

ENVIRONMENTAL CRIMES

## ENVIRONMENTAL CRIMES AND OTHER WHITE COLLAR ITEMS

1. Schumer had hearing and bill on environmental crimes. It is a natural Clinton-Gore issue. There is substantial evidence that the Environmental Crimes Section in DOJ has not been prosecuting vigorously and has held U.S. Attorneys and grand juries back. You have the report done for Schumer by the Environmental Crimes Project at GW law school. We have refined and modified the bill beyond what was originally introduced.

Included:

1. Original Environmental Crimes bill
2. Hearing memo

2. Workplace crime. Schumer did hearing and wrote a bill to create felony penalties for knowingly creating danger at workplace that leads to serious bodily injury or death. History of criminal enforcement in this area is terrible. Bill and memo are included.

3. Health care fraud is also a terrific white collar crime issue that ties in with health care reform. Billions lost to fraud and abuse. Biden-Schumer introduced companion bill last year that passed Senate. We have developed substantially different bill that we think is much better. As written not clear if bill creates an offense or a sentencing enhancement and it is very narrow in scope. Original Biden bill included.

4. Computer crime: A provision in the crime bill expands the computer crime offense to provide for intentional introduction of a virus into the system. Language included.

5. Other white collar issues from crime bill conference report:

Insurance Fraud - provision included

Mail fraud - small fix

Savings and Loan Task Force - duplicative of office in DOJ

(Big non-legislative white collar crime issue is in S and L enforcement. Specifically, very poor collection rate from convicted S and L's and individuals. That is a DOJ issue.)

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102D CONGRESS  
2D SESSION

# H. R. 5305

To amend title 18, United States Code, with respect to environmental crimes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 1992

Mr. SCHUMER introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, with respect to  
environmental crimes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Environmental Crimes  
5       Act of 1992".

6       **SEC. 2. ENVIRONMENTAL CRIMES.**

7       (a) IN GENERAL.—Part I of title 18, United States  
8       Code, is amended by inserting after chapter 33 the  
9       following:

10       **"CHAPTER 34—ENVIRONMENTAL CRIMES**

      "Sec.

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ONE HUNDRED SECOND CONGRESS

**Congress of the United States****House of Representatives**

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MAJORITY—225-3951

MINORITY—225-6906

**MEMORANDUM**

**TO:** Members of the Subcommittee  
on Crime and Criminal Justice

**FROM:** Charles E. Schumer, Chairman

**DATE:** June 9, 1992

**RE:** Legislative Hearing on H.R. 5305, the "Environmental Crimes Act of 1992."

On Thursday, June 11, 1992, at 10:00 a.m., in room 2226 of the Rayburn House Office Building, the Subcommittee on Crime and Criminal Justice will convene a legislative hearing on H.R. 5305, the "Environmental Crimes Act of 1992."

Scheduled to testify at the hearing are: Mr. Roger B. Clegg, Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice; Mr. Scott Fulton, Deputy Assistant Administrator for Enforcement, U.S. Environmental Protection Agency; Mr. William J. Esposito, Section Chief, White Collar Crimes Section, Federal Bureau of Investigation; Mr. Jonathan R. Turley, Associate Professor, National Law Center, George Washington University; [INSERT ADDITIONAL WITNESS]; Mr. Michael Hausfeld, Esq., Cohen, Milstein, Hausfeld & Toll, Washington, D.C.; and three private citizens who are victims of environmental crimes. A witness list is attached to this memorandum.

**BACKGROUND**

Although criminal penalties have been included in many Federal environmental statutes for a number of decades, civil enforcement has traditionally been the rule and criminal enforcement the exception. However, the events of the past decade suggest that this pattern is changing.

In the past ten years, the Environmental Protection Agency ("EPA") and the Department of Justice ("DOJ") have shown an increased willingness to utilize the criminal provisions of the Federal environmental laws to punish many of the egregious violators. From 1983 to 1991, the DOJ, working with the EPA and the Federal Bureau of Investigation

("FBI"), brought a total of 838 indictments for environmental crimes, generally increasing from 40 indictments in 1983 to 125 indictments in 1991. Of those indictments, the DOJ obtained pleas or convictions in 613 cases.

This is a laudable trend. However, a growing body of evidence suggests that even these improved efforts are failing to fully deter irresponsible and criminal environmental activity. Indeed, the evidence shows that compliance with current environmental laws is often very poor. For example:

- A recent study conducted by the General Accounting Office ("GAO") revealed that federal, municipal, and industrial facilities have a long-standing history of noncompliance with the Clean Water Act's pollutant discharge limits. Water Pollution: Observations on Compliance and Enforcement Activities Under the Clean Water Act, GAO/T-RCED-91-80 (1991).

- A separate GAO study found widespread noncompliance with laws designed to prevent inland oil spills. GAO studied four EPA regions and found violations in between forty-one and ninety-four percent of the inspections conducted. GAO estimated that such non-compliance has caused between 2,000 and 3,000 inland oil spills each year since 1982. Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents, GAO/RCED-89-65 (1989).

- The National Wildlife Federation ("NWF") has reported widespread noncompliance with the Safe Drinking Water Act, a law designed to protect the American public from hazardous pollutants in public drinking water systems. NWF reported more than 100,000 violations of the law each year, including approximately 17,000 violations of health standards, affecting about 13 million people. National Wildlife Federation, Danger on Tap: The Government's Failure to Enforce the Federal Safe Drinking Water Act (1988 & 1989 update).

Such evidence illustrates that noncompliance with national environmental laws remains widespread and chronic. Greater deterrents are needed. It is becoming increasingly clear that such a deterrent must come from an expanded Federal environmental crimes enforcement program, coupled with stricter criminal penalties for serious environmental violations. Indeed, James Strock, Secretary for Environmental Protection for the State of California (and former Assistant Administrator for Enforcement at EPA) has stated that "there is no question that criminal enforcement is EPA's most effective deterrent." Strock, Environmental Criminal Enforcement Priorities for the 1990s, 59 Geo. Wash. L. Rev. 916 (1991) [hereinafter Strock].

Civil and administrative measures are simply inadequate to deter violations of environmental laws. As Judson Starr, former director of the Environmental Crimes Unit in the Land and Natural Resources Division of DOJ, has stated:

What both administrative and civil sanctions have in common . . . is that they serve to punish only the corporate entity, not the decisionmakers who are responsible for the violations committed in the corporate name. Moreover, generally the fines assessed corporations are simply passed on to the consumer through higher product prices. A deterrence factor [is] conspicuously missing from both types of sanctions. The government has . . . learned that the most cost effective way to bring corporate decision-making into compliance with the law is to use the available criminal laws aimed at the decisionmakers themselves.

Starr, Too Many Cooks . . . , 6 Env'tl. F. 9, 13 (1989)(emphasis added).

The need for increased criminal enforcement of environmental laws as an effective deterrent has also been recognized by the DOJ. Former Attorney General Richard Thornburgh endorsed the adoption of "beefed-up" criminal provisions of environmental statutes, particularly the inclusion of felony penalties under those laws. Press Release, Department of Justice, (November 15, 1990). In fact, even the National Association of Manufacturers has expressed its support for "criminal prosecution for intentional or willful violations of environmental laws." Letter from Jerry J. Jasinowski, President, National Association of Manufacturers, to the Honorable Craig T. James, U.S. House of Representatives (July 3, 1990).

## **H.R. 5305**

To address the need for enhanced criminal sanctions for violations of environmental laws, H.R. 5305 creates a new "knowing endangerment" felony under title 18, United States Code. It would provide for up to 15 years imprisonment and a fine of no more than \$250,000 for any person who commits specified criminal violations of certain environmental statutes and thereby additionally places any person in imminent danger of death or serious bodily injury. An organization could be fined up to \$1 million.

Similar "knowing endangerment" provisions, originally enacted in 1980 as part of the Resource Conservation and Recovery Act, have been more recently added to the Clean Water Act and the Clean Air Act. They are designed to punish the most egregious environmental violators. The "knowing endangerment" provision of H.R. 5305 is modeled upon the Clean Water Act provision and would be applicable to specified criminal violations of:

- (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- (2) the Federal Insecticide, Fungicide, and Rodenticide Act;
- (3) the Ocean Dumping Act;

- (4) the Safe Drinking Water Act;
- (5) the Toxic Substances Control Act; and
- (6) the Environmental Protection and Community Right-to-Know Act.

These statutes were selected for inclusion in the "knowing endangerment" provision of H.R. 5305 because of the risk that violation of their criminal provisions poses to public health and safety. Their inclusion assures a greater uniformity among the environmental statutes in the application of sanctions for criminal activity.

H.R. 5305 also imposes probation upon any organization convicted of the three current "knowing endangerment" statutes, or the "knowing endangerment" statute created under the bill. As a condition of that probation, the organization must pay for the implementation of an environmental compliance audit. The bill sets forth specific rules regarding the selection of an independent expert to conduct the audit, the scope of the audit, the contents of the audit report, review of the audit report, court-ordered implementation of the audit report and other matters.

