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FACT SHEET

No. 102-17

October 9, 1991

The Crime Bill

This DSG Fact Sheet deals with H.R. 3371, Omnibus Crime Control Act. The House is scheduled to consider the measure next week.

This bill marks the fifth major crime bill taken up by the House in the past seven years. Congress enacted major crime legislation in 1984, 1986, 1988, and again in 1990. Since 1986, 230 new or increased federal penalties for criminal offenses have been enacted into law. Still, crime continues to plague U.S. cities and towns, and remains one of the top concerns of the American public. As in past years, this bill promises to engender considerable controversy over such issues as the death penalty, limiting death row appeals, rules of evidence, and other matters.

The Rules Committee is scheduled to meet Thursday to consider a rule for the measure. A second DSG Fact Sheet covering all amendments made in order by the recommended rule will be available prior to Floor consideration.

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Section I

Overview

The legislation scheduled for House consideration next week is similar to President Bush's crime package in that it significantly increases the number of federal crimes subject to the death penalty, and it restricts the ability of state prisoners to file writs of habeas corpus in federal courts to challenge the constitutionality of their state conviction or sentence — although the President called for even more severe restrictions on such appeals.

H.R. 3371 differs from the President's proposal in several respects. The bill establishes a narrower exception to the "exclusionary rule" — which prohibits the use of evidence obtained in violation of the Constitution — than proposed by the Administration. Further, the bill addresses a number of issues not covered by President Bush's plan. First, it bans a wide variety of semiautomatic assault weapons. Second, unlike the Administration's proposal, the bill authorizes funds for a variety of anti-crime strategies, including a number of crime prevention programs at the state and local levels. Finally, the measure prohibits executing prisoners when they show that their death sentence was imposed on the basis of race.

Senate Action

The Senate passed its version of a crime bill (S. 1241) this past July. Like H.R. 3371, the Senate measure increases the number of crimes subject to the death penalty and bans certain semiautomatic assault weapons. The Senate, however, did not prohibit racially discriminatory death sentences, and more severely restricted the ability of state prisoners to file habeas corpus appeals in federal courts.

Summary

H.R. 3371 prohibits owning or selling specified types of semiautomatic assault weapons and increases penalties for violating federal firearm laws. The bill also makes over 50 federal crimes subject to the death penalty. Related provisions establish uniform procedures for imposing the federal death penalty.

The bill limits appeals to the federal courts through petitions for writs of habeas corpus by state prisoners who have been sentenced to

death. Specifically, it requires prisoners under sentence of death to file any habeas corpus petitions within one year after their state appeals have been exhausted, and limits the circumstances under which subsequent habeas corpus petitions can be filed. At the same time, the bill also establishes standards designed to ensure that state prisoners facing death sentences have access to competent legal counsel at all stages of the trial and appeal process.

The bill also enacts into law a current exception created by the courts to the "exclusionary rule." The bill permits use of evidence obtained by police who relied in "good faith" on a search warrant issued for such evidence, even if the warrant is later found to be invalid.

The measure authorizes \$1.2 BILLION for a variety of anti-crime strategies, including \$150 million for "community policing" programs; \$300 million for areas with severe drug problems; \$200 million for states to ensure certainty of punishment of youthful offenders; and \$100 million for drug treatment programs in state prisons.

Other key provisions would authorize the Justice Department to sue police departments for engaging in "patterns or practices" of unconstitutional or unlawful conduct; require the reversal of a conviction and a new trial when a coerced confession was used at a trial; authorize grants for improving DNA analysis for identifying criminals; and prohibit states from operating sports-related lotteries.

Committee Action

The Judiciary Committee reported the bill with additional and dissenting views by a voice vote (H.Rept. 102-242, Part I). The measure was also referred to the following other committees: Banking, Education and Labor, Energy and Commerce, Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means. The Ways and Means Committee has reported the bill (report was not available as of press time Wednesday); the other committees receiving referral have not acted.

Section II

Assault Weapons & Firearm Penalties

This section summarizes assault weapon and other firearm provisions of H.R. 3371, Omnibus Crime Control Act. The bill, for the first time, prohibits owning or selling 13 specified types of assault weapons, increases penalties for existing laws involving guns, and establishes new federal crimes involving guns and explosives.

Ban On Assault Weapons

The bill makes it illegal for persons to own or sell specified domestically made semiautomatic assault weapons, and copies thereof. However, the bill exempts weapons that are already legally owned. (None of the bill's provisions applies to the use of these weapons by governmental agencies, such as law enforcement officials and the military.)

Restricted Assault Weapons

The bill prohibits the possession and transfer of the following specific types of assault weapons and copies thereof:

- Action Arms Israeli Military Industries UZI and Galil;
- Auto Ordnance 27A1 Thompson, 27A5 Thompson, and M1 Thompson;
- Beretta AR-70 (SC-70);
- Colt AR-15 and CAR-15;
- Fabrique Nationale FN/FAL, FN/LAR, and FNC;
- INTRATEC TEC-9;
- MAC 10 and 11;
- Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs;
- Springfield BM59, SAR48, and G3SA;

- Steyr AUG;
- Street Sweeper and Striker 12;
- All Ruger Mini-14 models with folding stocks; and
- Armscorp FAL.

The bill authorizes the Treasury Department to recommend to Congress periodic revisions in the list of restricted assault weapons. However, any changes to the list of restricted assault weapons must be enacted by Congress.

Penalties

Under the bill, it would be a federal offense to own or sell these assault weapons or copies thereof — except for weapons that are currently legally owned under the bill's "grandfather" provision. The bill imposes penalties of up to five years in prison, a fine of up to \$5,000, or both.

Lawful Transfer of "Grandfathered" Weapons

Within 60 days of enactment, the bill requires the Treasury Department to issue regulations governing the transfer of legally owned restricted weapons. Under the bill, the regulations must provide that such a transfer can proceed no later than 30 days after the Treasury Department has received from an individual the documentation the department requires.

Ban On Ammunition Feeding Devices

The bill also would make it a federal offense to own or sell large-capacity ammunition feeding devices (devices with a capacity of more than seven rounds) — except for large-capacity ammunition feeding devices that are legally owned on the date of the bill's enactment.

New Penalties for Firearm Crimes

Increased Firearm Penalties

The bill increases to 10 years the minimum mandatory federal sentence for using or possessing an assault weapon in committing a violent crime or a drug trafficking crime. (Currently, the minimum mandatory federal sentence for using or possessing a weapon in the commission of these crimes is five years.) For purposes of this penalty, the bill defines an

assault weapon as "any repeating firearm which utilizes a portion of the energy of a firing cartridge case to extract the fire cartridge case and chamber the next round and which requires a separate pull of the trigger to fire each cartridge."

The bill establishes a mandatory minimum penalty of five year imprisonment for those found guilty of possessing a gun who were previously convicted of violent felony or serious drug offense. If the person has two prior convictions for a violent felony or serious drug offense, the mandatory minimum sentence for possessing a gun would be 10 years.

The bill doubles the mandatory penalty for a second conviction of using an explosive to commit a felony, from 10 to 20 years. The measure also doubles the penalty from five to 10 years for knowingly making a false statement in order to purchase a firearm from a licensed dealer. The bill also increases federal penalties for interstate gun trafficking.

New Crimes

The bill establishes a variety of new crimes involving firearms, including the following:

- Smuggling firearms into the United States with the intent to commit or promote the commission of a drug offense or violent crime (imprisonment of up to 10 years and fines or both);
- Stealing firearms or explosives (mandatory minimum penalty of two years in prison);
- Using a firearm in counterfeiting or forgery;
- Conspiring to violate federal firearm and explosive laws (subject to the same penalties as actually committing the crime);
- Stealing firearms or explosives from a licensed importer, manufacturer, or dealer, or a person with a permit (imprisonment of up to 10 years, a fine, or both); and
- Selling explosives to felons or other persons prohibited from possessing explosives.

Other Gun-Related Provisions

The bill eliminates the requirement of forfeiture proceedings for certain unregistered firearms before they can be seized by law enforcement officials. The owner may be reimbursed if it turns out that the property has not been used or involved in a violation of law or that the illegal use of the weapons was without the owner's consent. In addition, a federal officer would be authorized to destroy explosives forfeited to the Federal Government (because of a violation of law), if storage or removal may be unsafe. The owner may be reimbursed if it turns out that the property has not been used or involved in a violation of law.

The measure requires that potential firearms dealers certify that they are complying with state and local firearm licensing laws before the Federal Government issues a federal license to deal in firearms.

Under the bill, the statute of limitations for prosecuting national firearms act offenses would be extended from three years to five years.

The bill also strengthens the requirement that firearms dealers report to the Federal Government cases of multiple firearm purchases by the same person. Under current law, a dealer is required to report two sales to the same person, if they occur within five days of each other. The bill requires a report if such sales occur within 30 days of each other.



Section III

Death Penalty

This section describes the provisions of H.R. 3371 which expand the list of federal crimes for which the death penalty may be imposed, establish a single set of procedures for imposing the federal death penalty, and bar execution of prisoners who demonstrate that their death sentence was imposed because of racial discrimination.

Background

In the 1972 case of *Furman v. Georgia*, the Supreme Court effectively invalidated all death penalty laws, on the basis that sentencing decisions were left to the uncontrolled discretion of judges or juries, and that consequently there was a substantial risk that the punishment would be inflicted in an arbitrary and capricious manner. In 1976, in *Gregg v. Georgia*, the Supreme Court approved death sentencing procedures adopted by several states that required the decision maker to consider and weigh certain aggravating and mitigating factors. Under the 1976 ruling, the death penalty could be imposed or reimposed for specific crimes if the legislation meets the standards approved by the ruling.

Under current law, there are only two federal offenses for which the death penalty can be imposed: airline hijacking that results in death, and certain drug-related murders.

Additional Federal Death Penalty Crimes

The bill permits capital punishment as a sentencing option for over 50 federal offenses (most of which involve murder), including the following:

- Drug trafficking in very large amounts of drugs;
- Killing by a drug kingpin;
- Killing law enforcement officials in connection with a drug offense;
- Intentional killing during any drug felony;

- Drive-by shooting, where death results;
- Aircraft hijacking (either domestic or international), where death results;
- Espionage and treason;
- Attempted assassination of the President, Vice President, President-elect, or Vice President-elect, if the intended victim sustains serious bodily injury;
- Attempted kidnapping of the President, Vice President, President-elect, or Vice President-elect, if the intended victim sustains serious bodily injury;
- First degree murder on federal land;
- Intentional killing of the President, Vice President, President-elect, or Vice President-elect, or one of the persons appointed as one of the highest ranking staff members of the President or Vice-President;
- Conspiracy to kill the President, where death results;
- Conspiracy to kidnap the President, where death results;
- Murder of certain federal officials;
- Destroying aircraft, where death results;
- Destroying motor vehicles, where death results;
- Transporting explosives with intent to kill, where death results;
- Destroying federal property (with explosives), where death results;
- Mailing of injurious articles (e.g. explosives), where death results;

- Wrecking a train, where death results;
- Bank robbery, where death results;
- Intentional killing of a Member of Congress, Supreme Court Justice or Supreme Court nominee, Director or Deputy Director of the CIA, or a Presidential or Vice Presidential candidate;
- Conspiring to kill or kidnap a Member of Congress, Supreme Court Justice or Supreme Court nominee, Director or Deputy Director of the CIA, or a Presidential or Vice Presidential candidate;
- Intentional killing of a foreign official or an internationally protected person (e.g., diplomat) or a family member of such an official or person;
- Murder by a federal prisoner serving a life sentence;
- Kidnapping, where death results;
- Hostage taking, where death results;
- Murder for hire;
- Murder in aid of racketeering;
- Murder of a U.S. national abroad;
- Genocide;
- Murder of court officials or jurors in order to obstruct justice;
- Retaliatory murders of witnesses or informants;
- Murder of federal law enforcement officials;
- Murder of a state official, or law enforcement assisting federal officials;

- Torture, where death results;
- Use of weapons of mass destruction (such as biological weapons or poison gas), where death results;
- Attacking a federal facility with firearms, where death results;
- Violating an individual's federally protected rights based on race, religion, or national origin, where death results;
- Interfering with religious freedom, where death results;
- Intentional killing of a person in the federal witness protection program;
- Murder of a U.S. national abroad by another U.S. national; and
- Violence at sea, where death results.

Federal Death Penalty Procedures

The bill also establishes a general set of procedures for imposing the federal death penalty. Under the new procedures, the Justice Department would be required to notify the court and the defendant that it intends to seek the death penalty and indicate the aggravating factors that it intends to prove as a basis for imposition of the death penalty. Such notice must be given a "reasonable time" before the trial begins or before the court accepts a plea of guilty.

The bill mandates division of the trial into two phases when the death penalty is sought: first, the trial itself to determine guilt; and then, a sentencing trial. Both phases would be conducted before a jury, unless the defendant has elected to be tried by a judge instead.

