determine what measures to take.</p>	<p><u>Sec. 1310.</u> State plans must address delinquency prevention and system improvement efforts to reduce the disproportionate number of minority juveniles who come into contact with the juvenile justice system as well as addressing any disproportionality that exists in detention facilities. Numerical standards or quotas may not be established.</p>	<p><u>Sec. 222.</u> (a)(27). Language does not specifically mention race. State plans must address any disproportionate confinement of "any segment of the population."</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. By eliminating any specific reference to race, the Senate version eliminates the original purpose of the provision. This may have the affect of terminating programs already in place at the state level to address this problem.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<b>Juveniles in Prison: Separation from Adult Inmates. (STATES)</b>  (42 U.S.C. § 5633(a)(13) as interpreted by regulations)	Youth under juvenile court jurisdiction may not be detained where there is any physical or sustained sight or sound contact with adult inmates. - sight contact is defined as "clear visual contact between incarcerated adults and juveniles within close proximity to each other." - sound contact is defined as "direct oral communication between incarcerated adults and juvenile offenders." - ALL contact is prohibited in the residential areas of a facility.	<b>Sec. 1310.</b> Instead of current law standard of "sight and sound" separation, states need only ensure that juveniles not have "regular contact" or unsupervised incidental contact. This would permit incidental contact with adults.	<b>Sec. 103.</b> State detention centers must ensure that juveniles do not have prohibited physical contact or sustained oral communication with incarcerated adults. Brief and inadvertent superficial contact is permissible.	House provision should be rejected.  The House should cede to the Senate. The House language creates a loophole to allow for supervised incidental contact which could lead to potentially dangerous situations for juveniles.
<b>Juveniles in Prison: Separation from Adult Inmates. (FEDERAL)</b>  (18 U.S.C. § 5035)	A juvenile under age 18 may be detained only in a suitable juvenile facility or other suitable place designated by the Attorney General with a preference for a foster home or community-based facility. The juvenile may not be detained in a facility where he or she has regular contact with an adult convicted of a crime or awaiting trial on a crime. Insofar as possible, alleged delinquents should be kept separate from adjudicated delinquents.	<b>Sec. 204.</b> To the maximum extent feasible, a juvenile prosecuted <u>as an adult</u> in federal court shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.  - A juvenile who is prosecuted <u>as a juvenile</u> shall not be detained prior to disposition in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.	<b>Sec. 103.</b> Delinquent youth in federal court may not be detained: - where they have prohibited physical contact or engage in sustained oral communication with incarcerated adults that provides an opportunity for the adult to physically harm the youth; - an exception to prohibited contact allows for supervised proximity between a youth and an adult inmate that is brief and inadvertent or accidental, in secure nonresidential areas not used by juveniles.  <b>Sec. 105(b). Release and Detention Prior to Disposition.</b> To the extent practicable, violent juveniles shall be kept separate from nonviolent juveniles.	House provision should be rejected.  The House should cede to the Senate. The House language creates a substantial loophole which could allow certain youth as young as 13 who are prosecuted in the Federal system to have unlimited exposure to adult inmates.

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>REMOVAL of JUVENILES from ADULT JAILS. (STATE)</b></p> <p>(42 U.S.C. § 5633(a)(14))</p>	<p>Youth may be detained in adult facilities for the following purposes:</p> <ul style="list-style-type: none"> <li>- 6 hours for processing, or 6 hours before or after a court appearance;</li> <li>- in rural areas, for 24 hours plus weekends &amp; holidays for delinquent youth who are awaiting an initial court appearance;</li> <li>- during and up to 24 hours after emergency conditions that make travel unsafe.</li> </ul>	<p><u>Sec. 1310.</u> Extends current law to allow detention with adults subject to separation requirements described above.</p> <p>For juveniles accused of nonstatus offenses and detained in a jail/lockup for a period not to exceed 6 hours: (i) for processing or release; (ii) while awaiting transfer to a juvenile facility; or (iii) in which period such juveniles make a court appearance;</p> <ul style="list-style-type: none"> <li>- In rural areas, for 48 hours plus weekends &amp; holidays for youth accused of nonstatus offenses who are awaiting an initial court appearance;</li> <li>- In rural areas, for up to 20 days prior to sentencing whenever <b>parents consent</b>, the child's views are represented by counsel, and the court determines detention is in the child's best interest. Subject to review every 5 days in the presence of the juvenile;</li> </ul> <p>During and up to 24 hours after emergency conditions making travel unsafe have cleared.</p>	<p><u>Sec. 222.</u> Extends current law to allow detention with adults:</p> <ul style="list-style-type: none"> <li>- In rural areas for 48-hours plus weekends &amp; holidays for delinquent youth awaiting an initial court appearance;</li> <li>- In rural areas, indefinitely whenever <b>parents consent</b>, the child's views are represented by counsel, and the court determines detention is in the child's best interest. Subject to review every 5 days; such review <b>MAY</b> be in the presence of the juvenile.</li> <li>- During and up to 48 hours after emergency conditions making travel unsafe.</li> </ul>	<p>The parental consent exception in both Senate and House provisions should be rejected.</p> <p>This exception is a radical change to current law and will result in children being placed in adult jails for unacceptably long periods.</p>
<p><b>Confidentiality of RECORDS. (STATE)</b></p> <p>(42 U.S.C. § 3796 et seq.)</p>	<p>Federal grant provisions do not require any particular method of maintaining or disseminating juvenile records.</p>	<p><u>Sec. 102. Grant Program.</u> Funding from the Juvenile Accountability Block Grant is available to States providing an adult-equivalent records system for all juveniles committing a felony-equivalent offense, with information available to law enforcement, FBI, all courts, and school officials.</p>	<p><u>Sec. 321. Block Grant Program.</u> In order to receive funds from the Attorney General, States must provide an adult-equivalent records system for all juveniles committing a felony-equivalent offense, with information available to law enforcement, FBI, all courts, schools and colleges.</p> <ul style="list-style-type: none"> <li>- If a juvenile is adjudicated</li> </ul>	<p>Oppose language in BOTH bills and remove in Conference.</p> <p>However, we recommend continuing current law privacy protections for</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
		<p><b>Sec. 504. Grant Program for Juvenile Records.</b>            Authorizes a grant program for States to improve record-keeping systems. In order to qualify, states must have in place a system to make juvenile records available for firearm background checks. This system must assure that records of violent juvenile offenses are not expunged and are available as if it were an adult record.</p> <p><b>Sec. 1310. State Plans.</b>            (Amends 42 U.S.C. § 5633)            An amendment to the Juvenile Justice and Delinquency Protection Act requires that the State, to the maximum extent practicable, will implement a system to ensure that if a juvenile is before a court in the juvenile justice system, public child welfare records relating to such juvenile that are on file in the geographical area under the jurisdiction of the court are made known to the court.</p>	<p>delinquent, the records of that adjudication are transmitted to the FBI. Records of the most serious felony offenses shall be maintained and disseminated in the same manner as adult criminal records. Records of any other felony offense shall only be made available within the criminal justice system. There is also a provision that allows for the record to contain a notation of expungement under State law.</p> <p><b>Sec. 1104. Transfer of School Disciplinary Records.</b>            (Amends 20 U.S.C. 8921 et seq. Part F, § 14604(b).)            Within 2 years after this Bill's enactment, each State receiving federal funds under this Act shall provide an assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, full-time or part-time, in the school.</p>	<p>juvenile records. However, in the alternative we recommend restricting the shared information to courts and law enforcement agencies only. We also recommend that schools be required to go to the courts to access juvenile records. The records should only be released if the schools can establish a compelling need to protect the safety of other students.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p data-bbox="163 285 378 378"><b>Confidentiality of RECORDS (FEDERAL)</b></p> <p data-bbox="163 410 336 475">(18 U.S.C. §§ 5038(a),(c))</p>	<p data-bbox="422 285 865 724">Records of juvenile proceedings may be released to: other courts, an agency preparing a report for another court, law enforcement agencies for use in an investigation or law enforcement employment check, the treatment agency or facility to which a juvenile has been committed, an agency conducting a national security employment check, the victim of the juvenile's act of delinquency indicating final disposition. They may NOT be released for any other employment check, license, bonding, or similar request.</p>	<p data-bbox="884 285 1245 345"><b>Sec. 207. Juvenile Records and Fingerprinting.</b></p> <p data-bbox="884 350 1354 854">A juvenile delinquent's records shall be made available for official purposes, including communications with any victim or, in the case of a deceased victim, such victim's representative, or school officials, and to the public to the same extent as court records of adult criminal prosecutions are available. When a juvenile has been adjudicated delinquent for an act that, if committed by an adult, would be a felony or for a violation of section 924(a)(6), the court shall transmit to the FBI information concerning the adjudication, including name, date of adjudication, and notation that it was a juvenile adjudication.</p>	<p data-bbox="1373 285 1768 313"><b>Sec. 108. Use of Juvenile Records.</b></p> <p data-bbox="1373 318 1789 594">When a juvenile is adjudicated delinquent, courts shall transmit such records to the FBI, which will maintain an adult-equivalent records system. These records will be available to schools/colleges, provided that their content is not used for the sole purpose of denying admission.</p> <p data-bbox="1373 602 1789 1195">- In addition to all the ways that juvenile records can be released under current law, there is an additional provision that requires juvenile records to be made available to a law enforcement agency for a position within that agency. If a juvenile is adjudicated delinquent, the records are transmitted to the FBI. Records of the most serious felony offenses shall be maintained and disseminated in the same manner as adult criminal records. Records of any other felony offense will also be transmitted to the FBI but will only be made available within the criminal justice system or for purposes of responding to a national security clearance.</p> <p data-bbox="1373 1203 1789 1380">- A juvenile may petition the court after 5 years to have such records removed from the FBI database if they can establish by clear and convincing evidence that they are no longer a danger to the community.</p>	<p data-bbox="1808 285 2034 410">Oppose language in BOTH bills and remove in Conference.</p> <p data-bbox="1808 443 2034 1357">However, of the two we prefer the Senate version which limits records sharing and contains a provision that allows the juvenile to petition to have his or her records removed from the database after 5 years if he or she can establish they are no longer a danger to the community. Additionally, we recommend restricting information sharing to courts and law enforcement agencies with a requirement that schools can only access information with the court's permission.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>PROSECUTING JUVENILES in FEDERAL COURT: Expanding Federal Jurisdiction.</b></p> <p>(18 U.S.C. §§ 5032(a)(2)-(4))</p>	<p>Under current law, federal prosecutors are required to defer to state courts for prosecuting youth that have violated Federal law. In order to overcome this presumption and bring a case in federal court, the U.S. Attorney must certify that the following conditions exist:</p> <ol style="list-style-type: none"> <li>1) The State court does not have jurisdiction or refuses to assume it;</li> <li>2) The State does not have available services for the juvenile offenders, OR</li> <li>3) The offense is a felony crime of violence, AND</li> <li>4) There is a substantial Federal interest to warrant Federal jurisdiction.</li> </ol>	<p><u>Sec. 201.</u> A juvenile may be proceeded against as a juvenile in Federal court if the Attorney General, after investigation, certifies that the State or Indian tribe does not have jurisdiction or declines to assume it or there is a substantial Federal interest in the case. If the Attorney General does not certify, or if the Attorney General does not have jurisdiction, then the case shall be surrendered to state or tribal authorities.</p> <p><b>The juvenile proceeding is opened to the public unless good cause is shown why certain people should be excluded.</b></p>	<p><u>Sec. 101.</u> The juvenile will be proceeded against in Federal court if there is a substantial Federal interest in the case to warrant Federal jurisdiction or if the ends of justice so require. <b>The United States Attorney certifies to these conditions but the certification is not reviewable by the court.</b></p> <p>If there is concurrent jurisdiction between the States and the Federal system, the United States Attorney shall exercise a presumption in favor of State Court jurisdiction unless the State or Tribal Court cannot or will not take the case and there is a substantial Federal interest.</p> <p><b>The juvenile proceeding is opened to the public unless good cause is shown why certain people should be excluded.</b></p>	<p>We also recommend that schools be required to go to the courts to access juvenile records. The records should only be released if the schools can establish a compelling need to protect the safety of other students.</p> <p>Oppose language in BOTH bills and remove in Conference.</p> <p>There does not appear to be a significant difference between House and Senate versions, nor does it appear that either bill significantly alters current law. However, we recommend rejecting House and Senate versions and maintain current law which is easier to understand, and</p>

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<p><b>TRYING JUVENILES as ADULTS in FEDERAL COURT</b>  (18 U.S.C. § 5032)</p>	<p>The Attorney General may seek to prosecute a juvenile as an adult if:</p> <ul style="list-style-type: none"> <li>-when over 16 years of age and accused of committing a serious violent felony or a drug offense,</li> <li>-when 13 years of age or older and alleged to have committed murder, attempted murder, or armed robbery,</li> <li>-when 16 years of age or older and alleged to have committed a felony involving the use of physical force against the property of another, drug felonies, or serious firearm offenses.</li> </ul> <p>In such cases, the juvenile court may transfer the case from juvenile court to adult court when it is in the interest of justice to do so, upon written findings with respect to the juvenile's age, prior record, maturity, past treatment, and nature of the alleged offense.</p>	<p><u>Sec. 201.</u> A juvenile shall be prosecuted as an adult in Federal court under the following conditions: If the juvenile has requested in writing at the advice of counsel to be prosecuted as an adult; or the juvenile is at least 14 years old (or 13 at the approval of the Attorney General) and commits an act, which if committed by an adult, would be a serious violent felony or crime of violence (or a conspiracy or attempt to commit that felony or offense) or a serious drug offense. Under these circumstances, the United States Attorney does not have the discretion to prosecute a child in juvenile court, nor does the court have the authority to review the decision.</p> <p>A juvenile may be prosecuted as an adult for any felony offense if the Attorney General decides to do so. This decision is also not reviewable in any court.</p>	<p><u>Sec. 102.</u> By Federal law, youths 14 and older accused of a serious violent felony/drug offense or previously tried as an adult can be prosecuted as adults in Federal court at the discretion of the US Attorney which decision is generally not reviewable in a court. Juveniles 14 and older may be prosecuted for less serious offenses at the discretion of the Attorney General. The juvenile may seek an order to have the case transferred back to juvenile court under the following conditions:</p> <ol style="list-style-type: none"> <li>1) 14 and 15-year-old youth may seek an order in all cases;</li> <li>2) 16 and 17-year-old youth may seek an order in cases that are not serious violent felonies or drug offenses.</li> </ol>	<p>maintains presumption of prosecuting juvenile cases in state courts.</p> <p>Oppose language in BOTH bills and remove in Conference.</p> <p>The court, not the prosecutor, should decide if and when children should be prosecuted as adults. However, between the two versions, we recommend the Senate version which maintains at least minimal judicial review and provides more discretion to the prosecutor to decide when to prosecute a child as an adult.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>FEDERAL SENTENCING GUIDELINES</b></p>	<p>The maximum term of probation and/or official detention for a juvenile found delinquent and who is less than 18 years of age is the lesser of:</p> <ul style="list-style-type: none"> <li>- the juvenile's 21<sup>st</sup> birthday, OR</li> <li>- the maximum term available had the juvenile been convicted as an adult.</li> </ul> <p>Several drug trafficking crimes (for which juveniles may be tried as adults) carry mandatory minimum sentences. (e.g. 21 U.S.C. §§ 841, 848).</p> <p>In calculating a convicted defendant's criminal history for purposes of the Sentencing Guidelines, 3 points are assigned for prior sentences of 1 year and 1 month or more regardless of the age of the defendant, but other prior sentences for conduct committed prior to the age of 18 (whether imposed after juvenile or adult proceedings) are only scored if they were served within 5 years of the "instant" offense (2 points for confinement of at least 60 days; 1 point in other cases). (U.S.S.G. §§ 4(A)(1) 1, 4(A)(1) 2). The Sentencing Commission is authorized to study the feasibility of guidelines for the disposition of juvenile delinquents. (28 U.S.C. § 995(a)(19).)</p> <p>Current law only permits the use of juvenile convictions that occurred within the last 5 years.</p>	<p><b>Sec. 206. Disposition; Availability of Increased Detention, Fines and Supervised Release for Juvenile Offenders.</b> (Amends 18 U.S.C. § 5037).</p> <p>The United States Sentencing Commission, in consultation with the Attorney General, shall develop a list of possible sanctions for juveniles adjudicated as delinquent. Such list shall:</p> <ul style="list-style-type: none"> <li>(a) be comprehensive in nature and encompass penalties of varying levels of severity;</li> <li>(b) include terms of confinement; AND</li> <li>(c) provide punishments that escalate in severity with each additional or subsequently more serious delinquent conduct.</li> </ul> <p>The maximum term for which probation may be ordered for a juvenile found delinquent is the maximum term for an adult (5 years). The term for which official detention may be ordered for a juvenile found delinquent may not extend beyond the lesser of the maximum term of imprisonment if the juvenile had been convicted as an adult, ten years, or the date at which the juvenile turns 26 years old.</p>	<p><b>Sec. 111. Federal Sentencing Guidelines.</b> (Amending 28 U.S.C. § 994). (Sec. 102 contains a similar provision Amending 18 U.S.C. § 3553). The United States Sentencing Commission must set guidelines within one year that effectuate a policy of an accountability-based juvenile justice system that provides substantial and appropriate sanctions that are graduated to reflect the severity or repeated nature of violations, for each delinquent act, and reflect the specific interests and circumstances of the juvenile defendants. In calculating a criminal history score, prior juvenile records within the past 15 years may be considered. The Sentencing Commission should amend the guidelines to provide that the computation of a career offender should include previous convictions or adjudications as a juvenile. The Senate bill changes current law and requires judges to impose mandatory sentences on juveniles when applicable. However, there is an exception to the application of minimum sentences-for juveniles under the age of 16, the court is not required to impose mandatory sentences if the court finds, after consultation with the government,</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. The House provision does not require courts to impose mandatory sentencing on juveniles.</p>

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<p><b>LIMITS ON PRISONER LITIGATION</b></p> <p>(28 U.S.C. §§ 3626(a)(c))</p>	<p>The Prison Litigation Act of 1996 already establishes strict limits on the use of consent decrees in prison cases. The few consent decrees that remain are those in which a court has found clear evidence of ongoing constitutional violations in the prison system.</p>	<p><u>Sec. 110. Limitation on Prisoner Release Orders.</u></p> <p>This amendment would strike down all consent decrees in prison condition cases and prohibit federal judges from entering prisoner release orders.</p>	<p>that the juvenile does not have a previous conviction or adjudication for a serious violent felony or a serious drug offense.</p> <p>(No such Provision)</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate. This version would strike down consent decrees that currently operate to improve inhumane prison conditions. By forcing states to litigate cases they would rather settle through consent decrees, the provision infringes on state prerogatives. By unconstitutionally depriving federal judges of authority to remedy violations of the Eighth Amendment in prisons, it would worsen overcrowding and other unhealthy prison conditions.</p>

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				It would have an especially deleterious effect on the conditions in which vulnerable prisoners such as women, juveniles and the mentally ill are incarcerated.
<b>MANDATORY MINIMUM SENTENCES:</b>  <b>Mandatory Life Imprisonment for Repeat Sex Offenders.</b>  (18 U.S.C. § 3559)	Mandatory Life Imprisonment for: <b>2 Serious Violent Felonies</b> (sex offenses) <u>OR</u> <b>1 Serious Violent Felony AND One Serious Drug Felony.</b> Child Molestation (i.e. sex offense) is considered a <b>Serious Violent Felony</b> if: <ol style="list-style-type: none"> <li>1) Victim is under 14 years old.</li> <li>2) Victim Dies.</li> <li>3) Offense involves conduct outlined in § 3591(a)(2).</li> </ol>	<u>Sec. 104.</u> Person convicted of Federal sex offense in which a minor is the victim shall be sentenced to <b>life imprisonment</b> if the person has a prior sex conviction in which a minor was a victim, (unless the sentence of death is imposed).	(No such Provision)	House provision should be rejected.  The House should cede to the Senate. In the alternative, all sentencing enhancements should be referred to the United States Sentencing Commission to insure uniformity and fairness.
<b>Transfer of Firearm to Juvenile.</b>  (18 U.S.C. § 924)	Under current law, the transfer of a firearm to a juvenile is punishable by up to 1 year in jail. If person knows the firearm will be used in a crime of violence, the maximum sentence is 10 years. Current law only applies to handguns and ammunition, not assault weapons or large capacity ammunition loading devices.	<u>Sec. 402.</u> A person, <b>other than a juvenile</b> , who transfers handgun, ammunition, large capacity ammunition feeding device or semiautomatic assault weapon to a <b>juvenile</b> in violation of § 922 (x) knowing the juvenile intended to <b>posses</b> these items in a school zone shall receive a mandatory minimum sentence of at least 3 years and as much as 20 years if the person knows the juvenile intended to <b>use</b> the firearm in the commission of a serious violent felony,	<u>Sec. 851.</u> <b>Mandatory Minimum sentence of not less than 1 year and not more than 5</b> for transferring a weapon to a juvenile (in violation of § 922(x)).  - NO "school zone" mandatory minimum. - <b>Mandatory minimum of 10 years</b> if person knows juvenile intended to commit violent felony, maximum of 20 years.	Oppose language in BOTH bills and remove in Conference.  In the alternative, all sentencing enhancements should be referred to the United States Sentencing Commission in

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		the mandatory minimum sentence is 10 years with a maximum of 20 years.	- Provision that states NO juvenile shall be released after conviction simply because they have turned 18. <u>Sec. 210.</u> (18 U.S.C. § 924(e)(2)(A)). Any person who knowingly transfers a firearm to a person under 18 knowing that person intended to commit a drug trafficking crime shall be sentenced <b>not less than 3 years, not more than 10 years.</b>	order to insure uniformity and fairness.
<b>Career Criminal Predicates for Juveniles</b>  (18 U.S.C. § 924(e)(2)(A)(ii))	Juvenile prosecutions for drug offenses are not currently used for calculating career criminal predicates.	(No such Provision)	<u>Sec. 210.</u> Juvenile adjudications for serious drug offenses are included under the definition of armed career criminal.	Senate provision should be rejected.  The Senate should cede to the House. Including juvenile adjudications as predicate offenses would have the effect of sentencing young people to life imprisonment for crimes they committed while they were children, thus foreclosing any possibility of rehabilitation.