H.R. 5305 also provides that the court shall order, as an additional penalty, that no Federal agency may enter into any contract with, or make any loan or grant to, any person who has been convicted of the "knowing endangerment" provision established under the bill. Additionally, H.R. 5305 provides for rewards of up to \$10,000 for citizens who provide information or services leading to a conviction under a number of environmental criminal statutes. A more complete description of the bill is provided in the Section-by-Section Analysis attached to this memorandum.

The methods of attacking environmental crimes embodied in H.R. 5305 are well-recognized as effective tools to deter environmental violations. EPA has consistently recommended that a "knowing endangerment" provision be added to all Federal environmental statutes. Letter from James Strock, Assistant Administrator, U.S. Environmental Protection Agency, to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (May 30, 1990). EPA has urged the addition of such a provision to all environmental statutes "in the interest of uniformity." Id.

EPA has also consistently endorsed the imposition of environmental audits as a part of the sentencing process for environmental criminals. See Id. See also Letter from Raymond B. Ludwiszewski, Acting Assistant Administrator, U.S. Environmental Protection Agency, to the Honorable George W. Gekas, U.S. House of Representatives (June 28, 1991); U.S. Environmental Protection Agency, Enforcement in the 1990s Project: Recommendations of the Analytical Workgroups 4-34 (1991).

Current law now bars Federal contracts with any person convicted of a criminal offense under the Clean Water Act and the Clean Air Act. In addition, Congress has also long recognized the value of citizen awards as a tool in detecting criminal offenses. Indeed, at least 14 statutory award provisions have been enacted, including the citizen award authority under the Superfund Amendments and Reauthorization Act of 1986, the Shore Protection Act and the Clean Air Act. EPA is seeking to have similar awards provisions included in all environmental statutes. Strock at 925.

This hearing will focus on the need for H.R. 5305 and its potential as an effective tool to deter and punish environmental crimes. We will also hear testimony assessing the current state of environmental criminal enforcement at the Federal level.

102D CONGRESS  
1ST SESSION

# H. R. 549

To amend title 18, United States Code, to provide increased penalties for workplace endangerment, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 1991

Mr. SCHUMER introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide increased penalties for workplace endangerment, and for other purposes.

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

### 3       SECTION 1. SHORT TITLE.

4       This Act may be cited as the "Workplace Protection  
5       Act of 1991".

### 6       SEC. 2. TITLE 18 AMENDMENT.

7       (a) IN GENERAL.—Title 18, United States Code, is  
8       amended by inserting after chapter 33 the following:

### 9               "CHAPTER 34—ENDANGERMENT

"Sec.

"731. Workplace endangerment.

1 **"§ 731. Workplace endangerment**

2       “(a) Whoever commits a workplace offense and thereby  
3 recklessly causes a substantial risk of the death or serious  
4 bodily injury of an employee shall be fined under this title or  
5 imprisoned not more than 10 years, or both.

6       “(b) Whoever commits a workplace offense and thereby  
7 recklessly causes the death of, or serious bodily injury to, an  
8 employee, shall be fined under this title or imprisoned not  
9 more than 20 years, or both.

10       “(c) As used in this section—

11               “(1) the term ‘serious bodily injury’ has the mean-  
12 ing given that term in section 247 of this title; and

13               “(2) the term ‘workplace offense’ means any con-  
14 duct that constitutes a violation of section 17(a) of the  
15 Occupational Safety and Health Act of 1970.”.

16       (b) CLERICAL AMENDMENT.—The table of chapters at  
17 the beginning of part I of title 18, United States Code, is  
18 amended by inserting after the item relating to chapter 33  
19 the following:

“34. Endangerment..... 731.”.

○

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MAJORITY—225-3951

MINORITY—225-6908

### MEMORANDUM

**TO:** Members of the Subcommittee  
on Crime and Criminal Justice

**FROM:** Charles E. Schumer, Chairman

**DATE:** May 26, 1992

**RE:** Oversight Hearing on Workplace Safety: Criminal Enforcement

On Thursday, May 28, 1992, at 10:00 a.m., in room 2226 of the Rayburn House Office Building, the Subcommittee on Crime and Criminal Justice will convene a hearing on Workplace Safety: Criminal Enforcement.

Scheduled to testify at the hearing are: Paul L. Maloney, Senior Counsel, Criminal Division, U.S. Department of Justice; Alan C. McMillan, Deputy Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor; Julian W. De La Rosa, Inspector General, U.S. Department of Labor; Robert F. Scherer, Ph.D., PHR, Department of Management, Wright State University, Dayton, Ohio; Jan Chatten-Brown, Special Assistant to District Attorney Ira Reiner, Los Angeles, California; Professor Vanessa Merton, Associate Dean for Clinical Education, Pace University School of Law, White Plains, New York; and three private citizens who are victims of workplace crimes. A witness list is attached to this memorandum.

### **BACKGROUND**

In 1970, Congress passed the Occupational Safety and Health Act ("OSH Act") with the promise of assuring "so far as possible, every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." It is a promise unfulfilled.

During the two decades since its creation, the Occupational Safety and Health Administration ("OSHA") has proven to be less than vigilant at protecting the safety of American workers. According to estimates by the National Safety Council, more than 200,000 workers have died in work-related incidents since the passage of the OSH Act. Yet,

since 1978, only 84 criminal cases have been referred by OSHA to the Department of Justice for prosecution. Of that total, only 23 criminal cases have actually been brought against employers for violations, and only one person has ever spent time in jail - 45 days.

OSHA's poor record of enforcement points to the basic problem with the OSH Act's criminal enforcement provisions. Under current law, the maximum penalty that an employer may receive for a willful violation that kills a worker is a simple misdemeanor, carrying a maximum six-month prison term. Such a weak penalty pales in comparison to the time and effort that prosecutors must expend to pursue these cases. The penalty for removing a tag from a mattress is higher than the penalties for creating worksite conditions that kill employees. Moreover, there is no criminal penalty under the OSH Act for a willful violation that results in serious bodily injury to an employee. An employer is not criminally liable unless the worker dies. Crippling disfigurement or permanent brain damage are not enough to trigger criminal penalties.

By Contrast, the Mine Safety and Health Act ("MSHA") provides for felony criminal penalties for a broad category of violations. Under MSHA, a willful violation of a mandatory health or safety standard or knowing violation of a withdrawal order are both punishable by up to a year in prison and a \$25,000 fine for first time offenders, or five years and \$50,000 for a second or subsequent conviction.

OSHA's weak civil enforcement record creates an even greater need for increased criminal sanctions. Even though the agency has opposed efforts to increase the criminal penalties under the OSH Act, proclaiming that civil enforcement is sufficient to deter violations, OSHA's civil enforcement program has proven to be sadly ineffective. Recent analysis of OSHA statistics reveals that, in real terms, OSHA median fines are decreasing and are only a fraction of what they were two decades ago.

To aid OSHA in deterring OSH Act violations, Congress, in 1990, increased the maximum civil penalties for OSH Act violations seven-fold. Maximum penalty amounts for serious and other-than-serious violations increased from \$1,000 to \$7,000, and the maxima for willful and repeat violations increased from \$10,000 to \$70,000. The civil fines now exceed the criminal fines.

Yet, a recent report issued by the General Accounting Office, Occupational Safety and Health: Penalties for Violations Are Well Below Maximum Allowable Penalties, GAO/HRD-92-48, revealed that OSHA rarely assessed the maximum penalty allowed before the fines were increased. OSHA proposed the maximum amount for only 2.1 percent of all violations with penalties, and it actually imposed the maximum for less than one percent of the violations. Even though larger firms are expected to pay penalties closer to the maximum, among the largest firms (more than 500 employees) only 14 percent received proposed penalties that were more than 50 percent of the applicable maximum penalty. According to the GAO study, after the maximum fines were raised seven-fold by Congress,

the average proposed penalty for an OSH Act violation is now only three times higher than it was before the new maximum penalties went into effect.

One reason that may underlie OSHA's reluctance to impose maximum civil fines is the ever-present threat that an employer may successfully appeal a proposed OSHA fine to the pro-employer Occupational Safety and Health Review Commission ("OSHRC"). Under current law, an employer which has received a proposed fine from OSHA may pay the fine, negotiate an informal settlement with local OSHA officials, or appeal the fine to OSHRC. A recent study conducted by the Labor Department's Office of the Inspector General, consisting of a review of 45 cases classified by OSHA as "egregious" which were settled by OSHA or decided by OSHRC during fiscal years 1989 and 1990, found that OSHRC reduced the proposed OSHA fine in 96% of the cases appealed before it. In a separate study, the GAO concluded that OSHRC reduced the average penalty contested before it by 57%. This record gives employers a powerful incentive to contest OSHA civil fines and provides employers with great leverage to "negotiate" OSHA into proposing paltry civil penalties that amount to little more than a slap on the wrist.

Clearly, civil enforcement alone does not work. Fines, be they civil or criminal, are not enough. Fines can be treated as a mere cost of doing business and passed-through to the consumer. Only the threat of serving time behind bars is a real deterrent. Indeed, another GAO study completed in 1990, Occupational Safety and Health: Options for Improving Safety and Health in the Workplace, GAO/HRD-90-66BR, recommended that to deter employers from wilfully violating OSHA standards, Congress could increase the severity of the Act's criminal sanctions and encourage OSHA to use such sanctions. That report also recommended that OSHA could do more administratively to obtain evidence, particularly on the necessary issue of criminal intent, including getting inspectors to the scene of an incident quickly.