Aggravating and Mitigating Factors

The bill sets out the aggravating and mitigating factors that must be considered in deciding whether to impose a death sentence. The aggravating factors include the following: a crime committed in the course of another specified crime (such as kidnapping); previous conviction of a state

or federal offense for which a sentence of death or life imprisonment was authorized; previous conviction of another serious offense; involvement of a firearm or previous conviction of a violent felony involving a firearm; grave risk of death to additional persons; heinous, cruel or depraved manner of commission; payment for the offense; substantial planning and premeditation; and vulnerability of the victim, or the type of victim (i.e., the President, head of a foreign nation, employee in a federal prison). These factors also may include the effect of the offense on the victim and the victim's family. In addition, the bill specifies that other aggravating factors may be considered with notice to the court.

Mitigating factors to be considered include mental capacity; duress; defendant's minor degree of participation in the offense; youthfulness of the defendant; insignificant prior criminal record; mental or emotional disturbance; the defendant could not reasonably have foreseen that conduct would create a grave risk of death; others equally culpable will not be punished with death; and consent of the victim. The court or jury must also consider whether any other aspects of the defendant's character or record or the circumstances of the offense mitigate the offense. The bill directs the court to instruct the jury that it shall not consider race, color, religious beliefs, national origin, or sex of either the defendant or victim.

Under the bill, aggravating circumstances must be proved beyond a reasonable doubt, while mitigating factors need only be supported by a preponderance of the evidence. The bill specifies that all evidence (even that prohibited at trial under the Federal Rules of Evidence), both aggravating and mitigating, may be considered unless the evidence is irrelevant.

The jury must impose the death penalty if each juror (or the judge, in a non-jury trial) finds at least one aggravating factor exists beyond a reasonable doubt and not one juror finds a mitigating factor, and/or if each juror finds one or more aggravating factors that sufficiently outweigh any mitigating factors. However, the bill specifies that the jury be instructed that it is never required to impose a death penalty.

Counsel & Appeals

The measure also provides for the appointment of qualified counsel to represent persons who are financially unable to obtain adequate legal representation and who are charged with a federal offense for which the death penalty is authorized. Under the bill, standards for such counsel is established. In capital cases, the bill specifies that the prosecution and defense are allowed to conduct examinations of prospective jurors. (Under current law, only the judge may conduct such interviews.)

The bill also provides for automatic review of any death sentence by both a court of appeals and the Supreme Court. Under the measure, if at least one of the aggravating factors is upheld on appeal, then the appellate court must determine if it outweighs any mitigating factors, and uphold the sentence if it does.

Limitations On Death Penalty

The bill prohibits imposing the death penalty on people who were under 18 at the time of their crimes or who are mentally retarded or mentally incompetent. It also suspends execution of women while they are pregnant.

For the federal death penalty to apply to crimes on Indian lands, an Indian tribe must have elected that the death penalty shall apply.

Race Discrimination

Finally, the measure bars execution of prisoners who demonstrate that their death sentence was imposed because of racial discrimination. This prohibition would apply to *all* death sentences in the United States, including sentences imposed under state law.

The bill permits use of statistical evidence showing a significant racially discriminatory pattern to demonstrate racial discrimination in imposing the death penalty. It also specifies, however, that in determining whether there is a pattern of racially discriminatory death sentencing, the brutality of the offenses involved, the prior records of the offenders, and other appropriate non-racial characteristics must be considered.

Under the bill, the court is required to examine the validity of the statistics and whether they provide a basis for finding a significant discriminatory pattern. Once the defendant puts forth valid evidence of a discriminatory pattern, an inference is raised that the sentence was discriminatory, which unless rebutted by the prosecution will stand.

The state may rebut the defendant's case by demonstrating by a preponderance of the evidence that non-racial factors explain the racially discriminatory pattern, or that the sentence being challenged does not fit into the racially discriminatory pattern (e.g., the facts of the case fall into a category of highly aggravated cases, where death is imposed, regardless of race).

The bill requires states to compile statistics on cases in which the death sentence might be imposed, showing the factors that influenced the charging and sentencing. If the state compiles these statistics and provides counsel in any racial discrimination claim, the findings of fact by state courts dismissing the claim will carry a presumption of validity in any federal habeas corpus proceedings.

The racial discrimination provisions of the bill would apply to all currently pending cases, whether or not appeals have been exhausted.



Section IV

Habeas Corpus Reform & "Exclusionary Rule"

This section describes provisions of H.R. 3371 that limit appeals to the federal courts through petitions for writs of habeas corpus by state prisoners who have been sentenced to death. It also deals with the bill's provisions that codify the "good faith" exception to the "exclusionary rule" for evidence seized in violation of the Constitution.

Death-Row Appeals/Habeas Corpus Reform

"Habeas corpus" refers to proceedings in federal court in which state prisoners raise federal constitutional challenges to the validity of their conviction or sentence. The bill modifies the rules for federal habeas corpus proceedings involving state prisoners facing death sentences. These changes are intended to provide one complete federal review, to limit successive habeas corpus petitions in death penalty cases, and to focus judicial review on substantive – rather than procedural – issues.

Limitation Periods in Capital Cases

The bill requires that prisoners under sentence of death must file their federal habeas corpus petitions within one year after their direct appeals have been exhausted. The one-year time limit would be suspended during any time that the state fails to provide counsel as required by the bill; while the prisoner is pursuing post-conviction relief in state court; and during an additional period of up to 90 days, if counsel moves for an extension and makes a showing of "good cause."

Successive Petitions in Capital Cases

Under current law, prisoners whose initial federal habeas corpus application is not granted may file second or successive petitions seeking another consideration of their claim or raising claims not previously presented.

The Supreme Court recently narrowed the circumstances under which a second or successive habeas claim from the same prisoner will be heard. Under *McKlesky v Zant*, a second federal habeas petition will not be heard, unless the prisoner shows either "cause" for failing to raise the constitutional claim in a prior application, and "prejudice" flowing from the violation that went uncorrected because the claim was not raised the first time; or that a "miscarriage of justice" would result from a federal court's

failure to entertain the claim in a successive petition (generally interpreted as if the constitutional violation caused the conviction of an innocent party).

The bill narrows even further the circumstances under which a prisoner may file a second or successive habeas petition. These new rules would apply only to prisoners sentenced to death.

Under the bill, federal courts would consider habeas corpus petitions raising new issues (those not raised in the first habeas petition) only if one of the following circumstances is present:

- The petitioner was previously not reasonably aware of facts that support his or her claim, and those facts could not have been discovered previously by the exercise of reasonable diligence; or
- State officials, acting unconstitutionally, interfered with the petitioner's ability to present a claim in the initial habeas corpus proceeding (e.g. where the state failed to disclose exculpatory material to the defendant).

(These are comparable, but narrower than the "cause" requirement in *McKlesky*.)

In addition to one of these circumstances being present, the new claim must be sufficient, if proved, to undermine the courts' confidence in either the prisoners' guilt or the validity of the capital sentence. (This provision is comparable to the "miscarriage of justice" standard of *McKlesky*.)

This is narrower than the *McKlesky* standard in that the bill requires the prisoner to show both cause and a miscarriage of justice, while *McKlesky* required showing one or the other.

Counsel in Capital Cases

The bill requires all states that impose the death penalty to provide qualified counsel to indigents in capital cases at trial, on appeal, on state collateral review, and on petitions for discretionary review by the U.S. Supreme Court. Under the measure, states must establish an appointing authority (either a statewide defender organization or a resource center) to ensure that indigents have qualified counsel. The bill also specifies that the appointing authority must establish qualifications and standards for

appointed counsel, select lawyers to represent indigent clients, and monitor their performance. The measure requires that attorneys be adequately compensated, based on their qualifications and the local market, and be reimbursed for reasonable expenses and costs.

Finally, the bill establishes sanctions that will apply when a state fails to provide counsel, or when appointed counsel fails substantially to meet the qualifications or performance standards set out in the bill. In such situations, states would not be entitled to the presumption of correctness as to the state court's findings of fact, and federal courts would not apply current prohibitions on consideration as to claims not raised at the state level – so-called "procedural default rules."

The bill also prohibits challenges to habeas appeal decisions based on a claim of "ineffective counsel."

Law Applicable in Habeas Corpus Proceedings

The bill specifies that when the Supreme Court announces a "new rule of law" after a prisoner's state (non-habeas corpus) appeals have been finally decided, federal courts could not apply the new rule in subsequent habeas corpus appeals by the prisoner. Instead, the court must apply the law that was in effect at the time the state appeals were decided. Under the measure, a "new rule of law" is defined as a Supreme Court decision representing a sharp break from precedent, issued since the prisoner's state appeals were decided, that could not have been anticipated at the time the prisoner's sentence became final in state courts.

Automatic Stays of Execution

Under current law, federal courts are authorized to issue stays of execution in death penalty cases when necessary to allow time for federal consideration of prisoners' habeas corpus claims.

The bill makes these stays of execution automatic, where the petitioner diligently pursues habeas corpus relief. The stay of execution will expire if the prisoner fails to file a habeas corpus petition within the time allotted, or the habeas corpus proceedings are finished (including any Supreme Court review), or the prisoner knowingly waives the stay.

Certificates of Probable Cause

Current law allows appeal of a federal district court's denial of a habeas corpus petition only if the district judge issues a "certificate of probable cause" stating that there is a meritorious issue to be considered on appeal.

The bill permits prisoners under sentence of death to appeal a denial of relief in a district court without obtaining a certificate of probable cause. This right, however, would apply only to denial of the prisoner's first habeas corpus petition, and a certificate would still be required to appeal a denial of any subsequent petitions.

Racial Discrimination In Death Sentences

The bill specifies that claims of racial bias in cases involving the death penalty may be raised in federal habeas corpus proceedings, regardless of whether or not they have been raised or determined in previous habeas corpus proceedings. This provision would only apply, however, to proceedings begun within one year after enactment.

Good Faith Exception To The Exclusionary Rule

The bill enacts into law, for purposes of federal proceedings, an existing judicially created exception to the exclusionary rule. (The exclusionary rule prohibits the use in criminal prosecutions of evidence obtained in ways found to violate the Fourth Amendment protection against "unreasonable searches and seizures.")

The exception codified by the bill is the "good faith" exception for searches with warrants that was created in the 1984 Supreme Court case of *United States v Leon*. Under this limited "good faith" exception, evidence is generally not excluded if it was obtained in "good faith" reliance on a warrant, even if the warrant is ultimately determined to be invalid. The bill stipulates, however, that this exception will not apply if 1) the judicial officer in issuing the warrant was misled by information submitted by a law enforcement officer who knew the information to be false; 2) the warrant was based on an affidavit so lacking in evidence of probable cause as to render belief in probable cause unreasonable; or 3) the warrant was so obviously deficient that officers could not reasonably presume it to be valid.



Section V

Crime Prevention, Law Enforcement, and Other Provisions

The section describes provisions of H.R. 3371, relating to crime prevention, law enforcement, drug control, and other issues.

The bill authorizes \$1.2 BILLION for a variety of anti-crime strategies, including \$150 million for "community policing" programs; \$300 million for "drug emergency" areas; \$200 million for states to develop programs to ensure certainty of punishment of youthful offenders; and \$100 million for drug treatment programs in state prisons. For a list of authorizations in the bill see the table on the following page.

Other key provisions of the bill would authorize the Justice Department to sue police departments for engaging in "patterns or practices" of unconstitutional or unlawful conduct; require the reversal of a conviction and a new trial if a "coerced confession" was used at a trial in violation of the Constitution; authorize grants for improving DNA analysis for identifying criminals; and prohibit states from operating sports-related lotteries.

Crime Prevention

Community Policing

The measure authorizes \$150 million in federal grants for "community policing" programs in each of fiscal years 1992 through 1994. These new grants to local governments and community groups could be used to modernize technologies to reduce paperwork officers must file at the precinct desk, to train officers in cultural differences, create neighborhood policing programs, improve communications between police officers, decentralize police stations, develop innovative neighborhood-oriented police programs, and develop police policies and community programs focusing on crime prevention. The bill specifies that the federal share of the project may not exceed 75%.

Safe Schools

The measure contains provisions to ensure safety of children while in school. The bill authorizes \$100 million in each fiscal year through FY 1994 for a grant program for educational agencies to institute anti-crime and safety measures to develop education and training programs for the prevention of crime, violence, and illegal drugs and alcohol; for counseling victims of crime in schools; for crime prevention equipment; and for the prevention and reduction of drug and gang-related activities in school.

Authorizations for Crime Prevention & Law Enforcement

(\$ in millions)

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
TOTAL	\$1,171	\$1,226	\$1,224	\$47	\$47
State and local communities/ police cooperative grants	150	150	150	--	--
Residential substance abuse treatment grants	100	100	100	--	--
School crime and violence local grants	100	100	100	--	--
Youth offenders incarceration & probation alternatives	200	200	200	--	--
Pretrial drug testing state grants	100	100	100	--	--
Drug-related emergencies state and local grants	300	300	300	--	--
DNA analysis	12	12	12	12	12
Law enforcement scholarships/ Family support services	35	35	35	35	35
Drug Enforcement Administration	101	--	--	--	--
Correctional grants to states	200	200	200	--	--
Immigration and Naturalization Service	45	--	--	--	--
Domestic violence response grants	25	*	*	--	--
Midnight basketball leagues	3	3	--	--	--

*"such sums as may be necessary."

