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House
REPUBLICAN
Conference

Legislative Digest

September 27, 1994

Dick Armey
Chairman
26th District, Texas

Contract With America

10 bills to be considered during the first 100 days of a Republican-led 104th Congress

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experienced crime at a rate of 136.7 per 1,000 compared to the rate of 83.3 per 1,000 for households with incomes between \$30,000 and \$49,000.

While the problem is severe, statistics illustrate that a small percentage of criminals commit the vast majority of violent crimes. Just seven percent of criminals commit two-thirds of all violent crime, including three fourths of rapes and robberies, and virtually all murders. A 1991 study done by the Bureau of Alcohol, Tobacco and Firearms indicated that 471 armed criminals had a total of 3,088 felony convictions — an average of 6.55 felonies each. To make matters worse, many of these criminals either are never caught, or, if found guilty, do not serve their entire prison sentence. Every year, over 60,000 criminals convicted of a violent crime never go to prison — for every 100 crimes reported only three criminals go to prison. The Bureau of Justice Statistics has found that only 45.4 percent of court-ordered confinement is served on average, and 51 percent of violent offenders sent to prison are released in two years or less. These numbers are even more telling in light of the fact that at least 30 percent of the murders in this country are committed by people on probation, parole or bail. Faced with prison overcrowding, 17 states have begun emergency release programs. Overall, the risk of punishment has declined in the past 40 years while the annual number of serious crimes committed has skyrocketed.

All this has led to public calls for "truth-in-sentencing" laws (requiring criminals to serve a significant percentage of their sentences without a chance of parole) and "three strikes, you're out" laws (requiring life in prison for recidivists convicted of their third violent felony). Opponents of strict sentencing laws like these argue that "locking people up" does not address the problem of why crimes are committed in the first place. Evidence suggests, however, that there is a strong correlation between increased incarceration and decreased crime rates: from 1990-1991, states with the greatest increases in criminal incarceration rates experienced, on average, a 12.7 percent decrease in crime, while the 10 states with the weakest incarceration rates experienced an average 6.9 percent increase in crime.

Recent Legislation

Just a few weeks ago, President Clinton signed P.L. 103-322, the Omnibus Crime Control Act of 1994 after nearly one year of congressional hearings, mark-ups, floor votes, conference wranglings, a delayed recess, and weekend votes. Many members spoke out against the legislation, arguing that it did little to address the fundamental crime problem in our country. Relying on expensive "Great Society-esque" programs, the bill attempted to do what all other big government social programs have failed to do: make individuals responsible for their actions and instill a sense of right and wrong in those with a propensity to commit a crime. Criticism focused not only on what the bill contained, but what it lacked. Republicans argued that it should have included reform of the *habeas corpus* process (the process by which inmates challenge the constitutionality of their sentences), a good faith exemption for the exclusionary rule, tough language against sexual predators, more money for state prison construction, and stronger requirements that states enact truth-in-sentencing laws to be eligible for grant assistance.

After a crazy weekend session at the end of August, the conference agreement was finally approved by the House 235-195 (Roll Call #416). When all was said and done, the compromise authorized a total of \$30 billion over six years, including \$5.4 billion for prevention programs, \$7.9 billion for new prison construction and \$8.8 billion for new police officers. It also included the so-called "three strikes, you're out" provision, applied the death penalty to over 50 new crimes, increased penalties

court dockets each year, and (3) it allows prisoners on death row to almost indefinitely delay their punishment.

Authorization of Funds for States to Prosecute Capital Cases. Congress already provides funds for death penalty resource centers to litigate federal *habeas corpus* petitions for death row inmates. H.R. ___ authorizes equal funding for states to prosecute these cases. Bill sponsors argue that equal funds should be provided to both the defense and the prosecution in these cases.

Reform of Death Penalty Procedures. The bill mandates that juries be instructed to recommend a death sentence if aggravating factors (circumstances of the crime that increase the level of guilt) outweigh "mitigating factors" (circumstances that reduce the degree of moral culpability). Juries must also be instructed to avoid any "influence of sympathy, sentiment, passion, prejudice or other arbitrary factors" in their decisions.

Under the recent omnibus crime control act, the Justice Department is required to notify the court and the defendant that it intends to seek the death penalty, and it must indicate the "aggravating" factors it intends to prove as the basis for imposition of a capital sentence. The law specifically states that a jury is never required to impose a death sentence (even if it finds that aggravating factors outweigh mitigating factors), and that death penalties can never be imposed on individuals who are mentally retarded, incompetent or under 18 years of age at the time of their crime. Critics of current law argue that it (1) establishes an elaborate system of aggravating and mitigating factors, but then allows juries to ignore the evidence and make an arbitrary sentencing recommendation; (2) gives too much discretion to a judge and jury; (3) weakens current law; and (4) greatly complicates the use of any new federal death penalty.

Mandatory Minimum Sentencing for Drug Crimes (Title II)

The Comprehensive Crime Control Act of 1984 (P.L. 98-473) created the U.S. Sentencing Commission to develop and monitor sentencing guidelines to be used by federal judges when sentencing criminal defendants. Despite the commission's suggestions that mandatory minimum sentences tend to warp the guidelines system, Congress has enacted about 100 mandatory minimum sentences for a variety of federal crimes. Many federal judges have complained that these restrictions are foolish, wasteful and cruel (sometimes requiring them to impose a sentence without regard to the nature of the offense or the character and background of the offender), and that they have no deterrent effect on crime.

Supporters of mandatory sentences counter that they complement the sentencing guidelines, prevent disparity in sentencing, and ensure certainty of punishment. Mandatory minimums send a strong and unmistakable message to criminals that they will serve a set minimum sentence if they commit certain violent crimes. Mandatory minimums are also used by prosecutors to extract confessions from low-level offenders in exchange for reduced sentences. The information is then used to build cases against criminal crime bosses. Although judges object to mandatory minimums because they take away their sentencing discretion, prosecutors see them as important law enforcement tools.

H.R. ___ establishes a mandatory minimum sentence of 10 years for state or federal drug or violent crimes that involve possession of a gun. Penalties increase to 20 years for a second conviction and life in prison for a third. For those who discharge a firearm with intent to injure another person, the

To qualify for these grants, a unit of local government must show that it will (1) establish a trust fund in which block grant money is to be deposited; (2) use the money within two years; (3) spend the money in accordance with the guidelines in this section; (4) use approved accounting, audit and fiscal procedures; (5) make any requested records available to the Bureau of Justice Assistance and the comptroller of the U.S. for review; and (6) submit the required progress reports. Each state that applies is to automatically receive 0.25 percent of the funds as well as additional funds based on its number of reported violent crimes in 1993 compared to the rest of the country. States are to distribute the funds among local units of government based on their population and the number of reported violent crimes in 1993 compared to the rest of the local governmental units in the state.

If a unit of local government does not spend all of its grant money within two years of receipt, it must repay the unused portion to the Bureau of Justice Assistance within three months. The bill also stipulates that (1) this grant money is intended to supplement, not supplant, state funds; (2) grantees may not use more than 2.5 percent of their grant for administrative costs; and (3) grantees must hold one public hearing on the proposed use of their grant. The bill also sets out procedures to be used if a local government violates any portion of this title.

* As noted above, H.R. ____ repeals sections of the recently-enacted crime control act that provide specific funds for drug courts, recreational programs, community justice programs and other social prevention spending. Bill sponsors argue that providing money directly to local law enforcers and letting them decide how to spend the funds (as the Taking Back Our Streets Act does) is preferable to the current law approach of authorizing specific amounts of money for programs approved by Washington bureaucrats.

Grants for Prison Construction Based on Truth-in-Sentencing (Title V)

H.R. ____ authorizes \$10.5 billion over six years (\$232 million in FY 1995, \$997.5 million in FY 1996, \$1.3 billion in FY 1997, \$2.5 billion in FY 1998, \$2.7 billion in FY 1999 and \$2.8 billion in FY 2000) for the Attorney General to make grants to states so they can build, expand and operate prisons for serious violent felons. This title replaces the prison section in the recently-enacted crime bill. H.R. ____ also authorizes the AG to make grants for states to move non-violent offenders and criminal aliens to other correctional facilities (including old military bases) to make room for violent criminals at existing prisons. Grants are to be awarded based on two formulas: a percentage that applies to all states (.40 percent) and a percentage based on population.

Fifty percent of the funds authorized under this section are designated as "general grants." To receive these funds, states must show that since 1993 (1) an increased percentage of convicted violent offenders have been sentenced to prison, (2) the state has increased the average prison time actually served in prison, and (3) the state has increased the percentage of sentences to be actually served. The other 50 percent is reserved for truth-in-sentencing incentive grants. To be eligible for these funds, states must show that they require serious violent felons to serve at least 85 percent of the sentence imposed, and require sentencing or releasing authorities to allow the defendant's victim (or the victim's family) to testify on the issue of sentencing and any post-conviction release.

The bill includes an exception for prisoners over the age of 70 years after a public hearing in which representatives of the public and the prisoner's victims have an opportunity to testify on the issue of release. It also stipulates that (1) grant money is to supplement, not supplant, state funds; (2) no more

The current law definition of an aggravated felony includes murder, drug trafficking, trafficking in firearms or explosives, money laundering, terrorism, and any crime of violence carrying a prison sentence of at least five years.

Criminal Alien Deportation Proceedings. The bill allows the Attorney General to issue a final order of deportation against any alien determined to be deportable for conviction of an aggravated felony (without requiring a deportation hearing). An alien is defined as anyone who (1) was not lawfully admitted for permanent residence in the U.S. at the time that proceedings for the commission of an aggravated crime began or (2) had permanent resident status on a conditional basis at the time that proceedings for the commission of an aggravated crime began. An alien against whom a deportation order is issued may appeal for judicial review in federal court; however, the court action is limited to challenging only the defendant's identification (whether the person is who the Immigration and Naturalization Service [INS] says he is and whether he committed the aggravated felony).

Judicial Deportations. When an alien whose conviction causes him to be deemed deportable is sentenced, a federal court may issue a judicial order of deportation if the U.S. attorney requested one prior to sentencing and the INS commissioner is in agreement. A judicial order of deportation or a denial of such order may be appealed by either party to the circuit court of appeals. A court action, however, is limited to challenging only the defendant's identification (whether the person is who the Immigration and Naturalization Service [INS] says he is and whether he committed the aggravated felony).