This oversight hearing will focus on the issues surrounding the need to increase the criminal penalties under the OSH Act. During the hearing, we will hear from three victims of workplace crimes. Dorothy Fitch lost her husband when he fell to his death on a construction site, a site operated by a company that had a record of repeated, virtually identical employee deaths, all resulting from willful violations of OSHA standards. We will also hear from Ed and Rosemarie Sochacki, who lost their son needlessly in a tunnel explosion that resulted from willful violations of OSHA standards. In neither case did any person serve a day in jail.

I have previously introduced a bill to increase OSH Act criminal sanctions, H.R. 549. Additionally, the Comprehensive Occupational Safety and Health Reform Act, H.R. 3160, contains a provision to strengthen the criminal provisions of the OSH Act. However, this hearing will be in the nature of an oversight hearing, and neither H.R. 549 nor H.R. 3160 will be the focus.

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## **SUMMARY:**

### ***"THE HEALTH CARE FRAUD PROSECUTION ACT OF 1992"***

- o Creates new federal penalties for mail and wire fraud committed by doctors, pharmacists and other health-care providers, punishable by up to 10 years imprisonment and fines of up to \$250,000.**
- o Doubles the penalty -- to a maximum of 20 years in prison -- for health-care fraud that results in serious bodily injury to the patient (e.g., where a doctor charges for a medical test, the test is never performed, and the failure causes serious injury to the patient). If the fraudulent act results in death, the provider may be sentenced to life imprisonment.**
- o Requires health-care cheats to pay mandatory restitution to patients and government agencies.**
- o Authorizes federal law enforcement agencies to seize and forfeit the ill-gotten profits of health-care fraud.**
- o Authorizes rewards of up to \$10,000 to patients, health-care insiders, and others for information that leads to the arrest and prosecution of health-care fraud schemes.**
- o Expands the federal mail fraud statute to include private mail carriers (e.g., Federal Express), which are frequently used to circumvent the mail fraud law.**
- o Boosts funding for FBI agents, federal prosecutors, and other criminal investigators to detect and prosecute health-care fraud schemes.**

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102D CONGRESS  
2D SESSION

H. R. 5449

Test

To amend title 18, United States Code, to provide enhanced penalties for commission of fraud in connection with the provision of or receipt of payment for health care services, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1992

Ms. DELAURO (for herself and Mr. SCHUMER) introduced the following bill;  
which was referred to the Committee on the Judiciary

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**A BILL**

To amend title 18, United States Code, to provide enhanced penalties for commission of fraud in connection with the provision of or receipt of payment for health care services, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Health Care Fraud  
5 Prosecution Act of 1992".

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102D CONGRESS  
2D SESSION

# H. R. 5025

To amend title 18, United States Code, to prohibit the practice by mental health care providers of using bounty hunters to attract patients for treatment.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1992

Mr. BRYANT introduced the following bill, which was referred to the  
Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit the practice by mental health care providers of using bounty hunters to attract patients for treatment.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Mental Health Care  
5       Providers Bounty Prevention Act of 1992”.

6       **SEC. 2. TITLE 18 AMENDMENT.**

7       (a) IN GENERAL.—Chapter 89 of title 18, United  
8       States Code, is amended by adding at the end the  
9       following:

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102D CONGRESS  
2D SESSION

# H. R. 5120

To establish an Intergovernmental Commission on Health Care Fraud and Abuse.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1992

Mr. WEISS introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, the Judiciary, and Ways and Means

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## A BILL

To establish an Intergovernmental Commission on Health Care Fraud and Abuse.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Intergovernmental  
5       Health Care Fraud and Abuse Commission Act of 1992".

6       **SEC. 2. ESTABLISHMENT OF INTERGOVERNMENTAL**  
7                       **HEALTH CARE FRAUD AND ABUSE COMMIS-**  
8                       **SION.**

9       (a) IN GENERAL.—There is established a commission  
10      to be known as the "Intergovernmental Commission on

*Insurance Fraud*

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1                   **TITLE XXII—CONSUMER**  
2                   **PROTECTION**

3   **SEC. 2201. CRIMES BY OR AFFECTING PERSONS ENGAGED**  
4                   **IN THE BUSINESS OF INSURANCE WHOSE AC-**  
5                   **TIVITIES AFFECT INTERSTATE COMMERCE.**

6           (a) **IN GENERAL.**—Chapter 47 of title 18, United  
7 States Code, is amended by adding at the end thereof the  
8 following new sections:

9   **“§ 1033. Crimes by or affecting persons engaged in**  
10                   **the business of insurance whose activi-**  
11                   **ties affect interstate commerce**

12           “(a)(1) Whoever is engaged in the business of insur-  
13 ance whose activities affect interstate commerce and, with  
14 the intent to deceive, knowingly makes any false material  
15 statement or report or willfully and materially overvalues  
16 any land, property or security—

17                   “(A) in connection with any financial reports or  
18 documents presented to any insurance regulatory of-  
19 ficial or agency or an agent or examiner appointed  
20 by such official or agency to examine the affairs of  
21 such person, and

22                   “(B) for the purpose of influencing the actions  
23 of such official or agency or such an appointed agent  
24 or examiner,

25 shall be punished as provided in paragraph (2).

1       “(2) The punishment for an offense under paragraph  
2 (1) is a fine as established under this title or imprison-  
3 ment for not more than 10 years, or both, except that  
4 the term of imprisonment shall be not more than 15 years  
5 if the statement or report or overvaluing of land, property,  
6 or security jeopardizes the safety and soundness of an in-  
7 surer.

8       “(b)(1) Whoever—

9           “(A) acting as, or being an officer, director,  
10       agent, or employee of, any person engaged in the  
11       business of insurance whose activities affect inter-  
12       state commerce, or

13           “(B) is engaged in the business of insurance  
14       whose activities affect interstate commerce or is in-  
15       volved (other than as an insured or beneficiary  
16       under a policy of insurance) in a transaction relating  
17       to the conduct of affairs of such a business,

18       willfully embezzles, abstracts, purloins, or misappropriates  
19       any of the moneys, funds, premiums, credits, or other  
20       property of such person so engaged shall be punished as  
21       provided in paragraph (2).

22       “(2) The punishment for an offense under paragraph  
23 (1) is a fine as provided under this title or imprisonment  
24 for not more than 10 years, or both, except that if such  
25 embezzlement, abstraction, purloining, or misappropria-

1 tion described in paragraph (1) jeopardizes the safety and  
2 soundness of an insurer. such imprisonment shall be not  
3 more than 15 years. If the amount or value so embezzled,  
4 abstracted, purloined, or misappropriated does not exceed  
5 \$5,000. whoever violates paragraph (1) shall be fined as  
6 provided in this title or imprisoned not more than one  
7 year, or both.

8       “(c)(1) Whoever is engaged in the business of insur-  
9 ance and whose activities affect interstate commerce or is  
10 involved (other than as an insured or beneficiary under  
11 a policy of insurance) in a transaction relating to the con-  
12 duct of affairs of such a business, knowingly makes any  
13 false entry of material fact in any book, report, or state-  
14 ment of such person engaged in the business of insurance  
15 with intent to—

16               “(A) deceive any person about the financial  
17 condition or solvency of such business, or

18               “(B) deceive any officer, employee, or agent of  
19 such person engaged in the business of insurance,  
20 any insurance regulatory official or agency, or any  
21 agent or examiner appointed by such official or  
22 agency to examine the affairs of such person about  
23 the financial condition or solvency of such business,  
24 shall be punished as provided in paragraph (2).

1       “(2) The punishment for an offense under paragraph  
2 (1) is a fine as provided under this title or imprisonment  
3 for not more than 10 years, or both, except that if the  
4 false entry in any book, report, or statement of such per-  
5 son jeopardizes the safety and soundness of an insurer,  
6 such imprisonment shall be not more than 15 years.

7       “(d) Whoever, by threats or force or by any threaten-  
8 ing letter or communication, corruptly influences, ob-  
9 structs, or impedes or endeavors corruptly to influence, ob-  
10 struct, or impede the due and proper administration of  
11 the law under which any proceeding involving the business  
12 of insurance whose activities affect interstate commerce  
13 is pending before any insurance regulatory official or  
14 agency or any agent or examiner appointed by such official  
15 or agency to examine the affairs of a person engaged in  
16 the business of insurance whose activities affect interstate  
17 commerce, shall be fined as provided in this title or impris-  
18 oned not more than 10 years, or both.

19       “(e)(1)(A) Any individual who has been convicted of  
20 any criminal felony involving dishonesty or a breach of  
21 trust, or who has been convicted of an offense under this  
22 section, and who willfully engages in the business of insur-  
23 ance whose activities affect interstate commerce or partici-  
24 pates in such business, shall be fined as provided in this  
25 title or imprisoned not more than 5 years, or both.

1       “(B) Any individual who is engaged in the business  
2 of insurance whose activities affect interstate commerce  
3 and who willfully permits the participation described in  
4 subparagraph (A) shall be fined as provided in this title  
5 or imprisoned not more than 5 years, or both.