Certainty of Punishment for Young Offenders

The bill also provides \$200 million in each of fiscal years 1992, 1993, and 1994 for states to develop new programs specifically to ensure certainty of punishment of youthful offenders in order to reduce the incidence of repeat offenders among the young. These grants would be used for alternative punishments for these young offenders, such as boot camps, shock incarceration, requiring young offenders to reimburse victims of their crimes, weekend incarceration, community service, and programs for serious substance abuse and gang-related crime. The federal share of the match for these programs would not exceed 75%.

Crime Victims' Fund

The bill makes permanent and removes the limits on deposits to the Crime Victims Fund, which makes grant to groups that assist crime victims and that make payments to crime victims for various costs. (Under current law, the Crime Victims Funds is scheduled to expire in FY 1994, and there is a limit of \$152 million on deposits to the Fund. It is funded from criminal fines collected from persons convicted of federal offenses.) The bill also adjusts the allocation of the fund, and requires fund recipients to focus attention to children who are victims of violent street crime.

These provisions are intended to expand existing federal programs to compensate and assist victims of crime, including compensation for medical costs, counseling, and lost wages.

Midnight Basketball

The measure authorizes \$2.5 million in FY 1992 and FY 1993 for grants for midnight basketball league programs. These programs support leagues with games held between 10 p.m. and 2 a.m. for high-risk youth. Under the measure, at least half of the players must live in federally assisted low-income housing. To be eligible to play, team members must attend job training and counseling and other educational activities.

Car Theft Prevention

The bill requires the Justice Department to establish a program to prevent motor vehicle theft. The measure requires the Justice Department to prescribe a uniform highly visible decal to identify vehicles of those people volunteering to participate in the program.

Under the program, state and local enforcement officials would be authorized to stop people in such motor vehicles, if they are driven in an abnormal circumstance, as indicated by the decal, on the presumption that they have been stolen. (The decal program provides the police with cause to stop a stolen car at night, when its decal would indicate that it is normally parked.) Under the program, no other probable cause would be necessary to stop the car.

The measure also makes it a federal offense to alter or remove motor vehicle identification numbers.

Law Enforcement

Police Misconduct

While brutality by an individual police officer is a violation of the Constitution and a federal crime, the Justice Department rarely prosecutes police officers. Further, it is difficult to obtain a conviction, particularly if an officer was poorly trained or was acting according to department policy. However, the Justice Department is not authorized to address systematic patterns or practices of police misconduct; the Justice Department has no authority to sue the police department to correct the underlying policy.

The bill gives the Justice Department authority to sue a police department to stop it from engaging in a "pattern or practice" of unconstitutional or unlawful conduct. In addition, the bill gives private parties standing to sue to stop abusive police practices.

The bill requires the Justice Department, through the Uniform Crime Reports or otherwise, to collect from state and local governments statistical data on complaints of police brutality.

Study on Police Bill of Rights

The bill provides for a Justice Department study of the procedure used in internal, disciplinary police investigations of police officers to determine if such probes are conducted fairly and effectively. Under the measure, the Justice Department must look at the adequacy of rights available to law enforcement officers and members of the public in such cases, including notice, conduct of questioning, counsel, hearings, appeal, and sanctions. The bill requires the Justice Department to submit the study along with recommendations to Congress within one year.

Expand DNA Analysis

The bill authorizes state and local governments to use drug control grants to develop or improve the analysis of DNA for identifying criminals, and requires such states and the FBI laboratory to adhere to minimum quality control, proficiency testing, and privacy standards. (DNA carries the unique genetic code of each human being, so that DNA found in blood, skin tissue, and semen can be used to identify an individual suspected of committing a crime.)

The measure authorizes \$10 million for state and local forensic laboratories to be used for purchasing equipment, training DNA analysts, and assuring the quality of the test. The measure specifies that these grants would be contingent on the following:

- Complying with FBI quality assurance standards;
- Undergoing external proficiency tests twice a year for each DNA analyst; and
- Prohibiting the disclosure of the information for non-law enforcement purposes, unless information that would identify the person is removed. The bill makes it a crime to release DNA information to unauthorized persons, or to misuse DNA samples or test results.

The bill also requires the establishment of an advisory board to make recommendations on DNA quality assurance and proficiency testing to the FBI. The measure stipulates that the FBI would not be responsible for administering the proficiency testing program. Rather, laboratories would contract for such testing with one of the commercial vendors, or with Collaborative Testing Service.

The bill specifies that the FBI may establish an index of DNA profiles of convicted felons, subject to the same standards as grant recipients. Further, the bill requires the FBI to adhere to minimum quality assurance, proficiency testing, and privacy standards.

The bill authorizes \$2 million in each of fiscal years 1992 through 1996 for the FBI to carry out the additional responsibilities of administering the advisory board and arranging for blind proficiency tests for FBI laboratories.

INS Border Patrols

The measure authorizes \$45 million in FY 1992 for Border Patrol Personnel in the Immigration Naturalization Service (INS). Of that total, \$25 million is earmarked to hire, train, and equip at least 500 full-time border patrol officers. The other \$20 million would be reserved to hire, train, and equip at least 400 full-time criminal investigators dedicated to combatting drug trafficking by illegal aliens and to deportations of criminal aliens.

Law Enforcement Scholarships

The bill authorizes \$30 million in each of fiscal years 1992 through 1996 for states to establish scholarship programs to enhance the education of law enforcement officials, and to assist law enforcement personnel seeking further education. Under the measure, the grants will be allocated to states based on the number of law enforcement officers in each state and shortages of law enforcement officials. The measure specifies that 60% of the program will be subsidized with federal funds.

These scholarships would be for one year for educational expenses at any institution of higher education. To be eligible for such a scholarship, the law enforcement official must have served for at least two years prior to seeking the scholarship. Officers receiving such scholarships must return to work in law enforcement.

Law Enforcement Family Support

The bill authorizes \$5 million in each of fiscal years 1992 through 1996 for grants to state and local law enforcement agencies to provide family support services. Under the measure, the law enforcement agency must provide one of the following services to receive these grants: counseling for law enforcement family members; child care on a 24-hour basis; marital and adolescent support groups; stress reduction programs; or stress education for law enforcement recruits and families. These grants may also be used for other family support services, such as post-shooting debriefing of officers, and counseling for families of personnel killed in the line of duty. Federal grants must be matched with local funds or in-kind services.

The measure also requires the Bureau of Justice Assistance to establish guidelines for family services in the law enforcement divisions of the Justice Department, to study the effects of stress on law enforcement personnel and their families and disseminate findings to state and local law enforcement agencies, and to provide technical assistance and training programs to state and local law enforcement agencies. Up to \$1 million of the funds may be used for these activities.

Death Benefits for Retired Officers

The bill expands the Public Safety Officer Death Benefits to provide benefits to families of retired public safety officers who die as the direct result of an injury sustained while responding to a fire rescue or police emergency.

Correctional Option Grants

The bill authorizes such sums as may be necessary in FY 1991, and \$200 million for each of fiscal years 1992 through 1994 for grants to states for developing alternatives to prisons, such as boot camp prisons.

Limits on Justice Assistance Grants

The measure places new limits on who can receive money from the discretionary fund of the Bureau of Justice assistance. This provision is intended to address concerns that these funds are being used to fund other Justice Department agencies, rather than state, county, local and private agencies.

Domestic Violence Grants

The bill authorizes \$25 million in FY 1992, and such sums as may be necessary for fiscal year 1993 and 1994, to make grants to 10 states to assist them in implementing programs to increase prosecutions for domestic violence, encourage reporting of these crimes, facilitate arrests, and provide legal services to domestic violence victims.

Drug Abuse Prevention and Control

Drug Emergency Areas

The bill authorizes \$300 million for states or localities that are designated as "drug emergency" areas for each of fiscal years 1992, 1993, and 1994. These "drug emergency" areas may include states that have a disproportionate share of drug-related crimes big cities, or rural areas that have more drug-related crime than the local police authority is able to handle. The bill stipulates that a federal match for such a program shall not exceed 75%.

Substance Abuse Treatment in Prisons

The measure authorizes \$100 million in each fiscal year through 1994 for grants to states for substance abuse treatment programs in state prisons. To be eligible for such funds, the state must implement a drug testing program for prisoners who have completed a drug abuse program. The bill specifies that such prisoners must be tested for drugs as long as they are in custody. The federal share of the match for this program would be limited to 75%. The bill establishes a preference for states that provide social services, such as job training, for prisoners who complete the drug treatment program.

It also requires drug treatment for federal prisoners with substance abuse problems who wish to participate. Under the measure, the federal Bureau of Prisons must be able to accommodate all eligible participants by FY 1995. The measure authorizes the Bureau of Prisons to release a prisoner up to one year early, based on successful participation in the substance abuse program. The bill provides for periodic drug testing of a prisoner who participated in the program if the Bureau of Prisons moves a prisoner from a prison to a halfway house based on successful completion of the program.

The measure authorizes such sums as may be necessary for the program.

Drug Testing of Arrestees

The bill authorizes \$100 million in grants in each fiscal year through 1994 to states for voluntary drug testing of persons who have been arrested, but not yet tried in court. Under the measure, states must develop drug testing programs that would be available for individuals arrested; such drug tests would continue on a regular basis until trial, in order to help decide whether the defendant should be incarcerated pending trial. The bill stipulates that the federal match for this program shall be no more than 75%.

Drug Testing of Federal Parolees

The measure requires federal courts to establish drug testing for federal offenders on post-conviction release (including probation, supervised release, and parole). Under the measure, a federal offender convicted of an offense involving a firearm or drugs would be periodically tested to ascertain that he is drug-free. This would not apply if the court determines that there is little risk of future substance abuse. If the released convict tests positive for drugs, the release shall be revoked.

DEA

The measure authorizes \$100.5 million in FY 1992 for the Drug Enforcement Administration. Of that total, the bill earmarks \$45 million to hire, equip, and train at least 350 agents and necessary support personnel to expand DEA investigations in rural areas. The bill also provides up to \$5 million to hire, equip, and train at least 50 agents and necessary support personnel to investigate drug law violations involving anabolic steroids.

Forfeiture Funds for Drug Prevention Grants

The bill specifies that 25% of the excess funds in the Justice Department Forfeiture Fund at the end of each fiscal year must go to drug prevention programs in the Public Health Service.

Federal Block Grants

The bill makes permanent the existing 75% federal share of the cost of state and local anti-drug programs funded under block grants. Under existing law, the federal share would drop to 50% in FY 1992.

Steroids

The bill imposes criminal sanctions on coaches and other physical trainers and advisers who try to persuade or induce any person to illegally possess or use steroids. This offense would be punishable by up to two years imprisonment (up to five years if the person induced is under 18).

Increase Penalties in Drug-Free Zones

The bill increases the mandatory minimum penalty for distributing drugs in drug-free zones (e.g., near a school or playground) from one year to three years for a first offense. For a second offense, the measure increases the mandatory minimum sentence from three years to five years.

The bill triples the penalty for distributing or manufacturing drugs in or near public housing – making public housing a drug-free zone. The bill also stiffens penalties for drug trafficking in prisons, and for distributing illegal drugs to pregnant women.

Legal Opium Imports

Currently, 80% of legal opium imports must be from Turkey and India. The bill changes in U.S. policy regarding the legal importation of raw opium for pharmaceutical purposes because of concerns that India may be diverting some its legal opium crop to the illegal market. The bill limits opium imports to a maximum of 30% for India in calendar year 1992, and reduces that further to 20% for India in calendar year 1993.

Drug Abuse Resistance Education Programs

The bill makes local governments, including local law enforcement agencies, eligible to receive grants to help prevent drug abuse among young people under the Drug Abuse Resistance Education Programs (DARE). (Currently only local education agencies are eligible for these grants.)

Criminal Procedure

Use of Coerced Confessions

The Supreme Court has long held that use of coerced confessions violate the due process provisions of the Constitution. Further, the Supreme Court has previously considered it a fundamental error to admit such a confession, because it would be impossible to say that the jury ignored the confession and convicted the defendant on other evidence. However, the Supreme Court held last March in *Arizona v. Fulminante* that the use of coerced confession in a trial, while a constitutional violation, did not automatically invalidate a conviction, provided that other evidence of guilt was overwhelming.

The bill specifies that the use of a coerced confession in a federal or state trial will automatically require the reversal of a conviction, and will require a new trial without use of the coerced confession.

Other Provisions

The bill provides that the list of jurors and their addresses may be withheld from the defendant by the judge. (Under current law, federal defendants are always provided with the list of jurors.)

The bill requires that a defendant in a capital case be entitled to have statements made by prosecution witnesses prior to the trial, in order to facilitate the defense's examination of such witnesses.