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<p><b>Discharging Firearms in a School Zone.</b></p> <p>(18 U.S.C. § 924(a)(4))</p>	<p>Penalty for discharging firearm in a school-zone is up to five years in jail.</p>	<p><u>Sec. 601.</u> Any person who knowingly discharges a firearm in a school zone shall receive a mandatory minimum sentence of at least 10 years, if serious bodily injury results, at least 15 years; or if death results and the person has attained 16 years but not 18 years, shall be sentenced to life imprisonment; if person is over 18 shall be sentenced to life imprisonment or to DEATH.</p>	<p>(No such Provision)</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate.</p> <p><b>We oppose any expansion of the federal death penalty.</b></p> <p>In the alternative, all sentencing enhancements should be referred to the United States Sentencing Commission to insure uniformity and fairness.</p>
<p><b>Using a Firearm to Commit a Crime of Violence or a Drug Trafficking Crime.</b></p> <p>(18 U.S.C. § 924)</p>	<p>If firearm is discharged, mandatory sentence of at least 10 years.</p> <p>Whoever knowingly transfers a firearm to a juvenile, knowing it will be used to commit a crime of violence, will receive a maximum sentence of 10 years.</p>	<p><u>Sec. 604.</u> If the firearm is discharged in the commission of a crime of violence or a drug trafficking crime, the person will be imprisoned for not less than 12 years; AND if the firearm is used to injure another person, a mandatory sentence of at least 12 years; AND whoever knowingly transfers a firearm, knowing that it will be used to commit such crime, shall be imprisoned at least 5 years, not more than 10.</p>	<p>(No Such Provision)</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate.</p> <p>In the alternative, all sentencing enhancements should be referred to the United States Sentencing Commission to insure uniformity and fairness.</p>

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<b>Using Minors to Distribute Drugs.</b>  (21 U.S.C. § 861)	<b>First Offense:</b> At least 1 year or 2X the imprisonment or supervised release authorized for distribution to adults. <b>Second Offense:</b> At least 1 year or 3X the imprisonment or supervised release authorized for distribution to adults. (Mandatory sentences do NOT apply to marijuana offenses involving five grams or less.)	<b>Sec. 701.</b> Any person over 18 years who knowingly and intentionally employs, hires, uses, persuades, induces, entices or coerces a person under 18 to distribute drugs, or assist in avoiding detection or apprehension for distributing drugs, shall be imprisoned for <b>not less than 3 years for their first offense; and not less than 5 years for any subsequent offense.</b>	<b>Sec. 202.</b>  SAME as House Bill. (Included in GANGS provisions).	Oppose language in <b>BOTH bills</b> and remove in Conference.  In the alternative, all sentencing enhancements should be referred to the United State Sentencing Commission to insure uniformity and fairness.
<b>(Adults) Distributing Drugs to Minors.</b>  (21 U.S.C. § 859)	<b>First Offense:</b> At least 1 year or 2X the imprisonment or supervised release authorized for distribution to adults. <b>Second Offense:</b> At least 1 year or 3X the imprisonment or supervised release authorized for distribution to adults. (Mandatory sentences do NOT apply to marijuana offenses involving five grams or less.)	<b>Sec. 702.</b> Any person at least 18 years of age who knowingly distributes drugs to a person under 21 shall be imprisoned <b>not less than 3 years for a first offense; and not less than 5 years for a second offense.</b>	<b>Sec. 904.</b>  SAME as House Bill.	Oppose language in <b>BOTH bills</b> and remove in Conference.  In the alternative, all sentencing enhancements should be referred to the United States Sentencing Commission to insure uniformity and fairness.

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<b>Drug Trafficking in or near a School or Other Protected Location.</b>  (Section 419 of Controlled Substances Act, 21 U.S.C. § 860)	<p><u>First Offense:</u> Not less than one year, or 2X imprisonment or supervised release for adults.</p> <p><u>Second Offense:</u> Not less than three years, or 3X imprisonment or supervised release for adults.</p>	<p><u>Sec. 703.</u> Any person who distributes, possesses with intent to distribute, or manufactures a controlled substance in, on, or near a school or other protected facility shall be imprisoned <u>not less than 3 years for a first offense; and not less than 5 years for a second offense.</u></p>	<p><u>Sec. 905.</u> SAME as House Bill.</p>	<p>Oppose language in BOTH bills and remove in Conference.</p> <p>In the alternative, all sentencing enhancements should be referred to the United State Sentencing Commission to insure uniformity and fairness.</p>
<b>ECO TERRORISM/ DEATH PENALTY:</b>  (18 U.S.C. § 3591)	<p>Previous maximum penalty for an act of animal enterprise terrorism, resulting in death, was a life sentence.</p> <p>NO DEATH SENTENCE currently exists.</p>	(No such Provision)	<p><u>Section 1620.</u> Expands <b>Death Penalty</b> for a violation of 18 U.S.C. § 43. (Act of Animal Enterprise Terrorism).</p>	<p>Senate provision should be rejected.</p> <p><b>We oppose any expansion of the federal death penalty.</b></p>
<b>PROJECT EXILE</b>	<p>The Federal Government has established a pilot program in Richmond, Virginia called <b>Project Exile</b>. Project Exile is meant to "exile" persons who commit firearms offenses from their communities. It requires the federal government to work with states to establish a program where most firearms offenses are prosecuted in federal court. The rationale behind this program is that tougher federal sentencing will deter persons from committing firearms offenses.</p>	<p><u>Sec. 301. Armed Criminal Apprehension Program.</u></p> <p>Requires the Attorney General to establish within 90 days a program in each office of the US Attorney. The program shall:</p> <ol style="list-style-type: none"> <li>1) Coordinate State and local law enforcement officials in identifying violations of Federal firearms laws.</li> <li>2) Require agreements with State and local law enforcement officials to refer cases to ATF for violations of federal firearms laws (18 U.S.C. § 921 et seq.)</li> </ol>	(No such Provision)	<p>House provision should be rejected.</p> <p>The House should cede to the Senate. We oppose this bill, which would require establishing a Project Exile program in every US Attorney's office across the country. Project Exile is another</p>

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	<p>Critics of Project Exile point out a number of problems. First, prosecuting so many state criminal cases in federal court clogs the federal courts and prevents judges from handling important matters traditionally reserved to the federal courts. Contrary to the rationale behind Project Exile, the sentences imposed in federal court are the same as those which would be imposed in state court, but prosecuting the cases in federal court is 3X more expensive.</p> <p>Lastly, federal prosecutors have used Project Exile to skew the jury pool and keep African Americans from serving on juries. The federal jury pool is drawn from a larger area which is majority white while the state jury pool is 75% African American.</p> <p>The program also requires identification of a "high crime" area, which will have the effect of focusing attention on bringing cases in urban, largely minority, communities. Along with establishing a "high crime" area, the program establishes a public education campaign aimed at encouraging neighbors to "turn in" their neighbors. Again, this provision will target communities of color. Ironically, the recent school shootings have been in rural areas, not urban ones, yet this broad change in federal law will impact urban areas, not rural ones.</p>	<p>and violations of the IRS code relating to firearms.</p> <ol style="list-style-type: none"> <li>3) Requires US Attorney to designate AT LEAST <u>one</u> Asst. US Attorney to prosecute firearms laws.</li> <li>4) Requires hiring of ATF agents.</li> <li>5) Requires the US Attorney to charge the most serious Federal firearm offense possible.</li> </ol> <p>AUSA must also establish, in designated "high crime" areas, a "Public Education Campaign" in coordination with the local community that educates public about severity of penalties and encourages citizens to report possession of illegal firearms to authorities.</p>		<p>example of the federal courts taking over prosecution of state criminal law cases, creating a crisis in the federal courts according to Chief Justice Rehnquist and former Attorney General Meese. We also oppose forum shopping to prevent minorities from serving on juries.</p>

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<p><b>Cross-Designation of Federal Prosecutors.</b></p>	<p>(SEE ABOVE)</p>	<p><u>Sec. 304.</u>          Authorizes US Attorney's Office to designate Asst. US Attorneys to prosecute firearm offenses under STATE law in State and Local COURTS.</p>	<p>(No such Provision)</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate. Authorizing federal prosecutors to prosecute cases in state court using state law is a huge usurpation of state power.</p>
<p><b>GANG PROVISIONS:</b></p> <p><b>Change in Definition of "Criminal Street Gang."</b></p> <p>(18 U.S.C. § 521)</p>	<p>A gang is "an ongoing group, club, organization or association of 5 or more persons"</p> <ul style="list-style-type: none"> <li>- that has as one of its primary purposes to engage in a criminal offense (violation of controlled substance act for which maximum penalty is not less than 5 years; Federal felony crime of violence, or conspiracy to commit above offenses.)</li> <li>- members of which engage, or have engaged within the past 5 years, in a continuing series of these described offenses AND</li> <li>- the activities of which affect interstate or foreign commerce.</li> </ul>	<p><u>Sec. 704.</u>  <b>Definition of Criminal Street Gang would be changed to include 3 people or less.</b></p>	<p><u>Sec. 204.</u>          SAME as House Bill.</p>	<p>Oppose the language in BOTH bills and remove in Conference.</p> <p>Lowering the number of persons required to trigger prosecution under gang laws creates an overbroad provision that sweeps in persons who may have committed a crime together, but are not part of a gang. This will have the effect of imposing unduly harsh punishment on persons who are not part of a gang.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<b>Interstate and Foreign Travel or Transportation in Aid of Criminal Gangs.</b>  (Travel Act Amendment, 18 U.S.C. § 1952)	Does not exist in current law.	<u>Sec. 706.</u> - Expands <b>RICO</b> to cover Gang activities. Adding: <b>"Sec. 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises."</b> Followed by general definitions and guidelines. - <b>Sentence Enhancement</b> for a person who in violating section 522 of title 18 (see below) recruits, solicits, induces, commands or causes a person residing in another state to be or to remain a member of a criminal street gang, or crosses a state line with intent to do same, travels in interstate commerce or uses the mail to promote, establish, manage (etc.) illegal activity shall be imprisoned not more than 10 years, if it is a crime of violence, up to 20 years, if death results, life imprisonment or the <b>Death Penalty</b> may be imposed.	<u>Sec. 209.</u>  SAME as House Bill.	Oppose language in BOTH bills and remove in Conference.  We oppose any expansion of the federal death penalty and an expansion of RICO.
<b>Gang-Related Witness Intimidation and Retaliation.</b>  (18 U.S.C. § 1512)	Whoever kills or attempts to kill to prevent the testimony of a witness:  -In the case of murder, life imprisonment or <b>Death Penalty</b> ; any other killing, punishment same as manslaughter, attempted killing, up to 20 years.  -Influencing, preventing or delaying testimony, up to 10 years.  -Harassing, up to 1 year.	<u>Sec. 707.</u> Sentence of up to 10 years for interstate travel to engage in witness intimidation or obstruction of justice or <b>conspiracy to do same</b> , up to 20 years if bodily injury results, life imprisonment or <b>Death Penalty</b> if death results.  - (Adding) Establishes guidelines for a witness protection program overseen by the Attorney General in conjunction with State & Local Authorities that coordinates interstate programs with each other.	<u>Sec. 206.</u> Same penalty of up to 20 years for using physical force or attempting murder against a witness as House Bill.  - Same conspiracy provisions as House Bill.  - NO new Death Penalty	House provision should be rejected.  The House should cede to the Senate.  We oppose any expansion of the federal death penalty.

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p data-bbox="170 289 352 443"><b>Solicitation or Recruitment of Persons in Criminal Street Gang Activity.</b></p> <p data-bbox="170 475 317 537">(18 U.S.C. § 521 et seq.)</p>	<p data-bbox="422 289 835 321">No provision exists under current law.</p>	<p data-bbox="890 289 995 321"><b>Sec. 801.</b></p> <p data-bbox="890 326 982 354">Adding:</p> <p data-bbox="890 358 1352 727">"Sec. 522 (a) PROHIBITED ACT- it shall be unlawful for any person, to use any facility in, or travel in, interstate or foreign commerce, or cause another to do so, to recruit, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or conspire to do so, with the intent that the person being recruited, solicited, induced, commanded or caused to be or remain a member of such gang participate in an offense described in section 521(c)."</p> <p data-bbox="890 732 1352 954">- Any person who violates this section, if the person recruited is a minor (under 18), shall have <u>mandatory minimum</u> sentence of <b>not less than 4 years and not more than 10</b>. If the person recruited is NOT a minor, <u>mandatory minimum</u> sentence of <b>1 year</b> and not more than 4.</p> <p data-bbox="890 987 1325 1138">- The person is also liable to the federal, State or local government, if the person recruited is a minor, for the <b>COSTS</b> of housing, maintaining and treating the minor until the minor turns 18.</p>	<p data-bbox="1379 289 1484 321"><b>Sec. 201.</b></p> <p data-bbox="1379 358 1612 386">SAME as House Bill.</p>	<p data-bbox="1812 289 2032 418">Oppose language in BOTH bills and remove in Conference.</p> <p data-bbox="1812 451 2011 727">In the alternative, refer any sentencing enhancements to the United States Sentencing Commission to insure uniformity and fairness.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>ASSET FORFEITURE:</b></p> <p><b>Special Forfeiture of Collateral Profits of Crime.</b></p> <p>(18 U.S.C. § 3681)</p>	<p>Upon request of the Attorney General, the defendant must forfeit anything gained, used, intended for use in or facilitating the occurrence of a crime against the United States.</p>	<p>(No such provision)</p>	<p><u>Sec. 1614.</u>  Government can seize a broad range of property for violations of § 794 (espionage): Any felony offense against the United States or a State, or any <u>misdemeanor</u> offense against the United States or a State that results in physical harm.</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. This drastic expansion of federal forfeiture law would enable the federal government to seize property where the crime occurred, even in situations traditionally considered inappropriate for forfeiture. For example, under certain circumstances, the government could seize a person's home where a misdemeanor assault took place.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<b>MANDATORY 24-HOUR DETENTION</b>	Does not exist in current law.	(No such Provision)	<p><u>Sec. 222. State Plans.</u>  <del>In order to receive formula grants</del>            under this part, a State must:</p> <p>"(28) demonstrate that the State has in effect a policy or practice that requires State or local law enforcement agencies to—</p> <p>(A) present before a juvenile officer any juvenile who unlawfully possesses a firearm in school; and</p> <p>(B) detain such juvenile in an appropriate juvenile facility or secure community-based placement for not less than 24 hours for appropriate evaluation, upon a finding by the judicial officer that the juvenile may be a danger to himself or herself, to other individuals, or to the community in which that juvenile resides."</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. The Senate version adds a new "core mandate" on States requiring them to detain juveniles who bring guns to school. The core mandates requirements have been used to make sure that children's rights within state systems are protected. This new provision changes the focus of the core requirements by imposing a particular statutory requirement on states which may or may not be appropriate for their jurisdictions.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>INDIVIDUALS WITH DISABILITIES EDUCATION ACT</b></p> <p>(20 U.S.C. § 1415(k) sec. 615(k)(10)(A))</p>	<p>IDEA was amended in 1997 to <u>strengthen protections for special education and disabled students</u> by giving more flexibility to school officials when disciplining students with disabilities, especially in situations involving drugs or weapons. The new regulations, promulgated after the 1997 amendment, provide guidance and clarification on behavioral assessment and development of intervention plans. School administrators and staff are not required by law to take any immediate disciplinary action.</p>	<p><u>Sec. 118.</u> Permits school personnel to discipline students with disabilities who carry or possess <i>weapons</i> in the same manner as those students without disabilities. Any weapons infraction would result in cessation of educational services.</p>	<p><u>Sec. 1699.</u> Amends current law so that schools can cease all educational services to a student with a disability who carries or possesses a <i>firearm</i> in school. A child expelled or suspended under this provision shall not be entitled to continued educational services during the term of expulsion/suspension. However, a school can choose to provide educational services even though it is not required to do so.</p> <p><u>Sec. 1636(b).</u> Schools can and should remove children who bring guns to school and should be allowed to report such crimes to law enforcement authorities. Additionally, immediate mental health intervention services must be provided for any child removed from school for any act of violence, including carrying or possessing a weapon.</p>	<p>Oppose the language in BOTH bills and remove in Conference.</p> <p>Current law is preferable because expelling or suspending students without providing education only increases drop-out rates, incarceration rates, and drug use rates.</p> <p>However, between the two versions, we prefer the Senate version because it provides some mental health services, which are essential for maintaining safe learning environments in schools and preventing future violence.</p>

## II. FREE SPEECH

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>FIRST AMENDMENT/ FREE SPEECH:</b></p> <p>Internet Filtering</p>	<p>Does not exist in current law.</p>	<p><b>'Children's Internet Protection Act'</b></p> <p><u>Sec. 1402.</u> No Universal Service for Schools or Libraries that Fail to Implement A Filtering or Blocking Technology for Computers with Internet Access. (Amends 47 U.S.C. § 254) (§ 254 of the Communications Act of 1934). An elementary school, secondary school, or library, to be eligible for universal assistance, shall certify to the Commission that it has selected a technology for computers with Internet access to filter or block: child pornographic materials, obscene materials, and materials deemed to be harmful to minors, and has installed or will install, and uses or will use, such technology. - The school or library must give NOTICE to the Commission if it CEASES to use such technology, and must have POSTED near its computers the type of filtering or blocking technology it uses, a statement of its filtering or blocking policy and a copy of its filter or block certification. A school that fails to comply is liable to repay all universal assistance after date of failure. - The determination of what material is</p>	<p><u>Sec. 1604.</u> Provision of Internet Filtering or Screening Software by Certain Internet Service Providers.</p> <p>NOT the same as House Bill. Concerns PRIVATE Internet software providers to RESIDENTIAL customers.</p> <p>"(a) REQUIREMENT TO PROVIDE- Each Internet service provider shall at the time of entering an agreement with a residential customer for the provision of Internet access services, provide to such customer, either at no fee or at a fee not in excess of the amount specified in subsection (c), computer software or other filtering or blocking system that allows the customer to prevent access of minors to material on the Internet."</p> <p>Other provisions include surveys to make sure service providers comply, fees that may be charged and dates of applicability.</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate.</p> <p>We prefer Senate provision. House provision is an unwise Federal mandate that will unconstitutionally impose flawed filtering technology on schools and libraries across the country.</p> <p>The Senate provision is ALSO an undesirable mandate, but it is far less sweeping.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
		to be filtered (i.e. what is harmful to minors) is LOCAL. It is to be made by the school, school board, library or other responsible authority. The federal government can NOT set criteria OR review the local decision. This act shall not preempt, limit or supersede any requirements more stringent than the ones in this act nor supersede or limit any otherwise applicable Federal or State child pornography or obscenity laws.		
Using the Internet to Engage in Unlawful Firearms and Explosives Transactions.	Current law already establishes criminal penalties for unlawful firearms and explosives transactions.	(No such Provisions)	<p><b>Subtitle F—INTERNET PROVISIONS Secs. 1661-1664.</b></p> <p><b>Sec. 1661. Internet Firearms and Explosives Advertising Act of 1999.</b> In light of the fact that a great deal of commerce involving the selling of firearms and explosives takes place on the Internet, Congress intends to pass a law punishing those who violate the applicable explosive and firearms laws.</p> <p><b>Sec. 1663. Prohibitions on Uses of the Internet.</b> In General—(Amends Chapter 44 of Title 18 of U.S.C.) Adding: “<b>Sec. 931. Criminal firearms and explosives solicitations.</b>” Any person who, over the Internet, makes, prints, publishes or causes to be made, printed or published any advertisement seeking or offering to</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House.</p> <p>Current law already makes criminal illegal transactions on the Internet.</p> <p>A new criminal law unnecessarily stigmatizes legitimate Internet commerce.</p> <p>This provision also adds new mandatory sentencing provisions and a <b>new death penalty.</b></p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
			<p>receive, exchange, buy, sell, produce, distribute, or transfer—</p> <p>" (A) a firearm knowing that such transaction, if carried out as noticed or advertised, would violate subsection (a), (d), (g), or (x) of section 922 of this chapter, or (B) explosive materials knowing that such transaction, if carried out as noticed or advertised, would violate subsection (a), (d) and (i) of section 842 of this title"</p> <p>(The person must know or have reason to know that such advertisement or notice will be carried through interstate or foreign commerce by computer, and this must happen).</p> <p><b>PENALTIES</b> shall be:  One year maximum for first offense, 5 year maximum if previously convicted for this offense or a similar offense, if <b>TWO prior convictions then Mandatory sentence of at least 10 years up to 20 years.</b></p> <p>If <b>DEATH</b> of juvenile results because of an offense committed under this section then offender can be imprisoned for any term of years, for life, or be sentenced to <b>DEATH</b>.</p> <p>It is an <b>AFFIRMATIVE DEFENSE</b> if the person charged can prove by a preponderance of the evidence that they are a <b>LICENSED</b> manufacturer,</p>	<p><b>We oppose any expansion of the federal death penalty.</b></p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
			importer or dealer under section 923 or 40 of this title AND that the site on the Internet, before offering the sale of the product, advised consumer at least once that sales or transfers would be made in accordance with all applicable Federal, State and local laws.	