6       “(2) A person described in paragraph (1)(A) may en-  
7 gage in the business of insurance or participate in such  
8 business if such person has the written consent of any in-  
9 surance regulatory official authorized to regulate the in-  
10 surer, which consent specifically refers to this subsection.

11       “(f) As used in this section—

12               “(1) the term ‘business of insurance’ means—

13                       “(A) the writing of insurance, or

14                       “(B) the reinsuring of risks.

15       by an insurer, including all acts necessary or inci-  
16 dental to such writing or reinsuring and the activi-  
17 ties of persons who act as, or are, officers, directors,  
18 agents, or employees of insurers or who are other  
19 persons authorized to act on behalf of such persons;

20               “(2) the term ‘insurer’ means any entity the  
21 business activity of which is the writing of insurance  
22 or the reinsuring of risks or any receiver or similar  
23 official or any liquidating agent for such an entity.  
24 in his or her capacity as such, and includes any per-

1 son who acts as, or is, an officer, director, agent, or  
2 employee of that business;

3 “(3) the term ‘interstate commerce’ means—

4 “(A) commerce within the District of Co-  
5 lumbia, or any territory or possession of the  
6 United States;

7 “(B) all commerce between any point in  
8 the State, territory, possession, or the District  
9 of Columbia and any point outside thereof;

10 “(C) all commerce between points within  
11 the same State through any place outside such  
12 State; or

13 “(D) all other commerce over which the  
14 United States has jurisdiction; and

15 “(4) the term ‘State’ includes any State, the  
16 District of Columbia, the Commonwealth of Puerto  
17 Rico, the Northern Mariana Islands, the Virgin Is-  
18 lands, American Samoa, and the Trust Territory of  
19 the Pacific Islands.

20 **“§ 1034. Civil penalties and injunctions for violations**  
21 **of section 1033**

22 “(a) The Attorney General may bring a civil action  
23 in the appropriate United States district court against any  
24 person who engages in conduct constituting an offense  
25 under section 1033 and, upon proof of such conduct by

1 a preponderance of the evidence, such person shall be sub-  
2 ject to a civil penalty of not more than \$50,000 for each  
3 violation or the amount of compensation which the person  
4 received or offered for the prohibited conduct, whichever  
5 amount is greater. If the offense has contributed to the  
6 decision of a court of appropriate jurisdiction to issue an  
7 order directing the conservation, rehabilitation, or liquida-  
8 tion of an insurer, such penalty shall be remitted to the  
9 regulatory official for the benefit of the policyholders,  
10 claimants, and creditors of such insurer. The imposition  
11 of a civil penalty under this subsection does not preclude  
12 any other criminal or civil statutory, common law, or ad-  
13 ministrative remedy, which is available by law to the Unit-  
14 ed States or any other person.

15       “(b) If the Attorney General has reason to believe  
16 that a person is engaged in conduct constituting an of-  
17 fense under section 1033, the Attorney General may peti-  
18 tion an appropriate United States district court for an  
19 order prohibiting that person from engaging in such con-  
20 duct. The court may issue an order prohibiting that person  
21 from engaging in such conduct if the court finds that the  
22 conduct constitutes such an offense. The filing of a peti-  
23 tion under this section does not preclude any other remedy  
24 which is available by law to the United States or any other  
25 person.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 47 of such title is amended  
3 by adding at the end the following new item:

“1033. Crimes by or affecting persons engaged in the business of insurance  
whose activities affect interstate commerce.

“1034. Civil penalties and injunctions for violations of section 1033.”.

4 (c) MISCELLANEOUS AMENDMENTS TO TITLE 18.  
5 UNITED STATES CODE.—(1) TAMPERING WITH INSUR-  
6 ANCE REGULATORY PROCEEDINGS.—Section 1515(a)(1)  
7 of title 18, United States Code, is amended—

8 (A) by striking “or” at the end of subpara-  
9 graph (B);

10 (B) by inserting “or” at the end of subpara-  
11 graph (C); and

12 (C) by adding at the end the following new sub-  
13 paragraph:

14 “(D) a proceeding involving the business of  
15 insurance whose activities affect interstate com-  
16 merce before any insurance regulatory official  
17 or agency or any agent or examiner appointed  
18 by such official or agency to examine the affairs  
19 of any person engaged in the business of insur-  
20 ance whose activities affect interstate com-  
21 merce;”.

22 (2) LIMITATIONS.—Section 3293 of such title is  
23 amended by inserting “1033,” after “1014,”.

1       (3) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—

2       Section 1510 of title 18, United States Code, is amended  
3       by adding at the end the following new subsection:

4       “(d)(1) Whoever—

5               “(A) acting as, or being, an officer, director,  
6       agent or employee of a person engaged in the busi-  
7       ness of insurance whose activities affect interstate  
8       commerce, or

9               “(B) is engaged in the business of insurance  
10      whose activities affect interstate commerce or is in-  
11      volved (other than as an insured or beneficiary  
12      under a policy of insurance) in a transaction relating  
13      to the conduct of affairs of such a business,  
14      with intent to obstruct a judicial proceeding, directly or  
15      indirectly notifies any other person about the existence or  
16      contents of a subpoena for records of that person engaged  
17      in such business or information that has been furnished  
18      to a Federal grand jury in response to that subpoena, shall  
19      be fined as provided by this title or imprisoned not more  
20      than 5 years, or both.

21      “(2) As used in paragraph (1), the term ‘subpoena  
22      for records’ means a Federal grand jury subpoena for  
23      records that has been served relating to a violation of, or  
24      a conspiracy to violate, section 1033 of this title.”.

*Credit card*

400

1 SEC. 2202. CONSUMER PROTECTION AGAINST CREDIT CARD  
2 FRAUD ACT OF 1991.

3 (a) SHORT TITLE.—This section may be cited as the  
4 “Consumer Protection Against Credit Card Fraud Act of  
5 1991”.

6 (b) FRAUD AND RELATED ACTIVITY IN CONNECTION  
7 WITH ACCESS DEVICES.—Section 1029 of title 18, United  
8 States Code, is amended—

9 (1) in subsection (a) by inserting after para-  
10 graph (4) the following new paragraphs:

11 “(5) knowingly and with intent to defraud ef-  
12 fects transactions, with one or more access devices  
13 issued to another person or persons, to receive pay-  
14 ment or any other thing of value during any one-  
15 year period the aggregate value of which is equal to  
16 or greater than \$1,000;

17 “(6) without the authorization of the issuer of  
18 the access device, knowingly and with intent to de-  
19 fraud solicits a person for the purpose of—

20 “(A) offering an access device; or

21 “(B) selling information regarding or an  
22 application to obtain an access device; or

23 “(7) without the authorization of the credit  
24 card system member or its agent, knowingly and  
25 with intent to defraud causes or arranges for an-  
26 other person to present to the member or its agent,

1       for payment, one or more evidences or records of  
2       transactions made by an access device;”.

3       (c) TECHNICAL AMENDMENTS.—Section 1029 of title  
4       18, United States Code, as amended by subsection (b),  
5       is amended—

6               (1) in subsection (a) by striking “or” at the end  
7       of paragraph (3);

8               (2) in subsection (c)(1) by striking “(a)(2) or  
9       (a)(3)” and inserting “(a) (2), (3), (5), (6), or (7)”;  
10       and

11              (3) in subsection (e) by—

12                   (A) striking “and” at the end of paragraph  
13                   (5);

14                   (B) adding “and” at the end of paragraph  
15                   (6); and

16                   (C) adding at the end thereof the following  
17       new paragraph:

18               “(7) the term ‘credit card system member’  
19       means a financial institution or other entity that is  
20       a member of a credit card system, including an enti-  
21       ty, whether it is affiliated with or identical to the  
22       credit card issuer, that is the sole member of a cred-  
23       it card system.”.

*Section 1242*

This Section authorizes to be appropriated \$5 million in each of fiscal years 1992 through 1996 for the Director to carry out his responsibilities under the new Part V of the Omnibus Crime Control and Safe Streets of 1968. This Section requires that at least 80 percent of these funds be disbursed as grants.

### TITLE XIII—FRAUD

#### SECTION-BY-SECTION ANALYSIS

*Section 1301*

Section 1301 amends 18 U.S.C. § 1341 by extending this section's penalties for the enumerated acts of mail fraud to such acts effectuated by means of private or commercial interstate carriers.

*Section 1302*

Section 1302 amends 18 U.S.C. § 1029, which provides penalties for producing, using, or trafficking in counterfeit or unauthorized devices which give access to various systems for the disbursement of funds or other things of value. The amendment extends the list of punishable offenses set out in section 1029(a) to include transactions undertaken with an access device issued to another person if i) such transactions are knowingly effected with the intent of defraud, and ii) result in the receipt of anything aggregating \$1,000 or more in value over a one-year period.

The amendment also extends the list of punishable offenses to include knowingly, and with the intent to defraud, offering an access device, or selling information or an application to obtain an access device, without the authorization of the issuer of the device. Further, the amendment makes punishable knowingly, and with intent to defraud, arranging for another person to present access device transaction records for payment to a credit card system member or its agent without the authorization of the credit card system member or its agent.