Finally, the measure permits the victim of a violent crime or sexual abuse to address the court regarding the defendant's sentencing.

Sexual Crimes

The bill doubles penalties for recidivist sex offenders. The measure also authorizes restitution as a penalty for federal sex offenders.

Aids Testing in Sexual Abuse Cases

The bill mandates testing for the HIV virus before a federal defendant charged with sexual abuse is released. It also requires a follow up test to be performed six and 12 months later. No follow up test will be required if the judge determines that in the alleged offense there was no risk of transmission. Under the measure, the defendant would not be released until the AIDS test is done. Follow up tests would be canceled if 1) the initial test is positive; 2) the defendant is acquitted; or 3) the charges are dismissed. The test results shall be disclosed to victim, the prosecutor, and the person tested.

Increased Penalties for AIDS Carrier

The measure also directs the Sentencing Commission to increase the penalties for sexual abuse crimes if the offender knew or had reason to know that he was infected with HIV, unless the crime did not create a risk of transmission. Further, the bill provides that money from the Crime Victims' Fund may be used for the cost of the HIV testing of the victim.

Crimes Against Children

Registration of Offenders

The bill requires the states within three years to establish programs requiring any person who is convicted of a criminal offense against a child to register a current address with the state law enforcement agency for 10 years after release from prison.

Persons who must register under the bill include those convicted of kidnapping a minor (except when it involves a non-custodial parent), false imprisonment of a minor (other than cases involving a non-custodial parent), criminal sexual conduct toward a minor, solicitation of a minor to engage in sexual conduct, use of a minor in sexual performance, or solicitation of a minor to practice prostitution. Under the bill, this

information would be transmitted to the appropriate state agency and to the FBI. The bill specifies that this information may be used for law enforcement purposes and for confidential background checks conducted for child care service providers.

International Parental Kidnapping

The bill makes it a federal offense to remove a child from the United States or to retain a child outside of the United States with intent to obstruct the lawful exercise of parental rights. Such an offense would be punishable by up to three years imprisonment and fines, and would apply to a non-custodial parent.

Child Abuser Identification

The bill establishes a central, national system of current information concerning persons who have been convicted of child abuse. Under the measure, states must provide information to the FBI including name, Social Security number, and description of the crime, from which the FBI would publish annual statistical summaries. Under the measure, this information would also be made available to governmental agencies authorized to receive criminal history information.

New Crimes and Additional Penalties

Insurance Fraud

The bill makes it illegal to defraud, loot, or plunder an insurance company. Under the measure, it would be a federal crime to 1) knowingly file a false statement with an insurance regulator; 2) embezzle more than \$5,000 from an insurance company; 3) make a false statement regarding the financial condition of the insurance to regulators; or 4) to obstruct the investigation of insurance regulators. If the amount involved in the violation is more than \$5,000, then the penalty would be up to 10 years imprisonment, a fine, or both. Further, the measure provides that anyone convicted of such an offense could not engage in the insurance business without a waiver from state insurance regulators.

Street Gangs

The bill imposes additional penalties of up to 10 years in prison (on top of the sentence for the actual crime) when a gang member commits certain federal offenses (such as a drug felony) if the crime was committed as a member of, on behalf of, or in association with a criminal street gang, and if the gang member has one or more specified federal or state convictions within the past five years.

Proceeds Of Extortion Or Kidnapping

The bill makes it a federal crime to receive proceeds of extortion or kidnapping, if the defendant knew that the money was unlawfully obtained.

Failure to Land an Airplane

The bill prohibits an airplane pilot from intentionally failing to obey an order to land by a federal law enforcement officer, subject to up to three years in prison.

Other Provisions

Ban State Sports Lotteries

The bill prohibits states from operating and authorizing sports-related gambling or betting. This provision would apply to lotteries based on both professional or amateur sporting events, except for dog and horse races. The bill, however, exempts those states that already conduct or authorize such activities (including Oregon, Nevada, and New Jersey).

Deny Federal Benefits for Non-Payment of Restitution

The measure authorizes federal courts to suspend certain federal benefits for defendants who fail to make restitution payments to a victim, as ordered by the court, until the defendant demonstrates a good faith effort to make such payments. However, the bill limits the federal benefits that may be suspended. The bill stipulates that retirement, Social Security, health, disability, veterans benefits, public housing, or other similar benefits may not be suspended under this provision.

FBI Access to Telephone Subscriber Information

In general, the FBI must get a court order or subpoena to get information on a person's telephone records. Current law provides for a limited exception in respect to counter-intelligence and international terrorism cases, but only if the telephone subscriber is believed to be an agent of a foreign power.

The bill broadens this exception to require telephone companies and other communications service providers to give the FBI access to information identifying certain telephone subscribers 1) when there is contact with a suspected foreign intelligence officer or terrorist; or 2) if the

circumstances of the conversation indicate that the call may involve spying or an offer of information to a foreign power.

Study on Campus Sexual Assault

The bill requires the Justice Department to contract for a national study on campus sexual assault and college and university policies to prevent such assaults.

Commission on Crime and Violence

The bill establishes a 22-member Commission on Crime and Violence to develop a comprehensive and effective crime control plan. Under the measure, the commission must report to the President and Congress within one year after the chairman is appointed.

Violent Juveniles in Adult Courts

The bill authorizes states to use Justice Assistance grants to develop effective systems for prosecuting certain juveniles for violent crimes (such as homicide and armed robbery) in adult courts.





FACT SHEET

No. 102-18

October 11, 1991

Crime Bill Amendments

This Fact Sheet deals with the amendments to H.R. 3371, Omnibus Crime Control Act, made in order by the recommended rule. The House is scheduled to take up the rule on Tuesday, consider many of the amendments that same day, and complete action on the measure Wednesday. (For a summary of the bill, see DSG Fact Sheet No. 102-17, October 9.)

The rule makes in order 46 specified amendments. Under the recommended rule, Rep. Gekas will offer an amendment making it easier to impose the death penalty and making it more difficult to appeal a state death sentence to a federal court. Rep. Hyde will offer an amendment placing more limits than the bill on the ability of prisoners to file habeas corpus appeals in federal courts. Rep. Volkmer will offer an amendment to eliminate the bill's ban on 13 assault weapons, while Rep. McCollum will offer two amendments — one to permit the use of evidence illegally obtained without a warrant if the police believed they were acting in "good faith" compliance with the law, and another to eliminate the bill's prohibition on executing prisoners whose conviction is demonstrated (including through the use of statistical data) to be based on racial discrimination.

A key vote is expected to occur on the rule; supporters of the Hyde amendment object to the rule's failure to prevent the division of the amendment into several parts that could be voted on separately.

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Section I

Overview

The Rules Committee has recommended a rule that permits 46 specified amendments and limits debate on each amendment. The recommended rule also eliminates the bill's provision which would have lowered the percentage of opium that could be legally imported from India, strikes language that would have extended the statute of limitations for prosecuting federal firearms violations, and deletes the bill's provision that would have removed the requirement of forfeiture proceedings before certain unregistered firearms could be seized by law enforcement officials. The Ways and Means Committee had objected to these provisions, which were within its jurisdiction.

As of press time Friday, opposition to the rule focused on the amendment by Rep. Hyde dealing with habeas corpus reform. The recommended rule does not prevent Members from demanding that parts of the amendment be considered and voted on separately, contrary to the preference of Hyde supporters.

Major Controversial Amendments

Major controversy centers on five amendments relating to the death penalty, habeas corpus reform, assault weapons, the exclusionary rule (which prohibits the use of evidence illegally obtained by the police), and racial discrimination in sentencing. (For a summary of the arguments being made by supporters and opponents of the five amendments, see Section III.)

Death Penalty

REP. GEKAS will offer an amendment that adds six additional crimes to the bill's list of crimes subject to the death penalty and broadens the bill's definition of other capital crimes. The amendment changes the bill's procedures for imposing the federal death penalty to allow a sentence of death if the capital crime was committed with a reckless disregard for human life, to remove the requirement that the jury be told that it does not have to impose the death penalty if the defendant is found guilty of a capital crime, and to permit the prosecution to announce its intention to seek the death penalty any time before sentencing, if "good cause" is shown.

The amendment makes the appointment of counsel discretionary in habeas appeals of state capital cases, requires that prisoners under death sentences must file federal habeas corpus petitions within 90 days after

they have exhausted their state appeals, and permits federal courts to accept habeas petitions only if they question the validity of the conviction itself, not the sentence.

Habeas Corpus Reform

REP. HYDE will offer an amendment striking the bill's provisions regarding habeas corpus reform. The amendment bars federal courts from hearing any claim in a habeas appeal that was "fully and fairly" adjudicated in state court; mandates that all habeas appeals be filed within one year of state appeals; limits prisoners under a death sentence to a single federal habeas petition (unless the petition questions the validity of the conviction); requires that habeas petitions be filed within six months in death penalty cases if the state has provided qualified counsel; and sets time limits for federal courts to complete consideration of such petitions. The amendment also deletes the bill's provision allowing prisoners under a death sentence to raise racial bias claims in habeas appeals, whether or not they have been raised before, and allows states to use federal funds to respond to habeas appeals in death penalty cases.

Assault Weapons

REP. VOLKMER will offer an amendment eliminating the bill's prohibition on owning or transferring 13 specified assault weapons, and deleting provisions that make it a federal crime to own or sell large-capacity ammunition feeding devices.

Exclusionary Rule

REP. McCOLLUM will offer an amendment to permit the use of evidence illegally obtained by the police, with or without a warrant, if the police obtained the evidence in "good faith" and in the "reasonable belief" that their actions were legal and in conformity with the Fourth Amendment to the Constitution. (The bill would permit the use of such evidence only if a warrant had been obtained.)

Race Discrimination in Death Sentencing

REP. McCOLLUM will offer an amendment eliminating the bill's provisions that bar the execution of prisoners who demonstrate their death sentences were imposed because of racial discrimination. Instead, the amendment prohibits the use of statistical data for invalidating a sentence, codifies current law that prohibits the consideration of race in determining a defendant's sentence, requires the questioning of jurors about potential racial bias and mandates instructions to the jury not to consider race.



Section II

Amendments In Order

This section describes the amendments to H.R. 3371, Omnibus Crime Control Act, made in order by the recommended rule. The amendments are listed below in the order in which they will be considered (except that amendments may be incorporated into an en bloc amendment offered by Chairman Brooks), and the debate time allocated to each amendment is given at the end of each description.

Death Penalty

REP. STAGGERS will offer an amendment to eliminate the bill's provisions permitting the death penalty for certain crimes, and instead require a mandatory sentence of life imprisonment without parole for defendants convicted of these crimes. The amendment also requires defendants convicted of these crimes to provide restitution of at least half of their earnings to the family or estate of the victim. Debate time: 20 minutes. (Staff Contact: Annelise Hafer, ext. 54331)

REP. HUGHES will offer an amendment to provide that all death penalty crimes which result in death (e.g. not espionage) must be committed "intentionally or knowingly" to be subject to the federal death penalty. Under the bill, several crimes if committed "with reckless disregard of human life" would be subject to the death penalty including the following: 1) drive by shootings, where death results; 2) use of weapons of mass destruction, where death results; 3) torture, where death results; and 4) aircraft hijacking, where death results. This amendment also would apply to three terrorist-related offenses in the Schumer amendment – attacking a fixed maritime platform (e.g. oil rig), where death results; terrorism on the high seas, where death results; and violence at international airports, where death results. Debate time: 15 minutes. (Staff Contact: Hayden Gregory, ext. 53926)

REP. HUGHES will offer an amendment to delete the drug kingpin death penalty from the bill. The provision deleted by the amendment would extend the death penalty to cover the crime of selling very large amounts of drugs (e.g. 300,000 grams of cocaine), where no death resulted. Debate time: 15 minutes. (Staff Contact: Hayden Gregory, ext. 53926)

REP. GEKAS will offer an amendment that adds six additional crimes to the bill's list of crimes subject to the death penalty and broadens the bill's definition of other capital crimes. The amendment changes the bill's procedures for imposing the federal death penalty to allow a sentence of death if the capital crime was committed with a reckless disregard for

human life, to remove the requirement that the jury be told that it does not have to impose the death penalty if the defendant is found guilty of a capital crime, and to permit the prosecution to announce its intention to seek the death penalty any time before sentencing, if "good cause" is shown.

The amendment also makes the appointment of counsel discretionary in habeas appeals of state capital cases, requires that prisoners under death sentences must file federal habeas corpus petitions within 90 days after they have exhausted their state appeals, and permits federal courts to accept habeas petitions only if they question the validity of the conviction itself, not the sentence. Debate time: 20 minutes. (Staff Contact: Greg Jerome, ext. 54315)

(For a more detailed summary, and arguments for and against the amendment, see Section III.)

REP. BROOKS will offer an amendment, if the Gekas amendment is adopted, to modify the federal death penalty procedures in the Gekas amendment. The measure deletes the Gekas provisions which change current law regarding the appointment of counsel in federal capital cases and in federal habeas corpus appeals in all death penalty cases.