### III. CHURCH/STATE

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>FIRST AMENDMENT/</b></p> <p><b>CHURCH/ STATE:</b></p> <p><b>Constitutionality of Memorial Services and Memorials at Public Schools. (&amp; Fee Shifting)</b></p> <p>(42 U.S.C. § 1988 (1999 supp.) &amp; Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(a)-3(b) (1999 supp.))</p>	<p>Under current law attorney's fees may be recovered in successful challenges arguing that the First Amendment's Religious Clauses have been violated. Additionally, many States have statutory fee-shifting provisions for State law claims.</p>	<p><u>Sec. 112.</u> The Congress of the United States finds:</p> <ul style="list-style-type: none"> <li>- The saying of a prayer, the reading of a scripture, or the performance of religious music, as part of a memorial service that is held on the campus of a public school to honor the memory of a person slain at that school does not violate the First Amendment.</li> <li>- The design and construction of any memorial to honor the same that includes religious symbols, motifs, or sayings that is placed on the campus of a public school likewise does not violate the First Amendment.</li> </ul> <p><b><u>FEE SHIFTING</u></b></p> <ul style="list-style-type: none"> <li>■ In any lawsuit claiming the type of memorial or memorial service violates the Constitution each side must pay their own attorney's fees AND the Attorney general is authorized to provide legal assistance to the school district or other government entity that is defending the legality of such memorial or memorial service.</li> </ul>	<p><u>Sec. 1606.</u></p> <p>SAME as House Bill.</p> <p>Includes FEE SHIFTING provisions.</p>	<p><b>Recommendations</b></p> <p>Oppose language in BOTH bills and remove in Conference.</p> <p>These amendments would remove the ability for claimants to recover fees in certain religious liberty cases even <b>when they have won their case.</b></p> <p>This provision will discourage bringing litigation to challenge important First Amendment violations.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<b>Fee Shifling</b>  (Section 722 (b) of the Revised Statutes of the United States 42 U.S.C. § 1988(b))	<b>SEE ABOVE.</b>  Same as Sec.'s 112 & 1606 but broader. No recovery of fees in most student religious expression cases.	<b>Sec. 1101, Limitation on Recovery of Attorneys fees in Certain Cases.</b> Adding: "Attorneys' fees under this section may not be allowed in any action claiming that a public school or its agents violates the constitutional prohibition against the establishment of religion by permitting, facilitating, or accommodating a student's religious expression".	(No such Provision)	House provision should be rejected.  The House should cede to the Senate.
<b>RELIGIOUS NON-DISCRIMINATION</b>  (Juvenile Justice and Delinquency Protection Act of 1974, 42 U.S.C. § 5601 et seq.)	Under current law only "religiously affiliated" organizations can receive funds to provide services.  Religiously affiliated organizations that receive public funds to provide services can NOT discriminate in Employment. Because they are using public funds the Title VII exemption does not apply. Additionally, service providers cannot discriminate against beneficiaries or coerce them to participate in religious activities.  Under current law states are not required by federal law to give grants to pervasively sectarian organizations.	<b>Sec. 114.</b> Adding: " <b>Sec. 299J.</b> a) A governmental agency that receives a grant under this title and that is authorized by this title to carry out the purpose for which such grant is made through contracts with, or grants to, nongovernmental agencies may use such grant to carry out such purpose through contracts with or grants to religious organizations.  For purposes of subsection (a), subsections (b) through (k) of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. § 604a) shall apply with respect to the use of a grant received by such entity under this title in the same manner as such subsections apply to States with respect to a program described in section 104(a)(2)(A) of such Act."	<b>Sec. 292. RELIGIOUS NONDISCRIMINATION;</b>  <b>Restrictions on use of Amounts; Penalties.</b>  Mirrors the language of paragraph (b) of 299J in House Bill, but does NOT include paragraph (a).  Text reads: "(a) RELIGIOUS NONDISCRIMINATION- The provisions of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. § 604a) shall apply to a State or local government exercising its authority to distribute grants to applicants under this title."	Oppose language in BOTH bills and remove in Conference.  Amendment language is preferred.  The House and Senate should amend this section with Senator Kennedy's proposed amendment. His amendment would clarify the language in this section and provide the necessary civil rights and constitutional protections.

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>Power to Display the Ten Commandments</b></p>	<p>Displaying the Ten Commandments is an issue which the Supreme Court has addressed in numerous decisions. There is a clear line of precedent barring the display of the Ten Commandments in public places as an unconstitutional violation of the Establishment Clause. This result was held in: <i>Capital Square Review &amp; Advisory Bd. v. Pinette</i>, 515 U.S. 753 (1995); <i>Texas Monthly v. Bullock</i>, 489 U.S. 1 (1988). More importantly, it is plainly beyond the power of Congress to override constitutional decisions of the courts (including <i>Stone v. Graham</i>) by ordinary legislation. <i>City of Boerne v. Flores</i>, 117 S.Ct. 2157 (1997).</p>	<p><u>Sec. 1202. Religious Liberty Rights Declared.</u></p> <p>The power to display the Ten Commandments on or within property owned or administered by the several states or political subdivisions thereof is hereby declared to be among the powers reserved to the States respectively.</p> <p>- The expression of religious faith by individual persons on or within the same is declared to be among the rights secured against laws respecting an establishment of religion or prohibiting the free exercise of religion made or enforced by the US Government AND declared to be among the liberties of which no State shall deprive any person without due process of law made in pursuance of powers reserved to the States.</p> <p>- The courts constituted, ordained, and established by Congress shall exercise the judicial power in a manner consistent with the forgoing declarations.</p>	<p>(No such Provision)</p>	<p>House provision should be rejected.</p> <p>The House should cede to the Senate. The House provision is unconstitutional and should be removed.</p>

## IV. PRIVACY

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p><b>CLONE PAGERS</b></p> <p>(Section 2511(2)(h), and sections 3124-3129 and chapter 206 of title 18 U.S.C.)</p>	<p>No current law exists.</p>	<p>(No such Provision)</p>	<p><b>Sec. 211. Clone Pagers.</b>            The Fourth Amendment requires that the government show "probable cause of crime" to secure an order that allows it to eavesdrop on the contents of electronic communications; the DOJ and some courts have recognized that numeric pagers convey content. -</p> <p>-This section substitutes for probable cause of crime mere "relevance to an ongoing criminal investigation" as the standard for interception of the contents of communications sent to a numeric pager. This highly relaxed standard is similar to what law enforcement shows when it seeks to place a pen register or trap and trace device to record phone numbers dialed from and to a phone.</p> <p>-This section sets out Application procedure for Federal and State authorities applying for court orders authorizing use. It sets out criterion for granting Court order authorizing use of clone pagers (etc.). Broadly speaking: <b>"Probable Cause"</b> is all the agency must prove to obtain an order. However, <b>NOT</b> probable cause of a crime, but <b>"probable cause to believe that information relevant to an ongoing criminal investigation"</b> will be intercepted.</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. It would be a dangerous precedent for Congress to authorize law enforcement to intercept the coded contents of an electronic communication under a standard that requires law enforcement merely to show that it is conducting an investigation.</p> <p>The FCC is already considering this issue and Congress should not intervene in the regulatory process.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
			<p>- Clone pagers are essentially treated under the relaxed standards for pen registers and trap and trace devices and NOT like wiretaps even though they intercept the contents of communications.</p> <p>- Because it so erodes personal privacy, electronic surveillance of this type ought to be an investigative technique of "last resort". Under this section, law enforcement officials can use clone pagers to intercept the contents of communications even if other normal investigative procedures would suffice.</p>	
DNA TESTING	No database of DNA samples exists under current law.	(No such Provision)	<p><b>TITLE XV—VIOLENT OFFENDER DNA IDENTIFICATION ACT OF 1999.</b>  <b>Sec. 1501-1503.</b> The Director of the FBI, in consultation with State and Federal officials, shall develop a plan to eliminate the backlog of convicted offenders DNA samples awaiting analysis in State or local forensic laboratory storage in an efficient and expeditious manner that will provide for their entry into the Combined DNA Indexing System (CODIS). This body will set up nationwide quality assurance standards that ensure state-of-the-art testing methods are being used.  DNA samples will be:</p> <ul style="list-style-type: none"> <li>■ Available to criminal justice agencies for law enforcement identification purposes.</li> </ul>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. This bill would establish a complex system of collecting and storing DNA samples from citizens that could profoundly impact the privacy of Americans. Before establishing a DNA samples database, Congress needs to insure that certain safeguards are met including: plans for destroying samples after testing if they no</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
			<ul style="list-style-type: none"> <li>■ Admissible in criminal cases if authorized by statute.</li> <li>■ Available to defendants currently charged with a crime.</li> </ul> <p><u>Sec. 1503 EXPANDS</u> Section 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. § 531 Note) to include the DNA system set up by this act and apply it to federal offenders, military and DC offenders.</p> <p>ALL FEDERAL offenders convicted of a crime of violence (including misdemeanors), either incarcerated or on supervised release, would be required to provide a sample for DNA testing.</p>	<p>longer serve a forensic purpose, a provision to delete test results when a conviction is reversed or expunged and narrowing the class of offenses from which samples are taken to prevent collecting an unnecessarily overbroad database.</p>
<p><b>DRUG TESTING.</b> (42 U.S.C. § 3796 et seq.)</p>	<p>States are not required to conduct mandatory drug testing of arrestees in order to receive juvenile accountability block grants.</p>	<p>(No such Provision)</p>	<p><u>Sec. 321. Block Grant Program.</u></p> <p><b>"Sec. 1801. Program Authorized."</b> To be eligible for an incentive grant under this section, a State must show in an application to the Attorney General that: "(c)(2) the State has established or will establish a policy of drug testing (including followup testing) juvenile offenders upon their arrest for any offense within an appropriate category of offenses designated by the chief executive officer of the State."</p>	<p>Senate provision should be rejected.</p> <p>The Senate should cede to the House. States should not be permitted to conduct automatic drug testing of arrestees. To conduct a drug test, the Fourth Amendment requires a warrant supported by probable cause.</p>

TOPIC AREA	CURRENT LAW	HOUSE BILL (H.R. 1501)	SENATE BILL (S. 254)	Recommendations
<p data-bbox="157 272 373 300"><b>AIDS TESTING</b></p> <p data-bbox="157 337 373 397">(42 U.S.C. § 5633)</p>	<p data-bbox="384 272 835 365">Under current law, States are not required to conduct HIV testing to be eligible for State Formula Grants.</p>	<p data-bbox="846 272 1304 300">(No such Provision)</p>	<p data-bbox="1314 272 1759 300"><u>Sec 222. State Plans.</u></p> <p data-bbox="1314 337 1759 495">In order to receive formula grants under this part, a State shall submit a plan, developed in consultation with the State Advisory group, that will establish a program to test sex offenders for HIV.</p>	<p data-bbox="1770 272 2041 332">Senate provision should be rejected.</p> <p data-bbox="1770 370 2041 771">The Senate should cede to the House. Provision is overly broad and requires testing even when there was no possibility of HIV transmission. The bill does not provide sufficient safeguards to protect the privacy of the person being tested.</p>



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 12, 1999

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

Dear Mr. Chairman:

I am writing to provide you and the other conferees with the Administration's views regarding various provisions of S. 254 and H.R. 1501. As our children begin returning to school later this month, the conference should seize the opportunity to make our schools and communities safer by taking common-sense steps to keep guns out of the wrong hands, prevent youth violence, and steer young people away from crime. We look forward to working with you to reconcile the two bills and produce a balanced and bipartisan juvenile crime bill - with the Senate-passed gun provisions - that effectively addresses juvenile crime including the devastating impact of gun violence on our young people.

As the Administration's past juvenile crime proposals have demonstrated, we believe that juvenile justice requires a balanced approach - one that couples tough sanctions that hold juveniles accountable for their conduct with effective delinquency prevention and early intervention measures. We must not lose sight of the fact that the overwhelming majority of our Nation's young people do not engage in crime or delinquency. Most of them are wonderful, hopeful children who not only want to succeed, but also to live in and support safe and livable communities. Indeed, it is critical to remember that in the approximately 20 years since this Nation began collecting the relevant data, the percentage of America's youth ages 10-17 arrested for a violent crime has never exceeded one-half of one percent. Therefore, we need to punish appropriately that small portion of violent offenders. At the same time, we must help communities and families provide effective, comprehensive support for the many millions of young Americans who may be at risk for delinquency, but who can be helped to become productive and law-abiding citizens.

Just last week, the Centers for Disease Control and Prevention (CDC) reported that violent activity by America's teens dropped significantly between 1991 and 1997. The percentage of teens who reported carrying guns and other weapons fell from 26 percent to 21 percent, while the percentage of teens who reported fighting fell from 43 percent to 37 percent. Even more dramatic is the significant drop in juvenile arrest rates for violent crimes. The arrest rate in 1997 was a full 23 percent lower than in the peak year of 1994.

The Honorable Henry J. Hyde

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Among the reasons for these dramatic declines in youth violence is the infusion of community police officers into cities and towns across the nation - law enforcement personnel who have worked in close partnership with prosecutors, parents, school officials, and youth workers, as well as with concerned government officials, practitioners, and citizen volunteers - to help America's communities get their young people back on track. The 106<sup>th</sup> Congress can promote continued declines in youth crime by embracing a comprehensive approach to community safety that includes support for law enforcement and for America's youth.

We stand at a pivotal moment in our ongoing effort to reduce gun-related crime and violence, especially as they affect our children. Although the number of violent crimes committed with firearms has fallen by 27 percent since 1992, 13 young people in America die every day due to gun violence. In fact, the firearm homicide rate for children under 15 years of age is 12 times higher in the United States than in 25 other industrialized countries combined. The Columbine High School murders, the workplace shooting in Atlanta, and this week's shooting spree at the North Valley Jewish Community Center in Los Angeles underscore this shocking statistic and provide a grim reminder of how much more we must do to reduce firearms violence. We can - indeed we must - build upon the successes of existing state and federal laws to provide greater protections for our children and all of our citizens, and make it more difficult for young people and criminals to get their hands on guns in the first place.

Our specific views, detailed in the accompanying document, reflect our overall approach to protecting public safety by strengthening law enforcement efforts, enhancing support for children through effective prevention measures, and keeping guns out of the hands of criminals and children. It will take common-sense measures like the Senate gun provisions to make our strategy a reality.

First, the federal government must support the comprehensive efforts of state and local governments that handle the vast majority of issues concerning children, families, and communities, including the crime and delinquency that can result when any of those begin to falter. Consequently, the Administration believes it is a critical federal responsibility to provide adequate funds to states and communities, supporting the spectrum of necessary activities in a way that ensures both necessary flexibility and the fundamental protection of juveniles.

Second, although we provide direct federal investigative and prosecutorial resources in a relatively small number of juvenile cases, we need to have strong laws in place for those occasions. Notably, since the majority of these cases arise in Indian country, we must pay particular attention to the needs of the tribes in the creation and execution of laws concerning juveniles in the federal system.

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Third, in order to protect the safety and well-being of juveniles throughout the Nation, we simply must have sensible, effective measures to keep guns and explosives away from them, and from criminals who would harm them and the rest of us. In 1997, 74 percent of the homicides committed by 18- to 20-year-old offenders involved firearms. And from the mid-1980s to the early 1990s, youth homicide victimization rates doubled, increasing at a higher rate than any other violent crimes for which statistics are available. We urge the conferees to ensure that measures to restrict youth access to guns are included in the final bill.

Our detailed analysis and comments concerning H.R. 1501 and S. 254 are provided in the attached document. First, however, we would like to highlight several specific provisions that the Administration believes must be included in the final juvenile crime bill that is forwarded to the President for his signature.

*Close the gun show loophole.* The Brady Law's background check requirement has worked to prevent more than 400,000 illegal, over-the-counter gun sales to felons, fugitives, and other prohibited persons. The Brady Law's requirement, however, does not apply to the many guns sold by unlicensed gun sellers at gun shows. In a bipartisan vote, the Senate passed a provision that would close this loophole in the Brady Law, and would also allow law enforcement to trace firearms sold at gun shows if those firearms were later used in crime. The Senate provision does this without weakening current law, creating any new bureaucracies, or intruding on the interests of law-abiding gun buyers and sellers. The Administration strongly supports the Senate's gun show provision and the instruction - approved overwhelmingly by the House - that the conferees produce a final bill that includes meaningful legislation to close the gun show loophole once and for all.

*Require safe storage devices to be sold with every handgun.* Safety locks and gun lockboxes can prevent some crime and many accidental shootings. Every gun sold in the United States by a licensed firearms dealer should have such a device with it. The Administration supports the Senate's provision requiring such devices to be sold with every handgun.

*Keep guns out of the hands of persons who have committed serious juvenile offenses.* Our federal gun laws recognize that persons who commit serious violent criminal offenses should not be allowed to possess firearms. However, persons who commit serious drug or violent criminal offenses as juveniles are not prevented from owning firearms once they reach the age of majority. This is simply wrong. Although the Senate passed a measure designed to address this problem, the provision contains language that could delay its implementation indefinitely. The Administration looks forward to working with the conferees on this important provision.

*Ban the importation of large-capacity ammunition clips.* The 1994 Assault Weapons Ban was passed to limit the general public's access to assault weapons and magazines with a capacity of more than 10 rounds. The 1994 law, however, contained a provision to allow possession and

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importation of existing large capacity ammunition clips. This has led to an influx of imported large capacity clips. The Senate passed a provision - which the Administration fully supports - to close this loophole.

*Prohibit youth from possessing assault weapons.* As noted earlier, youth gun access remains an especially serious problem. S. 254 includes a provision prohibiting anyone less than 18 years of age from possessing a semiautomatic assault weapon. The Administration supports this sensible prohibition, but believes that it does not go far enough. Congress should adopt the Administration's proposal to prohibit anyone less than 21 years of age from possessing assault weapons and handguns.

*Provide effective firearms enforcement.* Over the past several years, the Justice and Treasury Departments have supported several innovative and effective firearms enforcement programs around the country, including Project Exile in Richmond, Virginia and Operation Ceasefire in Boston, Massachusetts, among others. Every one of these programs has been developed collaboratively by state and local - as well as federal - officials and tailored to address the gun violence problem specific to the locale by enforcing the toughest laws available. These partnerships have resulted in a significant increase in the overall number of firearms prosecutions in this country. Since 1992, the combined number of federal and state firearms convictions is up sharply, and about 22 percent more criminals were incarcerated for state and federal weapons offenses in 1996 than in 1992. The number of federal gun cases in which the offender gets five or more years in prison is also up by more than 25 percent. We support giving our United States Attorneys and the Bureau of Alcohol, Tobacco and Firearms the resources they need to work with state and local authorities in developing and expanding individualized firearms violence reduction programs in their jurisdictions. However, the Senate and House Bills include provisions that would diminish the effectiveness of these programs by mandating the wholesale federalization of crimes even when state or local laws provide more stringent penalties, and would prevent states from implementing their own intensive firearms prosecution programs. These provisions should be dropped.

*Strengthen firearms and explosives laws.* We strongly support provisions in the Senate and House Bills to strengthen our federal firearms and explosive laws. For example, we support strengthening the crime gun tracing system and increasing the penalties on "straw purchasers" and others who facilitate illegal gun trafficking; prohibiting juvenile possession of explosives; and extending background checks and permit requirements to the purchase and possession of explosives by adults.

*Prevent juvenile crime before it starts.* We appreciate the inclusion this year of significant funding provisions that reflect the Congress' commitment to fund juvenile crime prevention. We urge the conferees to adopt the Senate Bill's 25 percent carve-out for prevention from the

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Juvenile Accountability Block Grant, and to ensure adequate, targeted funds for primary prevention.

*Reform the federal juvenile justice system.* As stated above, the federal government plays a small but vital role in investigating and prosecuting juvenile cases. Federal prosecutors need certain additional tools to bring their cases in a just and efficient way, and in a manner that does not unduly burden victims, witnesses, or the resources of the courts. However, these additional tools need not compromise unfairly the rights or interests of juveniles. We urge the conferees to adopt an appropriate balance, as described in the accompanying views letter.

*Preserve the "core requirements."* States need flexibility to develop and implement their own juvenile justice policies. However, there are certain fundamental areas in which we know - from documented, tragic experience - that federal baselines save lives. The four "core requirements" that serve as funding conditions in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, have protected thousands of juveniles in state juvenile justice systems from serious physical and emotional harm, and have addressed the critical issue of racial disparity in the juvenile justice system. The Administration commends the House and Senate for the substantial steps they have taken to protect these requirements. We are disappointed, however, with the Senate's virtual elimination of the requirement relating to Disproportionate Minority Confinement, and we urge the conferees to retain that requirement as the House has done. Additional recommendations concerning these requirements are detailed in the accompanying views letter.

*Break the link between mental health problems and crime.* We must take seriously the relationship between mental illness and delinquency. Too often, children with mental health problems end up in the juvenile justice system having never been treated for their problems, and then, once in the system, still do not get the care they need. We commend both houses for adding provisions to their bills this year that begin to address mental health needs in the juvenile justice system.

*Ensure juvenile justice resources for Indian tribes.* While juvenile crime has fallen on average nationwide, it is rising in Indian country. The Administration urges the conferees to make Indian tribal governments directly eligible for all of its juvenile justice funding streams. Eliminating the state "pass-through" gives appropriate deference to tribal sovereignty and streamlines the process for getting funds to tribal communities. In addition, we strongly advise the conferees to include section 1626 of the Senate Bill, which provides much-needed amendments to the federal criminal code to address crime in Indian country, in the final bill.

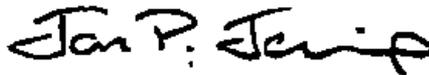
We note that this letter and the accompanying document incorporate the analysis of the Department of the Treasury on the firearms provisions, and that the Department of Education

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will separately communicate the Administration's views concerning certain provisions under its jurisdiction.

We hope that the conferees will ensure that the final bill includes the major provisions we have described above, as well as the comments included in our accompanying views letter. We are sending similar letters to Chairman Hatch and Chairman Goodling. Of course, we are ready to work with the conferees and their staff, as needed, to accomplish these goals.

Sincerely,



Jon P. Jennings  
Acting Assistant Attorney General

cc: The Honorable John Conyers, Jr.  
Ranking Minority Member



THE SECRETARY OF EDUCATION  
WASHINGTON, D.C. 20202

August 24, 1999

Honorable Henry I. Hyde  
House of Representatives  
Washington, DC 20515

Dear Congressman Hyde:

I am writing to express my serious concerns relating to certain provisions of the two juvenile crime bills recently passed by the House of Representatives and the Senate, respectively, H.R. 1501, the "Juvenile Justice Reform Act of 1999" and S. 254, the "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999." Improving the effectiveness of the Nation's juvenile justice system is a goal we all share, and is vitally important to the maintenance of our schools as safe and orderly centers of learning. Because the overwhelming majority of the provisions of both bills relate directly to the operation of the juvenile justice system, I defer overall to the Attorney General with respect to both bills.

However, both bills also contain a variety of provisions, added during floor debate, that would directly affect the administration of Federal education programs at the elementary and secondary education level as well as the ability of local school systems throughout the Nation to provide a safe, high-quality education. I urge the conferees not to include these provisions in the final bill, but to consider them, instead, as part of a more comprehensive and deliberate review of Federal elementary and secondary education programs that will occur as the Congress debates the upcoming reauthorization of the Elementary and Secondary Education Act of 1985 (ESEA). In this connection, I urge the Congress to act favorably on the President's ESEA reauthorization proposal, the "Educational Excellence for All Children Act of 1999," and, in particular, the many improvements that proposal would make to Title IV of the ESEA, the "Safe and Drug-Free Schools and Communities Act." If, however, the conferees feel compelled to address these issues in conference, I urge you to delete or modify the provisions described below.

**IDEA.** My strongest objections are to the amendments in both bills to the Individuals with Disabilities Education Act (IDEA). These amendments would allow school personnel in public elementary and secondary schools, for the first time, to suspend or expel children with disabilities from their schools for unlimited periods of time, without any educational services (including behavioral intervention services), and without the impartial hearing now required by the IDEA, for carrying or possessing a "gun or firearm" (Senate) or a "weapon" (House) to, or at, school or a school function. Congress need not, and should not, make these changes. Just two years ago, Congress, after thoughtful deliberation, amended the IDEA to give school

Our mission is to ensure equal access to quality education and to promote educational excellence throughout the Nation.