If a judicial order is denied, the Attorney General may still pursue a deportation order through administrative channels.

Defenses Based on Permanent Residence. Under current law, when an alien is in deportation proceedings, he can use certain defenses to get out. One such defense is showing that he has been a permanent resident of the United States for the past seven years. H.R. ___ does not change the underlying defense, but changes the time frame in which INS can begin deportation proceedings against an alien convicted of an aggravated offense. Under current law, deportation proceedings are to begin after the alien has served five years. H.R. ___ allows INS to begin deportation proceedings when an alien is sentenced to a term of at least five years. Bill sponsors argue that this standard is more relevant for judging the seriousness of a crime since dangerous criminals may be released prematurely due to prison overcrowding, or other reasons not related to the seriousness of the crime.

Defenses Based on Withholding of Deportation. Aliens may also reverse deportation proceedings by showing that they will suffer physical harm if returned to their native country. As defined by international law, "withholding of deportation" is a higher standard of protection than asylum: if an alien can prove such a situation exists, he must be retained in the U.S. unless he poses a danger to the public. H.R. ___ clarifies current law to stipulate that aggravated felons pose a serious danger to the public and are not allowed to request or be granted this protection.

Enhanced Penalties for Failing to Deport or Reentering. Under current law, aliens who are deportable for criminal offenses, for document fraud or because they are a security risk to the U.S. face up to 10 years in prison for failure to depart. Bill sponsors argue that there are no penalties for aliens who are deportable for other reasons but refuse to leave. H.R. ___ retains the current law penalty and establishes a penalty of up to four years in prison for all other deportable aliens who refuse to leave. The bill also establishes civil penalties for those who refuse to leave.

Prosecutors Know: Mandatory Minimums Work," by Jay Apperson, *The Washington Post*, February 27, 1994, p. C1; "Mandatory Minimums and the Betrayal of Sentencing Reform" by Henry Scott Wallace and "Mandatory Minimum Sentences: A Federal Prosecutor's Viewpoint" by Michael M. Baylson, *Federal Bar News & Journal*, March/April 1993, Vol. 40; and "Crime, Punishment and Politics," *The Washington Post*, October 6, 1993, p. A23.

Three-Strikes. "Three Strikes Provisions: Mandatory Life Sentences for Violent Offenders," *CRS Report 94-143GOV*; "We've Got Three Strikes — It's Working," by John Carlson, *The Washington Post*, March 6, 1994, p. C7; "What Pols Won't Say: 'Three Strikes — and We're Out of Money'," *The Washington Post*, February 27, 1994, p. C1; "Critics Say Three Strikes Proposal Would Do Little to Reduce Crime," *The Washington Post*, February 22, 1994, p. A4; "When to Call Three Strikes," *The Washington Post*, February 1, 1994, p. A20; and "Violent Crime Strikes a Chord Coast to Coast," *The Washington Post*, January 24, 1994, p. A1.

Truth In Sentencing. "Truth in Sentencing: Why States Should Make Violent Criminals Do Their Time," The Heritage Foundation *State Backgrounder*, December 30, 1993.

Stacey Shrader, 226-7863

The Taking Back Our Streets Act

104TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

House Republicans will introduce the following bill

A BILL

To control crime.

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

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the “Taking Back Our
5 Streets Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EFFECTIVE DEATH PENALTY

Subtitle A—Habeas Corpus Reform

CHAPTER 1—POST CONVICTION PETITIONS: GENERAL HABEAS CORPUS REFORM

- Sec. 101. Period of limitation for filing writ of habeas corpus following final judgment of a State court.
- Sec. 102. Authority of appellate judges to issue certificates of probable cause for appeal in habeas corpus and Federal collateral relief proceedings.
- Sec. 103. Conforming amendment to the rules of appellate procedure.
- Sec. 104. Discretion to deny habeas corpus application despite failure to exhaust State remedies.
- Sec. 105. Period of limitation for Federal prisoners filing for collateral remedy.

CHAPTER 2—SPECIAL PROCEDURES FOR COLLATERAL PROCEEDINGS IN CAPITAL CASES

- Sec. 106. Death penalty litigation procedures.

CHAPTER 3—FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS PETITIONS IN CAPITAL CASES

- Sec. 107. Funding for death penalty prosecutions.

Subtitle B—Federal Death Penalty Procedures Reform

- Sec. 111. Federal death penalty procedures reform.

TITLE II—DETECTING GUN CRIMES

- Sec. 201. Mandatory prison terms for use, possession, or carrying of a firearm or destructive device during a State crime of violence or State drug trafficking crime.

TITLE III—MANDATORY VICTIM RESTITUTION

- Sec. 301. Mandatory restitution and other provisions.

TITLE IV—LAW ENFORCEMENT BLOCK GRANTS

- Sec. 401. Block grant program.

TITLE V—TRUTH IN SENTENCING GRANTS

- Sec. 501. Truth in sentencing grant program.

TITLE VI—EXCLUSIONARY RULE REFORM

- Sec. 601. Admissibility of certain evidence.

TITLE VII—STOPPING ABUSIVE PRISONER LAWSUITS

- Sec. 701. Exhaustion requirement.
- Sec. 702. Frivolous actions.
- Sec. 703. Modification of required minimum standards.
- Sec. 704. Proceedings in forma pauperis.

TITLE VIII—STREAMLINING DEPORTATION OF CRIMINAL ALIENS

- Sec. 801. Expansion of definition of aggravated felony.
- Sec. 802. Deportation procedures for certain criminal aliens who are not permanent residents.
- Sec. 803. Judicial deportation.
- Sec. 804. Restricting defenses to deportation for certain criminal aliens.
- Sec. 805. Enhancing penalties for failing to depart, or reentering, after final order of deportation.
- Sec. 806. Miscellaneous and technical changes.
- Sec. 807. Criminal alien tracking center.

TITLE IX—AMENDMENTS TO VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT

- Sec. 901. Deletion or replacement of programs.

TITLE I—EFFECTIVE DEATH PENALTY
Subtitle A—Habeas Corpus Reform
CHAPTER 1—POST CONVICTION PETITIONS: GENERAL
HABEAS CORPUS REFORM

SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HABEAS CORPUS FOLLOWING FINAL JUDGMENT OF A STATE COURT.

Section 2244 of title 28, United States Code, is amended by adding at the end the following:

“(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

“(1) The time at which State remedies are exhausted.

“(2) The time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action.

“(3) The time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable.

“(4) The time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.”.

SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE CERTIFICATES OF PROBABLE CAUSE FOR APPEAL IN HABEAS CORPUS AND FEDERAL COLLATERAL RELIEF PROCEEDINGS.

Section 2253 of title 28, United States Code, is amended to read as follows:

“§ 2253. Appeal

“(a) In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

“(b) There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

“(c) An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of

1 arises out of process issued by a State court, or from the final order in a
2 proceeding under section 2255 of this title, unless a circuit justice or judge
3 issues a certificate of probable cause.”.

4 SEC. 103. CONFORMING AMENDMENT TO THE RULES OF APPELLATE
5 PROCEDURE.

6 Federal Rule of Appellate Procedure 22 is amended to read as follows:

7 “RULE 22

8 “HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

9 “(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An
10 application for a writ of habeas corpus shall be made to the appropriate dis-
11 trict court. If application is made to a circuit judge, the application will or-
12 dinarily be transferred to the appropriate district court. If an application
13 is made to or transferred to the district court and denied, renewal of the
14 application before a circuit judge is not favored; the proper remedy is by
15 appeal to the court of appeals from the order of the district court denying
16 the writ.

17 “(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR AP-
18 PEAL.—In a habeas corpus proceeding in which the detention complained
19 of arises out of process issued by a State court, and in a motion proceeding
20 pursuant to section 2255 of title 28, United States Code, an appeal by the
21 applicant or movant may not proceed unless a circuit judge issues a certi-
22 cate of probable cause. If a request for a certificate of probable cause is
23 addressed to the court of appeals, it shall be deemed addressed to the judges
24 thereof and shall be considered by a circuit judge or judges as the court
25 deems appropriate. If no express request for a certificate is filed, the notice
26 of appeal shall be deemed to constitute a request addressed to the judges
27 of the court of appeals. If an appeal is taken by a State or the Government
28 or its representative, a certificate of probable cause is not required.”.

29 SEC. 104. DISCRETION TO DENY HABEAS CORPUS APPLICATION DE-
30 SPITE FAILURE TO EXHAUST STATE REMEDIES.

31 Section 2254(b) of title 28, United State Code, is amended to read as
32 follows:

33 “(b) An application for a writ of habeas corpus in behalf of a person
34 in custody pursuant to the judgment of a State court shall not be granted
35 unless it appears that the applicant has exhausted the remedies available
36 in the courts of the State, or that there is either an absence of available
37 State corrective process or the existence of circumstances rendering such
38 process ineffective to protect the rights of the applicant. An application may
39 be denied on the merits notwithstanding the failure of the applicant to ex-
40 haust the remedies available in the courts of the State.”.

1 SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRISONERS FILING
2 FOR COLLATERAL REMEDY.

3 Section 2255 of title 28, United States Code, is amended by striking
4 the second paragraph and the penultimate paragraph thereof, and by adding
5 at the end the following new paragraphs:

6 "A two-year period of limitation shall apply to a motion under this sec-
7 tion. The limitation period shall run from the latest of the following times:

8 "(1) The time at which the judgment of conviction becomes final.

9 "(2) The time at which the impediment to making a motion cre-
10 ated by governmental action in violation of the Constitution or laws of
11 the United States is removed, where the movant was prevented from
12 making a motion by such governmental action.

13 "(3) The time at which the right asserted was initially recognized
14 by the Supreme Court, where the right has been newly recognized by
15 the Court and is retroactively applicable.

16 "(4) The time at which the factual predicate of the claim or claims
17 presented could have been discovered through the exercise of reasonable
18 diligence."

19 CHAPTER 2—SPECIAL PROCEDURES FOR COLLATERAL
20 PROCEEDINGS IN CAPITAL CASES

21 SEC. 106. DEATH PENALTY LITIGATION PROCEDURES.

22 (a) IN GENERAL.—Title 28, United States Code, is amended by insert-
23 ing the following new chapter after chapter 153:

24 "CHAPTER 154—SPECIAL HABEAS CORPUS
25 PROCEDURES IN CAPITAL CASES

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; require-
ment of rule of court or statute; procedures for appointment.