The Brooks amendment would modify the Gekas amendment with respect to the appointed counsel for indigents eligible for the death sentence. The Brooks amendment maintains the current law requirement that the Federal Government appoint counsel in all capital cases in federal habeas proceedings. (The Gekas substitute makes the appointment of counsel discretionary in federal habeas proceedings involving state capital cases.) Further, it restores current law providing for compensation of experts in federal trials.

The Brooks amendment also modifies under what circumstances counsel is required to be appointed. The Gekas amendment provides for the appointment when the trial begins. Under the Brooks amendment, counsel would be appointed for pretrial proceedings as well. Finally, the Brooks amendment authorizes federal courts to determine the pay for attorneys and other costs and expenses. (The Gekas amendment limits compensation for appointed counsel to the amounts specified under the Criminal Justice Act.) Debate time: 10 minutes. (Staff Contact: Alan Erenbaum, ext. 53951)

REP. MCCOLLUM will offer an amendment making several additional crimes subject to the death penalty. The amendment makes drug kingpins who attempt to kill public officers, jurors, witnesses, or members

of their families to obstruct justice subject to the death penalty. The amendment also provides that those convicted of drug felonies that "act with reckless disregard of human life" resulting in death would be eligible for the death sentence. Under the bill, the death penalty would only apply to drug felons that "knowingly or intentionally" cause a death. Debate time: 15 minutes. (Staff Contact: Dave Merkel, ext. 52176)

Habeas Corpus Reform

REP. HYDE will offer an amendment striking the bill's provisions regarding habeas corpus reform. (Habeas corpus refers to proceeding in federal court by which state prisoners raise federal constitutional challenges to the validity of their conviction or sentence.) The amendment bars federal courts from hearing any claim in a habeas appeal that was "fully and fairly" adjudicated in state court; mandates that all habeas appeals be filed within one year of state appeals; limits prisoners under a death sentence to a single federal habeas petition (unless the petition questions the validity of the conviction); requires that habeas petitions in death penalty cases be filed within six months if the state has provided qualified counsel; and sets time limits for federal courts to complete consideration of such petitions. The amendment also deletes the bill's provision allowing prisoners under a death sentence to raise racial bias claims in habeas appeals, whether or not they have been raised before, and allows states to use federal funds to respond to habeas appeals in death penalty cases. Debate time: 40 minutes. (Staff Contact: Katherine Hazeem, ext. 57195)

(For a more detailed summary, and arguments for and against the amendment, see Section III.)

REP. BRYANT will offer a substitute for the portion of the Hyde amendment on habeas corpus reform that allows states to use federal grant funding for prosecutors to respond to habeas corpus appeals in death penalty cases. The Hyde amendment would require that federal grants for this purpose be made available to states each year in an amount equal to the federal funding provided to death penalty resource centers (which help defendants in death penalty cases pursue habeas corpus appeals). The Bryant substitute, like the Hyde amendment, would allow states to use federal grant funds to respond to habeas corpus appeals, but only if the state provides an equal amount of funding to death penalty resource centers. (Currently, there are 36 states which allow the death penalty, and 15 death penalty resource centers to aid defendants in habeas corpus appeals. These centers receive about \$11.5 million annually in direct federal funding, but little or no funding from states.) Debate time: 20 minutes. (Staff Contact: Barbara Crapa, ext. 52231)

Law Enforcement

REPS: McCURDY and GEPHARDT will offer an amendment that establishes a Police Corps program (similar to ROTC), which would provide, on a competitive basis, a federal college scholarship of up to \$10,000 per year, in return for a four-year commitment to serve in a state or local police force. Any participant who fails to complete the agreed upon service must pay back the entire scholarship aid, plus 10%. The amendment also establishes a law enforcement scholarship program under which current law enforcement officials would receive up to \$10,000 per year in scholarship aid, if they have been employed in law enforcement for two years and agree to serve one month for each credit hour for which assistance is made. This program would require service of between six months and two years. The amendment authorizes \$100 million in fiscal years 1992 and 1993, and \$200 million in each of fiscal years 1994, 1995, and 1996 for these programs. Debate time: 20 minutes. (Staff Contacts: Stephanie Reed, ext. 56165, and Craig Hanna, ext. 50100)

REP. SMITH (Fla.) will offer an amendment to add an additional \$25 million, above the \$150 million presently in the bill, for the Cops on the Beat program, to be directed to the 12 metropolitan areas that have the highest total crime index as published by the Justice Department. Debate time: 20 minutes. (Staff Contact: Eric Altshule, ext. 57931)

REP. SKELTON will offer an amendment which does the following:

- Authorizes \$50 million in FY 1992, and such sums as may be necessary in fiscal years 1993 and 1994, for a grant program for state and local law enforcement agencies;
- Increases the base allocation for distribution of anti-drug funds to states;
- Establishes a Rural Drug Enforcement Task Force;
- Allows the cross-designation of up to 100 federal law enforcement officers to enforce the Controlled Substances Act on non-federal land; and
- Authorizes \$1 million for courses for rural law enforcement personnel for investigation of drug trafficking and related crimes.

Debate time: 10 minutes. (Staff Contact: Amy Blankenship, ext. 52876)

REPS. DORGAN and ECKART will offer an amendment that would require the Attorney General to establish a savings and loan criminal fraud task force within the Justice Department. The task force would be charged with prosecuting, in an aggressive manner, criminal cases involving savings and loan institutions. Debate time: 20 minutes. (Staff Contacts: Allen Huffman, ext. 52611, and David Narkewicz, ext. 56331)

Assault Weapons

REP. VOLKMER will offer an amendment striking the bill's ban on owning or transferring assault weapons. The bill makes it illegal for persons to own or sell 13 specified domestically made semiautomatic assault weapons, and copies thereof. The amendment would delete this prohibition on assault weapons. The amendment also deletes provisions that would make it a federal offense to own or sell large-capacity ammunition feeding devices (devices with a capacity of more than seven rounds). Debate time: 60 minutes. (Staff Contact: Cherry Schloman, ext. 52956)

(For arguments for and against the amendment, see Section III.)

Exclusionary Rule

REP. McCOLLUM will offer an amendment to permit the use of evidence illegally obtained by the police, with or without a warrant, if the police obtained the evidence in "good faith" and in the "reasonable belief" that their actions were legal and in conformity with the Fourth Amendment to the Constitution. (The bill would permit the use of such evidence only if a warrant had been obtained.) Debate time: 20 minutes. (Staff Contact: Dave Merkel, ext. 52176)

(For a more detailed summary, and argument for and against, see Section III.)

Drug Issues

REP. SOLOMON will offer an amendment to require states to revoke convicted drug abusers' driver's licenses in order to receive federal highway funds. Debate time: 10 minutes. (Staff Contact: Veronica Townend, ext. 55614)

REP. CLEMENT will offer an amendment that would establish "drug-free zones" around truck stops and highway rest areas. The amendment would establish minimum penalties, and increase the maximum penalties, for offenses involving distribution of illegal drugs, or possession with intent to distribute these drugs, at truck stops and rest areas or in areas within 1,000 feet of them. The amendment would require a minimum sentence of one year in prison for a first offense, and three years for a second or subsequent offense (unless a longer minimum sentence is otherwise applicable). It would provide maximum penalties (fines and/or imprisonment) double those set forth in existing law for a first offense, and triple those in existing law for a second or subsequent offense. The amendment also would bar granting of probation or a suspended sentence for persons convicted of a second or subsequent offense. Debate time: 10 minutes. (Staff Contact: Whit Martin, ext. 54311)

REP. GILMAN will offer an amendment making it unlawful for any person knowingly to print, publish, place, or otherwise cause to appear in any publication a written advertisement seeking or offering to purchase, receive, or distribute a "Schedule I" controlled substance illegally. ("Schedule I" controlled substances include drugs such as heroin, morphine, LSD, marijuana, mescaline, peyote, and psilocybin, among others.) Debate time: 10 minutes. (Staff Contact: Carolyn McMahon, ext. 53776)

REP. SOLOMON will offer an amendment to require states to conduct random drug testing of individuals within the state criminal justice system, at a cost not to exceed 10% of the state's total block grant receipts. Debate time: 15 minutes. (Staff Contact: Frank Petramale, ext. 57985)

"Fairness in Death Sentencing"

REP. McCOLLUM will offer an amendment eliminating the bill's provisions that bar the execution of prisoners who demonstrate their death sentences were imposed because of racial discrimination. Instead, the amendment prohibits the use of statistical data for invalidating a sentence, codifies current law that prohibits the consideration of race in determining a defendant's sentence, requires the questioning of jurors about potential racial bias and mandates instructions to the jury not to consider race, and makes racial prejudice an aggravating factor in sentencing those convicted of murder. Debate time: 40 minutes. (Staff Contact: Dave Merkel, ext. 52176)

(For a more detailed summary, and arguments for and against the amendment, see Section III.)

Grant Programs

REP. SCHIFF will offer an amendment to extend for one year the current temporary 25% state match for Bureau of Justice Assistance (BJA) formula grants. After 1992, the amendment requires a 50% state match. (The bill permanently extends the 25% state match.) Debate time: 15 minutes. (Staff Contact: Becky Yates, ext. 56316)

REP. CONYERS will offer an amendment that would provide for the use of 25% of the excess unobligated funds in the Justice Department's Asset Forfeiture Fund to support drug abuse prevention and treatment efforts through existing grant programs established under the Public Health Service Act. (To date, law enforcement programs have been the sole beneficiaries of the federal asset forfeiture system.) The amendment also would authorize the Attorney General to sell seized real property (i.e., buildings and land, such as crack houses), at nominal cost, to non-profit organizations that provide community-based crime control, housing, or education services. This provision would apply only to low-value properties – those appraised at less than 40% of the median price of comparable properties in the same area. Finally, the amendment would require an annual report to Congress on the administrative and contracting expenses paid from the Asset Forfeiture Fund. Debate time: 15 minutes. (Staff Contact: Carol Bergman, ext. 55051)

Military Medals

REP. McCANDLESS will offer an amendment that increases the penalty for the unauthorized wearing, selling, or manufacturing of military medals (including the Congressional Medal of Honor) from \$250 to \$5,000, or double the value of an illegal sale. The amendment specifies that the unauthorized trading of military medals also would be subject to the same penalties. Debate time: 10 minutes. (Staff Contact: Andrew Leyden, ext. 55330)

Bilingual Safe Schools

REP. BUSTAMANTE will offer an amendment intended to make the "Safe Schools" program established in the bill more accessible to Spanish-speaking students. The amendment would require the Bureau of Justice Assistance to produce written materials for the program in both English and Spanish, and would require local educational authorities to include in their grant applications a description of the educational materials that will be developed in Spanish. Debate time: 10 minutes. (Staff Contact: Carlos Guevara, ext. 54511)

Border Drug Areas

REP. BUSTAMANTE will offer an amendment to expand the definition of "drug emergency areas" in the bill to include areas of a state where there is the threat of a drug-related emergency because the area borders a portion of a foreign country where a drug-related emergency exists. The amendment also would include drug smuggling among the factors to be considered by the President in declaring drug emergency areas. Debate time: 10 minutes. (Staff Contact: Carlos Guevara, ext. 54511)

Gun Sales

REP. VOLKMER will offer an amendment that would require firearms dealers to more frequently report multiple firearm purchases made by the same person to the Federal Government; and that would require potential firearms dealers to certify that they are complying with state and local firearm licensing laws before a federal license could be issued to deal in firearms. Debate time: 10 minutes. (Staff Contact: Cherry Schloman, ext. 52956)

Studies, Commissions, and Grants

REP. OAKAR will offer an amendment to require the National Institute of Justice to conduct a study of offenders who commit offenses while under the influence of alcohol or alcohol combined with other drugs. This study is to compare the recidivism rate of those who participated in a residential treatment program while in state custody with those who did not participate in such a program while in state custody. The amendment also requires the National Institute of Justice to conduct a nationwide assessment of the use of alcohol and alcohol combined with other drugs as a factor in violent, domestic, and general criminal activity. Debate time: 10 minutes. (Staff Contact: Chris Porter, ext. 55871)

REP. DERRICK will offer an amendment that would require the Treasury Department to conduct a study of the incendiary ammunition currently being offered for sale under the name "Dragon's Breath" or "Three Second Flame Thrower," and any similar incendiary ammunition, in order to determine whether there is any reasonable sporting or law enforcement use for this ammunition. (Shotgun shells are currently being sold by mail order under the above names. According to advertisements by their manufacturer, Blammo Ammo, the shells blow fast-burning, high-temperature metals 300 or more feet, engulfing the target in a "momentary 4,000-degree fireball." This ammunition has never been classified as an explosive by the Bureau of Alcohol, Tobacco, and Firearms.) Debate time: 10 minutes. (Staff Contact: Wren Ivester, ext. 55301)

REP. WYDEN will offer an amendment to expand the use of Bureau of Justice Assistance grants regarding response to domestic violence. The bill authorizes \$25 million in grants to 10 states to improve the response of law enforcement officials to domestic violence. The amendment permits the use of such funds for the training of health care professionals as well. Debate time: 10 minutes. (Staff Contact: Alicia Knight, ext. 54811)