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officials new tools to address the issue of children with disabilities bringing such weapons to school, or otherwise threatening teachers and other students. For example, school officials may remove, for up to 45 days, a child with a disability who takes a weapon to school, and may request a hearing officer to similarly remove a child who is substantially likely to injure himself or others, if the child's parents object to the removal. Furthermore, the IDEA currently allows hearing officers to keep these students out of the regular educational environment beyond 45 days if they continue to pose a threat to the rest of the student body. Finally, the 1997 amendments to the IDEA help prevent dangerous situations from arising, by encouraging schools to address misbehavior before it becomes serious, through the provision of behavioral interventions and other appropriate services. I am convinced that these new tools will be effective if given a chance to work.

In contrast, the amendments now under consideration would deny vital educational services to children with disabilities who are removed from school, including behavioral interventions that are designed to prevent dangerous behavior from recurring. Continued provision of educational services, including these behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuing educational services is the wrong decision in the short run, and, in the long run, will result in significant costs in terms of increased crime, dependency on public assistance, unemployment, and alienation from society.

Also, the applicable definition of "weapon" (current section 615(k)(10)(D) of the IDEA), as used in the House bill, is very broad and open to subjective application -- covering anything, such as a rock picked up on the way to school or a baseball bat intended for an after-school ball game -- that is "readily capable of causing death or serious bodily injury," whether or not it is designed as a weapon and without regard to the student's intention in bringing it to school. A statutory standard this broad is sure to lead to inconsistent application at the local level and widespread confusion.

The exclusion of children with disabilities from school -- without the impartial due-process hearing and the continued services that the IDEA now requires -- is the wrong response. I urge you to reject these amendments to the IDEA.

Religious Expression. Both bills contain amendments relating to the expression of religious beliefs at public schools. This Administration has a strong record of protecting religious expression in schools. In 1995, the President directed the Attorney General and me to issue guidelines that would help schools preserve the religious freedom of students. I sent these guidelines to every school district in the Nation in 1995 and again last year, to ensure that parents, teachers, students, and school officials understand that schools need not be religion-free zones. These guidelines make clear that schools may not forbid students from expressing their religious views or beliefs solely because of their religious nature, and that any student in an American public school may pray, bring a Bible to school, say grace at lunch, or voluntarily participate in "see you at the flagpole" gatherings. In addition, I share the Department of Justice's concerns over the constitutionality of the provisions in H.R. 1501 and S. 254.

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**Internet Filtering.** The House bill contains an amendment that would require elementary and secondary schools and libraries receiving universal-service assistance to select, install, and use filters that block access to child pornographic and obscene materials, as well as materials deemed harmful to minors, on computers with Internet access and to certify to the Federal Communications Commission that they have done so. A school or library that fails to meet these requirements would be liable to repay immediately the full amount of all universal-service assistance it received after the date of its failure to comply.

I strongly support the goal of protecting children from inappropriate material on the Internet. However, I do not believe the House provision would effectively accomplish this goal. As written, the House provision could result in the blocking of material that may be appropriate for educational and other uses, raising constitutional concerns, and would place a disproportionate burden on our poorest and most rural schools and libraries.

Appropriately crafted legislation would empower schools to protect children from unsuitable material while also protecting First Amendment values. Accordingly, I support a provision that would require every school and library that receives assistance from the universal service fund to certify that it has developed and implemented a plan to protect children from inappropriate material on the Internet. These plans should be developed in consultation with parents and other interested parties so that schools and libraries can adopt local approaches that best serve the needs of their students and communities. I would be pleased to work with the conferees to develop such a provision.

**Safe Schools.** The Senate bill would expand the Gun-Free Schools Act of 1994 -- which requires school districts to expel from school for at least one year any student who brings a firearm to school -- to require States to pass a law that would compel the same punishment for students who possess at school a "felonious quantit[y] of an illegal drug." Clearly, the presence of illegal drugs at school is unacceptable. However, I oppose this provision as drafted. First, I do not favor expanding the number of students who are expelled from school for long periods of time -- for the sake of the students themselves, and their communities. Many students who are expelled for a long period of time never return to school, which ends their education and casts them troubled and ill-prepared onto the streets. We cannot afford to lose these children. Secondly, expelling students in this manner based on whether the amount of illegal drugs they possessed at school did, or did not, constitute a felony under State or Federal law would not only lead to inconsistent results -- and confusion -- across the country in the application of this Federal requirement, it would force school administrators to become expert in the application of criminal law and to function, in effect, as prosecutors.

I believe that the criminal justice system should be brought to bear vigorously on any student who brings illegal drugs to school. Accordingly, I believe a better approach would be to require schools that have not already done so to adopt and enforce sanctions against students who bring

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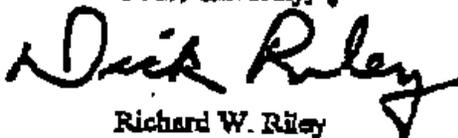
illegal drugs to school, and to make it mandatory that school authorities refer to the appropriate law-enforcement authorities any student who brings an illegal drug to school, whether felonious or not.

The Senate bill would also amend current Titles IV and VI of the ESEA to expressly permit school districts to use an unlimited amount of their resources under those two titles to "purchase school security equipment," such as metal detectors. While such equipment can be an important part of local efforts to make schools safe, it is vital that school districts continue to look at a variety of other approaches to addressing their individual needs, because we know that metal detectors alone will not make schools safe. Our reauthorization proposal for the Safe and Drug-Free Schools program would provide school districts additional flexibility to purchase such equipment. I urge the conferees to omit the Senate provision from the final bill, so that the Congress and the Administration can work together to address this issue as part of the pending reauthorization of the entire Safe and Drug-Free Schools program and the rest of the ESEA.

Thank you for the opportunity to present these views.

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.

Yours sincerely,

  
Richard W. Riley

**Concerns with "proffer" bill provisions regarding other gun provisions:****Safety locks:** provision is identical in substance to the provision in S. 254

- applies to handguns only
- provides sweeping immunity
- exempts curios and relics
- fails to repeal existing provision re: use of evidence of noncompliance

**Juvenile possession of semiautomatic assault weapons and large capacity ammunition clips:**  
based on S. 254

- includes same exceptions for assault weapons and clips that apply to handguns, but also includes clips in prohibition
- like Senate bill, does not raise age of possession to 21
- unlike provisions in Senate and House bill, does not raise maximum penalties in current law nor does it eliminate mandatory probation for first-time juvenile offenders
- does not increase other penalties
- although "proffer" language silent on penalties, there are several other provisions in the Senate and House bills regarding penalties for YHSA violations, and it is unclear whether the conferees intend to retain any of them

**Juvenile Brady:** better than version in S. 254

- has an 180-day effective date
- like Senate bill, it still applies only to narrow class of 3-strikes felonies
- like Senate bill, does not require individualized determination for restoration of rights.

**Ban on importing large capacity ammunition feeding devices:** meaningless provision

- unlike S. 254, fails to include essential language amending the definition of "large capacity ammunition device," to include devices manufactured before 1994
- unlike Senate bill, contains new exception that may swallow the rule for devices manufactured or produced for curios or relics, because cannot tell when the device was manufactured, and some clips that fit curios and relics also fit new guns
- omits the grandfather provision from YGCEA for clips manufactured before 1994 that were possessed before the effective date of this provision

**Exemption of qualified retired law enforcement officers from state laws prohibiting carrying of concealed weapons:** identical to Community Protection Act of 1999, introduced by Representative Cunningham as H.R. 218

25% Set Aside (Senate)  
DMC / Core Regs (House)  
Armed Law (NSA - unworkable)  
10 Commandments (blatantly unworkable)

### GUN SHOW PROVISION

Definition of gun shows too narrow

still requires guns as purpose of show, easily skirted, lots of multigun events like  flea markets not covered  requires 5 or more firearms vendors

Shortens time allowed under Brady law for background checks

exclusion of time for only "arrests" excludes domestic violence restraining orders (Mo. case)  
maybe mental health - other info of prohibition

Retention of NICS records disallowed

will prevent FBI's ability to detect fraud and protect privacy (19 yr old. fake ID to buy handgun)  
(let analysts abuse system w/o notice)  
(prevent ordering w/out debit unit)  
(run background checks on employees)

#### Use of registrants

prevents effective crime gun tracing to non-FFLs because no tear-off requirement (#1 credit on gun)  
for non-FFLs and inadequate recordkeeping (recordkeeping on people, not guns sold); exposes NICS to fraud and abuse - safe haven for criminals  
- steer business away from FFLs at gun shows

Registrants may not be effectively inspected

Restriction on warrantless inspections of promoter and vendor (?)

FFLs can ship interstate - overturn 30 yrs of settled law, will <sup>handgun</sup> <sub>across state lines</sub> to unlicensed dealer

Definition of vendor arguably does not include roving seller, so that rover will not register with promoter and be advised of legal requirement re: background checks

Penalties reduced from Senate passed bill for Brady law violation

No notice of legal requirements to attendees

No requirement that vendors sign a ledger acknowledging legal obligations, although they get notice of law, in theory

Some blanket immunities from liability given

# DRAFT

## Major Department of Justice Concerns about the Juvenile Justice Provisions of S. 254 and H.R. 1501\*

\*This is by no means an exhaustive list of Department of Justice concerns, but rather an attempt to flag the major ones. Our Views Letter, transmitted to Congress on August 12, 1999, is obviously a more substantial exposition.

Issue	H.R. 1501	S. 254	Department of Justice Position
<b>Prevention Funding</b>			
Prevention Funding	<ul style="list-style-type: none"><li>• No set-aside for primary prevention in Juvenile Accountability Block Grant (JABG).</li><li>• No minimum for primary prevention in prevention and intervention block grant.</li></ul>	<ul style="list-style-type: none"><li>• 25% set-aside for primary prevention from JABG.</li><li>• Requires that at least 80% of prevention and intervention block grant funds be spent on primary prevention, but needs clarification that this set-aside be used for "primary prevention activities that target juveniles not in the juvenile justice system."</li></ul>	<ul style="list-style-type: none"><li>• 25% set-aside from JABG for prevention in Senate bill is critical.</li><li>• Within prevention block grant, it is important to clarify substantial set-aside for "primary prevention" (youth not yet in the system).</li></ul>
<b>Core Requirements</b>			
The "Core Requirements" (existing grant conditions that ensure fundamental protection of and fairness to juveniles in state custody)	<ul style="list-style-type: none"><li>• Retains all four core requirements in substantially similar form.</li></ul>	<ul style="list-style-type: none"><li>• Eliminates the requirement that states monitor Disproportionate Minority Confinement (DMC).</li><li>• Articulates separation and jail removal requirements in more problematic way.</li></ul>	<ul style="list-style-type: none"><li>• Essential that final bill continue the DMC requirement.</li><li>• "Separation" requirements should comport with current regulations. House "jail removal" requirement is preferable to the Senate version. (See pp. 31-32 of Views Letter.)</li></ul>

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Issue	H.R. 1501	S. 254	Department of Justice Position
<b>Learning What Works to Reduce Juvenile Crime</b>			
<b>Set-Asides for Research, Evaluation, etc., and Authorization of Tasks within DOJ</b>	<ul style="list-style-type: none"> <li>• Eliminates set-asides for research and evaluation, training, etc. in JABG.</li> <li>• Makes some modifications to research and evaluation structure within DOJ/OJP.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides set-asides in a non-uniform way throughout the various grant programs.</li> <li>• Makes some modifications to research and evaluation structure within DOJ/OJP.</li> </ul>	<ul style="list-style-type: none"> <li>• Every authorized grant program should have uniform set-asides for research, evaluation, statistics, training, and administration. We recommend at least: 3% for research, evaluation, and statistics; 2% for training; and 1% for administration.</li> <li>• We recommend that all research be housed at NIJ, all statistics should be housed at BJS, pursuant to OJP's reorganization plan. We have draft amendment language prepared to accomplish this purpose.</li> </ul>
<b>Federal Juvenile Justice Reform</b>			
<b>Trying Juveniles as Adults</b>	Gives federal prosecutor sole authority to transfer juvenile to criminal court. May inappropriately require adult prosecution of certain juveniles.	Retains court review of transfer of juveniles to criminal court, except for juveniles 16+ charged with certain serious violent or drug crimes. <i>(where we want)</i>	<b>Recommendation:</b> Leave current system intact, except for juveniles 16+ charged with small list of most serious offenses (then give federal prosecutor sole discretion). In all other cases, expedite judicial review of prosecutor's application, and eliminate juvenile's opportunity for interlocutory appeal.  At a minimum, take Senate version that preserves judicial review in many cases, although with fixes described below.
<b>Expanding the List of Crimes for which Juveniles May Be Tried as Adults</b>	Enumerated list of felonies and misdemeanors.	Any felony (which retreats from current law in eliminating misdemeanor of youth handgun possession).	Retain current law, except for the addition of conspiracy to commit drug trafficking offenses. Conferees may also want to add guns-in-the-schoolyard misdemeanor (see p. 9 of Views Letter).

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# DRAFT

Issue	H.R. 1501	S. 254	Department of Justice Position
State vs. Federal Prosecution	Continues current threshold regulations.	<ul style="list-style-type: none"> <li>• Dramatically changes current law to require federal prosecutors to prove <i>both state/ tribe's lack of intention to proceed and a substantial federal interest.</i></li> <li>• Also permits judicial review of prosecutor's certification of substantial federal interest.</li> </ul>	<p>Critical that current law be retained, so that:</p> <ul style="list-style-type: none"> <li>• Federal prosecutors can proceed on substantial federal interest alone; and</li> <li>• Certification of substantial federal interest is not reviewable.</li> </ul>
Housing Juveniles with Adults	<p><u>Pre-adjudication</u></p> <ul style="list-style-type: none"> <li>• Ambiguous about commingling juveniles with adults in the federal system.</li> </ul> <p><u>Post-adjudication</u></p> <ul style="list-style-type: none"> <li>• Sections 101 and 106 would permit or require juveniles adjudicated delinquent to be incarcerated with and on the same terms as adults in adult secure facilities.</li> </ul>	<p><u>Pre-adjudication</u></p> <ul style="list-style-type: none"> <li>• Expressly prohibits commingling of juveniles with adults in the federal system.</li> </ul> <p><u>Post-adjudication</u></p> <ul style="list-style-type: none"> <li>• Sections 102, 107 and 109 would permit or require juveniles adjudicated delinquent to be incarcerated with and on the same terms as adults in adult secure facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• We support the Senate language.</li> <li>• We oppose housing juveniles tried as juveniles in adult secure facilities even after age 18.</li> </ul>
<b>Juvenile Crime in Indian Country</b>			
Juvenile Crime in Indian Country	Does not make tribes directly eligible for all grant funds.	Does not make tribes directly eligible for all grant funds. (Does, however, include critical law enforcement provisions at section 1626.)	Final legislation should include tribes as direct grant recipients (and include section 1626 of the Senate bill).

# DRAFT

Issue	H.R. 1501	S. 254	Department of Justice Position
<b>CONSTITUTIONAL CONCERNS</b>			
<b>Intrusion on Judicial Authority Respecting Ten Commandments and Religious Expression</b>	Section 1202 would require federal courts to allow posting of the Ten Commandments in public places and to permit religious expression on governmental property, even in cases where such conduct would be unconstitutional.	No similar provision.	We insist that the House provision be eliminated because it is unconstitutional. Not only would it result in courts' failure to correct violations of the Establishment Clause; it also would violate the separation of powers (see views letter pp. 98-100)
<b>Prisoner Release Orders and Termination of Prison Consent Decrees</b>	Section 110(a) would prevent federal district courts from issuing certain prisoner release orders. Section 110(c) would terminate prison consent decrees.	No similar provision.	We insist that the House provision be eliminated. It would raise serious constitutional concerns, is unnecessary, and would directly and substantially undermine the Civil Rights Division's program of enforcing constitutional rights in correctional facilities.
<b>Attorneys Fees in Establishment Clause Lawsuits</b>	Sections 112 and 1101 would eliminate the "loser pays" rule on attorneys fees for successful challenges against schools for certain violations of the Establishment Clause of the First Amendment.	Section 1606 (the same as House section 112) would eliminate the "loser pays" rule on attorneys fees for successful challenges against schools for certain violations of the Establishment Clause of the First Amendment.	We oppose these provisions and would urge that they be removed. The unprecedented fees exception for certain types of civil rights claims would raise serious constitutional concerns.
<b>Requirements Directed to State and Local School Personnel</b>	No similar provision.	Section 1636(a) would require (by statute) school personnel to provide certain services to children removed from school for acts of violence.	This would appear to be an unconstitutional "commandeering" of state officials. We would insist that this serious constitutional concern be eliminated by amending the Senate language to eliminate the statutory requirement and replace it with an appropriate condition on receipt of certain federal funds.

\*

# DRAFT

Issue	H.R. 1501	S. 254	Department of Justice Position
Teacher Liability Protection Act	Title XV would limit state lawsuits against teachers.	Title XII would limit state lawsuits against teachers.	As drafted, these provisions appear to exceed Congress' authority under the Commerce clause. We would ask that they be redrafted to use Congress' spending power to condition funds on conforming changes to states' laws.
Religious Tests for Commission Memberships	No similar provision.	Would require that the National Commission on Character Development (section 1107) and the National Youth Violence Commission (section 1692) include "member[s] of the clergy" in violation of the First Amendment and Article VI of the Constitution.	Fix by replacing "members of the clergy" with a phrase such as "persons experienced in positions of moral leadership (including, for example, members of the clergy)".
<b>OTHER CONCERNS</b>			
Amlee's Law	Section 103 would require the Attorney General to shift grant funds interstate to cover the costs of catching trying and incarcerating certain offenders who were released from custody in one state and re-offend in another state.	The Senate bill has a similar provision (Section 1610).	We oppose Amlee's Law because it is impractical, expensive to implement, and would penalize states' law enforcement for actions of corrections officials. It would require the creation and retention of massive amounts of new information on state justice systems. Also, the definition of the offenses are unclear. (see views letter pp 71-73)
Disclaimer Provisions/ Hate Crimes and Religion	Section 1321 directs that hate crime materials be "respectful of the diversity of religious beliefs" and "make it clear that for most people religious faith is not associated with prejudice and intolerance."	Section 1609(a) Requires "all materials produced... as a result of Federal funding ... under this act" to contain a provision telling readers where they might raise objections about religious content of the material, and requires creation of a special DOJ office to field those complains, as well as regular reporting requirements to Congress.	These provisions are objectionable and unnecessary. All Department materials, including hate crimes curricula, respect religious beliefs, and the Department is already well-equipped to field and respond to any objections, should they arise. The Senate provision in particular is a bureaucratic burden on the states, who will have to monitor every grantee's compliance.

\*  
NBA will oppose.

# DRAFT

Issue	H.R. 1501	S. 254	Department of Justice Position
<b>Drug Dealer Liability</b>	Would create a civil cause of action against drug dealers for those people harmed by drugs. Drug users could only sue if they disclosed information to agents about the source of their drugs.	Contains no similar provision.	<p><b>We oppose creating drug dealer liability.</b></p> <ul style="list-style-type: none"> <li>• It would not create much additional deterrent</li> <li>• Drug dealers are often judgement-proof</li> <li>• Private suits could interfere with criminal investigations</li> <li>• Would burden federal courts with needless cases.</li> <li>• Disclosure requirement is unworkable</li> </ul>
<b>Authorizing Earmarks</b>	No similar provision.	Several provisions <u>authorize</u> earmarks for particular private or non-profit efforts (e.g. Title XVI, the National Youth Crime Demonstration Project)	<p><b>Grant laws do not generally specify private nonprofit organizations for grant funds. Choosing grant recipients is inherently an executive branch function.</b></p>
<b>Matthew's Law</b>	Section 902(a) directs the Sentencing Commission to enhance penalties for violent crimes committed against children.	Contains no similar provision.	<p><b>This is unnecessary, as sentencing enhancements already exist when the victims of crimes are children. (See views letter pp. 95-96.)</b></p>
<b>DNA Provisions</b>	No similar provisions.	<p>Creates an FBI assistance program to reduce the backlog of States' unanalyzed DNA samples. Provides for collection of DNA samples from federal, military, and DC offenders.</p>	<p><b>We generally support the Senate provisions, but seek the following changes:</b></p> <ul style="list-style-type: none"> <li>• Assign backlog assistance program to the AG, not the FBI.</li> <li>• Eliminate proposed statutory limits on which kinds of offenders can be required to provide DNA samples.</li> <li>• Eliminate provision for expungement of certain juvenile DNA records.</li> <li>• Allow indexing of DNA from relatives of missing persons.</li> <li>• Fix certain drafting problems related to military offenders.</li> </ul>

# THE WHITE HOUSE

## OFFICE OF LEGISLATIVE AFFAIRS

HOUSE LIAISON

—FAX COVER SHEET—

DATE: 9/15

TO: Bruce Reed

FAX: 6-2878

FROM:	<input checked="" type="checkbox"/> BRODERICK JOHNSON	<input type="checkbox"/> JOSH ACKIL
	<input type="checkbox"/> AL MALDON	<input type="checkbox"/> ERICA MORRIS
	<input type="checkbox"/> LISA KOUNTOUPES	<input type="checkbox"/> LAUREN GILLESPIE
	<input type="checkbox"/> JANELLE ERICKSON	

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SUBJECT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-8275

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**Participants in the Press Conference**

**September 15, 1999**

Sen. Orrin Hatch, R-UT, Chairman of the Senate Judiciary Committee

Sen. Jeff Sessions, R-AL, Chairman, Subcommittee on Youth Violence

Rep. David Vitter, (R-LA)

Rick Castafio, father of Rich Castafio, a student wounded in the Columbine High School shootings

Gil Gallagos, President of the National Fraternal Order of Police

Fred Russell, Deputy Police Chief, Richmond, Virginia where Project Exile started

Peggy Landry, New Orleans, Louisiana, member of several parole boards in Louisiana, victim of an attempted gun crime



# News Release

## JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

September, 15, 1999

Contact: Jeanne Lopano, 202/224-5225

### Remarks of Senator Orrin G. Hatch

#### Press Conference on Release of

#### "Crimes Committed With Firearms"

Working Towards a Comprehensive Solution: Over 13,000 murders and non-negligent manslaughters a year are committed with firearms. Too many of the crimes involve juveniles. According to the Justice Department, the number of juvenile arrests for violent crime, including crimes committed with a firearm, exceeded the 1988 level by 48%. Our violent crime problem, and youth violence in particular, are complex problems that demand comprehensive solutions. The Hatch-Sessions youth violence bill, which is being considered in conference, presents the Congress and the Administration with an opportunity to give the American people a comprehensive response to violent crime.