Finally, in addition to technical changes, the amendment defines in subsection (e) the term "credit card system member" to mean a financial institution that is a member of a credit card system, including a financial institution that is the sole credit system member affiliated with a particular credit card issuer.

★ *Section 1303—Crimes By or Affecting Persons Engaged in the Business of Insurance whose Activities Affect Interstate Commerce*

#### PURPOSE

Section 1303 makes defrauding, looting, or plundering an insurance company a Federal felony. It is designed as a strong enforcement tool to bring an end to criminal fraud in the business of insurance, providing a strong Federal deterrent to such wrongdoing in this field in general and to complex insurance fraud schemes in particular.

*Insurance*

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*Section 1303*

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## BACKGROUND

Almost since revolutionary times, insurance has played a distinctive and indispensable role in American society, thanks in large part to the high quality of the workers in that industry who have served the public so well. Nonetheless, State and Federal law enforcement officials have determined that insider insurance fraud is fast becoming the number one white collar crime in America today. The Committee believes that the rigors of the current financial service marketplace on honest companies are tough enough; they must not be damaged further from within by the fraudulent acts.

Under present laws, all too often the perpetrators of fraud and deceptive practices in the insurance field not only are able to carry out their schemes with impunity, but—equally troubling—they move on to another insurance company to inflict still more harm to the good name of insurance. Insurance fraud frequently involves complex “paper trails”, and applicable statutes of limitations often expire before a criminal investigation for insurance fraud can be completed. Because of their five-year statutes of limitations, Federal mail and wire fraud statutes have largely proven ineffective in dealing with the problems. It is clear that current criminal statutes and penalties are inadequate to deal with the fraudulent activity in this industry, and a specific Federal criminal statute is necessary. Particularly in the wake of the crisis in the savings and loan industry and the increasing number of bank failures, the Federal Government cannot simply sit by and watch another financial industry in this country be destroyed from within.

In coordination with the Committee on Energy and Commerce, the National Association of Insurance Commissioners, state officials, and other associated with the insurance industry, and following over three years of hearings conducted by the Energy and Commerce Committee's Subcommittee on Oversight and Investigations, a legislative proposal was developed. On August 1, 1991, Congressman Brooks, Chairman of the Committee on the Judiciary, and Congressman Dingell, Chairman of the Committee on Energy and Commerce, introduced H.R. 3171, the Insurance Fraud Prevention Act of 1991. The provisions of Section 1303 are derived from that proposal.

Section 1303 was included as a part of H.R. 3371, the Omnibus Crime Control Act of 1991, which was marked up and reported by the Committee by voice vote on September 26, 1991. Section 1303 was reported by the Committee, unamended.

## SECTION-BY-SECTION ANALYSIS

*Section 1303*

Section 1303 amends Chapter 47 of title 18 by adding two new sections, Section 1033 and Section 1034.

Section 1033 allows Federal prosecution if a person, with the intent to deceive, knowingly files a false statement or property valuation with an insurance regulator; embezzles or misappropriates funds or property worth \$5,000 or more from an insurance company; makes false entries or statements regarding the financial condition of an insurance company so as to deceive any individual

or regulator regarding the financial condition or solvency of that company; or, obstructs the investigations of insurance regulators. In addition, prosecution lies against whoever after conviction under this section willfully works in the insurance field without a waiver from government authorities, as well as whoever in the business of insurance willfully permits such participation.

If the amount or value of a violation under this section does not exceed \$5,000, the punishment is a fine or imprisonment of not more than one year, or both. If the violation jeopardizes the safety and soundness of an insurer, the term of imprisonment shall be not more than 15 years. Otherwise, the punishment for an offense under this section is a fine or imprisonment for not more than 10 years, or both. Anyone convicted of an offense under this section (or who has been convicted of any criminal felony involving dishonesty or a breach of trust) who willfully engages in the business of insurance without a waiver by an appropriate insurance regulator is subject to a fine or imprisonment of not more than 5 years, or both. Anyone who willfully permits such a person's participation in the industry is subject to the same penalties as is that person.

Section 1034 permits the Attorney General to bring civil actions and to seek injunctions against violators. The civil penalty shall be not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense contributed to an insurer's insolvency, the penalties will be remitted for the benefit of the policyholders, claimants, and creditors of that insurer. Section 1304 also defines the terms "business of insurance", "insurer", "interstate commerce", and "State".

Section 1303 also makes miscellaneous conforming amendments to title 18 with regard to insurance, prohibiting tampering with insurance regulatory proceedings and prohibiting obstruction of criminal investigations.

## TITLE XIV—PROTECTION OF YOUTH

### SUBTITLE A—CRIMES AGAINST CHILDREN

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1401*

Short title: Jacob Wetterling Crimes Against Children Registration Act.

##### *Section 1402*

Section 1402 directs the Attorney General to establish guidelines for State programs requiring individuals convicted of certain crimes against a minor to maintain registration of a current address with State law enforcement officials for ten years after his or her completion of a term of imprisonment or from the initiation of a term of parole or supervised release. Persons who must register are those convicted of kidnapping a minor, except by a non-custodial parent; false imprisonment of a minor, except by a non-custodial parent; criminal sexual conduct toward a minor; solicitation of

minors to engage in sexual performance; and

Under the act, officials must not only have a duty to register, but also the appropriate State officials must ensure that the individual convicted of the crime is aware of the duty of the person and that the State provides appropriate State law enforcement to enforce the law. The State law enforcement officials are responsible for the enforcement of the law. The Federal Bureau of Investigation is responsible for the enforcement of the law.

On each anniversary of the date of the conviction, the person must mail a vidual. This is a receipt to avoid the person has no right to register or to keep a criminal record.

The registrars are used for law enforcement using fingerprints.

##### *Section 1403*

Section 1403 date of enactment of the program that does not initiate it receives unconditional and Safe percent and the compliance with

Subtitle B requires parent, and the general felony.

More than each year by a The State Department 1975, but many number of cases kidnappings a

1 **SEC. 2203. MAIL FRAUD.**

2 Section 1341 of title 18, United States Code, is  
3 amended—

4 (1) by inserting “or deposits or causes to be de-  
5 posited any matter or thing whatever to be sent or  
6 delivered by any private or commercial interstate  
7 carrier,” after “Postal Service,”; and

8 (2) by inserting “or such carrier” after “causes  
9 to be delivered by mail”.

10 **TITLE XXIII—FINANCIAL INSTI-**  
11 **TUTION FRAUD PROSECU-**  
12 **TIONS**

13 **SEC. 2301. SHORT TITLE.**

14 This title may be cited as the “Financial Institutions  
15 Fraud Prosecution Act of 1991”.

16 **SEC. 2302. FEDERAL DEPOSIT INSURANCE ACT AMEND-**  
17 **MENT.**

18 Section 19(a) of the Federal Deposit Insurance Act  
19 (12 U.S.C. 1829(a)) is amended in paragraph  
20 (2)(A)(i)(I)—

21 (1) by striking “or 1956”; and

22 (2) by inserting “1517, 1956, or 1957”.

23 **SEC. 2303. FEDERAL CREDIT UNION ACT AMENDMENTS.**

24 Section 205(d) of the Federal Credit Union Act (12  
25 U.S.C. 1785(d)) is amended to read as follows:

26 “(d) PROHIBITION.—

*Mail  
Fraud*

*Financial  
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Amendments*

1           “(1) IN GENERAL.—Except with prior written  
2 consent of the Board—

3           “(A) any person who has been convicted of  
4 any criminal offense involving dishonesty or a  
5 breach of trust, or has agreed to enter into a  
6 pretrial diversion or similar program in connec-  
7 tion with a prosecution for such offense, may  
8 not—

9           “(i) become, or continue as, an insti-  
10 tution-affiliated party with respect to any  
11 insured credit union; or

12           “(ii) otherwise participate, directly or  
13 indirectly, in the conduct of the affairs of  
14 any insured credit union; and

15           “(B) any insured credit union may not  
16 permit any person referred to in subparagraph  
17 (A) to engage in any conduct or continue any  
18 relationship prohibited under such subpara-  
19 graph.

20           “(2) MINIMUM 10-YEAR PROHIBITION PERIOD  
21 FOR CERTAIN OFFENSES.—

22           “(A) IN GENERAL.—If the offense referred  
23 to in paragraph (1)(A) in connection with any  
24 person referred to in such paragraph is—

25           “(i) an offense under—

1                   “(I) section 215, 656, 657, 1005,  
2                   1006, 1007, 1008, 1014, 1032, 1344,  
3                   1517, 1956, or 1957 of title 18, Unit-  
4                   ed States Code; or

5                   “(II) section 1341 or 1343 of  
6                   such title which affects any financial  
7                   institution (as defined in section 20 of  
8                   such title); or

9                   “(ii) the offense of conspiring to com-  
10                  mit any such offense,

11                 the Board may not consent to any exception to  
12                 the application of paragraph (1) to such person  
13                 during the 10-year period beginning on the date  
14                 the conviction or the agreement of the person  
15                 becomes final.

16                 “(B) EXCEPTION BY ORDER OF SENTENC-  
17                 ING COURT.—

18                 “(i) IN GENERAL.—On motion of the  
19                 Board, the court in which the conviction or  
20                 the agreement of a person referred to in  
21                 subparagraph (A) has been entered may  
22                 grant an exception to the application of  
23                 paragraph (1) to such person if granting  
24                 the exception is in the interest of justice.