REP. SLAUGHTER (N.Y.) will offer an amendment to establish a 23-member National Commission to Support Law Enforcement to study and recommend changes regarding funding, employment conditions, information-sharing systems, research and training, equipment, and resources of law enforcement agencies. The commission is to report its findings to Congress within 18 months. Debate time: 10 minutes. (Staff Contact: Sarah Abernathy, ext. 53615)

Penalties for Assisting Terrorists

REP. SMITH (Tex.) will offer an amendment that would make it a federal crime to provide material support or resources (e.g., funds, weapons, explosives, equipment, personnel, or training), while knowing or intending that they will be used for terrorist-related activities. Debate time: 10 minutes. (Staff Contact: David Kolbe, ext. 54236)

Drug Programs

REP. LOWEY will offer an amendment to require that the first submission to Congress of a National Drug Control Strategy include as a goal expanding the availability of treatment for drug addiction. The amendment also expresses the sense of Congress that one of the long-term goals of the National Drug Control Strategy should be to make drug treatment available to all who need it. Debate time: 10 minutes. (Staff Contact: David Seldin, ext. 56506)

REP. LOWEY will offer an amendment to restore to the bill the High Intensity Drug Trafficking Areas Program (which provides law enforcement assistance to areas where the drug trade is centered), which the bill replaces with the Drug Emergency Areas Program. Under the amendment, both the High Intensity Drug Trafficking Areas Program and the Drug Emergency Areas Program would be included in the bill. Debate time: 10 minutes. (Staff Contact: David Seldin, ext. 56506)

REP. CONYERS will offer an amendment to establish a National Commission to Study the Causes of the Demand for Drugs in the United States. The 13-member commission would include members appointed by the President and by the House and Senate leadership. During its two-year existence, the commission would be charged with examining the root causes of drug use and abuse in the United States; evaluating the efforts being made to prevent drug abuse; identifying existing gaps in drug abuse policy which have resulted from a lack of attention to the root causes of drug abuse; assessing what governmental resources and policies are needed to reduce the desire of individuals to experiment with and abuse illegal drugs; and making recommendations for improvements in policies to reduce the use of illegal drugs in the United States. The amendment would require the commission to submit interim and final reports to the President and Congress containing its findings, conclusions, and recommendations regarding these matters. Debate time: 10 minutes. (Staff Contact: Carol Bergman, ext. 55051)

Technical & Jurisdictional Amendments

REP. DINGELL will offer an amendment making technical and conforming changes to the provisions of the bill relating to insurance fraud. Debate time: 10 minutes. (Staff Contact: Janet Potts, ext. 53147)

REP. BROOKS will offer an amendment to make the transfer of Justice Forfeiture Funds subject to appropriations. The amendment would prevent the direct spending of \$11 million in 1993 and \$97 million over the five-year period contained in the bill. If this transfer were not made an appropriation, it would affect calculations that trigger "pay-as-you-go" sequestration at the end of the year under the 1990 Budget Reconciliation Act (PL 101-508). Debate time: 10 minutes. (Staff Contact: Alan Erenbaum, ext. 53951)

REPS. ROE, HAMMERSCHMIDT, AND JONES (N.C.) will offer an amendment to delete from the bill the provision making it a federal offense for an airplane pilot to intentionally fail to obey an order to land by a federal law enforcement officer, punishable by a fine and/or up to three years in prison. Debate time: 10 minutes. (Staff Contact: David Traynham, ext. 59161)

REP. KILDEE will offer an amendment making miscellaneous changes in provisions affecting programs within the jurisdiction of the Education and Labor Committee, including 1) requiring consultation with the Secretary of Education on the Safe Schools Assistance program; 2) striking the bill's conditioning of grants to states under the Child Abuse Prevention and Treatment Act on state implementation of a Child Abuser

Identification Program; 3) requiring consultation with the Secretary of Education on the National Baseline Study on Campus Sexual Assault; 4) requiring the concurrence of school districts with regard to drug abuse resistance education programs; and 5) requiring consultation with the Labor Department on the Midnight Basketball League program. Debate time: 10 minutes. (Staff Contact: Susan Wilhelm, ext. 54368)

REP. ROWLAND will offer an amendment to permit the Attorney General to transfer title of forfeited property to a state governor, if the land is appropriate for use as a recreational or historic public area. This will permit the transfer of a heavily forested tract of land in Cobb County, Georgia that was recently confiscated by the Drug Enforcement Administration (DEA) to be used as a county nature park. Debate time: 10 minutes. (Staff Contact: Elizabeth Nesbit, ext. 56531)

Trauma Centers

REP. WAXMAN will offer an amendment to authorize \$50 million in FY 1992 for grants to help defray uncompensated costs incurred by trauma centers arising from drug-related violence. In addition, the amendment directs that a portion of amounts declared as excess in the Justice Department's Assets Forfeiture Fund be directed to support trauma care centers (rather than the Alcohol, Drug Abuse, and Mental Health Services Block Grant, as under the bill). Debate time: 10 minutes. (Staff Contact: Ripley Forbes, ext. 67620)

Police Death Benefits

REP. MOLINARI will offer an amendment that names the program which extends death benefits to retired public safety officers as the "Irwin Rutman Retired Safety Officers Benefit Program." (Irwin Rutman was a retired police officer who was killed while trying to stop a robbery on a New York City subway in 1990.) Debate time: 10 minutes. (Staff Contact: Paul Lobo, ext. 53371)

Expanded Death Penalty

REP. SCHUMER will offer an amendment to establish the death penalty for three terrorist-related offenses – attacking a maritime fixed platform (e.g. oil rig), where death results; terrorism on the high seas, where death results; and violence at international airports, where death results. The amendment also establishes the death penalty for rape and sexual abuse in federal jurisdiction, where death results, and murders by escaped prisoners serving life sentences in federal prison. Debate time: 10 minutes. (Staff Contact: Andy Fois, ext. 62406)

Miscellaneous Amendments

REP. KOPETSKI will offer an amendment to clarify that the conditions under which vehicles participating in the bill's Motor Vehicle Theft Prevention Program may be stopped by state and local police may not be based on race, creed, color, national origin, or age. (The bill authorizes the Attorney General to establish a voluntary Motor Vehicle Theft Prevention Program under which participating drivers would place decals on their cars indicating the conditions under which the car is normally driven. The participating owners would sign consent forms authorizing police to stop their cars, if they are driven under circumstances (such as during certain hours of the day) that the decals indicate would be abnormal for the car's owner. Debate time: 10 minutes. (Staff Contact: Chris Dollase, ext. 55711)

REP. KOPETSKI will offer an amendment that adds "alcohol abuse" as one of the kinds of "substance abuse" for which counselling and treatment must be provided under the bill's Certainty of Punishment for Young Offenders state grant program. Debate time: 10 minutes. (Staff Contact: Chris Dollase, ext. 55711)

REP. KOPETSKI will offer an amendment to require that before a state or locality could participate in the bill's Motor Vehicle Theft Prevention Program, the legislature of that state must pass legislation authorizing state and local police to stop cars in accordance with the conditions of that program. Debate time: 10 minutes. (Staff Contact: Chris Dollase, ext. 55711)

REP. GOODLING will offer an amendment to clarify provisions of the General Education Provisions Act (GEPA) that prohibit colleges and universities from releasing student records without authorization. The amendment would provide new definitions making a clear distinction between "education records" and "criminal records." Thus, it would clarify that under GEPA, only education records are considered private and protected from release, while the release of campus law enforcement records is to be governed by state and local laws and policies. The amendment would codify a recent federal court decision on this subject. Debate time: 10 minutes. (Staff Contact: Jo-Marie St. Martin, ext. 51743)

REP. JONES (N.C.) will offer an amendment to permit U.S.-flag passenger vessels that engage in overnight voyages or single-day voyages to offer gambling beyond the three-mile limit, just as the bill permits foreign-flag vessels to offer gambling beyond the three-mile limit. Debate time: 10 minutes. (Staff Contact: John Callather, ext. 62460)



Section III

Arguments on Major Amendments

This section deals summarizes the major controversial amendments to H.R. 3371, Omnibus Crime Control Act, and the arguments being made by supporters and opponents of each of the five amendments (see note at the end of this section).

Death Penalty

REP. GEKAS will offer an amendment to permit capital punishment for the following federal offenses in addition to those in the bill:

- Sexual abuse and child molestation on federal land, that results in death;
- Attacking a maritime fixed platform (e.g. offshore oil rigs), where death results;
- Violence against maritime navigation, where death results;
- Murder in the course of a drug felony;
- Attempt to murder by drug kingpins in order to obstruct justice; and
- Gun murders in federal violent crimes.

The amendment also broadens several death penalty provisions in the bill. Most importantly, the amendment expands the definition of a drive-by shooting subject to the death penalty. Under the amendment a drive-by shooting would be when the firearm is discharged either in the course or in the furtherance of drug trafficking, or from a motor vehicle. (Under the bill, the shooting must occur from within a car.)

Federal Death Penalty Procedures

The amendment also establishes a set of procedures for imposing the federal death penalty. The procedures established by the amendment differ from those under the bill in some important respects.

First, the amendment requires a different standard of intent for the death penalty to be imposed for crimes specified under the bill. Under the amendment, the death penalty may be imposed for any of the list of crimes if the defendant manifested a "reckless disregard for human life" – defined as extreme indifference to human life. (Except for several crimes, the bill requires that the act be intentional before the death penalty could apply.)

Second, the amendment does not mandate that the jury be instructed that it is not required to impose the death sentence. (While the bill requires that only a jury could impose the death sentence in certain cases, it also requires the judge to instruct the jury that it is not required to impose a death penalty.)

Further, the substitute provides that the prosecution can, upon showing "good cause," announce its intention to seek the death penalty at any time, including after the guilt of the defendant has been decided at trial, or after the defendant has pled guilty. (Under the bill, the prosecution would be required to notify the court and the defendant that it intends to seek the death penalty a "reasonable time" before the trial begins or before the court accepts a plea of guilty.)

Under the amendment, the underlying offense (the offense for which the defendant is charged) can be counted as an aggravated factor. (Under the bill, in most cases the charged offense cannot be considered an aggravating factor.)

The amendment also provides that appellate courts must reverse the sentence, if they find a prejudicial error in the trial (i.e., the admission of evidence in violation of the Constitution). That error, however, must be "properly preserved and raised on appeal" in order for the court to reverse the decision. (The bill requires that the appellate court review and consider the entire record in a death sentence appeal, not just those errors properly reserved or raised.)

The substitute provides counsel for indigents when the trial starts. The court must provide new counsel in habeas appeals. The amendment would not pay for experts, as the bill does. In addition, the substitute caps total compensation for appointed counsel to the amounts specified under the Criminal Justice Act for any given case. (The bill requires adequate compensation, based on experience and prevailing wages.)

Finally, the amendment requires that prisoners under sentence of death file any federal habeas corpus petitions within 90 days after their state court appeals have been exhausted in order to have their conviction reviewed by federal courts through habeas corpus. (The bill provides one year.) Under the amendment, courts would be required to accept such

petitions only if they raise a question as to the validity of the conviction. (Under the bill, courts would also be required to hear such petitions raising questions as to the validity of the sentence as well as the conviction.) (Staff Contact: Greg Jerome, ext. 54315)

Arguments FOR the Gekas Amendment

Proponents of the amendment argue that it would help fight crime by restoring the federal death penalty, while providing fair and effective procedures that preserve necessary constitutional protections. In contrast, the bill establishes procedures that are so biased and inadequate that it almost guarantees that the death penalty will never be imposed.

The amendment sets out fair, constitutional procedures that are currently in use for imposing the death penalty – procedures that protect the innocent and punish the guilty. Following current law, the amendment requires that the death penalty be imposed once the jury has determined that it is warranted. In contrast, the bill requires an instruction to the jury that it need never impose the death penalty, even if the aggravating factors clearly outweigh any mitigating factors. This gives the jury discretion to avoid imposing the death penalty – leading to death sentences in some cases and not in other, extremely similar cases.

The amendment provides for enforceable capital punishment for murder when committed with reckless disregard for human life. The bill, on the other hand, radically restricts the death penalty by requiring that the defendant was practically certain that his conduct would cause a death. This is contrary to the approach of every general death penalty bill that has been passed by Congress. Further, the bill prohibits in most cases, treating murder in the course of various other violent crimes as an aggravating factor, despite the fact that the Supreme Court has upheld the constitutionality of similar statutes. So, the fact that the defendant murdered the victim in the course of a kidnapping or hostage taking would not be enough to impose the death penalty.

Finally, the amendment rids the bill of a provision that would give the defense free rein to engage in "sandbagging" in capital cases – withholding claims of error at trial, and then ambushing the government by raising them for the first time on appeal, when it is too late to correct them without overturning the judgement. Further, the bill, for no apparent reason, requires the jury to find essentially two aggravating factors, the nature of the offense the defendant is charged with and one other, in order to impose the death penalty.