Our bill makes our schools safer, it empowers parents, it recognizes the importance of prevention, and it emphasizes enforcement. It is this last component of our strategy which we are here to discuss with you today.

Part of any comprehensive solution to deal with crime must be a commitment to enforcing the firearms laws on the books. Actions speak louder than words, whether we're talking about how the government deals with gun offenders or how it deals with terrorists.

Today, I am joined by representatives of the law enforcement and victims communities. We are here to talk about the need to restore a national policy to enforce our firearms laws. I am also releasing a report entitled *Crimes Committed With Firearms- A report for Parents, Prosecutors, and Policy Makers* prepared by the majority staff of the Judiciary Committee.

Our report makes some interesting findings, reviews proven, effective enforcement policies of the past, and offers some promising suggestions for the future. For example, we found:

Criminals use firearms to commit approximately 440,000 total violent crimes each year. Available data indicates that many of these crimes are committed by repeat offenders.

Our report also found that proven enforcement programs and policies of the past have been de-emphasized by the Justice Department:

In 1991, the Department of Justice initiated Project Triggerlock, under which violent repeat offenders who broke federal firearms laws were targeted for federal prosecution. The average sentence received by an armed career criminal under Triggerlock was 18 years without parole. Yet, Triggerlock was effectively dumped. In 1992 there were 7,048 federal prosecutions of federal firearms violations. In 1998, there were only 3,807 such prosecutions.

Over the same time period, the budget for the Department of Justice, excluding some large new grant programs, increased some 54%. Thus, we appear to be paying more and getting less.

For the past three years, the Committee found that the Justice Department's total nationwide prosecutions of criminals for transferring a handgun or handgun ammunition to a juvenile amounted to a total of 22. For possession or discharge of a firearm in a school zone -- 17. And for violations of the Brady background check provisions -- 1 in the last three years.

- The Committee also learned that the Bureau of Alcohol Tobacco and Firearms ("BATF") has reduced the number of referrals for federal prosecution of all firearms violations by 44%, from 1992 to 1998.

The Administration recently reported 100,000 disqualified persons--a large portion of which have a serious criminal record--were prevented from purchasing a gun since November 1998 by the National Instant Check System--NICS background checks. This means that tens of thousands of criminals may have broken existing federal law in attempting to purchase a firearm. And these criminals may be still be trying to obtain a firearm. However, the BATF has referred only 200 of these illegal attempted purchases for prosecution. That is just .2%--POINT 2 PERCENT who MAY be prosecuted.

This movement away from prosecution needs to be reversed and, despite a lack of national-level leadership, efforts are underway to do so. Local U.S. Attorneys in Richmond and other cities have continued an enhanced, localized version of Project Triggerlock with great success. Under the new version of the program, Project Exile, Richmond's homicide rates has fallen by more than 30% each year. That is what prosecution of criminals who use firearms to violate federal law can accomplish.

Project Exile was instituted because: (1) federal laws generally provide longer prison sentences for criminals that commit firearms offenses; and (2) federal prosecutors often have greater resources to devote to enforcement of firearms statutes than their state counterparts.

CONCLUSION

Any serious, comprehensive strategy to deal with the problem of criminals using firearms must include the reinstatement of an aggressive national policy to prosecute criminals who violate firearms statutes. The report I have issued today recommends - among other things - that we do exactly what Sen. Sessions - and our other speakers - are advocating - prosecute criminals. The report recommends that we:

1. Restore a national program to prosecute criminals who violate federal firearms laws by enacting Project CUFF ("Criminal Use of Firearms by Felons"). CUFF will expand Project Exile nationally and will ensure active and thorough investigation and prosecution of criminals who violate firearms laws.
2. Fund Project CUFF with at least \$50 million to ensure the active and thorough investigation and prosecution of criminals who violate firearms laws and provide for an advertising campaign to deter firearms violations.
3. Create an office within the Department of Justice to coordinate and oversee the national prosecution program.
4. Designate at least one prosecutor in every U.S. Attorney's office to prosecute firearms offenses.
5. Prohibit juveniles who are convicted of a violent crime from ever possessing a firearm-Juvenile Brady.

The Congress cannot arrest or prosecute a single violent offender. But we can take steps to insure that the Executive Branch does so. We must act because the Administration has failed to do so.

##

(STATEWIDE VA PROGRAM  
would be wiped out)

# Prosecutions of Federal Firearm Laws

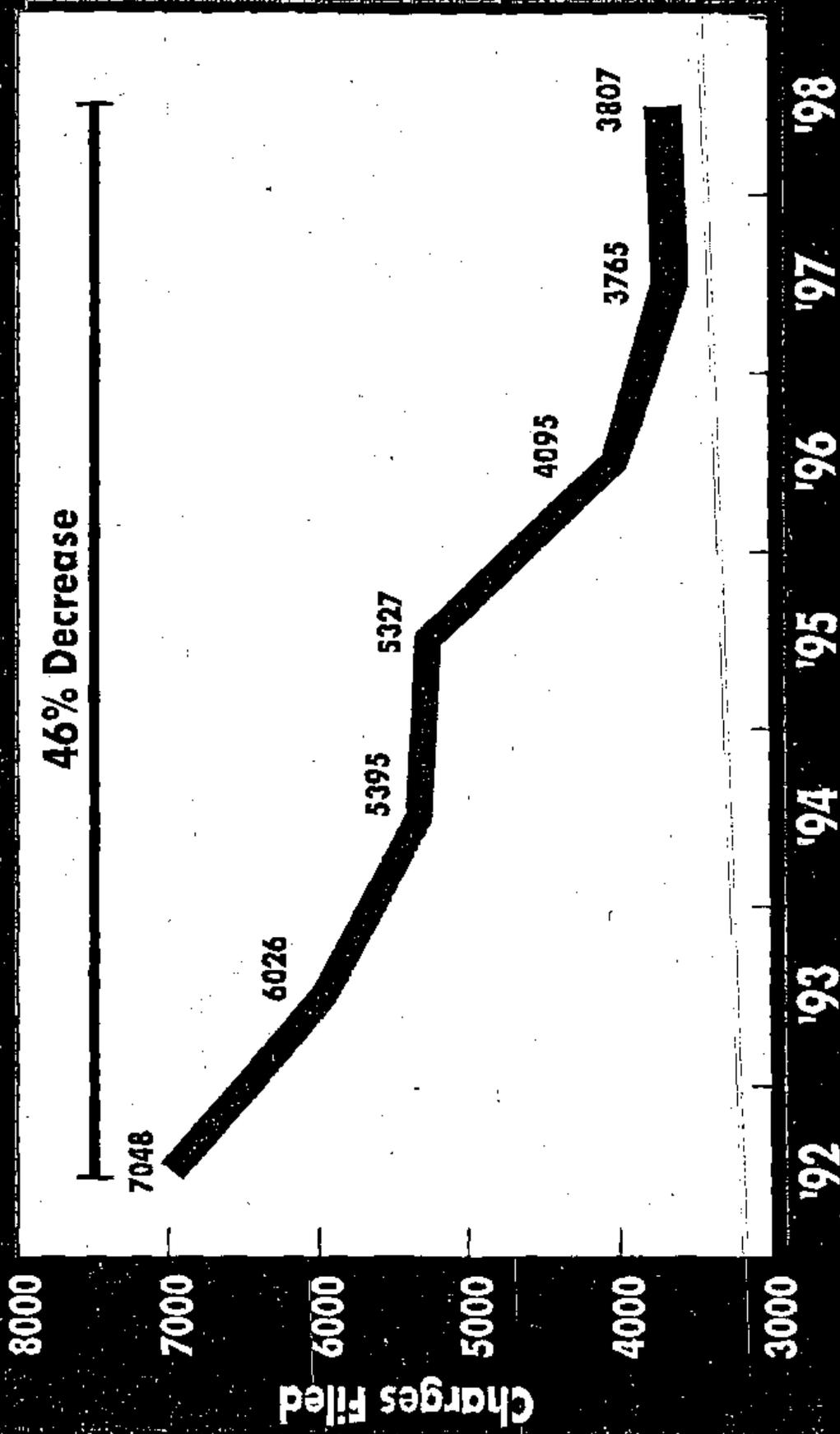
Cases Reported Executive Office U.S. Attorney

Reported Firearms Section Counts Criminally Collected Year 1996-1998

THU 09/16/99 1998 1997 1996

Section	1998	1997	1996
922(a)(1) Possession of a firearm by a prohibited person in prohibited category	17	29	19
922(a)(7) Possession of a firearm by a felon	30	13	24
922(a)(11) Possession of a firearm by a fugitive	30	30	33
922(a)(12) Possession of a firearm by a drug addict or addict on a drug lease	48	49	138
922(a)(14) Possession of a firearm by a person who has been convicted of a crime	1	4	5
922(a)(15) Possession of a firearm by a person who has been convicted of a crime	12	49	107
922(a)(16) Possession of a firearm by a person who has been convicted of a crime	0	0	1
922(a)(17) Possession of a firearm by a person who has been convicted of a crime	3	18	24
922(a)(18) Possession of a firearm by a person who has been convicted of a crime	0	11	28
922(a)(19) Possession of a firearm by a person who has been convicted of a crime	1	9	8
922(a)(20) Possession of a firearm by a person who has been convicted of a crime	0	0	1
922(a)(21) Possession of a firearm by a person who has been convicted of a crime	0	0	0
922(a)(22) Possession of a firearm by a person who has been convicted of a crime	12	21	24
922(a)(23) Possession of a firearm by a person who has been convicted of a crime	16	4	4
922(a)(24) Possession of a firearm by a person who has been convicted of a crime	9	9	4
922(a)(25) Possession of a firearm by a person who has been convicted of a crime	27	9	8
922(a)(26) Possession of a firearm by a person who has been convicted of a crime	48	28	21
922(a)(27) Possession of a firearm by a person who has been convicted of a crime	1987	1489	1763
922(a)(28) Possession of a firearm by a person who has been convicted of a crime	48	323	409
922(a)(29) Possession of a firearm by a person who has been convicted of a crime	213	1144	1318

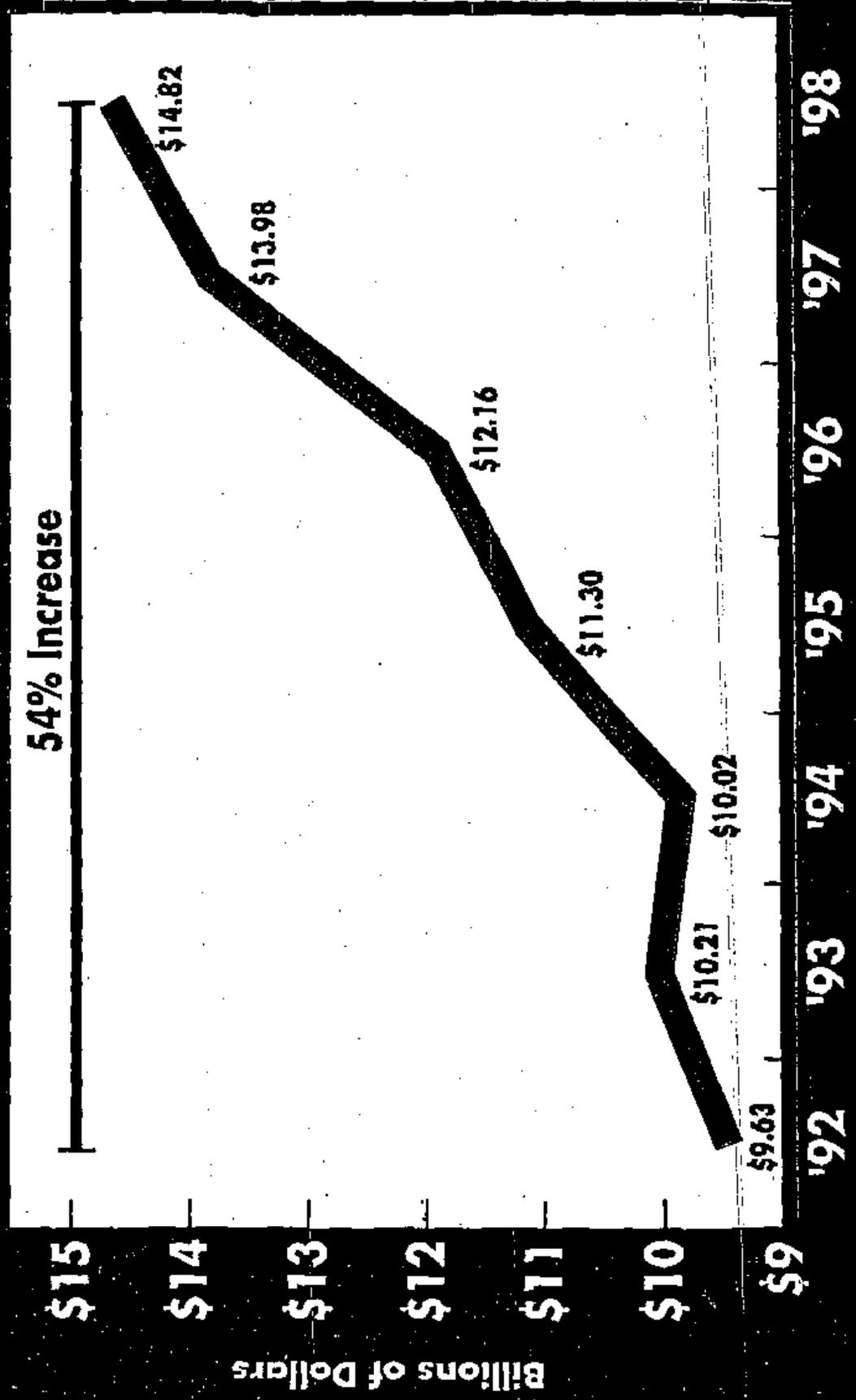
# Clinton-Gore Administration Decrease In Prosecutions of Criminal Use of Firearms FY 1992-1998



Source: United States Attorneys Annual Statistical Report

# Clinton-Gore Administration Increase in Department of Justice Budget\*

FY 1992-1998



\*Does not include OJP, Community Oriented Policing Services, or the Crime Victims Fund

# Republican Project CURF

## CURF

- Restores a national program to prosecute criminals who violate Federal firearms laws.
- Funds program with at least \$50 million to ensure active and thorough investigation and prosecution of criminals who violate firearms laws.
- Designates at least one prosecutor in each U.S. Attorney's office to prosecute firearms offenses.
- Provides for advertising prosecution program to increase deterrence of firearms violations.

Leanne A. Shimabukuro

09/14/99 10:34:58 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP  
cc: Cathy R. Mays/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP  
Subject: JJ CONFERENCE -- update

A few things to update you on what Deanne and I have learned tonight:

- **Possible Hatch press conference:** We've heard that Hatch may have a press conference tomorrow (Wed.) at 11:30am with victims of gun violence. No one on the Hill seems to have heard this, but Dallas Morning News indicated to Bea that this might happen.

- **Hyde meetings:** Hyde met with Conyers briefly tonight. Hyde said to Conyers that he thought they were in 80-90 percent agreement, but that he was unmoveable on creating "instant check registrants" -- which would undermine crime gun tracing efforts. Hyde also said that he opposed FBI records retention for the NICS but might be willing to compromise on this point. Conyers' staff subsequently told Dems that he didn't think they could reach agreement with Hyde. Hyde was also set to meet with Hatch later tonight.

- **Gun compromise language:** With respect to the version we received as close hold last week, some of the bigger problems include: (1) allowing interstate shipment of guns by FFLs to unlicensed individuals; (2) weak record-keeping requirements on sales by unlicensed sellers (special registrants) to enable gun tracing; (3) large capacity ammo clip provision appears meaningless; (4) checks at gun shows would only provide up to three days to determine felony arrest dispositions -- wouldn't cover restraining orders; (5) automatic destruction of NICS records; (6) gun show definition may not cover flea markets. We're still trying to assess how problematic the interstate sales provision is.

Of course, this may not be the current version Hyde or Hatch are using, but it's hard to believe it would get much better than this. I have put a copy of the draft language from last week and a Treasury document summarizing the provisions on your chairs.

We'll pass along any new info we hear on the bill.

Thanks,  
Leanne

**DRAFT**

**Section 1101 - Mandatory Transfer of Secure  
Gun Storage or Safety Devices**

Like the Senate bill, the legislation would require licensees to provide a secure gun storage or safety device with every handgun sold to an unlicensed individual. This requirement would not apply to long guns or curio or relic handguns.

The Administration supports extending this requirement to long guns as well as curio or relic firearms. These firearms are just as dangerous as handguns. The requirement to provide a secure gun storage or safety device can be satisfied by providing a gun safe; accordingly, no modification to the firearm is required. Thus, there is no need for an exemption for long guns and curio or relic firearms.

Like the Senate bill, the legislation provides that if a secure gun storage or safety device is temporarily unavailable to the licensee, he has 10 calendar days after the delivery of the handgun to deliver to the transferee a secure gun storage or safety device.

Like the Senate bill, the legislation provides immunity from civil liability to persons who have lawful possession and control of a handgun, and use a secure gun storage or safety device with the handgun. This applies only to civil actions for damages resulting from the unlawful use of the handgun by a third party if the handgun was accessed by another person without the authorization of the owner, and at the time the handgun was so accessed, it had been made inoperable by use of a secure gun storage or safety device.

Like the Senate bill, the legislation retains the existing statutory definition of a "secure gun storage or safety device."

The legislation fails to repeal existing uncodified provisions of law which create confusion as to whether evidence of a licensee's failure to comply with the new provision may be introduced in administrative licensing proceedings.

**Section 1102 - Prohibiting Juveniles from  
Possessing Semiautomatic Assault Weapons**

Like the Senate bill, the legislation prohibits the possession of semiautomatic assault weapons by juveniles under age 18. Unlike the Senate bill, the ban extends also to large capacity ammunition feeding devices.

- Like the Senate bill, the legislation would extend the same exceptions currently applicable to handgun possession by juveniles to the possession of semiautomatic assault weapons and large capacity ammunition feeding devices by juveniles.
- The Administration believes that the age of eligibility for possession of handguns, semiautomatic assault weapons and large capacity ammunition feeding devices should be raised to 21.
- The Administration also opposes extending all the current exemptions for possession of handguns by juveniles to semiautomatic assault weapons and large capacity magazines. While there are legitimate employment and sporting reasons why juveniles should be allowed to possess handguns, with the written permission of their parents, these reasons do not apply to the possession of semiautomatic assault weapons and large capacity ammunition feeding devices by juveniles.

**Section 1103 - Prohibiting Violent Juvenile  
Offenders from Possessing Firearms**

- Like the Senate bill, the legislation would prohibit the possession of firearms by persons who, as juveniles, were adjudicated of certain acts of violent juvenile delinquency.
- Like the Senate bill, the prohibition applies only to acts committed by juveniles that, if committed by adult, would constitute a serious violent felony (as defined in section 3559(c)(2)(F)(I)) had Federal jurisdiction existed and been exercised.
- The Administration supports a broader definition, which would include serious drug offenses as well as all violent felonies, as defined in section 3559(c)(2). There is no reason why such violent juvenile offenders should be allowed to possess firearms upon reaching age 18.

**Section 1104 - Mandatory Background Checks at Gun Shows**

- The definition of a "gun show" has been amended to cover only events at which at least 50 or more firearms are offered or exhibited for sale, transfer or exchange, and at which there are not less than 5 firearms vendors. Unlike the Senate bill, the definition would only cover events which are sponsored to foster the collecting, competitive use, sporting use, or any other legal use of firearms. This definition might be interpreted to exclude flea markets.

Unlike the Senate bill, the term "gun show vendor" applies only to vendors or sell, offer for sale, transfer, or exchange one or more firearms "at a fixed, assigned, or contracted location." Thus, vendors who roam the gun show without an assigned location would be exempt from the background check requirements.

- The Attorney General is required to ensure that background check requests made from gun shows must be completed within 24 hours. An exception is provided if the system indicates that "the person being checked has been arrested for an offense described in section 922(g) and the disposition of the arrest has not been communicated to the Attorney General." This exception is not broad enough to cover other categories, such as persons under restraining orders, where NICS may require more than 24 hours to determine if the person is prohibited.

- The legislation allows NICS checks at gun shows to be conducted either through a licensee or through an "instant check registrant. Instant check registrants are required to keep records regarding the identity of the transferee and the conduct of a background check; however, they do not have to keep the same records licensees keep regarding transfer of firearms. Furthermore, there is no requirement that instant check registrants comply with tracing requests. This means, as a practical matter, that it will be difficult if not impossible to trace crime guns sold through instant check registrants at gun shows.

The legislation provides immunity from liability in civil actions for licensees, instant registrants, and nonlicensees who dispose of firearms using the services of a licensee or instant check registrant. The immunity applies, with limited exceptions, to civil actions brought for damages resulting from the unlawful use of the firearm by the transferee or a third party.

DRAFT

- Unlike the Senate bill, the legislation does not require vendors to sign a ledger or organizers to notify gun show attendees of the requirements of the law.
- The gun show organizer must provide each vendor with a document which sets forth all Federal laws that apply to firearms transactions at gun show, including all related recordkeeping requirements, verbatim.
- The legislation provides that a licensee may ship firearms by common carrier to out-of-State purchasers. This amends a restriction in current law, which does not allow licensees to sell firearms to nonresidents of the State unless the transfer is made in person. The legislation also provides that a registrant may ship firearms by common carrier to residents of the State. It is unclear why the registrant would be in possession of the firearm, since he is not entitled to buy and sell firearms.
- Unlike the Senate bill, the legislation would limit the Secretary's authority to inspect licensees at gun shows. Such an inspection could only occur if the Secretary obtains a warrant from a Federal magistrate upon showing reasonable cause to believe that a violation of law has occurred, or by entering the gun show during business hours in the course of a criminal investigation of a person or persons other than the organizer or licensee, or when tracing a crime gun.
- There are provisions on increased penalties for serious recordkeeping violations by licensees and increased penalties for violations of the criminal background check requirements that are identical to the Senate bill.

**DRAFT**

**Section 1105 - Gun Owner Privacy:  
Prohibition on Background Check Fee**

- The legislation would prohibit the imposition of a fee for a background check by the United States or any State or local officers or employee acting on behalf of the United States.
- This provision would discourage States from acting as points of contact for Brady NICS checks, and might raise constitutional issues.
- The legislation would require the immediate destruction of records in NICS relating to approval of firearms transfers. This requirement shall not apply to the retention of the unique identification number and the date on which it was provided.
- The requirement for immediate destruction of NICS records of approved transactions makes it impossible to audit NICS transactions to ensure that licensees are not abusing NICS to run background checks on friends, business associates, and neighbors, for purposes that are not firearms-related.