"2257. Mandatory stay of execution; duration; limits on stays of execution; successive peti-
tions.

"2258. Filing of habeas corpus petition; time requirements; tolling rules.

"2259. Evidentiary hearings; scope of Federal review; district court adjudication.

"2260. Certificate of probable cause inapplicable.

"2261. Application to State unitary review procedures.

"2262. Limitation periods for determining petitions.

"2263. Rule of construction.

26 "§ 2256. Prisoners in State custody subject to capital sen-
27 tence; appointment of counsel; requirement of rule
28 of court or statute; procedures for appointment

29 "(a) This chapter shall apply to cases arising under section 2254
30 brought by prisoners in State custody who are subject to a capital sentence.
31 It shall apply only if the provisions of subsections (b) and (c) are satisfied.

32 "(b) This chapter is applicable if a State establishes by rule of its court
33 of last resort or by statute a mechanism for the appointment, compensation
34 and payment of reasonable litigation expenses of competent counsel in State

1 postconviction proceedings brought by indigent prisoners whose capital con-
2 victions and sentences have been upheld on direct appeal to the court of last
3 resort in the State or have otherwise become final for State law purposes.
4 The rule of court or statute must provide standards of competency for the
5 appointment of such counsel.

6 “(c) Any mechanism for the appointment, compensation and reimburse-
7 ment of counsel as provided in subsection (b) must offer counsel to all State
8 prisoners under capital sentence and must provide for the entry of an order
9 by a court of record: (1) appointing one or more counsel to represent the
10 prisoner upon a finding that the prisoner is indigent and accepted the offer
11 or is unable competently to decide whether to accept or reject the offer; (2)
12 finding, after a hearing if necessary, that the prisoner rejected the offer of
13 counsel and made the decision with an understanding of its legal con-
14 sequences; or (3) denying the appointment of counsel upon a finding that
15 the prisoner is not indigent.

16 “(d) No counsel appointed pursuant to subsections (b) and (c) to rep-
17 resent a State prisoner under capital sentence shall have previously rep-
18 resented the prisoner at trial or on direct appeal in the case for which the
19 appointment is made unless the prisoner and counsel expressly request con-
20 tinued representation.

21 “(e) The ineffectiveness or incompetence of counsel during State or
22 Federal collateral postconviction proceedings in a capital case shall not be
23 a ground for relief in a proceeding arising under section 2254 of this chap-
24 ter. This limitation shall not preclude the appointment of different counsel,
25 on the court's own motion or at the request of the prisoner, at any phase
26 of State or Federal postconviction proceedings on the basis of the ineffec-
27 tiveness or incompetence of counsel in such proceedings.

28 **“§ 2257. Mandatory stay of execution; duration; limits on**
29 **stays of execution; successive petitions**

30 “(a) Upon the entry in the appropriate State court of record of an
31 order under section 2256(c), a warrant or order setting an execution date
32 for a State prisoner shall be stayed upon application to any court that
33 would have jurisdiction over any proceedings filed under section 2254. The
34 application must recite that the State has invoked the postconviction review
35 procedures of this chapter and that the scheduled execution is subject to
36 stay.

37 “(b) A stay of execution granted pursuant to subsection (a) shall expire
38 if—

39 “(1) a State prisoner fails to file a habeas corpus petition under
40 section 2254 within the time required in section 2258, or fails to make

1 a timely application for court of appeals review following the denial of
2 such a petition by a district court;

3 "(2) upon completion of district court and court of appeals review
4 under section 2254 the petition for relief is denied and (A) the time
5 for filing a petition for certiorari has expired and no petition has been
6 filed; (B) a timely petition for certiorari was filed and the Supreme
7 Court denied the petition; or (C) a timely petition for certiorari was
8 filed and upon consideration of the case, the Supreme Court disposed
9 of it in a manner that left the capital sentence undisturbed; or

10 "(3) before a court of competent jurisdiction, in the presence of
11 counsel and after having been advised of the consequences of his deci-
12 sion, a State prisoner under capital sentence waives the right to pursue
13 habeas corpus review under section 2254.

14 "(c) If one of the conditions in subsection (b) has occurred, no Federal
15 court thereafter shall have the authority to enter a stay of execution or
16 grant relief in a capital case unless—

17 "(1) the basis for the stay and request for relief is a claim not
18 previously presented in the State or Federal courts;

19 "(2) the failure to raise the claim is (A) the result of State action
20 in violation of the Constitution or laws of the United States; (B) the
21 result of the Supreme Court recognition of a new Federal right that
22 is retroactively applicable; or (C) based on a factual predicate that
23 could not have been discovered through the exercise of reasonable dili-
24 gence in time to present the claim for State or Federal postconviction
25 review; and

26 "(3) The facts underlying the claim would be sufficient to estab-
27 lish by clear and convincing evidence that but for constitutional error,
28 no reasonable fact finder would have found the petitioner guilty of the
29 underlying offense or eligible for the death penalty under State law.

30 "(d) Notwithstanding any other provision of law, no Federal district
31 court or appellate judge shall have the authority to enter a stay of execu-
32 tion, issue injunctive relief, or grant any equitable or other relief in a capital
33 case on any successive habeas petition (or other action which follows the
34 final determination of a first habeas corpus petition) unless the court first
35 determines the petition or other action does not constitute an abuse of the
36 writ. This determination shall be made only by the district judge or appel-
37 late panel who adjudicated the merits of the original habeas petition (or to
38 the district judge or appellate panel to which the case may have been subse-
39 quently assigned as a result of the unavailability of the original court or
40 judges). In the Federal courts of appeal, a stay may issue pursuant to the
41 terms of this provision only when a majority of the original panel or major-

ity of the active judges determines the petition does not constitute an abuse of the writ.

“§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

“Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within one hundred and eighty days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

“(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

“(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

“(3) during an additional period not to exceed sixty days, if (A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

“§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication

“(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

“(1) determine the sufficiency of the record for habeas corpus review based on the claims actually presented and litigated in the State courts except when the prisoner can show that the failure to raise or develop a claim in the State courts is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that

could not have been discovered through the exercise of reasonable diligence in time to present the claim for State postconviction review; and

“(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

“(b) Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it.

“§ 2260. Certificate of probable cause inapplicable

“The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to the provisions of this chapter except when a second or successive petition is filed.

“§ 2261. Application to State unitary review procedure

“(a) For purposes of this section, a ‘unitary review’ procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

“(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

“(c) Sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State ‘postconviction review’ and ‘direct review’ in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to ‘an order under section 2256(c)’ shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the one hundred and eighty

1 day limitation period under section 2258 shall be deferred until a transcript
2 is made available to the prisoner or his counsel.

3 **"§ 2262. Limitation periods for determining petitions**

4 "(a)(1) A Federal district court shall determine such a petition or mo-
5 tion within 60 days of any argument heard on an evidentiary hearing, or
6 where no evidentiary hearing is held, within 60 days of any final argument
7 heard in the case.

8 "(2)(A) The court of appeals shall determine any appeal relating to
9 such a petition or motion within 90 days after the filing of any reply brief
10 or within 90 days after such reply brief would be due. For purposes of this
11 provision, any reply brief shall be due within 14 days of the opposition brief.

12 "(B) The court of appeals shall decide any petition for rehearing and
13 or request by an appropriate judge for rehearing en banc within 20 days
14 of the filing of such a petition or request unless a responsive pleading is
15 required in which case the court of appeals shall decide the application with-
16 in 20 days of the filing of the responsive pleading. If en banc consideration
17 is granted, the en banc court shall determine the appeal within 90 days of
18 the decision to grant such consideration.

19 "(3) The time limitations contained in paragraphs (1) and (2) may be
20 extended only once for 20 days, upon an express good cause finding by the
21 court that the interests of justice warrant such a one-time extension. The
22 specific grounds for the good cause finding shall be set forth in writing in
23 any extension order of the court.

24 "(4) Since the matters under paragraphs (1) and (2)(A) are to be han-
25 dled on a priority basis, the time from filing of the petition or motion to
26 final argument (under paragraph (1)) or of the notice of appeal to the hear-
27 ing of the appeal (under paragraph (2)(A)) shall not exceed 4 months, un-
28 less exceptional circumstances require a longer period. Where such time pe-
29 riod exceeds 4 months in any petition or motion (under paragraph (2)(A)),
30 the court shall set forth in writing the exceptional circumstances causing the
31 delay.

32 "(b) The time limitations under subsection (a) shall apply to an initial
33 petition or motion, and to any second or successive petition or motion. The
34 same limitations shall also apply to the re-determination of a petition or mo-
35 tion or related appeal following a remand by the court of appeals or the
36 Supreme Court for further proceedings, and in such a case the limitation
37 period shall run from the date of the remand.

38 "(c) The time limitations under this section shall not be construed to
39 entitle a petitioner or movant to a stay of execution, to which the petitioner
40 or movant would otherwise not be entitled, for the purpose of litigating any
41 petition, motion, or appeal.

1 “(d) The failure of a court to meet or comply with the time limitations
2 under this section shall not be a ground for granting relief from a judgment
3 of conviction or sentence. The State or Government may enforce the time
4 limitations under this section by applying to the court of appeals or the Su-
5 preme Court for a writ of mandamus.

6 “(e) The Administrative Office of United States Courts shall report an-
7 nually to Congress on the compliance by the courts with the time limits es-
8 tablished in this section.

9 **“§ 2263. Rule of construction**

10 “This chapter shall be construed to promote the expeditious conduct
11 and conclusion of State and Federal court review in capital cases.”.

12 (b) CLERICAL AMENDMENT.—The table of chapters at the beginning
13 of part VI of title 28, United States Code, is amended by inserting after
14 the item relating to chapter 153 the following new item:

“154. Special habeas corpus procedures in capital cases 2256”.