1                   “(ii) PERIOD FOR FILING.—A motion  
2                   may be filed under clause (i) at any time  
3                   during the 10-year period described in sub-  
4                   paragraph (A) with regard to the person  
5                   on whose behalf such motion is made.

6                   “(3) PENALTY.—Whoever knowingly violates  
7                   paragraph (1) or (2) shall be fined not more than  
8                   \$1,000,000 for each day such prohibition is violated  
9                   or imprisoned for not more than 5 years, or both.”.

10 **SEC. 2304. CRIME CONTROL ACT AMENDMENT.**

11                   Section 2546 of the Crime Control Act of 1990 (Pub-  
12                   lic Law 101-647, 104 Stat. 4885) is amended by adding  
13                   at the end the following:

14                   “(c) FRAUD TASK FORCES REPORT.—In addition to  
15                   the reports required under subsection (a), the Attorney  
16                   General is encouraged to submit a report to the Congress  
17                   containing the findings of the financial institutions fraud  
18                   task forces established under section 2539 as they relate  
19                   to the collapse of private deposit insurance corporations,  
20                   together with recommendations for any regulatory or leg-  
21                   islative changes necessary to prevent such collapses in the  
22                   future.”.

1 **TITLE XXIV—SAVINGS AND LOAN**  
2 **PROSECUTION TASK FORCE**

3 **SEC. 2401. SAVINGS AND LOAN PROSECUTION TASK FORCE.**

4 The Attorney General shall establish within the Jus-  
5 tice Department a savings and loan criminal fraud task  
6 force to prosecute in an aggressive manner those criminal  
7 cases involving savings and loan institutions.

8 **TITLE XXV—SENTENCING**  
9 **PROVISIONS**

10 **SEC. 2501. IMPOSITION OF SENTENCE.**

11 Section 3553(a)(4) of title 18, United States Code,  
12 is amended to read as follows:

13 “(4) the kinds of sentence and the sentencing  
14 range established for—

15 “(A) the applicable category of offense  
16 committed by the applicable category of defend-  
17 ant as set forth in the guidelines issued by the  
18 Sentencing Commission pursuant to section  
19 994(a)(1) of title 28, United States Code, and  
20 that are in effect on the date the defendant is  
21 sentenced; or

22 “(B) in the case of a violation of probation  
23 or supervised release, the applicable guidelines  
24 or policy statements issued by the Sentencing

1           “(i) that begins and ends in the same  
2           State or possession of the United States.  
3           and

4           “(ii) during which the vessel does not  
5           make an intervening stop in another State  
6           or possession of the United States or a for-  
7           eign country.”.

8           (3) BOUNDARIES DEFINED.—The first section  
9           of that Act (15 U.S.C. 1171) is amended by adding  
10          at the end the following:

11          “(f) The term ‘boundaries’ has the same mean-  
12          ing given that term in section 2 of the Submerged  
13          Lands Act (43 U.S.C. 1301).”.

14           **Subtitle F—White Collar Crime**  
15           **Amendments**

16   **SEC. 3051. RECEIVING THE PROCEEDS OF EXTORTION OR**  
17           **KIDNAPPING.**

18          (a) PROCEEDS OF EXTORTION.—Chapter 41 of title  
19   18, United States Code, is amended—

20           (1) by adding at the end the following new sec-  
21          tion:

22   **“§ 880. Receiving the proceeds of extortion**

23          “Whoever receives, possesses, conceals, or disposes of  
24          any money or other property which was obtained from the  
25          commission of any offense under this chapter that is pun-

1 ishable by imprisonment for more than one year, knowing  
2 the same to have been unlawfully obtained, shall be im-  
3 prisoned not more than three years, fined under this title,  
4 or both.”; and

5 (2) in the table of sections, by adding at the  
6 end the following new item:

“380. Receiving the proceeds of extortion.”.

7 (b) RANSOM MONEY.—Section 1202 of title 18, Unit-  
8 ed States Code, is amended—

9 (1) by designating the existing matter as sub-  
10 section “(a)”;

11 (2) by adding the following new subsections:

12 “(b) Whoever transports, transmits, or transfers in  
13 interstate or foreign commerce any proceeds of a kidnap-  
14 ping punishable under State law by imprisonment for  
15 more than one year, or receives, possesses, conceals, or  
16 disposes of any such proceeds after they have crossed a  
17 State or United States boundary, knowing the proceeds  
18 to have been unlawfully obtained, shall be imprisoned not  
19 more than ten years, fined under this title, or both.

20 “(c) For purposes of this section, the term ‘State’ has  
21 the meaning set forth in section 245(d) of this title.”.

22 **SEC. 3052. RECEIVING THE PROCEEDS OF A POSTAL ROB-**  
23 **BERY.**

24 Section 2114 of title 18, United States Code, is  
25 amended—

1 (1) by designating the existing matter as sub-  
2 section (a); and

3 (2) by adding at the end the following new sub-  
4 section:

5 “(b) Whoever receives, possesses, conceals, or dis-  
6 poses of any money or other property which has been ob-  
7 tained in violation of this section, knowing the same to  
8 have been unlawfully obtained, shall be imprisoned not  
9 more than ten years, fined under this title, or both.”.

10 **SEC. 3053. CONFORMING ADDITION TO OBSTRUCTION OF**  
11 **CIVIL INVESTIGATIVE DEMAND STATUTE.**

12 Section 1505 of title 18, United States Code, is  
13 amended by inserting “section 1968 of this title, section  
14 3733 of title 31, United States Code or” before “the Anti-  
15 trust Civil Process Act”.

16 **SEC. 3054. CONFORMING ADDITION OF PREDICATE OF**  
17 **FENSES TO FINANCIAL INSTITUTIONS RE-**  
18 **WARDS STATUTE.**

19 Section 3059A of title 18, United States Code, is  
20 amended—

21 (1) by inserting “225,” after “215”;

22 (2) by striking “or” before “1344”; and

23 (3) by inserting “. or 1517” after “1344”.

1 **SEC. 3055. DEFINITION OF SAVINGS AND LOAN ASSOCIA-**  
2 **TION IN BANK ROBBERY STATUTE.**

3 Section 2113 of title 18, United States Code, is  
4 amended by adding at the end the following:

5 “(h) As used in this section, the term ‘savings and  
6 loan association’ means (1) any Federal saving association  
7 or State savings association (as defined in section 3(b) of  
8 the Federal Deposit Insurance Act, 12 U.S.C. 1813(b))  
9 having accounts insured by the Federal Deposit Insurance  
10 Corporation, and (2) any corporation described in section  
11 3(b)(1)(C) of the Federal Deposit Insurance Act (12  
12 U.S.C. 1813(b)(1)(C)) which is operating under the laws  
13 of the United States.”.

14 **SEC. 3056. CONFORMING DEFINITION OF “1 YEAR PERIOD”**  
15 **IN 18 U.S.C. 1516.**

16 Section 1516(b) of title 18, United States Code, is  
17 amended—

18 (1) by inserting “(i)” before “the term”; and  
19 (2) by inserting before the period the following:  
20 “, and (ii) the term ‘in any 1 year period’ has the  
21 meaning given to the term ‘in any one-year period’  
22 in section 666 of this title.”.

## TITLE XVII—MISCELLANEOUS CRIME CONTROL

### SUBTITLE A—GENERAL

#### *Section 1701. Receiving the Proceeds of Extortion or Kidnapping*

Section 1701 amends 18 U.S.C. ch. 41, which sets out offenses and penalties related to extortion and threats, by adding a new section at the end, section 880 (to be codified at 18 U.S.C. § 880). The new section 880 makes it a punishable offense to receive, possess, conceal or dispose of any money or property known to have been obtained by means of extortion or threats otherwise punishable under chapter 41 by imprisonment for more than one year. This offense is punishable by fines under title 18 and/or imprisonment for not more than three years.

Section 1701 also amends 18 U.S.C. § 1202, which provides penalties for receiving, possessing, or disposing of any money or other property known to have been delivered as a ransom in connection with a kidnapping punishable under 18 U.S.C. § 1201. The amendment designates the current provision of section 1202 as subsection (a) and adds a new subsection (b). The new subsection (b) provides for a fine under title 18 and/or imprisonment for not more than 10 years for transporting, transmitting, or transferring in interstate or foreign commerce the proceeds of a kidnapping punishable under State law by imprisonment for more than one year. The new subsection also imposes this same penalty on anyone who, knowing such proceeds to have been obtained illegally, receives, possesses, conceals or disposes of them after these proceeds have crossed State lines or the U.S. border.

#### *Section 1702. Receiving the Proceeds of a Postal Robbery*

Section 1702 amends 18 U.S.C. § 2114, which provides penalties of the assault or robbery of anyone who is lawfully in charge of the U.S. mail or other money or property of the United States. The amendment designates the current provision of section 2114 as subsection (a) and adds a new subsection (b). The new subsection (b) imposes a fine under title 18 and/or imprisonment for not more than 10 years on anyone who receives, possesses, conceals or disposes of any money or other property knowing that these have been obtained in violation of the proscriptions of this section against postal robbery.