These are simply a few examples of the many provisions in the bill that unfairly benefit of the defendant – and that are certain to make the death penalty virtually impossible to apply in practice. Approval of the amendment is essential to the restoration of an enforceable federal death penalty.

Arguments AGAINST the Gekas Amendment

Opponents argue that the amendment sets up procedures for implementing the death penalty that are flawed, unfair, and probably unconstitutional. The bill, on the other hand, establishes strong, yet fair procedures for imposing the death penalty.

The amendment unjustly allows the prosecution to wait to announce that it is seeking the death penalty until after the trial has begun, even after the defendant has been found guilty. The Supreme Court has emphasized the fundamental importance of adequate notice to ensure the fairness of death penalty proceedings, and the Gekas amendment simply ignores that.

Other procedures in the amendment for imposing the death penalty are probably unconstitutional as well. The amendment improperly allows the crime with which the defendant is charged to be an aggravating factor for imposing the death penalty – in effect eliminating any need for aggravating circumstances. Thus, anyone convicted of these crimes will automatically be sentenced to death if there are no mitigating factors. The function of the concept of aggravating factors is to narrow the class of defendants eligible for the death penalty. This amendment, by not requiring any aggravating factors, will render the procedures unconstitutional. In addition, by mandating that the death penalty be imposed whenever aggravating factors are not outweighed by mitigating factors, the amendment would deprive juries of the option of exercising mercy.

In addition, competent counsel is the key to prompt enforcement of a death penalty, and the amendment guts the bill's right-to-counsel provisions. The amendment says a defendant is not even entitled to a lawyer until the trial starts. How can anyone be adequately represented when his lawyers start the day of the trial without any preparation? The amendment also repeals provisions Congress enacted in 1988 requiring appointment of experts, such as psychiatrists and forensic scientists, that are critical in death penalty cases.

The amendment imposes a 90-day time limit on filing of federal habeas appeals – simply not enough time to prepare a case involving the death penalty. It also precludes a person from challenging his sentence on appeal, even if the government knowingly used perjured testimony and concealed that fact until after a first habeas petition was denied. The Gekas amendment, in short, is both unfair and unconstitutional.

Habeas Corpus Reform

REP. HYDE will offer an amendment striking provisions of the bill regarding habeas corpus reform. (Habeas corpus refers to proceedings in federal court by which state prisoners raise federal constitutional challenges to the validity of their conviction or sentence.)

The amendment bars federal courts from hearing any claim that was "fully and fairly" adjudicated in state court. The Hyde amendment defines "full and fair adjudication" as when the state court procedures are consistent with the requirements of federal law, and when its ruling is a reasonable application of clearly established federal law and reasonable in light of the evidence. Further, the amendment limits to one year the time during which all habeas corpus petitions must be filed, not just those challenging death sentences. (In general, the bill limits habeas petitions only in death penalty cases.)

Under the amendment, prisoners under a sentence of death would be limited to a single federal habeas petition, unless the petition casts doubt on the defendant's guilt of the offense. (Under the bill, courts would be required to hear such petitions raising questions as to the validity of the sentence as well as the finding of guilt.) Further, if a state provides counsel meeting state-established requirements, prisoners under sentences of death would be required to file their federal habeas corpus petitions within six months. (Under the bill, prisoners have one year to file federal habeas corpus petitions.) Further, the amendment sets time limits for federal courts to complete consideration of habeas petitions in death penalty cases.

The amendment also deletes provisions of the bill providing special rules for claims of racial discrimination in capital cases. (Under the bill, prisoners sentenced to death are permitted to raise racial bias claims in habeas appeals, regardless of whether or not they have been raised before. These claims would have to be raised within one year of enactment for these special rules to apply.)

Finally, the amendment allows states to use federal funding for prosecutors to respond to habeas corpus appeals in death penalty cases. It would require that federal grants for this purpose be made available to states each year in an amount equal to the federal funding provided to death penalty resource centers (which help defendants in death penalty cases pursue habeas corpus appeals).

Arguments FOR the Hyde Amendment

Supporters of the amendment emphasize that it would simply give reasonable deference to state court proceedings, limit endless appeals, and set fair time limits for filing of habeas appeals. In contrast, the bill would create an extraordinary array of burdensome new requirements and unsound procedural rules that would make the death penalty untenable for state courts.

First, the amendment provides proper deference to "full and fair" state court adjudications of a prisoner's claims. This is only a "rule of deference," and not a mandatory bar on federal review. Second, review under this standard is not limited to considering the fairness of procedures used by the state court. The amendment also requires a determination by the federal court that the state court findings were reasonable, in light both of the evidence and federal law. It is preposterous to argue that the amendment eliminates federal review and federal remedies of injustices that may occur in state courts.

Federal deference to state court decisions is quite common. Under current law, findings of fact by state courts are already entitled to deference on federal habeas review if the state hearing was full and fair. Further, courts determine the reasonableness of various decisions everyday; this is not some unusual procedure which the amendment is establishing for federal courts. What the amendment does do, is protect those states that appoint competent counsel to represent indigent capital defendants against delay and litigation abuse in capital cases.

The amendment also provides other effective responses to the pattern of litigation abuse and endless delay that has thwarted the use of state death penalty laws. The amendment would limit habeas petitions beyond an initial federal appeal to those extraordinary cases with information that casts doubt on the defendant's guilt of the offense for which the death penalty was imposed. In contrast, the bill would lead to endless litigation by permitting multiple habeas petitions relating to the validity of the sentence, contrary to Powell Commission recommendations. Thus, the bill would allow convicted murderers, whose guilt is obvious, to engage in protracted litigation concerning alleged technical defects in their sentences.

The bill – unless amended – would vastly increase the opportunity for abuses in all types of criminal cases, and would have truly devastating consequences in capital cases. First, the bill would promote repetitive habeas appeals based on new decisions by the Supreme Court by prohibiting use of "new law" only a very narrow range of cases – when a new decision involves a clear break with precedent, which almost never happens. Rarely does the Supreme Court, particularly in criminal matters, ever clearly break precedent. The bill also creates mandatory rules for states to appoint counsel that would require an elaborate and expensive system. The amendment eliminates these debilitating weaknesses of the bill, and replaces them with a fair – and effective – system of handling habeas corpus appeals.

Arguments AGAINST the Hyde Amendment

Opponents respond that the amendment will essentially stop federal courts from ever reviewing state decisions. The bill, on the other hand, provides for one complete federal review, rigidly limits successive habeas corpus petitions in death penalty cases, and ensures the provision of competent counsel.

The right to habeas corpus appeal, which the Hyde amendment would virtually eliminate, was developed to provide federal courts with authority to uniformly protect the fundamental federal rights of all Americans, regardless of who they are or where they live. Under the amendment, no federal court would be able to review a state decision unless the state procedure was grossly unfair and the decision was unreasonable or arbitrary – even if the state court had wrongly interpreted the U.S. Constitution. Contrary to recommendations of the Powell Commission, the amendment would strip the federal courts of their authority to hear constitutional claims – a truly dangerous step given that federal courts have found constitutional errors in approximately 40% of all capital cases.

Others contend that, under the amendment, because federal review would occur only if the state court judgement was arbitrary or unreasonable, there would be more friction – not less – between state and federal courts. By asking the federal courts to determine in every instance whether the state court behavior is reasonable, federal courts would become "sanity commissions," charged with deciding whether state courts took leave of their senses in determining fact or the law. Furthermore, the amendment would not necessarily reduce the number of cases clogging the federal courts. Instead, the question of what qualifies as a "full and fair" proceeding is guaranteed to produce a new crop of federal court cases. And all these provisions would, for the first time apply to all habeas cases, not just death penalty cases.

In addition, the amendment fails to require competent lawyers at trial and on appeal and fails to specify standards for counsel. It is an unfortunate fact, however, that competent counsel is often not provided in death penalty cases, yet it is critical to ensuring both efficiency and fairness to these proceedings. A major cause of delay in death penalty cases is often the inexperience and incompetence of lawyers.

The bill's provision, on the other hand, will allow the death penalty to be carried out more quickly and fairly. The bill provides a one-year statute of limitation on habeas appeals, and prohibits successive petitions in virtually all circumstances. It also ensures that states will provide competent counsel in capital cases from trial on. This provision, more than any other, will expedite capital cases by reducing the number of unnecessary appeals, retrials, and resentencing.

Assault Weapons

REP. VOLKMER will offer an amendment striking the bill's ban on owning or transferring assault weapons. The bill makes it illegal for persons to own or sell 13 specified domestically made semiautomatic assault weapons, and copies thereof. The amendment would delete this prohibition on assault weapons. The amendment also deletes provisions that would make it a federal offense to own or sell large-capacity ammunition feeding devices (devices with a capacity of more than seven rounds). (Staff Contact: Cherry Schloman, ext. 52956)

Arguments FOR the Amendment/AGAINST the Bill's Assault Weapon Ban

Supporters of the amendment argue that it protects the rights of law-abiding Americans by striking provisions of the bill that would drastically restrict the right of citizens to own, possess, transfer, or use many – if not most – firearms. Because the measure's ban is ill-conceived and poorly drafted, it will burden the rights of the American people to own guns, rather than reducing crime.

The bill is so sweeping that it could result in banning all weapons, including hunting and sporting weapons. Even though it bans 13 categories of assault weapons, it also outlaws "copies" – embodying the "same basic configuration" – of the weapons specified. This is a dangerously vague and broad standard, that might be declared unconstitutional. Given this language, virtually any firearm manufactured today could be banned under the bill.

Furthermore, the bill contains language that would allow the Bureau of Alcohol, Tobacco, and Firearms to ban additional guns not specifically restricted by the bill. For the first time, it places extensive controls on large categories of domestically made firearms.

Although it is understandable that Members of Congress want to respond to the periodic incidents of brutal, ruthless, and infuriating killings involving the use of firearms, the fact is that banning certain firearms will do nothing to stop these tragic crimes. Studies overwhelmingly show that gun control laws have no impact on stopping criminals from obtaining whatever firearm is necessary for perpetrating their crimes. Thus, passage of this legislation may remove certain guns from the hands of law-abiding Americans, but it will do nothing to disarm criminals.

Finally, the amendment deletes provisions of the bill that make a complete mockery of the rights guaranteed by the Second Amendment, which declares "the right of the people to keep and bear arms." The key reason why citizens have the right to keep and bear arms is to protect their families, and the bill's provisions will open the door to undermining this right.

Arguments AGAINST the Amendment/FOR the Bill's Assault Weapon Ban

Opponents of the amendment contend that the bill bans only a very narrow list of named semiautomatic assault weapons – weapons used almost exclusively by organized crime, gangs, and drug cartel. The American public supports a modest ban, like the bill's, given that criminals armed with assault weapons, like the UZI, are overwhelming law enforcement efforts and killing police officers.

The bill's modest proposal bans only 13 specified types of semiautomatic weapons – none of which are used for hunting or other sporting purposes. Many types of semiautomatic rifles would not be affected by this ban at all. In addition, the bill does not take away any semiautomatic assault rifles – even those outlawed under the bill – from people who already legally own them. The bill is a very limited proposal to somewhat reduce the availability of these weapons with enormous firepower, while infringing as little as possible on the ability of Americans to own firearms.

Virtually every major national law enforcement organization supports a ban on assault weapons. They support such a ban

because assault weapons have increasingly become the weapon of choice of drug dealers and other violent criminals, and because police are increasingly being outgunned. Simply put, law enforcement organizations support the outlawing of assault weapons in order to protect the lives of police officers, as well as the general public. No one claims that the bill by itself will lead to a major reduction in crime. Certainly, criminals will still be able to get weapons, even if the bill is enacted. The bill will accomplish, however, at least the limited objective of reducing the availability of these high-powered weapons.

The bill does not undermine the Second Amendment; rather, it is narrowly written precisely in order to protect the right of all law-abiding Americans to own firearms both for hunting and other sporting purposes, as well as their own self-defense.

Exclusionary Rule

REP. MCOLLUM will offer an amendment to establish, for purposes of federal proceedings, a broad "good faith" exception to the exclusionary rule (the rule that bars the use of illegally obtained evidence at a trial), applying both to searches with and without warrants. Under this broad "good faith" exception, evidence obtained in a search or seizure that violated constitutional protections would not be excluded if "the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the Fourth Amendment" to the Constitution. (The bill contains a provision enacting into law the limited "good faith" exception to the exclusionary rule, applying only to searches with warrants, that was created by the Supreme Court in the 1984 case of *United States v. Leon*.) Debate Time: 20 minutes. (Staff Contact: Dave Merkel, ext. 52176)

Arguments FOR the McCollum Amendment

Supporters of the amendment argue that adding a broad "good faith" exception to the bill is critically important, because the limited "good faith" exception created in *Leon* and contained in the bill does not go nearly far enough in correcting the unconscionable results that are carried out every day under the operation of the exclusionary rule – i.e., letting guilty criminals off free because of minor legal technicalities regarding the seizure of evidence.