15 **CHAPTER 3—FUNDING FOR LITIGATION OF FEDERAL**
16 **HABEAS CORPUS PETITIONS IN CAPITAL CASES**

17 **SEC. 107. FUNDING FOR DEATH PENALTY PROSECUTIONS.**

18 Part E of title I of the Omnibus Crime Control and Safe Streets Act
19 of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the fol-
20 lowing new section:

21 “Sec. 515. Notwithstanding any other provision of this subpart, the
22 Director shall provide grants to the States, from the funding allocated pur-
23 suant to section 511, for the purpose of supporting litigation pertaining to
24 Federal habeas corpus petitions in capital cases. The total funding available
25 for such grants within any fiscal year shall be equal to the funding provided
26 to capital resource centers, pursuant to Federal appropriation, in the same
27 fiscal year.”.

28 **Subtitle B—Federal Death Penalty**
29 **Procedures Reform**

30 **SEC. 111. FEDERAL DEATH PENALTY PROCEDURES REFORM.**

31 (a) IN GENERAL.—Subsection (e) of section 3593 of title 18, United
32 States Code, is amended by striking “Based upon this consideration” and
33 all that follows through the end of such subsection and inserting the follow-
34 ing:

35 “The jury, or if there is no jury, the court, shall then consider whether
36 the aggravating factor or factors found to exist outweigh any mitigating fac-
37 tors. The jury, or if there is no jury, the court shall recommend a sentence
38 of death if it unanimously finds at least one aggravating factor and no miti-
39 gating 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."

(b) CONFORMING AMENDMENT.—Section 3594 of title 18, United States Code, is amended by striking "or life imprisonment without possibility of release".

TITLE II—DETECTING GUN CRIMES

SEC. 201. MANDATORY PRISON TERMS FOR USE, POSSESSION, OR CARRYING OF A FIREARM OR DESTRUCTIVE DEVICE DURING A STATE CRIME OF VIOLENCE OR STATE DRUG TRAFFICKING CRIME.

Section 924(c) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(4)(A) A person who, during and in relation to a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of any State—

"(i) in the case of a first conviction of such a crime, in addition to the sentence imposed for the crime of violence or drug trafficking crime—

"(I) knowingly possesses a firearm shall be imprisoned not less than 10 years;

"(II) discharges a firearm with intent to injure another person shall be imprisoned not less than 20 years; or

"(III) knowingly possesses a firearm that is a machinegun or destructive device or is equipped with a firearm silencer or firearm muffler shall be imprisoned not less than 30 years;

"(ii) in the case of a second conviction of such a crime, in addition to the sentence imposed for the crime of violence or drug trafficking crime—

"(I) shall be imprisoned not less than 20 years if the person possessed a firearm during and in relation to the crime of violence or drug trafficking crime;

1 “(II) shall be imprisoned not less than 30 years if the person
2 discharged a firearm during and in relation to the crime of vio-
3 lence or drug trafficking crime; or

4 “(III) if the person possessed or discharged a firearm that is
5 a machinegun or a destructive device or is equipped with a firearm
6 silencer or firearm muffler during and in relation to the crime of
7 violence or drug trafficking crime, shall be imprisoned for life; and

8 “(iii) in the case of a third or subsequent conviction of such a
9 crime, shall be imprisoned for life.

10 “(B)(i) Notwithstanding any other provision of law, the court shall not
11 impose a probationary sentence on any person convicted of a violation of
12 this subsection, nor shall a term of imprisonment imposed under this sub-
13 section run concurrently with any other term of imprisonment including that
14 imposed for the crime of violence or drug trafficking crime in which the fire-
15 arm was used.

16 “(ii) No person sentenced under this subsection shall be released for
17 any reason whatsoever during a term of imprisonment imposed under this
18 paragraph.

19 “(C) For purposes of subparagraph (A), a person shall be considered
20 to be in possession of a firearm if—

21 “(i) in the case of a crime of violence, the person touches a fire-
22 arm at the scene of the crime at any time during the commission of
23 the crime; and

24 “(ii) in the case of a drug trafficking crime, the person has a fire-
25 arm readily available at the scene of the crime.

26 “(D) Subparagraph (A) shall not apply to a person who may be found
27 to have committed a criminal act while acting in defense of person or prop-
28 erty during the course of a crime being committed by another person (in-
29 cluding the arrest or attempted arrest of the offender during or immediately
30 after the commission of the crime), unless the person engaged in or partici-
31 pated in criminal conduct that gave rise to the occasion for the person's use
32 of a firearm.

33 “(E) As used in this paragraph:

34 “(i) The term ‘crime of violence’ means an offense that is punish-
35 able by imprisonment for more than 1 year and—

36 “(I) has as an element the use, attempted use, or threatened
37 use of physical force against the person or property of another; or

38 “(II) by its nature involves a substantial risk that physical
39 force against the person or property of another may be used dur-
40 ing the course of the offense.

“(ii) The term ‘drug trafficking crime’ means a crime punishable by imprisonment for more than 1 year involving the manufacture, distribution, possession, cultivation, sale, or transfer of a controlled substance, controlled substance analogue, immediate precursor, or listed chemical (as those terms are defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)), or an attempt or conspiracy to commit such a crime.

“(F) It is the intent of the Congress that—

“(i) this paragraph shall be used to supplement but not supplant the efforts of State and local prosecutors in prosecuting crimes of violence and drug trafficking crimes that could be prosecuted under State law; and

“(ii) the Attorney General shall give due deference to the interest that a State or local prosecutor has in prosecuting a person under State law.”.

TITLE III—MANDATORY VICTIM RESTITUTION

SEC. 301. MANDATORY RESTITUTION AND OTHER PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “may order” and inserting “shall order”; and

(B) by adding at the end the following new paragraph:

“(4) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

“(A) the criminal episode during which the offense occurred; or

“(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.”;

(2) in subsection (b)(1)(A) by striking “impractical” and inserting “impracticable”;

(3) in subsection (b)(2) by inserting “emotional or” after “resulting in”;

(4) in subsection (b)—

(A) by striking “and” at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (4) the following new paragraph:

“(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the inves-

1 tigation or prosecution of the offense or attendance at proceedings re-
2 lated to the offense; and”.

3 (5) in subsection (c) by striking “If the Court decides to order res-
4 titution under this section, the” and inserting “The”;

5 (6) by striking subsections (d), (e), (f), (g), and (h); and

6 (7) by adding at the end the following new subsections:

7 “(d)(1) The court shall order restitution to a victim in the full amount
8 of the victim's losses as determined by the court and without consideration
9 of—

10 “(A) the economic circumstances of the offender; or

11 “(B) the fact that a victim has received or is entitled to receive
12 compensation with respect to a loss from insurance or any other source.

13 “(2) Upon determination of the amount of restitution owed to each vic-
14 tim, the court shall specify in the restitution order the manner in which and
15 the schedule according to which the restitution is to be paid, in consider-
16 ation of—

17 “(A) the financial resources and other assets of the offender;

18 “(B) projected earnings and other income of the offender; and

19 “(C) any financial obligations of the offender, including obligations
20 to dependents.

21 “(3) A restoration order may direct the offender to make a single,
22 lump-sum payment, partial payment at specified intervals, or such in-kind
23 payments as may be agreeable to the victim and the offender.

24 “(4) An in-kind payment described in paragraph (3) may be in the
25 form of—

26 “(A) return of property;

27 “(B) replacement of property; or

28 “(C) services rendered to the victim or to a person or organization
29 other than the victim.

30 “(e) When the court finds that more than 1 offender has contributed
31 to the loss of a victim, the court may make each offender liable for payment
32 of the full amount of restitution or may apportion liability among the of-
33 fenders to reflect the level of contribution and economic circumstances of
34 each offender.

35 “(f) When the court finds that more than 1 victim has sustained a loss
36 requiring restitution by an offender, the court shall order full restitution of
37 each victim but may provide for different payment schedules to reflect the
38 economic circumstances of each victim.

39 “(g)(1) If the victim has received or is entitled to receive compensation
40 with respect to a loss from insurance or any other source, the court shall
41 order that restitution be paid to the person who provided or is obligated to

1 provide the compensation, but the restitution order shall provide that all
2 restitution of victims required by the order be paid to the victims before any
3 restitution is paid to such a provider of compensation.

4 "(2) The issuance of a restitution order shall not affect the entitlement
5 of a victim to receive compensation with respect to a loss from insurance
6 or any other source until the payments actually received by the victim under
7 the restitution order fully compensate the victim for the loss, at which time
8 a person that has provided compensation to the victim shall be entitled to
9 receive any payments remaining to be paid under the restitution order.

10 "(3) Any amount paid to a victim under an order of restitution shall
11 be set off against any amount later recovered as compensatory damages by
12 the victim in—

13 "(A) any Federal civil proceeding; and

14 "(B) any State civil proceeding, to the extent provided by the law
15 of the State.

16 "(h) A restitution order shall provide that—

17 "(1) all fines, penalties, costs, restitution payments and other
18 forms of transfers of money or property made pursuant to the sentence
19 of the court shall be made by the offender to an entity designated by
20 the Director of the Administrative Office of the United States Courts
21 for accounting and payment by the entity in accordance with this sub-
22 section;

23 "(2) the entity designated by the Director of the Administrative
24 Office of the United States Courts shall—

25 "(A) log all transfers in a manner that tracks the offender's
26 obligations and the current status in meeting those obligations,
27 unless, after efforts have been made to enforce the restitution
28 order and it appears that compliance cannot be obtained, the court
29 determines that continued recordkeeping under this subparagraph
30 would not be useful;

31 "(B) notify the court and the interested parties when an of-
32 fender is 90 days in arrears in meeting those obligations; and

33 "(3) the offender shall advise the entity designated by the Director
34 of the Administrative Office of the United States Courts of any change
35 in the offender's address during the term of the restitution order.

36 "(i) A restitution order shall constitute a lien against all property of
37 the offender and may be recorded in any Federal or State office for the re-
38 cording of liens against real or personal property.

39 "(j) Compliance with the schedule of payment and other terms of a res-
40 titution order shall be a condition of any probation, parole, or other form
41 of release of an offender. If a defendant fails to comply with a restitution

1 order, the court may revoke probation or a term of supervised release, mod-
2 ify the term or conditions of probation or a term of supervised release, hold
3 the defendant in contempt of court, enter a restraining order or injunction,
4 order the sale of property of the defendant, accept a performance bond, or
5 take any other action necessary to obtain compliance with the restitution
6 order. In determining what action to take, the court shall consider the de-
7 fendant's employment status, earning ability, financial resources, the willful-
8 ness in failing to comply with the restitution order, and any other cir-
9 cumstances that may have a bearing on the defendant's ability to comply
10 with the restitution order.