DRAFT

**Section 1106 - Ban on Importation of Large  
Capacity Ammunition Feeding Devices**

The legislation does not amend the definition of a large capacity ammunition feeding device. Accordingly, the ban on importation would only apply to devices manufactured after September 13, 1994.

Without amending the definition of a large capacity ammunition feeding device, the ban on importation is meaningless. As drafted, the legislation would continue the existing loophole whereby foreign large capacity ammunition feeding devices may continue to be imported upon a showing that the device was manufactured overseas on or prior to September 13, 1994. It is difficult to verify the manufacture date of foreign devices.

Even if the above loophole is closed, the legislation contains an exception from the importation ban for devices "manufactured or produced on or before September 13, 1994, for a firearm listed as a curio or relic pursuant to section 921(a)(13)." This would again create an enormous loophole, since it is impossible to tell whether a magazine was manufactured for a curio or relic firearm.

A magazine which happens to fit a curio or relic firearm would also fit firearms that are not curios or relics. For example, a Browning Hi Power pistol that is 50 years old is classified as a curio or relic firearm based on its age. A Browning Hi Power pistol manufactured last week is not a curio or relic firearm. Both weapons use the same magazine.

DRAFT

**Section 1107 - Exemption of Qualified  
Law Enforcement Officers from State Laws Prohibiting  
the Carrying of Concealed Firearms**

- This legislation would preempt State law to allow qualified law enforcement officers to carry concealed firearms in any State, regardless of State law.

• [REDACTED]

[REDACTED]

**Section 1108 - Exemption of Qualified Retired  
Law Enforcement Officers from State Laws Prohibiting  
the Carrying of Concealed Firearms**

- This legislation would preempt State law to allow qualified retired law enforcement officers to carry concealed firearms in any State, regardless of State law.

• [REDACTED]

[REDACTED]

1                   **TITLE XI—FIREARMS**  
2                   **PROVISIONS**

3   **SEC. 1101. MANDATORY TRANSFER OF SECURE GUN STOR-**  
4                   **AGE OR SAFETY DEVICE.**

5           (a) **UNLAWFUL ACTS.**—Section 922 of title 18,  
6 United States Code, is amended by inserting after sub-  
7 section (y) the following:

8           “(z)(1) Except as provided in paragraph (2), it shall  
9 be unlawful for any licensed manufacturer, licensed im-  
10 porter, or licensed dealer to sell, deliver, or transfer any  
11 handgun to any person not licensed under this chapter,  
12 unless the transferee is provided with a secure gun storage  
13 or safety device, as defined in section 921(a)(34), for the  
14 handgun.

15           “(2) Paragraph (1) shall not apply to the—

16           “(A)(i) manufacture for, transfer to, or posses-  
17 sion by, the United States or a department or agen-  
18 cy of the United States, or a State or a department,  
19 agency, or political subdivision of a State, of a hand-  
20 gun; or

21           “(ii) transfer to, or possession by, a law en-  
22 forcement officer employed by an entity referred to  
23 in clause (i), of a handgun for law enforcement pur-  
24 poses (whether on or off duty); or

1           “(B) transfer to, or possession by, a rail police  
2 officer employed by a rail carrier and certified or  
3 commissioned as a police officer under the laws of  
4 a State of a handgun for purposes of law enforce-  
5 ment (whether on or off duty);

6           “(C) transfer to any person of a handgun listed  
7 as a curio or relic by the Secretary pursuant to sec-  
8 tion 921(a)(13); or

9           “(D) transfer to any person of a handgun for  
10 which a secure gun storage or safety device is tem-  
11 porarily unavailable for the reasons described in the  
12 exceptions stated in section 923(e), if the licensed  
13 manufacturer, licensed importer, or licensed dealer  
14 delivers to the transferee within 10 calendar days  
15 after the date of the delivery of the handgun to the  
16 transferee a secure gun storage or ~~safety~~ device for  
17 the handgun.

18           “(3)(A) Notwithstanding any other provision of law,  
19 a person who has lawful possession and control of a hand-  
20 gun, and who uses a secure gun storage or safety device  
21 with the handgun, shall be entitled to immunity from a  
22 civil liability action as described in this paragraph.

23           “(B) A qualified civil liability action may not be  
24 brought in any Federal or State court. In this subpara-  
25 graph, the term ‘qualified civil liability action’ means a

1 civil action brought by any person against a person de-  
2 scribed in subparagraph (A) for damages resulting from  
3 the unlawful use of the handgun by a third party, if—

4           “(i) the handgun was accessed by another per-  
5 son without the authorization of the person so de-  
6 scribed; and

7           “(ii) when the handgun was so accessed, the  
8 handgun had been made inoperable by use of a se-  
9 cure gun storage or safety device.

10 A ‘qualified civil liability action’ shall not include an action  
11 brought against the person having lawful possession and  
12 control of the handgun for negligent entrustment or neg-  
13 ligence per se.

14           “(4)(A) This subsection shall not be construed to—

15           “(i) create a cause of action against any Fed-  
16 eral firearms licensee or any other person for any  
17 civil liability; or

18           “(ii) establish any standard of care.

19           “(B) Notwithstanding any other provision of law, evi-  
20 dence regarding compliance or noncompliance with this  
21 subsection shall not be admissible as evidence in any pro-  
22 ceeding of any court, agency, board, or other entity, except  
23 with respect to an action to enforce paragraphs (1) and  
24 (2), or to give effect to paragraph (3).”

1 (b) CIVIL PENALTIES.—Section 924 of title 18,  
2 United States Code, is amended—

3 (1) in subsection (a)(1), by inserting “or (p)”  
4 before “of this section”; and

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

6 “(p)(1)(A) With respect to each violation of section  
7 922(z)(1) by a licensed manufacturer, licensed importer,  
8 or licensed dealer, the Secretary may, after notice and op-  
9 portunity for hearing—

10 “(i) suspend for not more than 6 months, or re-  
11 voke, the license issued to the licensee under this  
12 chapter that was used to conduct the firearms trans-  
13 action; or

14 “(ii) impose on the licensee to a civil penalty of  
15 not more than \$2,500.

16 “(B) An action of the Secretary under this paragraph  
17 may be reviewed only as provided in section 923(f).

18 “(2) The suspension or revocation of a license or the  
19 imposition of a civil penalty under paragraph (1) shall not  
20 preclude any administrative remedy that is otherwise  
21 available to the Secretary.”

22 **SEC. 1102. PROHIBITING JUVENILES FROM POSSESSING**  
23 **SEMIAUTOMATIC ASSAULT WEAPONS.**

24 Section 922(x) of title 18, United States Code, is  
25 amended—

1 (1) in paragraph (1)—

2 (A) by striking “or” at the end of subpara-  
3 graph (A);

4 (B) by striking the period at the end of  
5 subparagraph (B) and inserting a semicolon;  
6 and

7 (C) by adding at the end the following:

8 “(C) a semiautomatic assault weapon; or

9 “(D) a large capacity ammunition feeding de-  
10 vice.”;

11 (2) in paragraph (2)—

12 (A) by striking “or” at the end of subpara-  
13 graph (A);

14 (B) by striking the period at the end of  
15 subparagraph (B) and inserting a semicolon;  
16 and

17 (C) by adding at the end the following:

18 “(C) a semiautomatic assault weapon; or

19 “(D) a large capacity ammunition feeding  
20 device.”; and

21 (3) by striking paragraph (3) and inserting the  
22 following:

23 “(3) This subsection shall not apply to—

24 “(A) a temporary transfer of a handgun, am-  
25 munition, a large capacity ammunition feeding de-

1 vice, or a semiautomatic assault weapon to a juvenile  
2 or to the temporary possession or use of a handgun,  
3 ammunition, a large capacity ammunition feeding  
4 device, or a semiautomatic assault weapon by a  
5 juvenile—

6 “(i) if the handgun, ammunition, large ca-  
7 pacity ammunition feeding device, or semiauto-  
8 matic assault weapon are possessed and used by  
9 the juvenile—

10 “(I) in the course of employment;

11 “(II) in the course of ranching or  
12 farming related to activities at the resi-  
13 dence of the juvenile (or on property used  
14 for ranching or farming at which the juve-  
15 nile, with the permission of the property  
16 owner or lessee, is performing activities re-  
17 lated to the operation of the farm or  
18 ranch);

19 “(III) for target practice;

20 “(IV) for hunting; or

21 “(V) for a course of instruction in the  
22 safe and lawful use of a firearm;

23 “(ii) clause (i) shall apply only if the juve-  
24 nile’s possession and use of a handgun, ammu-  
25 nition, a large capacity ammunition feeding de-

1 vice, or a semiautomatic assault weapon under  
2 this subparagraph are in accordance with State  
3 and local law, and the following conditions are  
4 met—

5 “(I) except when a parent or guardian  
6 of the juvenile is in the immediate and su-  
7 pervisory presence of the juvenile, the juve-  
8 nile shall have in the juvenile’s possession  
9 at all times when a handgun, ammunition,  
10 a large capacity ammunition feeding de-  
11 vice, or a semiautomatic assault weapon, is  
12 in the possession of the juvenile, the prior  
13 written consent of the juvenile’s parent or  
14 guardian who is not prohibited by Federal,  
15 State, or local law from possessing a fire-  
16 arm or ammunition; and

17 “(II)(aa) during transportation by the  
18 juvenile directly from the place of transfer  
19 to a place at which an activity described in  
20 clause (i) is to take place the firearm shall  
21 be unloaded and in a locked container or  
22 case, and during the transportation by the  
23 juvenile of that firearm, directly from the  
24 place at which such an activity took place  
25 to the transferor, the firearm shall also be

1 unloaded and in a locked container or case;  
2 or

3 "(bb) with respect to employment,  
4 ranching or farming activities as described  
5 in clause (i), a juvenile may possess and  
6 use a handgun, ammunition, a large capac-  
7 ity ammunition feeding device, or a semi-  
8 automatic assault weapon with the prior  
9 written approval of the juvenile's parent or  
10 legal guardian, if the approval is on file  
11 with the adult who is not prohibited by  
12 Federal, State, or local law from possess-  
13 ing a firearm or ammunition and that per-  
14 son is directing the ranching or farming  
15 activities of the juvenile;

16 "(B) a juvenile who is a member of the Armed  
17 Forces of the United States or the National Guard  
18 who possesses or is armed with a handgun, ammuni-  
19 tion, a large capacity ammunition feeding device, or  
20 a semiautomatic assault weapon in the line of duty;

21 "(C) a transfer by inheritance of title (but not  
22 possession) of a handgun, ammunition, a large ca-  
23 pacity ammunition feeding device, or a semiauto-  
24 matic assault weapon to a juvenile; or

1           “(D) the possession of a handgun, ammunition,  
2           a large capacity ammunition feeding device, or a  
3           semiautomatic assault weapon taken in lawful de-  
4           fense of the juvenile or other persons in the resi-  
5           dence of the juvenile or a residence in which the ju-  
6           venile is an invited guest.

7           “(4) A handgun, ammunition, a large capacity am-  
8           munition feeding device, or a semiautomatic assault weap-  
9           on, the possession of which is transferred to a juvenile in  
10          circumstances in which the transferor is not in violation  
11          of this subsection, shall not be subject to permanent con-  
12          fiscation by the Government if its possession by the juve-  
13          nile subsequently becomes unlawful because of the conduct  
14          of the juvenile, but shall be returned to the lawful owner  
15          when such handgun, ammunition, large capacity ammuni-  
16          tion feeding device, or semiautomatic assault weapon is  
17          no longer required by the Government for the purposes  
18          of investigation or prosecution.

19          “(5) For purposes of this subsection, the term ‘juve-  
20          nile’ means a person who is less than 18 years of age.

21          “(6)(A) In a prosecution of a violation of this sub-  
22          section, the court shall require the presence of a juvenile  
23          defendant’s parent or legal guardian at all proceedings.

24          “(B) The court may use the contempt power to en-  
25          force subparagraph (A).

1       “(C) The court may excuse attendance of a parent  
2 or legal guardian of a juvenile defendant at a proceeding  
3 in a prosecution of a violation of this subsection for good  
4 cause shown.

5       “(7) For purposes of this subsection, the term ‘large  
6 capacity ammunition feeding device’ has the same mean-  
7 ing as in section 921(a)(31) of title 18, except that the  
8 term also includes any device described in such section  
9 that was manufactured before the effective date of the  
10 Violent Crime Control and Law Enforcement Act of  
11 1994.”.

12 **SEC. 1103. PROHIBITING VIOLENT JUVENILE OFFENDERS**  
13 **FROM POSSESSING FIREARMS.**

14       (a) DEFINITION.—Section 921(a)(20) of title 18,  
15 United States Code, is amended—

16       (1) by inserting “(A)” after “(20)”,

17       (2) by redesignating subparagraphs (A) and  
18 (B) as clauses (i) and (ii), respectively;

19       (3) by inserting after subparagraph (A) the fol-  
20 lowing:

21       “(B) For purposes of subsections (d) and (g) of sec-  
22 tion 922, the term ‘adjudicated to have committed an act  
23 of violent juvenile delinquency’ means an adjudication of  
24 delinquency in Federal or State court, based on a finding  
25 of the commission of an act by a person prior to his or

1 her eighteenth birthday that, if committed by an adult,  
2 would be a serious violent felony (as defined in section  
3 3559(c)(2)(F)(i)) had Federal jurisdiction existed and  
4 been exercised.”; and

5 (4) by striking “What constitutes” and all that  
6 follows through “this chapter,” and inserting the fol-  
7 lowing:

8 “(C) What constitutes a conviction of such a crime  
9 or an adjudication of an act of violent juvenile delinquency  
10 shall be determined in accordance with the law of the ju-  
11 risdiction in which the proceedings were held. Any State  
12 conviction or adjudication of an act of violent juvenile de-  
13 linquency that has been expunged or set aside, or for  
14 which a person has been pardoned or has had civil rights  
15 restored, by the jurisdiction in which the conviction or ad-  
16 judication of an act of violent juvenile delinquency oc-  
17 curred shall not be considered to be a conviction or adju-  
18 dication of an act of violent juvenile delinquency for pur-  
19 poses of this chapter.”.

20 (b) PROHIBITION.—Section 922 of title 18, United  
21 States Code, is amended—

22 (1) in subsection (d)—

23 (A) in paragraph (8), by striking “or” at  
24 the end;

1 (B) in paragraph (9), by striking the pe-  
2 riod at the end and inserting “; or”; and

3 (C) by inserting after paragraph (9) the  
4 following:

5 “(10) has been adjudicated to have committed  
6 an act of violent juvenile delinquency.”; and

7 (2) in subsection (g)—

8 (A) in paragraph (8), by striking “or” at  
9 the end;

10 (B) in paragraph (9), by striking the  
11 comma at the end and inserting “; or”; and

12 (C) by inserting after paragraph (9) the  
13 following:

14 “(10) who has been adjudicated to have com-  
15 mitted an act of violent juvenile delinquency,”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply only to acts of violent juvenile de-  
18 linquency that occur 180 days or more after the date of  
19 the enactment of this Act.

20 **SEC. 1104. MANDATORY BACKGROUND CHECK AT GUN**  
21 **SHOWS.**

22 (a) DEFINITIONS.—Section 921(a) of title 18, United  
23 States Code, is amended by adding at the end the follow-  
24 ing:

1       “(35) The term ‘gun show’ means an event which is  
2 sponsored to foster the collecting, competitive use, sport-  
3 ing use, or any other legal use of firearms, and—

4               “(A) at which 50 or more firearms are offered  
5 or exhibited for sale, transfer, or exchange, if 1 or  
6 more of the firearms has been shipped or trans-  
7 ported in, or the event otherwise affects, interstate  
8 or foreign commerce; and

9               “(B) at which there are not less than 5 firearm  
10 vendors.

11       “(36) The term ‘curtilage area’, with respect to a gun  
12 show, means any building or structure in which, and any  
13 land on which, the gun show is held, and includes all real  
14 property in close proximity to the gun show on which ac-  
15 tivities in furtherance of firearms transactions occur.

16       “(37) The term ‘gun show organizer’ means any per-  
17 son who organizes or conducts a gun show.

18       “(38) The term ‘gun show vendor’ means any person  
19 who, at a fixed, assigned, or contracted location, exhibits,  
20 sells, offers for sale, transfers, or exchanges 1 or more  
21 firearms at a gun show.”.

22       (b) TIME LIMIT FOR NATIONAL INSTANT CRIMINAL  
23 BACKGROUND CHECKS.—Section 103(e) of the Brady  
24 Handgun Violence Prevention Act (18 U.S.C. 922 note)  
25 is amended by adding at the end the following:

1           “(3) DEADLINE FOR COMPLETION OF CHECKS  
2           REQUESTED FROM GUN SHOWS.—

3                   “(A) IN GENERAL.—Except as provided in  
4           subparagraph (B), the Attorney General shall  
5           ensure that each background check conducted  
6           through the national instant criminal back-  
7           ground check system pursuant to a request  
8           made from a gun show is completed within 24  
9           hours after an authorized person has contacted  
10          the system to request the check.

11                   “(B) EXCEPTION.—The requirement of  
12          subparagraph (A) shall not apply if the system  
13          indicates that the person being checked has  
14          been arrested for an offense described in section  
15          922(g) and the disposition of the arrest has not  
16          been communicated to the Attorney General.”.

17          (c) REGULATION OF FIREARMS TRANSFERS AT GUN  
18          SHOWS.—

19                   (1) IN GENERAL.—Chapter 44 of such title is  
20          amended by adding at the end the following:

21          “§ 931. Regulation of firearms transfers at gun shows

22                   “(a)(1) A person who is not a licensed importer, li-  
23          censed manufacturer, or licensed dealer, and who desires  
24          to be registered as an instant check registrant shall submit  
25          to the Secretary an application which—

1           “(A) contains a certification by the applicant  
2           that the applicant meets the requirements of sub-  
3           paragraphs (A) through (D) of section 923(d)(1);

4           “(B) contains a photograph and fingerprints of  
5           the applicant; and

6           “(C) is in such form as the Secretary shall by  
7           regulation prescribe.

8           “(2)(A) The Secretary shall approve an application  
9           submitted pursuant to paragraph (1) which meets the re-  
10          quirements of paragraph (1). On approval of the applica-  
11          tion and payment by the applicant of a fee of \$100 for  
12          3 years, and upon renewal of valid registration a fee of  
13          \$50 for 3 years, the Secretary shall issue to the applicant  
14          an instant check registration, and advise the Attorney  
15          General of the United States of the same, which entitles  
16          the registrant to contact the national instant criminal  
17          background check system established under section 103  
18          of the Brady Handgun Violence Prevention Act for infor-  
19          mation about any individual desiring to obtain a firearm  
20          at a gun show from any transferor who has requested the  
21          assistance of the registrant in complying with subsection  
22          (c) with respect to the transfer of the firearm, and receive  
23          information from the system regarding the individual, dur-  
24          ing the 3-year period that begins with the date the reg-  
25          istration is issued.

1       “(B) The Secretary shall approve or deny an applica-  
2 tion submitted pursuant to paragraph (1) within 60 days  
3 after the Secretary receives the application. If the Sec-  
4 retary fails to so act within such period, the applicant may  
5 bring an action under section 1361 of title 28 to compel  
6 the Secretary to so act.

7       “(3) An instant check registrant shall keep all  
8 records or documents which the registrant collects pursu-  
9 ant to this section during a gun show at a premises, or  
10 a portion thereof designated by the registrant, that is open  
11 for inspection by the Secretary. The Secretary shall estab-  
12 lish by regulation the procedure for the inspection, at a  
13 premises or a gun show, of the records required to be kept  
14 under this section in a manner for a registrant that af-  
15 fords the registrant procedural rights and protections  
16 identical to those afforded a licensee under subsections  
17 (g)(1)(A), (g)(1)(B), and (j) of section 923. An instant  
18 check registrant shall transmit to the Secretary all records  
19 required to be kept by the registrant under this sub-  
20 section, when the registration is no longer valid, has ex-  
21 pired, or has been revoked.

22       “(4)(A) This subsection shall not be construed—

23               “(i) as creating a cause of action against any  
24 instant check registrant or any other person, includ-  
25 ing the transferor, for any civil liability; or

1           “(ii) as establishing any standard of care.

2           “(B) Notwithstanding any other provision of law, ex-  
3 cept to give effect to subparagraph (C), evidence regarding  
4 the use or nonuse by a transferor of the services of an  
5 instant check registrant under this section shall not be ad-  
6 missible as evidence in any proceeding of any court, agen-  
7 cy, board, or other entity for the purposes of establishing  
8 liability based on a civil action brought on any theory for  
9 harm caused by a product or by negligence.

10          “(C)(i) Notwithstanding any other provision of law,  
11 a person who is—

12           “(I) an instant check registrant who assists in  
13 having a background check performed in accordance  
14 with this section;

15           “(II) a licensee who acquires a firearm at a gun  
16 show from a nonlicensee, for transfer to another  
17 nonlicensee in attendance at the show, for the pur-  
18 pose of effectuating a sale, trade, or transfer be-  
19 tween the 2 nonlicensees, all in the manner pre-  
20 scribed for the acquisition and disposition of fire-  
21 arms under this chapter; or

22           “(III) a nonlicensee disposing of a firearm, who  
23 utilizes the services of an instant check registrant  
24 pursuant to subclause (I) or a licensee pursuant to  
25 subclause (II),

1 shall be entitled to immunity from a civil liability action  
2 as described in this subparagraph.

3       “(ii) A qualified civil liability action may not be  
4 brought in any Federal or State court. The term ‘qualified  
5 civil liability action’ means a civil action brought by any  
6 person against a person described in clause (i) for dam-  
7 ages resulting from the unlawful use of the firearm by the  
8 transferee or a third party, but shall not include an  
9 action—

10           “(I) brought against a transferor convicted  
11 under section 924(h), or a comparable or identical  
12 State felony law, by a party directly harmed by the  
13 transferee’s criminal conduct, as defined in section  
14 924(h); or

15           “(II) brought against a transferor for negligent  
16 entrustment or negligence per se.

17       “(4) A registration issued under this subsection may  
18 be revoked pursuant to the procedures provided for license  
19 revocations under section 923.

20       “(b) It shall be unlawful for any person to organize  
21 or conduct a gun show unless the person—

22           “(1) registers with the Secretary in accordance  
23 with regulations promulgated by the Secretary,  
24 which shall not require the payment of any fee for  
25 such registration;

1           “(2) before commencement of the gun show—

2                   “(A) records and verifies the identity of  
3           each individual who is to be a gun show vendor  
4           at the gun show by examining, but not retain-  
5           ing, a copy of, a valid identification document  
6           (as defined in section 1028(d)(1)) of the indi-  
7           vidual containing a photograph of the individ-  
8           ual; and

9                   “(B) provides to each such individual a  
10           copy of the document provided by the Secretary  
11           under subsection (c); and

12                   “(3) maintains a copy of the records described  
13           in paragraph (2) at the permanent place of business  
14           of the gun show organizer for such period of time  
15           and in such form as the Secretary shall require by  
16           regulation.