#### *Section 1703. Criminal Street Gangs*

##### PURPOSE AND BACKGROUND

This section is intended to provide help in combatting violent and drug-trafficking street gangs by creating a Federal prosecutorial tool designed to reach the activities of members of criminal street gangs. Gangs have spread havoc throughout the country. They regularly engage in drug trafficking, violence and firearms related offenses. This section creates a new Federal offense for those gang members who commit any of a series of Federal offenses as a member of, on behalf of, or in association with a crimi-

nal street gang if  
Federal or State c

Section 1703 amends chapter 26, section 1101, by adding an additional penalty with gang activity. The new penalty is a term of imprisonment or a fine under title 18 or both, or other term imposed by law.

Subsection 521(b) of the Controlled Substances Act; any violation of the Contraband and Exportation Act; or participation in any of these offenses.

As described in section 1703, offenses may be committed by a member of, on behalf of, or in association with a gang and the defendant must be at least 18 years of age at the time of the offense. The offense is punishable by a fine under title 18 and/or imprisonment for not more than 10 years, or both, or other term imposed by law.

For purposes of this section, a finding of juvenile delinquency involving a violation of the Controlled Substances Act for purposes of paragraph (1) of section 521(b) of the Controlled Substances Act, or use of such record for purposes of section 521(b) of the Controlled Substances Act, shall be considered a conviction for the offense.

Subsection 521(b) of the Controlled Substances Act, club, organization, or association, or any member of the club, organization, or association, who has committed the offenses listed in section 521(b) of the Controlled Substances Act, interstate or foreign commerce.

#### *Section 1704. Unlawful*

Section 1704 amends chapter 21, section 1101, by adding a new section 21, which addresses offenses committed by a member of, on behalf of, or in association with a gang. The offenses are (1) robbery, (2) stolen property, (3) made, forged, or altered property, (4) property was of value, (5) knowledge may be obtained, and (6) such to be the case.

1           (2) in subsection (g) by amending the first sen-  
2           tence to read as follows: "The magistrate judge may.  
3           in a petty offense case involving a juvenile, exercise  
4           all powers granted to the district court under chap-  
5           ter 403 of this title."

6   **SEC. 2603. CONFORMING AUTHORITY FOR MAGISTRATES**  
7                   **TO REVOKE SUPERVISED RELEASE IN ADDI-**  
8                   **TION TO PROBATION IN MISDEMEANOR**  
9                   **CASES IN WHICH THE MAGISTRATE IMPOSED**  
10                  **SENTENCE.**

11       Section 3401(d) of title 18, United States Code, is  
12       amended by adding at the end the following: "A magis-  
13       trate judge who has sentenced a person to a term of super-  
14       vised release shall also have power to revoke or modify  
15       the term or conditions of such supervised release."

16   **TITLE XXVII—COMPUTER CRIME**

17   **SEC. 2701. COMPUTER ABUSE AMENDMENTS ACT OF 1991.**

18       (a) **SHORT TITLE.**—This title may be cited as the  
19       "Computer Abuse Amendments Act of 1991".

20       (b) **PROHIBITION.**—Section 1030(a)(5) of title 18,  
21       United States Code, is amended to read as follows:

22               "(5)(A) through means of a computer used in  
23       interstate commerce or communications, knowingly  
24       causes the transmission of a program, information,

1 code, or command to a computer or computer sys-  
2 tem if—

3 “(i) the person causing the transmission  
4 intends that such transmission will—

5 “(I) damage, or cause damage to, a  
6 computer, computer system, network, in-  
7 formation, data, or program; or

8 “(II) withhold or deny, or cause the  
9 withholding or denial, of the use of a com-  
10 puter, computer services, system or net-  
11 work, information, data or program; and

12 “(ii) the transmission of the harmful com-  
13 ponent of the program, information, code, or  
14 command—

15 “(I) occurred without the knowledge  
16 and authorization of the persons or entities  
17 who own or are responsible for the comput-  
18 er system receiving the program, informa-  
19 tion, code, or command; and

20 “(II)(aa) causes loss or damage to one  
21 or more other persons of value aggregating  
22 \$1,000 or more during any 1-year period;  
23 or

24 “(bb) modifies or impairs, or poten-  
25 tially modifies or impairs, the medical ex-

1           amination, medical diagnosis, medical  
2           treatment, or medical care of one or more  
3           individuals; or

4           “(B) through means of a computer used in  
5           interstate commerce or communication, knowingly  
6           causes the transmission of a program, information,  
7           code, or command to a computer or computer  
8           system—

9           “(i) with reckless disregard of a substan-  
10          tial and unjustifiable risk that the transmission  
11          will—

12           “(I) damage, or cause damage to, a  
13           computer, computer system, network, in-  
14           formation, data or program; or

15           “(II) withhold or deny or cause the  
16           withholding or denial of the use of a com-  
17           puter, computer services, system, network,  
18           information, data or program; and

19           “(ii) if the transmission of the harmful  
20           component of the program, information, code,  
21           or command—

22           “(I) occurred without the knowledge  
23           and authorization of the persons or entities  
24           who own or are responsible for the comput-

1           er system receiving the program, informa-  
2           tion, code, or command; and

3           “(II)(aa) causes loss or damage to one  
4           or more other persons of a value aggregat-  
5           ing \$1,000 or more during any 1-year peri-  
6           od; or

7           “(bb) modifies or impairs, or poten-  
8           tially modifies or impairs, the medical ex-  
9           amination, medical diagnosis, medical  
10          treatment, or medical care of one or more  
11          individuals;”.

12       (c) PENALTY.—Section 1030(c) of title 18, United  
13 States Code is amended—

14           (1) in paragraph (2)(B) by striking “and” after  
15       the semicolon;

16           (2) in paragraph (3)(A) by inserting “(A)”  
17       after “(a)(5)”; and

18           (3) in paragraph (3)(B) by striking the period  
19       at the end thereof and inserting “; and”; and

20           (4) by adding at the end thereof the following:

21           “(4) a fine under this title or imprisonment for  
22       not more than 1 year, or both, in the case of an of-  
23       fense under subsection (a)(5)(B).”.

1 (d) CIVIL ACTION.—Section 1030 of title 18, United  
2 States Code, is amended by adding at the end thereof the  
3 following new subsection:

4 “(g) Any person who suffers damage or loss by rea-  
5 son of a violation of the section, other than a violation  
6 of subsection (a)(5)(B), may maintain a civil action  
7 against the violator to obtain compensatory damages and  
8 injunctive relief or other equitable relief. Damages for vio-  
9 lations of any subsection other than subsection  
10 (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to  
11 economic damages. No action may be brought under this  
12 subsection unless such action is begun within 2 years of  
13 the date of the act complained of or the date of the discov-  
14 ery of the damage.”.

15 (e) REPORTING REQUIREMENTS.—Section 1030 of  
16 title 18 United States Code, is amended by adding at the  
17 end thereof the following new subsection:

18 “(h) The Attorney General and the Secretary of the  
19 Treasury shall report to the Congress annually, during the  
20 first 3 years following the date of the enactment of this  
21 subsection, concerning investigations and prosecutions  
22 under section 1030(a)(5) of title 18, United States  
23 Code.”.

24 (f) PROHIBITION.—Section 1030(a)(3) of title 18  
25 United States Code, is amended by inserting “adversely”

GANGS

## GANGS

The conference report included an offense/sentencing enhancement for certain drug and violent crimes committed as part of a criminal gang. Text included.

This is an issue that requires cross-jurisdictional coordination between DOJ and criminal law and HHS, Education Department etc. The Safe Schools and Certainty of Punishment programs include provisions for anti-gang programs.

Anti-gang programs have been a priority area for BJA discretionary grants and should remain so. Also, can be a major component of Weed and Seed type program.

It is also an issue regarding inter-jurisdictional turf battling between ATF and FBI which needs to be worked out. Need to establish a database for gang information and need to hire and train Federal agents from relevant ethnic groups who can speak the proper languages such as Thai and other Asian languages.

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@ 224-3465

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1 (2), and (3), shall be fined not more than \$10,000 or im-  
2 prisoned for not more than 5 years, or both" and inserting  
3 "and thereafter performs or attempts to perform (A) any  
4 of the acts specified in subparagraphs (1) and (3) shall  
5 be fined under this title or imprisoned for not more than  
6 5 years, or both or (B) any of the acts specified in sub-  
7 paragraph (2) shall be fined under this title or imprisoned  
8 for not more than 20 years, or both, and if death results  
9 shall be imprisoned for any term of years or for life".

10 **SEC. 703. COMMENCEMENT OF JUVENILE PROCEEDING.**

11 Section 5032 of title 18, United States Code, is  
12 amended by striking "Any proceedings against a juvenile  
13 under this chapter or as an adult shall not be commenced  
14 until" and inserting "A juvenile shall not be transferred  
15 to adult prosecution nor shall a hearing be held under sec-  
16 tion 5037 (disposition after a finding of juvenile delin-  
17 quency) until".

18 **SEC. 704. CRIMINAL STREET GANGS.**

19 (a) IN GENERAL.—Title 18, United States Code, is  
20 amended by inserting after chapter 25 the following:

21 **"CHAPTER 26—CRIMINAL STREET GANGS**

"Sec.