It is outrageous for defendants, who are caught actually holding illegal drugs and weapons, to go free because police officers inadvertently fail to comply with every last technicality.

The amendment, by admitting evidence obtained after good faith compliance with the law, would substantially reduce the number of cases dismissed or not prosecuted due to these technical violations. Nearly 5% of all cases which are currently not prosecuted are the result of search and seizure problems. Further, a National Institute of Justice study found that half of defendants not prosecuted, because critical evidence would have been kept out of court under the exclusionary rule, were rearrested within two years.

Providing a broad "good faith" exception simply carries the Supreme Court ruling in *Leon*, which create a "good faith" exception for searches with warrants, to its logical conclusion by extending it to warrantless searches. The amendment extends the logic of that case by providing that, even in cases of warrantless searches (such as pursuant to an arrest or in "hot pursuit"), evidence should be admitted if the officer was operating in "an objectively reasonable belief" that he was complying with the Constitution.

Such a broad "good faith" exception is fundamentally logical. The purpose of the exclusionary rule is to deter unlawful conduct by law enforcement officers (since they know that an illegal search or seizure cannot be used to obtain a conviction). But an officer's conduct can only be deterred, if he knows that it would be unlawful in the first place. The exclusionary rule was simply not designed for situations in which an officer was operating in a completely reasonable belief that he was complying with constitutional requirements. That is why several federal circuit courts have already applied the exception to warrantless searches, with no adverse effect on the rights of suspects and defendants.

Arguments AGAINST the McCollum Amendment

Opponents of the amendment counter that the bill already codifies the Supreme Court's "good faith" exception to the exclusionary rule and that it would be unwise to enact the much more sweeping exception provided for in the McCollum amendment – an exception which the Supreme Court itself has consistently refused to adopt. If such a large loophole were made in the exclusionary rule, there would be little left of the rule itself and the protection it affords. Furthermore, if courts began admitting evidence gathered in "good faith" in the case of warrantless searches, there would be much less incentive for the police to obtain search warrants at all – thereby undermining the fundamental protection of the Fourth Amendment to the Constitution.

The exclusionary rule is what protects all American citizens against unreasonable searches and seizures and the invasion of privacy by law enforcement officers. It does not undermine the ability of the police to enforce the law; indeed, it has been part of the training of all federal law enforcement agents since 1914, and both the current and prior director of the FBI have endorsed the rule and stated that it does not hinder the FBI's work. In addition, the number of cases affected by the exclusionary rule has been greatly exaggerated; a recent survey found that the cumulative loss of felony cases due to the rule was between 0.6% and 2.3%.

This amendment actually represents a fundamental departure from Supreme Court decisions, rather than taking Supreme Court reasoning to its logical conclusion. In fact, over the last six years, the Supreme Court has refused to extend the limited good faith exception created in the *Leon* case. In refusing to extend the *Leon* case to warrantless searches, the court has taken into account that, in the case of searches pursuant to warrants, there is evidence available concerning whether the officer acted in objective good faith – that is, the warrant itself. However, in warrantless searches, no such objective evidence exists. Instead, a court would have to rely on an officer's after-the-fact testimony to determine whether there had been good faith.

Finally, by arguing that a broad exception to the exclusionary rule is logical, proponents display a fundamental misunderstanding of the rule and how it works. The exclusionary rule works because it creates an incentive for law enforcement officers to know legal search and seizure standards. By creating a large "good faith" exception, officers will no longer have an incentive to know the law – in fact, it can be argued they will actually have an incentive not to know the law. The Supreme Court has quite properly refused to open this big loophole in the exclusionary rule, and Congress should similarly refuse to do so.

REP. McCOLLUM will offer an amendment to strike the provisions of the bill that bar execution of prisoners who demonstrate that their death sentence was imposed because of racial discrimination, and that permit the use of statistical evidence showing a significant racially discriminatory pattern in this determination. The amendment replaces them with the "Equal Justice Act."

The amendment would codify current law, which prohibits considering race in determining the sentence for a defendant. Under the amendment, using racial quotas and statistical data for imposing or invalidating the death penalty, or any other penalty, would be explicitly prohibited.

It requires the questioning of potential jurors on racial bias when there is a substantial likelihood that such bias would affect the consideration of the case; requires a change of the location of the proceedings if an impartial jury cannot be obtained in the original location because of racial prejudice; and prohibits appeals to racial bias in statements by the prosecutor or the defense attorney.

The amendment requires instructions to the jury in capital cases that they should not consider the race of the defendant or victim in sentencing. It also requires certification by each juror that he or she did not impose the sentence based on race. The amendment specifies that racial prejudice in a killing shall be considered an aggravating factor in deciding whether to impose the death penalty. Debate Time: 20 minutes. (Staff Contact: Dave Merkel, ext. 52176)

Arguments FOR the McCollum Amendment

Supporters of the amendment argue that unless amended, the bill would effectively repeal the death penalty by unconstitutionally allowing the use of statistics in showing racial discrimination, and would impose quotas in death sentencing. The amendment not only corrects these fatal flaws, but also includes important provisions to protect against racial discrimination in death sentencing, while explicitly prohibiting the use of racial quotas in death sentencing.

First, the amendment provides a number of safeguards against racial bias in the death sentencing process. The amendment requires questioning of potential jurors on their racial biases when there is a substantial likelihood that the such bias will affect the consideration of the case. It also mandates moving the trial to a new area if an non-prejudiced jury cannot be obtained in the original location. Further, appeals to racial bias in statements by the prosecutor or the defense attorney would be explicitly prohibited.

More importantly, the amendment rids the bill of racial quotas. In fact, the amendment explicitly prohibits using racial quotas and statistical data for imposing or invalidating the death penalty, or any other penalty. In contrast, the bill would make findings of racial discrimination in death sentencing, based on statistics.

The bill would force prosecutors to make racial considerations paramount in deciding what type of sentence to seek, while the heinous nature of the crime would be forgotten. That is because the bill's provisions focus on statistical disparities – not racial

discrimination. Under the bill, the facts in a specific case — including the presence or absence of racial prejudice — are irrelevant to establishing the inference of racial discrimination.

The unconstitutionality of such a quota system is clear. In *McKlesky v Kemp*, the Court rejected the use of statistics to invalidate the death penalty. It ruled that the Constitution requires individualized determination as to the appropriateness of the death penalty in a particular case, taking into account the character and record of the murderer and the circumstances of the offense.

The amendment will provide significant protection against racial discrimination, without the quotas in death sentencing that are mandated under the bill. In fact, all racial quotas in death sentencing would be outlawed under the amendment.

Arguments AGAINST the McCollum Amendment

Opponents argue that the provisions in the bill which the amendment would eliminate are critical to barring racial discrimination in imposing the death penalty. The amendment's replacement of these provisions with the "Equal Justice Act" would protect even the most egregious cases of racial bias in death sentencing from review.

While the amendment primarily restates principles that are already the law, it is worse than current law because it forbids the use of evidence of consistently biased outcomes to prove discrimination. It bars the courts from looking at the results of the death sentencing process, no matter how dramatic the pattern. If all death sentences were handed out against blacks in a particular jurisdiction where only 10% of murder defendants were black, the amendment would prohibit courts from taking that evidence into account.

Congress has never passed a law prohibiting courts from considering statistical evidence to determine discrimination. To the contrary, in the areas of employment, housing, and voting among others, Congress has always recognized that an unexplained pattern of racially biased outcome may be evidence of illegal discrimination.

Rather than abolish the death penalty, the bill would simply ensure that defendants are not sentenced to death based on their race. States would be free to carry out any and all death sentences, unless a significant racially discriminatory pattern can

be shown. Prosecutors will have two opportunities to challenge statistics suggesting racial discrimination: first, they can challenge both the sufficiency and quality of any statistical evidence before the court decides whether a death row inmate has raised a presumption of discrimination; and, second, they will have an opportunity to rebut the inference either by showing that an apparently racial pattern is explained by non-racial factors or by showing that this particular case does not fit into the pattern (e.g., the crime is more egregious than those with which it is compared).

The bill would not lead to death sentencing quotas, but rather would eliminate race from the decision to seek the death penalty. It would encourage prosecutors to develop non-racial standards for deciding when to seek a death sentence and how to apply those standards uniformly and consistently.

Note: The arguments presented above are not DSG's arguments nor do they represent a DSG evaluation of the amendments. As indicated, they are the arguments that supporters are making on behalf of the amendments and that opponents are making against them. DSG attempts only to summarize the arguments on both sides as cogently as possible.





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HON. BOB WISE (W. VA.) — Chairman

SCOTT LILLY — Executive Director

NOV 25 1991

FACT SHEET

No. 102-30

November 25, 1991

Crime Bill Agreement

This Fact Sheet deals with the conference agreement on H.R. 3371, Omnibus Crime Control Act. The measure is expected to be considered on the Floor today.

The conference report applies the federal death penalty to about 50 crimes, generally similar to both the House and Senate bills, and mandates a five-day waiting period for handgun purchases, requiring local law enforcement to check the background of the purchaser. It does not include provisions banning certain assault weapons.

The measure also requires prisoners under death sentences to file federal habeas corpus petitions within one year of their direct appeals, and narrows the circumstances under which a prisoner may file a second or successive habeas petition.

The agreement also permits the use of illegally obtained evidence if the police acted in "good faith" reliance on a search warrant. This codifies a 1984 Supreme Court decision on the use of such evidence.

The measure authorizes around \$3 BILLION in FY 1992 for hiring more law enforcement officials on the federal, state, and local levels and a variety of other crime fighting activities.

Note: As of press time, the conference report had neither been filed, nor was it available. Because the measure is expected to be considered early today, DSG has prepared this report based on information provided by the committee.

Major Elements of Crime Agreement

Conferees have reached agreement on H.R. 3371, Omnibus Crime Control Act. The conference report, however, has not yet been filed and is not available. The Rules Committee is expected to meet today to grant a rule clearing the measure for Floor consideration today.

Following are the major elements of the conference agreement:

- **Death Penalty** – The conference agreement applies the death penalty to about 50 federal crimes, generally similar to both the House and Senate bills. The measure does not include a Senate provisions that would have made any firearm slaying a federal crime punishable by death, and would have allowed the death penalty for drug-related killings in D.C.
- **Brady Bill/Handgun Waiting Period** – Like the Senate bill, the agreement mandates a 5-business-day waiting period before anyone buying a handgun would be permitted to take possession of the weapon, and requires a background check by local law enforcement during that time to check the background of the purchaser to ensure that the sale would not violate federal or state law. (The House bill required a 7-day waiting period, but did not mandate a background check.)
- **Exclusionary Rule** – Like the Senate bill, the conference agreement enacts into law, for purposes of federal proceedings, the "good faith" exception for searches with warrants that was created in the 1984 Supreme Court case of *United States v Leon*. (The exclusionary rule prohibits the use in criminal prosecutions of evidence obtained in ways found to violate the Fourth Amendment protection against "unreasonable searches and seizures.") Under this limited "good faith" exception, evidence is generally not excluded if it was obtained in "good faith" reliance on a warrant, even if the warrant is ultimately determined to be invalid.

No D'Amato
No DC DRUG KILLINGS
No "RECKLESS" STANDARD

SENATE BRADY

ONLY LEON COALF.

(The House-passed bill would have extended the "good faith" exception to searches without warrants.)

- **Funding for Anti-Crime Programs** – The bill authorizes about \$3 BILLION in FY 1992 for hiring more law enforcement officials on the federal, state, and local levels and a variety of other crime fighting activities. (The House bill authorized \$1.2 BILLION in FY 1992.)
- **Firearm Provisions** – The conference report does not include Senate provisions, which banned the manufacture or sale of certain semi-automatic assault weapons, but the bill contains most of the provisions in both the House and Senate bills increasing penalties for crimes involving guns.

NO ASSAULT
WEAPONS

Death-Row Appeals/Habeas Corpus Reform

The conference accepted the House's provisions modifying the rules for federal habeas corpus proceedings involving state prisoners facing death sentences. ("Habeas corpus" refers to proceedings in federal court in which state prisoners raise federal constitutional challenges to the validity of their conviction or sentence.) The measure requires that prisoners under sentence of death to file their federal habeas corpus petitions within one year after their direct appeals have been exhausted. The agreement narrows the circumstances under which a prisoner sentenced to death may file a second or successive habeas petition.

Under the agreement, federal courts would consider habeas corpus petitions raising new issues (those not raised in the first habeas petition) only if one of the following circumstances is present: the petitioner was previously not reasonably aware of facts that support his or her claim, and those facts could not have been discovered previously by the exercise of reasonable diligence; or state officials, acting unconstitutionally, interfered with the petitioner's ability to present a claim in the initial habeas corpus proceeding (e.g., where the state failed to disclose exculpatory material to the defendant). In addition to one of these circumstances being present, the new claim must be sufficient, if proved, to undermine the courts' confidence in either the prisoners' guilt or the validity of the capital sentence. (The Senate bill barred federal courts from hearing any claim in a habeas appeal that was "fully and fairly" adjudicated in state court.)





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