11 "(k) An order of restitution may be enforced—

12 "(1) by the United States—

13 "(A) in the manner provided for the collection and payment
14 of fines in subchapter (B) of chapter 229 of this title; or

15 "(B) in the same manner as a judgment in a civil action; and

16 "(2) by a victim named in the order to receive the restitution, in
17 the same manner as a judgment in a civil action.

18 "(l) A victim or the offender may petition the court at any time to
19 modify a restitution order as appropriate in view of a change in the eco-
20 nomic circumstances of the offender."

21 (b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664
22 of title 18, United States Code, is amended—

23 " (1) by striking subsection (a);

24 (2) by redesignating subsections (b), (c), (d), and (e) as sub-
25 sections (a), (b), (c), and (d);

26 (3) by amending subsection (a), as redesignated by paragraph (2),
27 to read as follows:

28 "(a) The court may order the probation service of the court to obtain
29 information pertaining to the amount of loss sustained by any victim as a
30 result of the offense, the financial resources of the defendant, the financial
31 needs and earning ability of the defendant and the defendant's dependents,
32 and such other factors as the court deems appropriate. The probation serv-
33 ice of the court shall include the information collected in the report of
34 presentence investigation or in a separate report, as the court directs."; and

35 (4) by adding at the end thereof the following new subsection:

36 "(e) The court may refer any issue arising in connection with a pro-
37 posed order of restitution to a magistrate or special master for proposed
38 findings of fact and recommendations as to disposition, subject to a de novo
39 determination of the issue by the court."

1 **TITLE IV—LAW ENFORCEMENT BLOCK**
2 **GRANTS**

3 SEC. 401. BLOCK GRANT PROGRAM.

4 Title I of the Violent Crime Control and Law Enforcement Act of 1994
5 is amended to read as follows:

6 **“TITLE I—LAW ENFORCEMENT BLOCK**
7 **GRANTS**

8 SEC. “101. PAYMENTS TO LOCAL GOVERNMENTS.

9 “(a) PAYMENT AND USE.—

10 “(1) PAYMENT.—The Director of the Bureau of Justice Assist-
11 ance, shall pay to each unit of general local government which qualifies
12 for a payment under this title an amount equal to the sum of any
13 amounts allocated to such unit under this title for each payment pe-
14 riod. The Director of the Bureau of Justice Assistance shall pay such
15 amount from amounts appropriated under section 102.

16 “(2) USE.—Amounts paid to a unit of general local government
17 under this section shall be used by that unit for carrying out one or
18 more of the following purposes:

19 “(A) Grants to local law enforcement organizations to—

20 “(i) hire, train, and employ on a continuing basis new,
21 additional law enforcement officers and necessary support
22 personnel;

23 “(ii) pay overtime to presently employed law enforcement
24 officers and necessary support personnel for the purpose of
25 increasing the number of hours worked by such personnel;
26 and

27 “(iii) procure equipment, technology, and other material
28 that is directly related to the basic law enforcement functions
29 of the law enforcement agency that is the intended beneficiary
30 of the expenditure of such funds by the unit of local govern-
31 ment.

32 “(B) Grants to local educational agencies or to a local law en-
33 forcement agency with jurisdiction over a school district, as appro-
34 priate, to pay for enhanced school security measures including—

35 “(i) providing increased police patrols in and around
36 schools, whether through the hiring of additional police offi-
37 cers or paying overtime to presently employed officers;

38 “(ii) purchasing police equipment necessary to carry out
39 normal police functions in and around schools;

1 “(iii) equipping schools with metal detectors, fences,
2 closed circuit cameras, and other physical safety measures;
3 and

4 “(iv) gun hotlines designed to facilitate the reporting of
5 weapons possession by students and other persons in and
6 around schools.

7 “(C) Grants to local nonprofit organizations which have or in-
8 tend to establish citizen neighborhood watch programs, provided
9 that the program operated or to be operated by the organization—

10 “(i) is presently operating or will become operational
11 within six months from the date of any grant application sub-
12 mitted pursuant to section 404 for this purpose;

13 “(ii) is established pursuant to guidelines issued by a
14 local law enforcement agency; and

15 “(iii) provides for the active, on-going involvement of a
16 local law enforcement agency to provide advice to the organi-
17 zation with respect to the community-watch operation.

18 “(D) Grants for programs that have as their principal pur-
19 pose the teaching of citizenship and moral standards, including
20 programs using law enforcement officials as role models, provided
21 that such programs are supervised, organized, or participated in
22 by law enforcement officials.

23 “(b) TIMING OF PAYMENTS.—The Director of the Bureau of Justice
24 Assistance shall pay each amount allocated under this title to a unit of gen-
25 eral local government for a payment period by—

26 “(1) 90 days after the date the amount is available; or

27 “(2) the first day of the payment period if the unit of general local
28 government has provided the Director of the Bureau of Justice Assist-
29 ance with the assurances required by section 403(d),
30 whichever is later.

31 “(c) ADJUSTMENTS.—

32 “(1) IN GENERAL.—Subject to paragraph (2), the Director of the
33 Bureau of Justice Assistance shall adjust a payment under this title
34 to a unit of general local government to the extent that a prior pay-
35 ment to the government was more or less than the amount required
36 to be paid.

37 “(2) CONSIDERATIONS.—The Director of the Bureau of Justice
38 Assistance may increase or decrease under this subsection a payment
39 to a unit of general local government only if the Director of the Bureau
40 of Justice Assistance determines the need for the increase or decrease,

1 or the unit requests the increase or decrease, within one year after the
2 end of the payment period for which the payment was made.

3 "(d) RESERVATION FOR ADJUSTMENT.—The Director of the Bureau of
4 Justice Assistance may reserve a percentage of not more than two percent
5 of the amount under this section for a payment period for all units of gen-
6 eral local government in a State if the Director of the Bureau of Justice
7 Assistance considers the reserve is necessary to ensure the availability of
8 sufficient amounts to pay adjustments after the final allocation of amounts
9 among the units of general local government in the State.

10 "(e) REPAYMENT OF UNEXPENDED AMOUNTS.—

11 "(1) REPAYMENT REQUIRED.—A unit of general local government
12 shall repay to the Director of the Bureau of Justice Assistance, by not
13 later than 27 months after receipt from the Director of the Bureau of
14 Justice Assistance, any amount that is—

15 "(A) paid to the unit from amounts appropriated under the
16 authority of this section; and

17 "(B) not expended by the unit within two years after receipt
18 of such funds from the Director of the Bureau of Justice Assist-
19 ance.

20 "(2) PENALTY FOR FAILURE TO REPAY.—If the amount required
21 to be repaid is not repaid, the Director of the Bureau of Justice Assist-
22 ance shall reduce payment in future payment periods accordingly.

23 "(3) DEPOSIT OF AMOUNTS REPAID.—Amounts received by the
24 Director of the Bureau of Justice Assistance as repayments under this
25 subsection shall be deposited in a designated fund for future payments
26 to units of general local government.

27 "(f) NONSUPPLANTING REQUIREMENT.—Funds made available under
28 this title to units of local government shall not be used to supplant State
29 or local funds, but will be used to increase the amount of funds that would,
30 in the absence of funds under this title, be made available from State or
31 local sources.

32 "SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

33 "(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
34 be appropriated to carry out this title—

35 "(1) 2,000,000,000 for fiscal year 1996;

36 "(2) 2,000,000,000 for fiscal year 1997;

37 "(3) 2,000,000,000 for fiscal year 1998;

38 "(4) 2,000,000,000 for fiscal year 1999; and

39 "(5) 2,000,000,000 for fiscal year 2000.

40 "Such sums are to remain available until expended.

1 “(b) ADMINISTRATIVE COSTS.—Not more than 2.5 percent of the
2 amount authorized to be appropriated under subsection (b) is authorized to
3 be appropriated period beginning on the first day of fiscal year 1995 and
4 ending on the last day of fiscal year 2000 to be available for administrative
5 costs by the Director of the Bureau of Justice Assistance in furtherance of
6 the purposes of the program. Such sums are to remain available until ex-
7 pended.

8 “SEC. 103. QUALIFICATION FOR PAYMENT.

9 “(a) IN GENERAL.—The Director of the Bureau of Justice Assistance
10 shall issue regulations establishing procedures under which eligible units of
11 general local government are required to provide notice to the Director of
12 the Bureau of Justice Assistance of the units’ proposed use of assistance
13 under this title.

14 “(b) GENERAL REQUIREMENTS FOR QUALIFICATION.—A unit of gen-
15 eral local government qualifies for a payment under this title for a payment
16 period only if the unit establishes, to the satisfaction of the Director, of the
17 Bureau of Justice Assistance that—

18 “(1) the government will establish a trust fund in which the gov-
19 ernment will deposit all payments received under this title;

20 “(2) the government will use amounts in the trust fund “(includ-
21 ing interest) during a period not to exceed two years from the date the
22 first grant payment is made to the government;

23 “(3) the government will expend the payments so received in ac-
24 cordance with the laws and procedures that are applicable to the ex-
25 penditure of revenues of the government;

26 “(4) the government will use accounting, audit, and fiscal proce-
27 dures that conform to guidelines which shall be prescribed by the Di-
28 rector of the Bureau of Justice Assistance after consultation with the
29 Comptroller General of the United States and as applicable, amounts
30 received under this title shall be audited in compliance with the Single
31 Audit Act of 1984;

32 “(5) after reasonable notice to the government, the government
33 will make available to the Director of the Bureau of Justice Assistance
34 and the Comptroller General of the United States, with the right to
35 inspect, records that the Director of the Bureau of Justice Assistance
36 reasonably requires to review compliance with this title or that the
37 Comptroller General of the United States reasonably requires to review
38 compliance and operation;

39 “(6) the government will make reports the Director of the Bureau
40 of Justice Assistance reasonably requires, in addition to the annual re-
41 ports required under this title; and

1 “(7) the government will spend the funds only for the purposes
2 set forth in section 101(a)(2).

