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Office of the Assistant Attorney General

Washington, D.C. 20530

January 26, 1995

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

Dear Chairman Hyde:

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

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

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

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

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

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

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

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

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

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

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

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

I. Death Penalty

A. Habeas Corpus Reform

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

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

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

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

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

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

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

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

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

B. Federal Death Penalty Procedures Reform

Subtitle B of Title I amends the death penalty provisions enacted by the Violent Crime Control and Law Enforcement Act of 1994, to direct the jury to impose a capital sentence if it finds that the aggravating factors in the case outweigh any mitigating factors. As we have previously stated, we support this approach as providing "more effective safeguards against inconsistency in capital sentencing by providing better guidance for the jury concerning the circumstances in which a capital sentence should or should not be imposed." Letter of Attorney General Janet Reno to Honorable Joseph R. Biden, Jr., Detailed Comments at 3 (June 13, 1994).

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

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

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

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

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

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

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

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

(4) The proposed procedures contemplate a return to an

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earlier system in which the Federal Government does not directly carry out executions, but makes arrangements with states to carry out capital sentences in federal cases. We recommend amendment of the legislation to perpetuate the current approach, under which the execution of capital sentences in Federal cases is carried out by Federal officials pursuant to uniform regulations issued by the Attorney General.

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

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

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

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

II. Deterring Gun Crimes

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

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

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state and local law enforcement, judicial and prison systems.

We oppose the provisions of this title, which would largely obliterate the distinction between federal and state criminal jurisdiction. They represent a false promise of action in fighting violent crime -- a promise that can never be realized, given limited federal resources -- and divert attention from the critical role that the federal government does play in the fight against violent and drug crimes.

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

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

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

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

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

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

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

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

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

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

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

III. Mandatory Victim Restitution

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

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

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

IV. Law Enforcement Block Grants

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

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

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

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

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

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

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ethnic, and class antagonisms.

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

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

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

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

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

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

V. Truth in Sentencing Grants

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

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

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

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

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

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the prison grants.

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

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

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

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

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

This approach also places undue emphasis on the current

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

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

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

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

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being implemented under the existing program.

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

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

VI. Exclusionary Rule Reform

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

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

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

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

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

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

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

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

VII. Stopping Abusive Prisoner Lawsuits

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

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

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

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

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

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

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

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

VIII. Streamlining Deportation of Criminal Aliens

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

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

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

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

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

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

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

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

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

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

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IX. Amendments to Violent Crime Control and Law Enforcement Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

X. Retention of Assault Weapons Ban

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

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

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

XI. Other Measures

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

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

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of child pornography into the United States by computer.

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

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

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

* * * * *

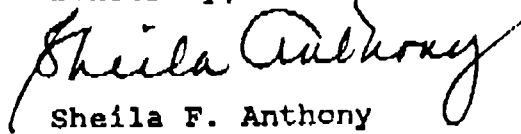
In sum, we support those proposals in H.R. 3 that will strengthen law enforcement. We also recommend that the pending legislation be expanded to include a wider range of criminal law reform measures that we have proposed or endorsed.

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

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

Sincerely,

A handwritten signature in cursive script, reading "Sheila Anthony".

Sheila F. Anthony
Assistant Attorney General