17           “(c) The Secretary shall provide to each gun show  
18           organizer registered with the Secretary pursuant to sub-  
19           section (b)(1) a document which sets forth all Federal laws  
20           that apply to firearms transactions at gun shows, includ-  
21           ing all related recordkeeping requirements, verbatim.

22                   “(d)(1) It shall be unlawful, at a gun show or the  
23           curtilage area of a gun show, for a person who is not li-  
24           censed under section 923 to sell, transfer, or exchange to  
25           another person who is not licensed under section 923, a

1 firearm that is accessible at the gun show or in the  
2 curtilage area of the gun show, unless—

3           “(A) the firearm is transferred through a li-  
4 censed importer, licensed manufacturer, or licensed  
5 dealer in accordance with paragraph (2)(B) and oth-  
6 erwise in accordance with law; or

7           “(B)(i) before the completion of the transfer,  
8 an instant check registrant contacts the national in-  
9 stant criminal background check system established  
10 under section 103 of the Brady Handgun Violence  
11 Prevention Act;

12           “(ii)(I) the system provides the registrant with  
13 a unique identification number; or

14           “(II) 3 business days (meaning a day on which  
15 State offices are open) have elapsed since the reg-  
16 istrant contacted the system, and the system has not  
17 notified the registrant that the receipt of a firearm  
18 by such other person would violate subsection (g) or  
19 (n) of section 922;

20           “(iii) the registrant notifies the person that the  
21 registrant has complied with clauses (i) and (ii), or  
22 of any receipt by the registrant of a notification  
23 from the national instant criminal background check  
24 system established under section 103 of the Brady

1 Handgun Violence Prevention Act that the transfer  
2 would violate section 922 or State law; and

3 “(iv) the transferor and the registrant have  
4 verified the identity of the transferee by examining  
5 a valid identification document (as defined in section  
6 1028(d)(1) of this title) of the transferee containing  
7 a photograph of the transferee.

8 “(2)(A) The rules of paragraphs (2), (3), and (4) of  
9 section 922(t) shall apply to firearms transfers assisted  
10 by instant check registrants under this section in the same  
11 manner in which such rules apply to firearms transfers  
12 made by licensees.

13 “(B)(i) The licensee or registrant may personally de-  
14 liver or ship the firearm to the prospective transferee in  
15 accordance with clause (ii) if the gun show has terminated,  
16 and—

17 “(I)(aa) 3 business days has elapsed since the  
18 licensee or registrant contacted the system from the  
19 gun show and the licensee or registrant has not re-  
20 ceived notification from the system that receipt of a  
21 firearm by the prospective transferee would violate  
22 subsection (g) or (n) of section 922 or State law; or

23 “(bb) the licensee or registrant has received no-  
24 tification from the system that receipt of a firearm

1 by the prospective transferee would not violate sub-  
2 section (g) or (n) of section 922 or State law; and

3 “(II) State and local law would have permitted  
4 the licensee or registrant to immediately deliver the  
5 firearm to the prospective transferee if the condi-  
6 tions described in item (aa) or (bb) had occurred  
7 during the gun show.

8 “(ii)(I) The licensee may personally deliver the fire-  
9 arm to the prospective transferee at a location other than  
10 the business premises of the licensee, without regard to  
11 whether the location is in the State specified on the license  
12 of the licensee, or may ship the firearm by common carrier  
13 to the prospective transferee.

14 “(II) The registrant may personally deliver the fire-  
15 arm to a prospective transferee who is a resident of the  
16 State of which the registrant is a resident, or may ship  
17 the firearm by common carrier to such a prospective trans-  
18 feree.

19 “(3) An instant check registrant who agrees to assist  
20 a person who is not licensed under section 923 in comply-  
21 ing with subsection (c) with respect to the transfer of a  
22 firearm shall—

23 “(A) enter the name, age, address, and other  
24 identifying information on the transferee (or, if the  
25 transferee is a corporation or other business entity,

1 the identity and principal and local places of busi-  
2 ness of the transferee) as the Secretary may require  
3 by regulation into a separate bound record;

4 “(B) record the unique identification number  
5 provided by the system on a form specified by the  
6 Secretary;

7 “(C) on completion of the functions required by  
8 paragraph (1)(B) to be performed by the registrant  
9 with respect to the transfer, notify the transferor  
10 that the registrant has performed such functions;  
11 and

12 “(D) on completion of the background check by  
13 the system, retain a record of the background check  
14 as part of the permanent business records of the  
15 registrant.

16 “(4) This section shall not be construed to permit or  
17 authorize the Secretary to impose recordkeeping require-  
18 ments on any vendor who is not licensed under section  
19 923, except to the extent that the vendor is acting as an  
20 instant check registrant.

21 “(e) It shall be unlawful for any person to receive  
22 a firearm from another person that the person knows has  
23 been transferred to the recipient in violation of this sec-  
24 tion.

1       “(f) It shall be unlawful for any person to structure,  
2 assist in structuring, or attempt to structure or assist in  
3 structuring a firearms transaction, for the purpose of  
4 evading any requirement of subsection (d).”.

5           (2) PENALTIES.—Section 924(a) of such title is  
6 amended by adding at the end the following:

7       “(7)(A) Whoever knowingly violates subsection (b),  
8 (d)(1), or (d)(2) of section 931 shall be—

9           “(i) fined under this title, imprisoned not more  
10 than 1 year, or both; or

11           “(ii) in the case of a second or subsequent con-  
12 viction of such a violation, fined under this title, im-  
13 prisoned not more than 5 years, or both.

14       “(B) Whoever knowingly violates subsection (d)(3) or  
15 (e) of section 931 shall be fined under this title, impris-  
16 oned not more than 3 years, or both.

17       “(C) In addition to any other penalties imposed  
18 under this paragraph, the Secretary may, with respect to  
19 any person who knowingly violates subsection (b), (d), or  
20 (e) of section 931—

21           “(i) impose a civil fine in an amount equal to  
22 not more than \$2,500; and

23           “(ii) if the person is registered pursuant to sec-  
24 tion 931(a), after notice and opportunity for a hear-  
25 ing, suspend for not more than 6 months or revoke

1 the registration of that person under section  
2 931(a).”.

3 (3) CONFORMING AMENDMENT.—Section 923(j)  
4 of such title is amended in the first sentence by  
5 striking “or event” and all that follows through  
6 “community”.

7 (4) CLERICAL AMENDMENT.—The section anal-  
8 ysis for chapter 44 of such title is amended by add-  
9 ing at the end the following:

“931. Regulation of firearms transfers at gun shows.”.

10 (d) INSPECTION AUTHORITY.—Section 923(g)(1) of  
11 such title is amended by adding at the end the following:

12 “(E)(i) When the Secretary has reasonable cause to  
13 believe that evidence of a violation of this chapter may  
14 be found at the place of business of a gun show organizer  
15 or any place where a gun show is being held, the Secretary  
16 may, upon demonstrating such cause before a Federal  
17 magistrate and securing from the magistrate a warrant  
18 authorizing entry, enter during business hours any such  
19 place (including any place of storage of the gun show orga-  
20 nizer), for the purpose of inspecting or examining any  
21 records or documents required to be kept by the gun show  
22 organizer under this chapter or rules or regulations under  
23 this chapter.

24 “(ii) The Secretary may enter during business hours  
25 the place of business of any gun show organizer and any

1 place where a gun show is being held, without such reason-  
2 able cause or warrant, for the purpose of inspecting or  
3 examining the records required by section 923 or 931 and  
4 the inventory of licensees conducting business at the gun  
5 show in the course of a reasonable inquiry during the  
6 course of a criminal investigation of a person or persons  
7 other than the organizer or licensee or when such exam-  
8 ination may be required for determining the disposition  
9 of one or more particular firearms in the course of a bona  
10 fide criminal investigation.”

11 (e) INCREASED PENALTIES FOR SERIOUS RECORD-  
12 KEEPING VIOLATIONS BY LICENSEES.—Section 924(a)(3)  
13 of such title is amended to read as follows:

14 “(3)(A) Except as provided in subparagraph (B), any  
15 licensed dealer, licensed importer, licensed manufacturer,  
16 or licensed collector who knowingly makes ~~any~~ false state-  
17 ment or representation with respect to the information re-  
18 quired by this chapter to be kept in the records of a person  
19 licensed under this chapter, or violates section 922(m)  
20 shall be fined under this title, imprisoned not more than  
21 1 year, or both.

22 “(B) If the violation described in subparagraph (A)  
23 is in relation to an offense—

1           “(i) under paragraph (1) or (3) of section  
2           922(b), such person shall be fined under this title,  
3           imprisoned not more than 5 years, or both; or

4           “(j) under subsection (a)(6) or (d) of section  
5           922, such person shall be fined under this title, im-  
6           prisoned not more than 10 years, or both.”.

7           (f) INCREASED PENALTIES FOR VIOLATIONS OF  
8           CRIMINAL BACKGROUND CHECK REQUIREMENTS.—

9           (1) PENALTIES.—Section 924(a) of such title is  
10          amended—

11           (A) in paragraph (5), by striking “sub-  
12           section (s) or (t) of section 922” and inserting  
13           “section 922(s)”; and

14           (B) by adding at the end the following:

15           “(8)(A) Whoever knowingly violates section 922(t)  
16           shall be fined under this title, imprisoned not more than  
17           3 years, or both.

18           “(B) In the case of a second or subsequent conviction  
19           under this paragraph, the person shall be fined under this  
20           title, imprisoned not more than 5 years, or both.”.

21           (2) ELIMINATION OF CERTAIN ELEMENTS OF  
22           OFFENSE.—Section 922(t)(5) of such title is amend-  
23           ed by striking “and, at the time” and all that fol-  
24           lows through “State law”.

1 (g) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect 180 days after the date of  
3 the enactment of this Act.

4 **SEC. 1105. GUN OWNER PRIVACY; PROHIBITION ON BACK-**  
5 **GROUND CHECK FEE.**

6 (a) PROHIBITION ON BACKGROUND CHECK FEE.—

7 (1) IN GENERAL.—Chapter 33 of title 28,  
8 United States Code, is amended by adding at the  
9 end the following:

10 **“§ 540B. Prohibition on fee for background check in**  
11 **connection with firearm transfer**

12 “No officer, employee, or agent of the United States,  
13 including a State or local officer or employee acting on  
14 behalf of the United States, may charge or collect any fee  
15 in connection with any background check required in con-  
16 nection with the transfer of a firearm (as defined in sec-  
17 tion 921(a)(3) of title 18).”

18 (2) TECHNICAL AND CONFORMING AMEND-  
19 MENTS.—The section analysis for chapter 33 of title  
20 28, United States Code, is amended by inserting  
21 after the item relating to section 540A the following:

“540B. Prohibition on fee for background check in firearm  
transfer.”

22 (b) PROTECTION OF GUN OWNER PRIVACY AND  
23 OWNERSHIP RIGHTS.—

1           (1) IN GENERAL.—Chapter 44 of title 18,  
2           United States Code, is amended by adding at the  
3           end the following:

4           **“§ 932. Gun owner privacy and ownership rights**

5           “Notwithstanding any other provision of law, no de-  
6           partment, agency, or instrumentality of the United States  
7           or officer, employee, or agent of the United States, includ-  
8           ing a State or local officer or employee acting on behalf  
9           of the United States—

10           “(1) shall perform any national instant criminal  
11           background check through the system established  
12           pursuant to section 103 of the Brady Handgun Vio-  
13           lence Prevention Act (18 U.S.C. 922 note) (referred  
14           to in this section as the “system”) if that system  
15           does not require and result in the immediate de-  
16           struction of all information, in any form whatsoever  
17           or through any medium, about any person who is de-  
18           termined, through the use of the system, not to be  
19           prohibited by subsection (g) or (n) of section 922 of  
20           this title, or by State law, from receiving a firearm,  
21           except that this subsection shall not apply to the re-  
22           tention or transfer of information relating to—

23           “(A) any unique identification number pro-  
24           vided by the national instant criminal back-

1 ground check system pursuant to section  
2 922(t)(1)(B)(i) of this title; or

3 “(B) the date on which that number is  
4 provided; or

5 “(2) shall continue to operate the system (in-  
6 cluding requiring a background check before the  
7 transfer of a firearm) unless—

8 “(A) the ‘NICS Index’ complies with the  
9 requirements of section 552a(e)(5) of title 5,  
10 United States Code; and

11 “(B) the agency responsible for the system  
12 and the system’s compliance with Federal law  
13 does not invoke the exceptions under sub-  
14 sections (j)(2), (k)(2), and (k)(3) of section  
15 552a of title 5, United States Code, except if  
16 specifically identifiable information is compiled  
17 for a particular law enforcement investigation  
18 or specific criminal enforcement matter.”.

19 (2). TECHNICAL AND CONFORMING AMEND-  
20 MENTS.—The section analysis for chapter 44 of title  
21 18, United States Code, is further amended by add-  
22 ing at the end the following:

“932. Gun owner privacy and ownership rights.”.

23 (c) CIVIL REMEDIES.—Any person aggrieved by a  
24 violation of section 540B of title 28, or section 932 of title  
25 18, United States Code, as added by this section, may

1 bring an action in the district court of the United States  
2 for the district in which the person resides. Any person  
3 who is successful with respect to any such action shall re-  
4 ceive actual damages, punitive damages, and such other  
5 remedies as the court may determine to be appropriate,  
6 including a reasonable attorney's fee.

7 (d) **EFFECTIVE DATE.**—The amendments made by  
8 this section shall take effect on the date of the enactment  
9 of this Act, except that the amendments made by sub-  
10 section (a) shall take effect as of October 1, 1998.

11 **SEC. 1106. BAN ON IMPORTING LARGE CAPACITY AMMUNI-**  
12 **TION FEEDING DEVICES.**

13 (a) **IN GENERAL.**—Section 922(w) of title 18, United  
14 States Code, is amended—

15 (1) in paragraph (1), by striking “(1) Except as  
16 provided in paragraph (2)” and inserting “(1)(A)  
17 Except as provided in subparagraph (B)”;

18 (2) in paragraph (2), by striking “(2) Para-  
19 graph (1)” and inserting “(B) Subparagraph (A)”;

20 (3) by inserting before paragraph (3) the fol-  
21 lowing:

22 “(2)(A) It shall be unlawful for any person to import  
23 a large capacity ammunition feeding device.

24 “(B) Subparagraph (A) shall not apply to any large  
25 capacity ammunition feeding device manufactured or pro-

1 duced on or before September 13, 1994, for a firearm list-  
2 ed as a curio or relic pursuant to section 921(a)(13).";  
3 and

4 (4) in paragraph (4)—

5 (A) by striking "(1)" each place it appears  
6 and inserting "(1)(A)"; and

7 (B) by striking "(2)" and inserting  
8 "(1)(B)".

9 (b) EFFECTIVE DATE.—The amendments made by  
10 subsection (a) shall take effect 180 days after the date  
11 of the enactment of this Act.

12 **SEC. 1107. EXEMPTION OF QUALIFIED LAW ENFORCEMENT**  
13 **OFFICERS FROM STATE LAWS PROHIBITING**  
14 **THE CARRYING OF CONCEALED FIREARMS.**

15 (a) IN GENERAL.—Chapter 44 of title 18, United  
16 States Code, is amended by inserting after ~~section 926A~~  
17 the following:

18 **"§ 926B. Carrying of concealed firearms by qualified**  
19 **law enforcement officers**

20 "(a) Notwithstanding any provision of the law of any  
21 State or any political subdivision thereof, an individual  
22 who is a qualified law enforcement officer and who is car-  
23 rying the identification required by subsection (d) may  
24 carry a concealed firearm that has been shipped or trans-

1 ported in interstate or foreign commerce, subject to sub-  
2 section (b).

3 “(b) This section shall not be construed to supersede  
4 or limit the laws of any State that—

5 “(1) permit private persons or entities to pro-  
6 hibit or restrict the possession of concealed firearms  
7 on their property; or

8 “(2) prohibit or restrict the possession of fire-  
9 arms on any State or local government property, in-  
10 stallation, building, base, or park.

11 “(c) As used in this section, the term ‘qualified law  
12 enforcement officer’ means an employee of a governmental  
13 agency who—

14 “(1) is authorized by law to engage in or super-  
15 vise the prevention, detection, investigation, or pros-  
16 ecution of, or the incarceration of any person for,  
17 any violation of law, and has statutory powers of ar-  
18 rest;

19 “(2) is authorized by the agency to carry a fire-  
20 arm;

21 “(3) is not the subject of any disciplinary action  
22 by the agency; and

23 “(4) meets standards, if any, established by the  
24 agency which require the employee to regularly qual-  
25 ify in the use of a firearm.

1       “(d) The identification required by this subsection is  
2 the official badge and photographic identification issued  
3 by the governmental agency for which the individual is,  
4 or was, employed as a law enforcement officer.”.

5       (b) CLERICAL AMENDMENT.—The table of sections  
6 for such chapter is amended by inserting after the item  
7 relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

8       **SEC. 1108. EXEMPTION OF QUALIFIED RETIRED LAW EN-**  
9                               **FORCEMENT OFFICERS FROM STATE LAWS**  
10                              **PROHIBITING THE CARRYING OF CON-**  
11                              **CEALED FIREARMS.**

12       (a) IN GENERAL.—Chapter 44 of title 18, United  
13 States Code, is further amended by inserting after section  
14 926B the following:

15       **“§.926C. Carrying of concealed firearms by qualified**  
16                              **retired law enforcement officers**

17       “(a) Notwithstanding any provision of the law of any  
18 State or any political subdivision thereof, an individual  
19 who is a qualified retired law enforcement officer and who  
20 is carrying the identification required by subsection (d)  
21 may carry a concealed firearm that has been shipped or  
22 transported in interstate or foreign commerce, subject to  
23 subsection (b).

24       “(b) This section shall not be construed to supersede  
25 or limit the laws of any State that—

1           “(1) permit private persons or entities to pro-  
2           hibit or restrict the possession of concealed firearms  
3           on their property; or

4           “(2) prohibit or restrict the possession of fire-  
5           arms on any State or local government property, in-  
6           stallation, building, base, or park.

7           “(c) As used in this section, the term ‘qualified re-  
8           tired law enforcement officer’ means an individual who—

9           “(1) retired in good standing from service with  
10          a public agency as a law enforcement officer, other  
11          than for reasons of mental instability;

12          “(2) before such retirement, was authorized by  
13          law to engage in or supervise the prevention, detec-  
14          tion, investigation, or prosecution of, or the incarcer-  
15          ation of any person for, any violation of law, and  
16          had statutory powers of arrest;

17          “(3)(A) before such retirement, was regularly  
18          employed as a law enforcement officer for an aggre-  
19          gate of 5 years or more; or

20          “(B) retired from service with such agency,  
21          after completing any applicable probationary period  
22          of such service, due to a service-connected disability,  
23          as determined by such agency;

24          “(4) has a nonforfeitable right to benefits under  
25          the retirement plan of the agency;

1           “(5) during the most recent 12-month period  
2           or, if the agency requires active duty officers to do  
3           so with lesser frequency than every 12 months, dur-  
4           ing such most recent period as the agency requires  
5           with respect to active duty officers, has completed,  
6           at the expense of the individual, a program approved  
7           by the State for training or qualification in the use  
8           of firearms; and

9           “(6) is not prohibited by Federal law from re-  
10          ceiving a firearm.

11          “(d) The identification required by this subsection is  
12          photographic identification issued by the State in which  
13          the agency for which the individual was employed as a law  
14          enforcement officer is located.”.

15          (b) CLERICAL AMENDMENT.—The table of sections  
16          for such chapter is further amended by inserting after the  
17          item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement offi-  
cers.”

**HANDGUN CONTROL**

**FAX TRANSMITTAL**

**Adam M. Eisgrau**

Director, Federal Relations

& Public Policy

202-289-5793

ONE MILLION STRONG . . . working to keep handguns out of the wrong hands.



DATE: 9/14/99 NUMBER: 456-7028  
 TO: LEANNE SHIMABUKURO  
 ORG: DPC  
 RE: LATEST MATERIALS



MESSAGE: LEANNE --  
 Here's the latest we've released. More in the pipeline. Thanks for the e-mail, but couldn't access the attachment. Please try again or give a holler and I'll send a messenger. Thanks! *Robert*

TOTAL PAGES (including cover) (5)

## GUN SHOWS: THE CASE OF THE DOUBLE-BARRELED LOOPHOLE

**Criminals love gun shows for two alarming good reasons:**

- 1) They can buy an unlimited number of guns from private sellers, cash-and-carry, without passing any kind of background check ; AND
- 2) The unlicensed vendor who sells them their guns isn't required to keep a single written record of the sale. As a result, even if a gun that they use in a crime is found, its serial number will be useless to police trying to trace the person who bought it.

**Today, in far too many situations, the "second barrel" of the gun show loophole assures that it's "no trace, no case" and criminals who could be caught remain at large. Consider these recent, high-profile examples of the problem:**

- On August 10, 1999 Buford Furrow killed a United States mail carrier and opened fire on a Jewish Community Center's day camp, wounding a grandmother and four children. The Uzi reached Furrow through a gun show in Washington state. *If Furrow hadn't surrendered, police would have had no way of tracing the Uzi used to him.* Once a gun leaves the hands of the last licensed dealer who sold it, authorities have no way to use its serial number to trace it to someone who's later bought the gun privately, as at a gun show.
- On April 20, 1999 Eric Harris and Dylan Klebold mounted a murderous assault on Columbine High School killing a teacher and twelve of their classmates before shooting themselves. They used a TEC-DC9 assault pistol, Hi-Point Carbine and two sawed-off shotguns in their rampage. All three long guns were bought for the killers at a gun show by a friend who didn't know their intent. They got the assault pistol from a 22 year-old who had himself bought it privately at the same gun show. *If authorities had had to find Klebold and Harris based on weapons left at the scene, the serial numbers on their guns simply would have been useless.* As it is, the only reason that authorities know how the weapons came into their hands is because the shooters' friend and the 22 year-old assault weapon seller came forward voluntarily.
- Between 1989 and 1992, Thomas Dillon coldly shot five people to death in separate assaults with different weapons that he bought and then frequently sold at gun shows to cover his tracks. Dillon knew that the law didn't (and still doesn't) require that private buyers and sellers at gun shows keep sales records of any kind. That's how he eluded a team of federal and state agents dedicated to his capture. They ultimately convicted Dillon not on the basis of any gun trace linking him to a murder weapon, but because a gun show seller who bought one such gun from Dillon on the day of his fifth killing recognized his picture in a local newspaper after Dillon's arrest on charges of purchasing an illegal silencer. Luck, dogged police work, and a good Samaritan with a sharp memory prevented a sixth murder *despite* gun laws that actually hampered the investigation.