3 “(c) REVIEW BY GOVERNORS.—A unit of general local government
4 shall give the chief executive officer of the State in which the government
5 is located an opportunity for review and comment before establishing com-
6 pliance with subsection (d).

7 “(d) SANCTIONS FOR NONCOMPLIANCE.—

8 “(1) IN GENERAL.—If the Director of the Bureau of Justice As-
9 sistance decides that a unit of general local government has not com-
10 plied substantially with subsection (b) or regulations prescribed under
11 subsection (b), the Director of the Bureau of Justice Assistance shall
12 notify the government. The notice shall state that if the government
13 does not take corrective action by the 60th day after the date the gov-
14 ernment receives the notice, the Director of the Bureau of Justice As-
15 sistance will withhold additional payments to the government for the
16 current payment period and later payment periods until the Director
17 of the Bureau of Justice Assistance is satisfied that the government—

18 “(A) has taken the appropriate corrective action; and

19 “(B) will comply with subsection (b) and regulations pre-
20 scribed under subsection (b).

21 “(2) NOTICE.—Before giving notice under paragraph (1), the Di-
22 rector of the Bureau of Justice Assistance shall give the chief executive
23 officer of the unit of general local government reasonable notice and
24 an opportunity for comment.

25 “(3) PAYMENT CONDITIONS.—The Director of the Bureau of Jus-
26 tice Assistance may make a payment to a unit of general local govern-
27 ment notified under paragraph (1) only if the Director of the Bureau
28 of Justice Assistance is satisfied that the government—

29 “(A) has taken the appropriate corrective action; and

30 “(B) will comply with subsection (b) and regulations pre-
31 scribed under subsection (b).

32 **“SEC. 104. ALLOCATION AND DISTRIBUTION OF FUNDS.**

33 “(a) STATE DISTRIBUTION.—For each payment period, the Director of
34 the Bureau of Justice Assistance shall allocate out of the amount appro-
35 priated for the period under the authority of section 102—

36 “(1) 0.25 percent to each State; and

37 “(2) of the total amount of funds remaining after allocation under
38 paragraph (1), an amount that is equal to the ratio that the number
39 of part 1 violent crimes reported by such State to the Federal Bureau
40 of Investigation for 1993, bears to the number of part 1 violent crimes
41 reported by all States to the Federal Bureau of Investigation for 1993.

1 “(b) LOCAL DISTRIBUTION.—

2 “(1) The Director of the Bureau of Justice Assistance shall allo-
3 cate among the units of general local government in a State the
4 amount allocated to the State under paragraphs (1) and (2) of sub-
5 section (a).

6 “(2) The Director of the Bureau of Justice Assistance shall allo-
7 cate to each unit of general local government an amount which—

8 “(A) bears the ratio that the number of part 1 violent crimes
9 reported by such unit to the Federal Bureau of Investigation for
10 1993 bears to the number of part 1 violent crimes reported by all
11 units in the State in which the unit is located to the Federal Bu-
12 reau of Investigation for 1993 multiplied by the ratio of the popu-
13 lation living in all units in the State in which the unit is located
14 that reported part 1 violent crimes to the Federal Bureau of In-
15 vestigation for 1993 bears to the population of the State; or

16 “(B) if such data are not available for a unit, the ratio that
17 the population of such unit bears to the population of all units in
18 the State in which the unit is located for which data are not avail-
19 able multiplied by the ratio of the population living in units in the
20 State in which the unit is located for which data are not available
21 bears to the population of the State.

22 “(3) If under paragraph (2) a unit is allotted less than \$5,000 for
23 the payment period, the amount allotted shall be transferred to the
24 Governor of the State who shall equitably distribute the allocation to
25 all such units or consortia thereof.

26 “(4)(A) If there is in a State a unit of general local government
27 that has been incorporated since the date of the collection of the data
28 used by the Director of the Bureau of Justice Assistance in making
29 allocations pursuant to this section, the Director of the Bureau of Jus-
30 tice Assistance shall allocate to this newly incorporated local govern-
31 ment, out of the amount allocated to the State under this section, an
32 amount bearing the same ratio to the amount allocated to the State
33 as the population of the newly incorporated local government bears to
34 the population of the State.

35 “(B) If there is in the State a unit of general local government
36 that has been annexed since the date of the collection of the data used
37 by the Director of the Bureau of Justice Assistance in making alloca-
38 tions pursuant to this section, the Director of the Bureau of Justice
39 Assistance shall pay the amount that would have been allocated to this
40 local government to the unit of general local government that annexed
41 it.

1 “(c) UNAVAILABILITY OF INFORMATION.—For purposes of this section,
2 if data regarding part 1 violent crimes in any State for 1993 is unavailable
3 or substantially inaccurate, the Director of the Bureau of Justice Assistance
4 shall utilize the best available comparable data regarding the number of vio-
5 lent crimes for 1993 for such State for the purposes of allocation of any
6 funds under this title.

7 “SEC. 105. UTILIZATION OF PRIVATE SECTOR.

8 “Funds or a portion of funds allocated under this subsection may be
9 utilized to contract with private, nonprofit entities or community-based or-
10 ganizations to carry out the uses specified under section 401(a)(2).

11 “SEC. 106. PUBLIC PARTICIPATION.

12 “A unit of general local government expending payments under this
13 title shall hold at least one public hearing on the proposed use of the pay-
14 ment in relation to its entire budget. At the hearing, persons shall be given
15 an opportunity to provide written and oral views to the governmental au-
16 thority responsible for enacting the budget and to ask questions about the
17 entire budget and the relation of the payment to the entire budget. The gov-
18 ernment shall hold the hearing at a time and a place that allows and en-
19 courages public attendance and participation.

20 “SEC. 107. ADMINISTRATIVE PROVISIONS.

21 “The administrative provisions of part H of the Omnibus Crime Con-
22 trol and Safe Streets Act of 1968, shall apply to this title.

23 “SEC. 108. DEFINITIONS.

24 “For the purposes of this title:

25 “(1) The term “unit of general local government” means—

26 “(A) a county, township, city, or political subdivision of a
27 county, township, or city, that is a unit of general local govern-
28 ment as determined by the Secretary of Commerce for general sta-
29 tistical purposes; and

30 “(B) the District of Columbia and the recognized governing
31 body of an Indian tribe or Alaskan Native village that carries out
32 substantial governmental duties and powers.

33 “(2) The term “payment period” means each one -year period be-
34 ginning on October 1 of any year in which a grant under this title is
35 awarded.

36 “(3) The term “State” means any State of the United States, the
37 District of Columbia, the Commonwealth of Puerto Rico, the Virgin Is-
38 lands, American Samoa, Guam, and the Northern Mariana Islands, ex-
39 cept that American Samoa, Guam, and the Northern Mariana Islands
40 shall be considered as one State and that, for purposes of section
41 404(a), 33 per centum of the amounts allocated shall be allocated to

1 American Samoa, 50 per centum to Guam, and 17 per centum to the
2 Northern Mariana Islands.

3 "(4) 'Juvenile' means an individual who is 17 years of age or
4 younger.

5 "(5) 'Part 1 violent crimes' means murder and non-negligent man-
6 slaughter, forcible rape, robbery, and aggravated assault as reported to
7 the Federal Bureau of Investigation for purposes of the Uniform Crime
8 Reports."

9 TITLE V—TRUTH IN SENTENCING 10 GRANTS

11 SEC. 501. TRUTH IN SENTENCING GRANT PROGRAM.

Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of
13 1994 is amended to read as follows:

14 "TITLE V—TRUTH IN SENTENCING 15 GRANTS

16 "SEC. 501. AUTHORIZATION OF GRANTS.

17 "(a) IN GENERAL.—The Attorney General is authorized to provide
18 grants to eligible States and to eligible States organized as regional com-
19 pacts to build, expand, and operate space in correctional facilities in order
20 to increase the prison bed capacity in such facilities for the confinement of
21 persons convicted of a serious violent felony and to build, expand, and oper-
22 ate temporary or permanent correctional facilities, including facilities on
23 military bases, for the confinement of convicted nonviolent offenders and
24 criminal aliens for the purpose of freeing suitable existing prison space for
25 the confinement of persons convicted of a serious violent felony.

26 "(b) LIMITATION.—An eligible State or eligible States organized as re-
27 gional compacts may receive either a general grant under section 502 or a
28 truth-in-sentencing incentive grant under section 503.

29 "SEC. 502. GENERAL GRANTS.

30 "(a) DISTRIBUTION OF GENERAL GRANTS.—50 percent of the total
31 amount of funds made available under this title for each of the fiscal years
32 1995 through 2000 shall be made available for general eligibility grants for
33 each State or States organized as regional compacts that meet the require-
34 ments under subsection (b).

35 "(b) GENERAL GRANTS.—In order to be eligible to receive funds under
36 subsection (a), a State or States organized as regional compacts shall sub-
37 mit an application to the Attorney General that provides assurances that
38 such State since 1993 has—

39 "(1) increased the percentage of convicted violent offenders sen-
40 tenced to prison;

1 “(2) increased the average prison time actually to be served in
2 prison by convicted violent offenders sentenced to prison; and

3 “(3) increased the percentage of sentence to be actually served in
4 prison by violent offenders sentenced to prison.

5 **“SEC. 503. TRUTH IN SENTENCING GRANTS.**

6 “(a) **TRUTH IN SENTENCING INCENTIVE GRANTS.**—50 percent of the
7 total amount of funds made available under this title for each of the fiscal
8 years 1995 through 2000 shall be made available for truth-in-sentencing in-
9 centive grants to each State or States organized as regional compacts that
10 meet the requirements of subsection (c).

11 “(b) **ELIGIBILITY FOR TRUTH IN SENTENCING INCENTIVE GRANTS.**—
12 In order to be eligible to receive funds under subsection (a), a State or
13 States organized as regional compacts shall submit an application to the At-
14 torney General that provides assurances that each State applying has en-
15 acted laws and regulations which include—

16 “(1)(A) truth-in-sentencing laws which require persons convicted
17 of a serious violent felony serve not less than 85 percent of the sen-
18 tence imposed or 85 percent of the court-ordered maximum sentence
19 for States that practice indeterminate sentencing; or

20 “(B) truth-in-sentencing laws which have been enacted, but not
21 yet implemented, that require such State, not later than three years
22 after such State submits an application to the Attorney General, to
23 provide that persons convicted of a serious violent felony serve not less
24 than 85 percent of the sentence imposed or 85 percent of the court-
25 ordered maximum sentence for States that practice indeterminate sen-
26 tencing, and

27 “(2) laws requiring that the sentencing or releasing authorities no-
28 tify and allow the defendant's victims or the family of victims the op-
29 portunity to be heard regarding the issue of sentencing and any post-
30 conviction release.

31 **“SEC. 504. SPECIAL RULES.**

32 “(a) **INDETERMINANT SENTENCING EXCEPTION.**—Notwithstanding the
33 provisions of paragraphs (1) through (3) of section 502(b), any State in
34 which on the date of enactment of this section practices indeterminant sen-
35 tencing and the average times served for the offenses of murder, rape, rob-
36 bery, and assault exceed, by 10 percent or greater, the national average of
37 times served for such offenses in State systems shall be eligible for grants
38 under subsection (a)(1).

39 “(b) **EXCEPTION.**—The requirements under section 502(b) shall apply,
40 except that a State may provide that the Governor of the State may allow
41 for the release of a prisoner over the age of 70 after a public hearing in

1 which representatives of the public and the prisoner's victims have an oppor-
2 tunity to be heard regarding a proposed release.

3 "SEC. 505. FORMULA FOR GRANTS.

4 "To determine the amount of funds that each eligible State or eligible
5 States organized as regional compacts may receive to carry out programs
6 under section 502 or 503, the Attorney General shall apply the following
7 formula:

8 "(1) \$500,000 or 0.40 percent, whichever is greater shall be allo-
9 cated to each participating State; and

10 "(2) of the total amount of funds remaining after the allocation
11 under paragraph (1), there shall be allocated to each State an amount
12 which bears the same ratio to the amount of remaining funds described
13 in this paragraph as the population of such State bears to the popu-
14 lation of all the States.

15 "SEC. 506. ACCOUNTABILITY.

16 "(a) FISCAL REQUIREMENTS.—A State or States organized as regional
17 compacts that receives funds under this title shall use accounting, audit,
18 and fiscal procedures that conform to guidelines which shall be prescribed
19 by the Attorney General.

20 "(b) REPORTING.—Each State that receives funds under this title shall
21 submit an annual report, beginning on January 1, 1996, and each January
22 1 thereafter, to the Congress regarding compliance with the requirements
23 of this title.

24 "(c) ADMINISTRATIVE PROVISIONS.—The administrative provisions of
25 section 801 and 802 of the Omnibus Crime Control and Safe Streets Act
26 of 1968 shall apply to this title, except that the requirements under such
27 section shall also apply to the Attorney General.

28 "SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

29 "(a) IN GENERAL.—For purposes of this title, there are authorized to
30 be appropriated \$232,000,000 for fiscal year 1995, \$997,500,000 for fiscal
31 year 1996, \$1,330,000,000 for fiscal year 1997, \$2,527,000,000 for fiscal
32 year 1998, \$2,660,000,000 for fiscal year 1999, and \$2,753,100,000 for fis-
33 cal year 2000, to carry out this title and no funds for other purposes au-
34 thorized by this Act shall be appropriated in fiscal years 1995 through 1999
35 until the programs under this title are fully funded in such years.

36 "(b) LIMITATIONS ON FUNDS.—

37 "(1) USES OF FUNDS.—Funds made available under this title may
38 be used to carry out the purposes described in section 501(a).

39 "(2) NONSUPPLANTING REQUIREMENT.—Funds made available
40 under this section shall not be used to supplant State funds, but shall

be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

"(3) ADMINISTRATIVE COSTS.—Not more than three percent of the funds available under this section may be used for administrative costs.

"(4) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

"(5) CARRY OVER OF APPROPRIATIONS.—Any funds appropriated but not expended as provided by this section during any fiscal year shall be carried over and will be made available until expended.

SEC. 508. DEFINITIONS.

"As used in this title—

"(1) the term 'indeterminate sentencing' means a system by which the court has discretion on imposing the actual length of the sentence, up to the statutory maximum and an administrative agency, generally the parole board, controls release between court-ordered minimum and maximum sentence;

"(2) the term 'serious violent felony' means—

(A) an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another and has a maximum term of imprisonment of 10 years or more,

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense and has a maximum term of imprisonment of 10 years or more,

"(C) such crimes include murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery; and

"(3) the term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States."

TITLE VI—EXCLUSIONARY RULE REFORM

SEC. 601. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

1 **"§ 3510. Admissibility of evidence obtained by search or sei-**
 2 **zure**

3 **"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR**
 4 **SEIZURE.—**Evidence which is obtained as a result of a search or seizure
 5 shall not be excluded in a proceeding in a court of the United States on
 6 the ground that the search or seizure was in violation of the fourth amend-
 7 ment to the Constitution of the United States, if the search or seizure was
 8 carried out in circumstances justifying an objectively reasonable belief that
 9 it was in conformity with the fourth amendment. The fact that evidence was
 10 obtained pursuant to and within the scope of a warrant constitutes prima
 11 facie evidence of the existence of such circumstances.

12 **"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—**Evidence
 13 shall not be excluded in a proceeding in a court of the United States on
 14 the ground that it was obtained in violation of a statute, an administrative
 15 rule or regulation, or a rule of procedure unless exclusion is expressly au-
 16 thorized by statute or by a rule prescribed by the Supreme Court pursuant
 17 to statutory authority.

18 **"(c) RULE OF CONSTRUCTION.—**This section shall not be construed to
 19 require or authorize the exclusion of evidence in any proceeding."

20 **(b) CLERICAL AMENDMENT.—**The table of sections at the beginning of
 21 chapter 223 of title 18, United States Code, is amended by adding at the
 22 end the following:

"3510. Admissibility of evidence obtained by search or seizure."

23 **TITLE VII—STOPPING ABUSIVE**
 24 **PRISONER LAWSUITS**

25 **SEC. 701. EXHAUSTION REQUIREMENT.**

26 Section 8(a)(1) of the Civil Rights of Institutionalized Persons Act (42
 27 U.S.C. 1997e) is amended—

28 (1) by striking "in any action brought" and inserting "no action
 29 shall be brought";

30 (2) by striking "the court shall" and all that follows through "re-
 31 quire exhaustion of" and insert "until"; and

32 (3) by inserting "are exhausted" after "available".

33 **SEC. 702. FRIVOLOUS ACTIONS.**

34 Section 8(a) of the Civil Rights of Institutionalized Persons Act (42
 35 U.S.C. 1997e(a) is amended by adding at the end the following:

36 "(3) The court shall on its own motion or on motion of a party
 37 dismiss any action brought pursuant to section 1979 of the Revised
 38 Statutes of the United States by an adult convicted of a crime and con-
 39 fined in any jail, prison, or other correctional facility if the court is sat-

1 isfied that the action fails to state a claim upon which relief can be
2 granted or is frivolous or malicious.

3 **SEC. 703. MODIFICATION OF REQUIRED MINIMUM STANDARDS.**

4 Section 8(b)(2) of the Civil Rights of Institutionalized Persons Act (42
5 U.S.C. 1997e(b)(2)) is amended by striking subparagraph (A) and redesi-
6 gnating subparagraphs (B) through (E) as subparagraphs (A) through (D),
7 respectively.

8 **SEC. 704. PROCEEDINGS IN FORMA PAUPERIS.**

9 (a) **DISMISSAL.**—Section 1915(d) of title 28, United States Code, is
10 amended—

- 11 (1) by inserting “at any time” after “counsel and may”; and
12 (2) by striking “and may” and inserting “and shall”;
13 (3) by inserting “fails to state a claim upon which relief may be
14 granted or” after “that the action”; and
15 (4) by inserting “even if partial filing fees have been imposed by
16 the court” before the period.

17 (b) **PRISONER’S STATEMENT OF ASSETS.**—Section 1915 of title 28,
18 United States Code, is amended by adding at the end the following:

19 “(f) If a prisoner in a correctional institution files an affidavit in ac-
20 cordance with subsection (a) of this section, such prisoner shall include in
21 that affidavit a statement of all assets such prisoner possesses. The court
22 shall make inquiry of the correctional institution in which the prisoner is
23 incarcerated for information available to that institution relating to the ex-
24 tent of the prisoner’s assets. The court shall require full or partial payment
25 of filing fees according to the prisoner’s ability to pay.”.

26 **TITLE VIII—STREAMLINING**
27 **DEPORTATION OF CRIMINAL ALIENS**

28 **SEC. 801. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.**

29 (a) **EXPANSION OF DEFINITION.**—Section 101(a)(43) of the Immigra-
30 tion and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as fol-
31 lows:

32 “(43) The term ‘aggravated felony’ means—

33 “(A) murder;

34 “(B) illicit trafficking in a controlled substance (as defined in
35 section 102 of the Controlled Substances Act), including a drug
36 trafficking crime (as defined in section 924(c) of title 18, United
37 States Code);

38 “(C) illicit trafficking in firearms or destructive devices (as
39 defined in section 921 of title 18, United States Code) or in explo-
40 sive materials (as defined in section 841(c) of that title);

1 “(D) an offense described in section 1956 of title 18, United
2 States Code (relating to laundering of monetary instruments) or
3 section 1957 of that title (relating to engaging in monetary trans-
4 actions in property derived from specific unlawful activity) if the
5 amount of the funds exceeded \$100,000;

6 “(E) an offense described in—

7 “(i) section 842 (h) or (i) of title 18, United States
8 Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title
9 (relating to explosive materials offenses);

10 “(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o),
11 (p), or (r) or 924 (b) or (h) of title 18, United States Code
12 (relating to firearms offenses); or

13 “(iii) section 5861 of the Internal Revenue Code of 1986
14 (relating to firearms offenses);

15 “(F) a crime of violence (as defined in section 16 of title 18,
16 United States Code, but not including a purely political offense)
17 for which the term of imprisonment imposed (regardless of any
18 suspension of imprisonment) is at least 5 years;

19 “(G) a theft offense (including receipt of stolen property) or
20 budgetary offense for which a sentence of 5 years' imprisonment
21 or more may be imposed;

22 “(H) an offense described in section 875, 876, 877, or 1202
23 of title 18, United States Code (relating to the demand for or re-
24 cept of ransom);