Every day, in every state in the nation, criminals who commit violent crimes that don't make headlines kill and cripple with their guns, drop them, and vanish without fear that the serial numbers on their weapons will permit police to track them down. *Both barrels of the gun show loophole kill*

**IF it reaches the President, the Senate's common sense gun show provisions will plug BOTH barrels of the gun show loophole:**

1) Nobody will be able to buy a gun at a gun show legally without passing a background check;  
AND

2) For the first time, Federal authorities will be allowed to establish a serial number reporting system that enables police to trace crime guns back to the vendors who sold them -- licensed or not -- as part of their efforts to catch violent criminals and return stolen guns to their owners.

**BUT, paranoia-driven political compromise could well keep both key parts of the Senate's sensible bill from being signed into law:**

Almost all Americans (90% in the latest ABC/Washington Post poll of 8/30/99) now favor requiring that background checks at gun shows be mandatory regardless of whether the seller is a federally licensed gun dealer or a private vendor . . . and there are hopeful signs that Congressional leaders may heed this call. *With continued public pressure, the background check "barrel" of the gun show loophole could be plugged.*

Congressional leaders are still balking, however, at plugging the second barrel of the gun show loophole by accepting the Senate's modest additional proposals to facilitate the tracing of crime guns.

The Senate bill would do that by: a) requiring that licensed dealers at gun shows do the required background checks for the customers of unlicensed sellers, and b) requiring the dealer to file a "report of the transfer" to the Secretary of the Treasury that could include the serial number of each gun transferred. Not purchaser names and addresses. Just serial numbers. In fact, the Senate's bill expressly prohibits the dealer report from including "the name or other identifying information relating to any person involved in the transfer who is not licensed" to sell guns.\*/

The NRA's hysterical claims notwithstanding, the Senate bill does not -- legally cannot -- create a national gun owner registry. What it does do is what we must do to catch criminals: give law enforcement authorities quick and reliable access to information about who sold a gun so that they can get the criminals who use them to kill and maim off of our streets. Without a serial number that can be traced to a manufacturer, and a system that allows the manufacturer to identify a gun seller, police and the public will continue to be victims of the second barrel of the gun show loophole and the end result will continue to be "No Trace, No Case."

*\*/ Three quarters of Americans have no problem with requiring that the name and address of all gun owners be on file with state or federal authorities (according to an ABC/Washington Post poll of 8/30/99). Fueled by paranoia-laced NRA rhetoric conjuring images of government agents kicking in the doors of law abiding gun owners to disarm them or worse, the minority nonetheless fear even the recording of gun serial numbers to help catch criminals and return stolen guns to their owners.*



For Immediate Release  
9/13/99

## SARAH BRADY ON CONFERENCE GUN BILL: "SPECIAL REGISTRANTS" -- A BAD IDEA RETURNS

Echoing today's full-page ad in USA Today, Sarah Brady called upon mothers of America to urge House and Senate conferees on the juvenile justice bill (HR 1501) to adopt "the strictest possible regulation of gun shows." A gun show, Brady said, "should be regulated as if the safety of our children and our community depends upon it. Because experience demonstrates that it does."

Brady attacked the gun show loophole as "a double-barreled threat to public safety. Where else can children and criminals readily buy a gun without a background check and without a paper trail? When a gun is sold at a gun store, there is a background check and a traceable record of the transaction. When a gun is sold by an unlicensed dealer at a gun show, it's just cash and carry. It's no coincidence that guns purchased in many of the recent shootings have been linked to gun show transactions. It's almost impossible to trace a gun purchased at a gun show from an unlicensed dealer. An unregulated gun show sale is a criminal's best friend."

All four guns used in the Littleton shooting were sold at gun shows, but despite a massive effort by federal and local law enforcement, it still took almost a week to identify the sellers of the weapons. It took two weeks, in fact, to identify the seller of the TEC-9 assault pistol. Moreover, police report that the gun used by alleged gunman Buford Furrow to shoot a postal worker in Los Angeles and wound four children at a Jewish Community Center was sold at a gun show in Washington State.

Brady strongly urged the conferees to reject the idea of creating a whole new class of 'special registrants' to conduct background checks at gun shows. "All gun show sales should be conducted by licensed dealers who know all the applicable laws of the state." Brady described the special registrant approach, as originally offered in the Senate by NRA board member Larry Craig, and later rejected by the full Senate, as "a regulatory monster created by the gun lobby for the gun lobby."

Brady said that special registrants, having no authority to initiate background checks except at gun shows, would be "less qualified and less accountable." Gun dealers are required to maintain a place of business, while special registrants could travel from gun show to gun show without any permanent place of business. As originally proposed and rejected in the Senate and the House, the guns sold through special registrants would be virtually untraceable. Registrants would not be required to maintain records to identify which registrant checked which gun transaction. This would mean, as Mrs. Brady said, "that law enforcement won't know where to begin when tracing a crime gun. At best, it would take precious days or weeks to trace the weapons sold through special registrants."

Brady also called upon Congress to close other loopholes that make it easy for children and criminals to obtain guns. "It's not just the gun show loophole that needs to be closed," Brady said. "An eighteen-year old child cannot buy a handgun at a gun store, but they can buy one at a gun show from an unlicensed dealer or a total stranger." During the House debate on the juvenile justice legislation this past June, Judiciary Committee Chair Henry Hyde joined the House Speaker in endorsing a ban on the private sale of handguns to juveniles under the age of 21, but the issue was later dropped without a House vote.

Brady today called upon "concerned parents to make their voices heard in Congress." Handgun Control ran a full page ad in USA Today urging mothers everywhere to call Congress and demand stricter gun laws. "It's time," Brady said, "for mothers to take the lead in stopping gun violence."



For Immediate Release  
9/8/99

## **SENSIBLE SENATE GUN CONTROL MEASURES COULD BE KILLED BY LATEST NRA ATTACK ON THE FACTS.**

**DON'T LET IT HAPPEN! CALL CONGRESS TODAY!!!**

***With Up to 90% of Americans Supporting Tougher Gun Controls, Latest  
NRA Mobilization Message Urges Grassroots "Uprising"***

The headlines above -- and the headlines of too many newspapers across the country -- say it all. Despite shooting after shooting after shooting -- funeral after funeral -- Congress WILL fail to send the President the common-sense gun control measures adopted by the Senate this Spring IF the NRA leadership's latest fear-mongering campaign goes unanswered.

Unless YOU get involved, it simply won't matter that huge majorities of Americans support the Senate's reasonable proposals: requiring background checks for all gun show purchasers, insisting that new handguns be sold with trigger locks or other safety devices, and stopping the importation of high-capacity ammunition clips once and for all.

Unless YOU make sure that your Representative and Senators get *two calls* from supporters of the Senate's sensible new laws for every one by an NRA member frightened by the lies told by his leadership, Americans who might have escaped being on the wrong end of a gun will continue to die.

Unless YOU and a friend make those calls now, it may well be too late to keep the Senate's modest measures from being jettisoned by a House/Senate Conference Committee whose members decide . . . again . . . that the NRA is just too tough to cross.

PLEASE, call, fax or write your Representative a note now with a simple two-part message:

"I want you to support the Senate's sensible gun control provisions - especially their gun show background check-- AND I'll be basing my vote in November of 2000 on what you do."

That's all there is to it. So, please, make the contact, make the case and make it soon.

The NRA has already spent \$1.5 million this Spring and Summer and just announced that it will spend at least \$1.5 million more to preserve no-questions-asked gun sales at gun shows.

There's only one thing more powerful than their money and their propaganda. . . .

**YOU.**

**Contact Your Representative Today**

[Click here now to send a free fax to your Congressperson](#)

Crime -  
Juvenile  
Justice  
bill

Today's debate: Church-state politics

# House lost in wilderness of misguided religious zeal

**OUR VIEW** Rash of proposals ignores 200 years of constitutional protection.

When Moses came down from the mountain bearing the Ten Commandments, according to Exodus, he was so enraged by the sight of the people worshipping a golden idol that he threw down the tablets and smashed them.

Now, Congress seems increasingly inclined to turn the Ten Commandments and other bits of religious symbolism into golden idols voters will worship come the next election.

Just last week, the House passed a trio of amendments posturing for the support of those who would use the power of the state to push their sectarian agendas. The actions:

▶ Allow states to display the Ten Commandments in schools;

▶ Declare that a memorial service or statue on school property can be overtly religious without violating the Constitution;

▶ Bar those who successfully sue over unconstitutional religious practices from seeking compensation for their costs.

None would pass constitutional muster, and they may never even go to court. The Senate or the president is likely to see them for what they are: hollow attempts to put a government imprimatur on particular religious beliefs.

The presumptuously titled "Ten Commandments Defense Act" pretends to empower states to allow display of the Ten Commandments in public facilities, including schools and courts. But the Supreme Court has closed that door once.

In 1980, it declared unconstitutional a Kentucky law requiring schools to post the Ten Commandments. The reason: Government-ordered display of one or two faiths' scriptures comes too close to designating a state religion.

No law can change that; only a constitutional amendment can. Nor can any law determine for the courts when the religious content of a statue crosses that line.

The mislabeled "Freedom of Student Religious Expression" amendment, meanwhile, is a plain assault on religious minorities. People who find their beliefs under attack would find

## Backing church-state divide

In 1980, the Supreme Court ruled that a Kentucky law requiring the posting of the Ten Commandments in public schools violated the First Amendment's separation of church and state. In its decision, the court wrote:

▶ "Posting of the Ten Commandments in public school rooms has no secular legislative purpose and is therefore unconstitutional."

▶ "The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact."

▶ "It does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions. . . . Nor is it significant that the Bible verses involved in this case are merely posted on the wall, rather than read aloud."

Source: Supreme Court in *Stone et al. v. Graham*, Kentucky school superintendent, 1980

their protections severely weakened. A suit could be made prohibitively expensive, even if the complaint were upheld. This is religious discrimination that could be visited upon Baptists, Catholics, Methodists or any group outside a given locality's power structure.

In recent years, the House has not blundered this far over the division between church and state that has protected religious freedom for two centuries. Nor might these measures have passed on their own. But in the midst of last week's chaotic debate over gun control and juvenile crime, they were opportunistically attached to a pending bill.

Religious and nonreligious people alike should join in prayer that it ends here.

Useful school guidelines were developed four years ago by a private coalition comprising groups ranging from the National Association of Evangelicals to the American Humanist Association and distributed by the Education Department. These suggest ways of incorporating religion in schools — subtle do's and don'ts — without assaulting anyone's beliefs.

The House action is just the opposite: an attempt to force-feed particular beliefs while gagging anyone who is offended.

# GOP, remember big government?

By Edward H. Crane

As George W. Bush and Al Gore began their presidential campaigns last week, it was no surprise that their rhetoric sounded similar. The parties they hope to lead are more alike with each passing day. From the fall of the independent counsel law and mushy Social Security "reform" to acquiescence to United Nations demands and post-Littleton talk of media regulation, the two parties are becoming indistinguishable.

There was a time when each party stood for worthwhile principles. Republicans focused on the enumerated powers of government and the constitutionally limited role of government in our society. Democrats focused on parts of the Bill of Rights and defended free speech and civil liberties.

It was all laudable, and it has all changed.

## Larger government role creeping back

Today, there is no aspect of civil society that either party would place beyond the reach of the tentacles of the federal Leviathan. Neither Barry Goldwater nor Ronald Reagan believed the federal government had a role in education. Now, Senate Majority Leader Trent Lott whines that Bill Clinton is not giving the GOP credit for the billions it wants to spend on local education. Today's Democrats would trample the First Amendment in the name of "campaign finance reform" and politically correct speech codes.

It's quite disheartening for those of us who advocate limited government and individual liberty. Most disturbing has been the collapse of the GOP as a defender of a constitutionally limited role for the federal government. Why has the GOP thrown in the towel? The answer lies, at least partially, in the GOP's path of least resistance:

**The balanced-budget obsession.** Many conservatives, confronted with continuous federal deficits, found it easier to don the mantle of fiscal responsibility than argue the merits of a given program. Rather than debate whether a school lunch program was within the scope of legitimate federal power, it was simpler to point out that we lacked funds for the program.

**The supply-side revolution.** When Jack Kemp, Newt Gingrich, Vin Weber and the rest discovered Jude Wanniski and Art Laffer, they thought they'd died and gone to heaven. In supply-side economics, they found a philosophy that offered an escape from the debate over government's proper role. Just cut taxes and grow the economy, and government will shrink as a percentage of gross domestic product, even without spending cuts.

Both fiscal conservatives and supply-siders would have done well to remember Milton Friedman's admonition that the true tax on the American people is the level of government spending, whether it is financed by taxes or borrowing.

## Scandals take precedence over real issues

**The scandalmongers.** Another cop-out is to focus on opponents' scandals rather than the issues. This approach appealed to Gingrich, who vowed never to give a speech without mentioning Monica Lewinsky. The 1998 elections were a disaster for the GOP precisely because the party's leadership abandoned the small-government rhetoric of 1994.

**The judicial-restraint crowd.** The Supreme Court is the ultimate venue in the battle for limited government. But even here, conservatives are raising the white flag. Instead of approaching a decision such as *Roe vs. Wade* with a principled attack on the court's legal reasoning, they paint it as an example of "judicial activism" and call for an evisceration of the court's power.

The Supreme Court's proper role is to take seriously the enumerated powers and the 10th Amendment and actively strike down legislation that is outside the powers granted Congress in the Constitution. We need principled judicial activism. "Judicial restraint," as advocated by many conservatives, is yet another capitulation in what should be a battle of ideas over the role of government in a free society.

Before Republicans and Democrats morph into one party that micromanages our lives from Washington, the GOP needs to reclaim responsibility for the defense of limited government. By continuing on its current path, it is merely slouching toward irrelevance.

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Crime - Juvenile Justice

WEDNESDAY, FEBRUARY 26, 1997

The Washington Post

David S. Broder

# Convergence on Crime

As federal crime programs go, the one that President Clinton unveiled last week in Boston is not half-bad. It addresses a serious problem—juvenile crime—in sensible fashion, relying on local programs that have proved their worth and encouraging their adoption in other communities.

The objection can still be raised that in this effort, as in other, more grandiose Washington anti-crime initiatives, the feds are trampling on turf that clearly belongs to city and state government. When presidents and members of Congress want to show their constituents they are responsive to fear of crime, their rhetoric is often vastly stronger than the help they furnish.

Clinton's juvenile-crime initiative is not immune from this criticism, but his words in Boston were more measured and his actions more appropriate than is the case when he and Congress pretend they're being tough by expanding the list of federal death-penalty crimes. And the problem Clinton is addressing is a real one.

As previously noted in this space, juvenile-crime rates have risen rapidly over the past decade, even though adult crime has been declining. Left unchecked, things could get much worse, because the number of youngsters headed for the teenage peak crime years is higher than it has been since the 1950s.

Boston and a few other cities have been ahead of the nation in responding to this challenge. What the president heard on his visit was a story of cooperative efforts by federal, state

*Youths who have had their first brush with the law need to know there are adults who care.*

and local agencies and private organizations that have sharply reduced violent crimes by juveniles and allowed the city to boast that no child has died by gunfire in over a year and a half.

The tactics that have brought this change include a targeted drive on gangs and stiffer prosecution of repeat juvenile offenders, coupled with expanded opportunities for youths in high-crime areas to find safe study and recreation opportunities in the after-school, pre-dinner hours when half the juvenile crimes are committed. Especially productive has been the cooperation between probation officers and police in making joint home calls on youths who have had their first brush with the law and need

to know there are adults who care about them and are monitoring their behavior. Recidivism rates among these youths are way down.

Clinton is offering modest incentives for other cities to adopt this multisided strategy. As in other instances, his initiative is puny in size, because his reluctance to grasp the nettle of entitlement reform and his ambition to compete with the Republicans on tax cuts leave him with little money for the domestic programs he says are important.

This one, by the most generous estimate, would allocate less than a half-billion dollars to participating communities over the next two years—and that includes money already in the anti-crime budget. Republican lawmakers have introduced a juvenile-crime package three times that size, so Congress may well up the ante on the president.

This is a policy area where liberal and conservative thinking has converged in recent years. Officials have come to agree with the concept of community policing that Clinton made the centerpiece of his first-term anti-crime strategy, and they have come to accept political scientist James Q. Wilson's view that zero tolerance toward even minor vandalism creates an environment in which serious crimes are more quickly reported and therefore more readily solved.

The day before Clinton went to Boston, the conservative Manhattan Institute issued a policy statement endorsed by William J. Bennett and two other Reagan-Bush law enforcement officials, emphasizing the importance of adult monitoring of juvenile offenders, backed up by intensive mentoring and ministering efforts by community volunteers, designed to keep "the minnows from becoming sharks."

The convergence tends to verify the claim made by some White House officials with whom I have discussed Clinton's work in this area. They point out that Clinton has helped remove the crime issue from the partisan arena (thereby depriving the Republicans of one of their favorite attack-ad themes against Democrats). He has made community policing an accepted national policy and has legitimized gun control as an effective crime-fighting strategy, taking considerable risk in challenging the National Rifle Association.

Most important of all, he has separated the crime issue from the race issue—no Willie Hortons in his ads—and thereby made it possible for the former to be addressed seriously on its own terms, without the stigma of disguised racism.

That is a commendable record.

George F. Will

# The Moral Hazards of Scientific Wonders

The Washington Post

WEDNESDAY, FEBRUARY 26, 1997

Well, hello, Dolly. What are we to make of you, now that we have made you? And what are we to make of us?

In Scotland, a sheep named Dolly has been manufactured—literally, made by hand. Dolly is the result of the first cloning of an adult mammal. If one is now enough for multiplication, does this mean that there no longer is any endangered species? Or does it mean that humans are uniquely endangered?

Dolly is genetically identical to the one parent—if that is the right word—from which it was cloned. The word “parent” is problematic.

It does not quite fit the sheep that was merely an incubator for the embryo engineered elsewhere and then inserted into her. So the word “parent” here denotes, if anything, another adult sheep, the one that was the sole source of Dolly’s genetic material. But that parent is sort of the sibling of its identical twin offspring, Dolly. Golly.

Such ambiguities will trouble only unusually thoughtful sheep. However, the featherless bipeds called human beings have the kind of consciousness that causes them to wonder about themselves: Given what we are, how ought we behave?

Now, what if the great given—a human being is the product of the union of a man and a woman—is no longer a given? The news from Scotland could have immense consequences for mankind’s moral life—for thinking about “ought” propositions.

The biotechnology of cloning turns out to be remarkably simple, meaning it is accessible to scientists with training that is not especially recondite. And apparently there is no practical impediment to cloning the human animal. If freedom is the silence of the law, Americans are free to try it. And the bioethical code adopted by European nations, forbidding genetic experiments that would alter human generations, will inhibit only the conscientious.

The news from Scotland gives the slogan “our bodies, our choices” an interesting new dimension. And a society that couches every issue in the language of individual rights (as in the right of “choice” concerning “reproductive freedom”) may have difficulties, now that narcissism and megalomania, two recurring human attributes, have a new avenue of expression: Make me my heir.

This subject is an invitation to playful imagining that soon turns serious. Imagine five Michael Jordans playing five other Michael Jordans. But, then, what makes him him is not just his genetic material but his competitive character, his fierce integrity. How much of character is genetically influenced or determined? The nature vs. nurture argument continues. As the twig is bent: Would a cloned Jordan be Jordan without whatever it was about his family, and about North Carolina, that helped young Michael become the man?

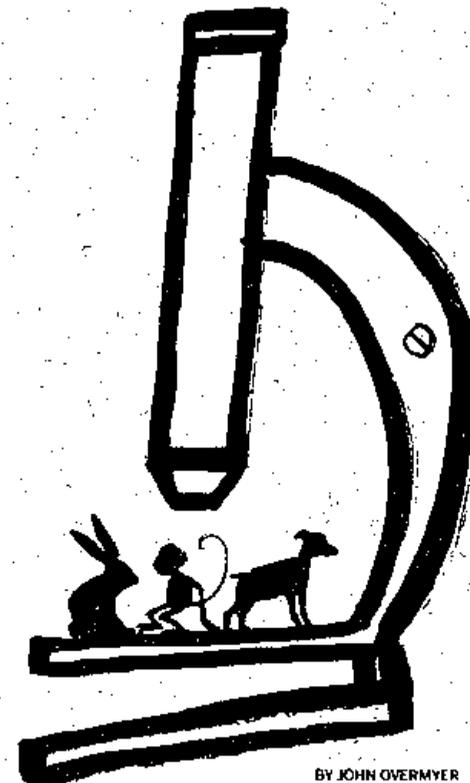
And what about the soul? Is there such a thing? Is there a ghost in the machine, or only a machine? Are they right who say, “I do not have a body, I am a body?”

Mankind, a *k* a *Homo technologicus*, is making progress, in the form of sheep and other animals with immense potential for agricultural, medicinal and other scientific advancements. But at what moral hazard? Twenty-five years ago Prof. Leon Kass of the University of Chicago said much that now urgently needs resaying.

In his essay “Making Babies: The New Biology and the ‘Old’ Morality,” Kass noted that technological corollaries to the pill—babies without sex—involve not just new ways of beginning life but new ways of understanding and valuing life. Connections with parents, siblings and ancestors are integral to being human, although not to being a sheep. Can individuality, identity and dignity be severed from genetic distinctiveness, and from belief in a person’s open future?

Suppose a cloned Michael Jordan, age 8, preferred the violin to basketball? Is it imaginable? If so, would it be tolerable to the cloner? Imagine the emotional distress of a cloned person with foreknowledge of powerful genetic predispositions, psychological or biological.

Cloning, like eugenics generally, would produce, as C. S. Lewis wrote, “one dominant age . . . which resists all



BY JOHN OVERMYER

previous ages most successfully and dominates all subsequent ages most irresistibly.” This is not the “conquest of nature,” it is (to take the title of Lewis’s book) the abolition of man, because humanity is supposed to be an endless chain, not a series of mirrors.

When Hiroshima occasioned anxious talk about the dangers of physics, Einstein replied that the world was more apt to be destroyed by bad politics than bad physics. Dolly raises the stakes of biology, but also of philosophy.