25 “(I) an offense described in section 2251, 2251A, or 2252 of
26 title 18, United States Code (relating to child pornography);

27 “(J) an offense described in—

28 “(i) section 1962 of title 18, United States Code (relat-
29 ing to racketeer influenced corrupt organizations); or

30 “(ii) section 1084 (if it is a second or subsequent of-
31 fense) or 1955 of that title (relating to gambling offenses),
32 for which a sentence of 5 years' imprisonment or more may be im-
33 posed;

34 “(K) an offense relating to commercial bribery, counterfeit-
35 ing, forgery, or trafficking in vehicles the identification numbers
36 of which have been altered for which a sentence of 5 years' impris-
37 onment or more may be imposed;

38 “(L) an offense that—

39 “(i) relates to the owning, controlling, managing or su-
40 pervising of a prostitution business;

1 “(ii) is described in section 2421, 2422, or 2423 of title
2 18, United States Code (relating to transportation for the
3 purpose of prostitution) for commercial advantage; or

4 “(iii) is described in section 1581, 1582, 1583, 1584,
5 1585, or 1588, of title 18, United States Code (relating to
6 peonage, slavery, and involuntary servitude);

7 “(M) an offense relating to perjury or subornation of perjury
8 for which a sentence of 5 years’ imprisonment or more may be im-
9 posed;

10 “(N) an offense described in—

11 “(i) section 793 (relating to gathering or transmitting
12 national defense information), 798 (relating to disclosure of
13 classified information), 2153 (relating to sabotage) or 2381
14 or 2382 (relating to treason) of title 18, United States Code;
15 or

16 “(ii) section 601 of the National Security Act of 1947
17 (50 U.S.C. 421) (relating to protecting the identity of under-
18 cover intelligence agents);

19 “(O) an offense that—

20 “(i) involves fraud or deceit in which the loss to the vic-
21 tim or victims exceeds \$200,000; or

22 “(ii) is described in section 7201 of the Internal Revenue
23 Code of 1986 (relating to tax evasion) in which the revenue
24 loss to the Government exceeds \$200,000;

25 “(P) an offense described in section 274(a)(1) of title 18,
26 United States Code (relating to alien smuggling) for the purpose
27 of commercial advantage;

28 “(Q) an offense described in section 1546(a) of title 18, Unit-
29 ed States Code (relating to document fraud), for the purpose of
30 commercial advantage;

31 “(R) an offense relating to a failure to appear before a court
32 pursuant to a court order to answer to or dispose of a charge of
33 a felony for which a sentence of 2 years’ imprisonment or more
34 may be imposed; and

35 “(S) an attempt or conspiracy to commit an offense described
36 in this paragraph.

37 The term applies to an offense described in this paragraph whether in
38 violation of Federal or State law and applies to such an offense in vio-
39 lation of the law of a foreign country for which the term of imprison-
40 ment was completed within the previous 15 years.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered on or after the date of enactment of this Act.

SEC. 802. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

“(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

“(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

“(2) An alien is described in this paragraph if the alien—

“(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

“(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

“(3) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in his discretion.

“(4) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 106.”.

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting “or pursuant to section 242A” after “under section 242(b)”;

(2) in subsection (a)(1) and subsection (a)(3), by inserting “(including an alien described in section 242A)” after “aggravated felony”; and

(3) by adding at the end the following new subsection:

“(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.”.

(c) TECHNICAL AMENDMENTS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (a)—

(A) by striking “(a) IN GENERAL.—” and inserting the following:

“(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—

“(1) IN GENERAL.—”; and

(B) by inserting in the first sentence “permanent resident” after “correctional facilities for”;

(2) in subsection (b)—

(A) by striking “(b) IMPLEMENTATION.—” and inserting “(2) IMPLEMENTATION.—”; and

(B) by striking “respect to an” and inserting “respect to a permanent resident”;

(3) by striking subsection (c);

(4) in subsection (d)—

(A) by striking “(d) EXPEDITED PROCEEDINGS.—(1)” and inserting “(3) EXPEDITED PROCEEDINGS.—(A)”;

(B) by inserting “permanent resident” after “in the case of any”; and

(C) by striking “(2)” and inserting “(B)”;

(5) in subsection (e)—

(A) by striking “(e) REVIEW.—(1)” and inserting “(4) REVIEW.—(A)”;

(B) by striking the second sentence; and

(C) by striking “(2)” and inserting “(B)”;

(6) by inserting after the section heading the following new subsection:

“(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.”; and

(7) by amending the heading to read as follows:

“EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING
AGGRAVATED FELONIES”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 803. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

1 “(d) JUDICIAL DEPORTATION.—

2 “(1) AUTHORITY.—Notwithstanding any other provision of this
3 Act, a United States district court shall have jurisdiction to enter a ju-
4 dicial order of deportation at the time of sentencing against an alien
5 whose criminal conviction causes such alien to be deportable under sec-
6 tion 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony),
7 if such an order has been requested prior to sentencing by the United
8 States Attorney with the concurrence of the Commissioner.

9 “(2) PROCEDURE.—

10 “(A) The United States Attorney shall provide notice of in-
11 tent to request judicial deportation promptly after the entry in the
12 record of an adjudication of guilt or guilty plea. Such notice shall
13 be provided to the court, to the alien, and to the alien’s counsel
14 of record.

15 “(B) Notwithstanding section 242B, the United States Attor-
16 ney, with the concurrence of the Commissioner, shall file at least
17 20 days prior to the date set for sentencing a charge containing
18 factual allegations regarding the alienage of the defendant and
19 satisfaction by the defendant of the definition of aggravated fel-
20 ony.

21 “(C) If the court determines that the defendant has presented
22 substantial evidence to establish prima facie eligibility for relief
23 from deportation under section 212(c), the Commissioner shall
24 provide the court with a recommendation and report regarding the
25 alien’s eligibility for relief under such section. The court shall ei-
26 ther grant or deny the relief sought.

27 “(D)(i) The alien shall have a reasonable opportunity to ex-
28 amine the evidence against him or her, to present evidence on his
29 or her own behalf, and to cross-examine witnesses presented by
30 the Government.

31 “(ii) The court, for the purposes of determining whether to
32 enter an order described in paragraph (1), shall only consider evi-
33 dence that would be admissible in proceedings conducted pursuant
34 to section 242(b).

35 “(iii) Nothing in this subsection shall limit the information a
36 court of the United States may receive or consider for the pur-
37 poses of imposing an appropriate sentence.

38 “(iv) The court may order the alien deported if the Attorney
39 General demonstrates by clear and convincing evidence that the
40 alien is deportable under this Act.

1 “(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF
2 DEPORTATION.—

3 “(A)(i) A judicial order of deportation or denial of such order
4 may be appealed by either party to the court of appeals for the
5 circuit in which the district court is located.

6 “(ii) Except as provided in clause (iii), such appeal shall be
7 considered consistent with the requirements described in section
8 106.

9 “(iii) Upon execution by the defendant of a valid waiver of
10 the right to appeal the conviction on which the order of deporta-
11 tion is based, the expiration of the period described in section
12 106(a)(1), or the final dismissal of an appeal from such convic-
13 tion, the order of deportation shall become final and shall be exe-
14 cuted at the end of the prison term in accordance with the terms
15 of the order.

16 “(B) As soon as is practicable after entry of a judicial order
17 of deportation, the Commissioner shall provide the defendant with
18 written notice of the order of deportation, which shall designate
19 the defendant's country of choice for deportation and any alter-
20 nate country pursuant to section 243(a).

21 “(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judi-
22 cial order of deportation shall not preclude the Attorney General from
23 initiating deportation proceedings pursuant to section 242 upon the
24 same ground of deportability or upon any other ground of deportability
25 provided under section 241(a).”.

26 (b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of
27 the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by
28 striking “The” and inserting “Except as provided in section 242A(d), the”.

29 (c) EFFECTIVE DATE.—The amendments made by this section shall
30 apply to all aliens whose adjudication of guilt or guilty plea is entered in
31 the record after the date of enactment of this Act.

32 **SEC. 804. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN**
33 **CRIMINAL ALIENS.**

34 (a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESI-
35 DENCE.—The last sentence of section 212(c) of the Immigration and Na-
36 tionality Act (8 U.S.C. 1182(c)) is amended by striking “has served for
37 such felony or felonies” and all that follows through the period and insert-
38 ing “has been sentenced for such felony or felonies to a term of imprison-
39 ment of at least 5 years, if the time for appealing such conviction or sen-
40 tence has expired and the sentence has become final.”.

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended—

(1) by striking the final sentence and inserting the following new subparagraph:

“(E) the alien has been convicted of an aggravated felony.”;

and

(2) by striking “or” at the end of subparagraph (C) and inserting “or” at the end of subparagraph (D).

SEC. 305. ENHANCING PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking “paragraph (2), (3), or 4 of” the first time it appears; and

(2) by striking “shall be imprisoned not more than ten years” and inserting “shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 241(a).”.

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1)—

(A) by inserting after “commission of” the following: “three or more misdemeanors involving drugs, crimes against the person, or both, or”; and

(B) by striking “5” and inserting “10”;

(2) in paragraph (2), by striking “15” and inserting “20”; and

(3) by adding at the end the following sentence:

“For the purposes of this subsection, the term ‘deportation’ includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.”.

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding after subsection (b) the following new subsection:

“(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

“(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order,

“(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

“(3) the entry of the order was fundamentally unfair.”.

SEC. 806. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: “; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.”.

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

SEC. 807. CRIMINAL ALIEN TRACKING CENTER.

(a) OPERATION.—The Commissioner of Immigration and Naturalization, with the cooperation of the Director of the Federal Bureau of Investigation and the heads of other agencies, shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

(b) PURPOSE.—The criminal alien tracking center shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$5,000,000 for fiscal year 1994 and \$2,000,000 for each of fiscal years 1995, 1996, 1997, and 1998.

TITLE IX—AMENDMENTS TO VIOLENT CRIME CONTROL AND LAW EN- FORCEMENT ACT

SEC. 901. DELETION OR REPLACEMENT OF PROGRAMS.

The Violent Crime Control and Law Enforcement Act of 1994 is amended—

(1) by striking title V; and

(2) by striking subtitles A through S and subtitle X of title III.