"521. Criminal street gangs.

22 **"§ 521. Criminal street gangs**

23 "(a) Whoever, under the circumstances described in  
24 subsection (c) of this section, commits an offense de-

1 scribed in subsection (b) of this section, shall, in addition  
2 to any other sentence authorized by law, be sentenced to  
3 a term of imprisonment of not more than 10 years and  
4 may also be fined under this title. Such sentence of impris-  
5 onment shall run consecutively to any other sentence im-  
6 posed.

7 “(b) The offenses referred to in subsection (a) of this  
8 section are—

9 “(1) any Federal felony involving a controlled  
10 substance (as defined in section 102 of the Con-  
11 trolled Substances Act) for which the maximum pen-  
12 alty is not less than five years;

13 “(2) any Federal felony crime of violence;

14 “(3) a conspiracy to commit any of the offenses  
15 described in paragraphs (1) through (3) of this sub-  
16 section.

17 “(c) The circumstances referred to in subsection (a)  
18 of this section are that the offense described in subsection  
19 (b) was committed as a member of, or on behalf of, a  
20 criminal street gang and that person has been convicted,  
21 within the past 5 years for—

22 “(1) any offense listed in subsection (b) of this  
23 section;

24 “(2) any State offense—

1           “(A) involving a controlled substance (as  
2           defined in section 102 of the Controlled Sub-  
3           stances Act) for which the maximum penalty is  
4           not less than one year after imprisonment; or

5           “(B) that is a crime of violence; for which  
6           the maximum penalty is more than 1 year’s im-  
7           prisonment; or

8           “(3) any Federal or State offense that involves  
9           the theft or destruction of property for which the  
10          maximum penalty is more than 1 year’s imprison-  
11          ment; or

12          “(4) a conspiracy to commit any of the offenses  
13          described in paragraphs (1) through (3) of this sub-  
14          section.

15          “(d) For purposes of this section—

16                 “(1) the term ‘criminal street gang’ means any  
17                 group, club, organization, or association of 5 or  
18                 more persons—

19                         “(A) whose members engage or have en-  
20                         gaged within the past 5 years, in a continuing  
21                         series of violations of any offense treated in  
22                         subsection (b); and

23                         “(B) whose activities affect interstate or  
24                         foreign commerce; and

1           “(2) the term ‘conviction’ includes a finding,  
2           under State or Federal law, that a person has com-  
3           mitted an act of juvenile delinquency involving a vio-  
4           lent or controlled substances felony.”.

5           (b) CLERICAL AMENDMENT.—The table of chapters  
6           for part I of title 18, United States Code, is amended by  
7           inserting after the item relating to chapter 25 the follow-  
8           ing:

          “26. Criminal street gangs ..... 521”.

9                   **TITLE VIII—TERRORISM**  
10                   **Subtitle A—Terrorism: Civil**  
11                   **Remedy**

12           **SEC. 801. SHORT TITLE.**

13           This subtitle may be cited as the “Antiterrorism Act  
14           of 1991”.

15           **SEC. 802. TERRORISM.**

16           (a) TERRORISM.—Chapter 113A of title 18, United  
17           States Code, as amended by subsection (d) of this section,  
18           is amended—

19                   (1) in section 2331 by striking subsection (d)  
20                   and redesignating subsection (e) as subsection (d);

21                   (2) by redesignating section 2331 as 2332, and  
22                   striking the heading for section 2332 as so redesign-  
23                   nated and inserting the following:

## TITLE XVII—MISCELLANEOUS CRIME CONTROL

### SUBTITLE A—GENERAL

#### *Section 1701. Receiving the Proceeds of Extortion or Kidnapping*

Section 1701 amends 18 U.S.C. ch. 41, which sets out offenses and penalties related to extortion and threats, by adding a new section at the end, section 880 (to be codified at 18 U.S.C. § 880). The new section 880 makes it a punishable offense to receive, possess, conceal or dispose of any money or property known to have been obtained by means of extortion or threats otherwise punishable under chapter 41 by imprisonment for more than one year. This offense is punishable by fines under title 18 and/or imprisonment for not more than three years.

Section 1701 also amends 18 U.S.C. § 1202, which provides penalties for receiving, possessing, or disposing of any money or other property known to have been delivered as a ransom in connection with a kidnapping punishable under 18 U.S.C. § 1201. The amendment designates the current provision of section 1202 as subsection (a) and adds a new subsection (b). The new subsection (b) provides for a fine under title 18 and/or imprisonment for not more than 10 years for transporting, transmitting, or transferring in interstate or foreign commerce the proceeds of a kidnapping punishable under State law by imprisonment for more than one year. The new subsection also imposes this same penalty on anyone who, knowing such proceeds to have been obtained illegally, receives, possesses, conceals or disposes of them after these proceeds have crossed State lines or the U.S. border.

#### *Section 1702. Receiving the Proceeds of a Postal Robbery*

Section 1702 amends 18 U.S.C. § 2114, which provides penalties of the assault or robbery of anyone who is lawfully in charge of the U.S. mail or other money or property of the United States. The amendment designates the current provision of section 2114 as subsection (a) and adds a new subsection (b). The new subsection (b) imposes a fine under title 18 and/or imprisonment for not more than 10 years on anyone who receives, possesses, conceals or disposes of any money or other property knowing that these have been obtained in violation of the proscriptions of this section against postal robbery.

#### *Section 1703. Criminal Street Gangs*

##### PURPOSE AND BACKGROUND

This section is intended to provide help in combatting violent and drug-trafficking street gangs by creating a Federal prosecutorial tool designed to reach the activities of members of criminal street gangs. Gangs have spread havoc throughout the country. They regularly engage in drug trafficking, violence and firearms related offenses. This section creates a new Federal offense for those gang members who commit any of a series of Federal offenses as a member of, on behalf of, or in association with a crimi-

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nal street gang if that gang member has one or more listed prior Federal or State convictions.

#### SECTION-BY-SECTION ANALYSIS

Section 1703 amends title 18 of the United States Code by adding chapter 26, section 521, (to be codified at 18 U.S.C. § 521), imposing additional penalties for certain crimes committed in connection with gang activity. Subsection (a) of section 521 makes the additional penalty a term of imprisonment not to exceed 10 years, and/or fines under title 18. The prison term is to run consecutively to any other term imposed for the underlying crimes.

Subsection 521(b) sets out the crimes for which additional penalties may be imposed. These are: any Federal felony involving a controlled substance (as defined by section 102 of the Controlled Substances Act); any Federal felony crime of violence; any felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act or the Maritime Drug Law Enforcement Act; or participation in a conspiracy to commit any of these offenses.

As described in subsection 521(c), additional penalties for these offenses may be imposed only if these offenses are committed as a member of, on behalf of, or in association with a criminal street gang and the defendant has been convicted within the past five years of any of the following: Any offense listed in subsection 521(b); and State offense involving a controlled substance or a crime of violence for which the penalty is more than one year's imprisonment; any Federal or State offense that involves the destruction of property for which the maximum penalty is more than one year's imprisonment; or participation in a conspiracy to commit any of these offenses.

For purposes of section 521(c), a "conviction" includes convictions or findings of juvenile delinquency under State or Federal law for acts involving a violent felony or felony controlled substances violations. The Committee intends that any use of State juvenile records for purposes of proving prior convictions under this section be consistent with the laws of the State or States regarding access to and use of such records.

Subsection 521(d) defines a "criminal street gang" as any group, club, organization, or association of five or more persons whose members have engaged in a continuing series of violation of any of the offenses listed in subsection 521(b) and whose activities affect interstate or foreign commerce.

#### *Section 1704. Undercover Operations*

Section 1704 amends Chapter 1 of title 18 by adding at the end a new section 21, to be codified at 18 U.S.C. § 21. The new section 21 addresses offenses under title 18 in which two of the elements of the offense are (i) that the property at issue has been embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated, and (ii) that the defendant knew the property was of such character. Under section 21, the defendant's knowledge may be established by proof that the defendant believed such to be the case after learning this by means of an official rep-

BOOT CAMPS



## BOOT CAMPS

Three prongs:

1. Schumer Certainty of Punishment grant program for Federal aid to state and locals for boot camps and other alternative and intermediate sanctions. Text included.
2. Biden Federally run boot camps for primarily state and local drug offenders. Text included.
3. More Federal boot camps for Federal prisoners. There is only one now with 160 beds. Official BOP position has been that they do not need more but that could change. Do not need legislation for this but did give legislative authorization for the one in 1990 crime bill. Text included. Could direct BOP to establish more. Is a need - BOP toughened admission criteria to shrink qualified pool of prisoners.

Keep in mind that success of alternatives, including bootcamps, at reducing recidivism is not proven. There are conflicting studies for things like intensive supervision probation, including GAO study soon to be released.

1 medical services, or another appropriate state official, in  
2 the State of the prospective grantee.

3 **"SEC. 1245. AUTHORIZATION OF APPROPRIATIONS.**

4 "For the purpose of carrying out this part, there are  
5 authorized to be appropriated \$50,000,000 for fiscal year  
6 1992, and such sums as may be necessary for each of the  
7 fiscal years 1993 and 1994.

8 **SEC. 1196. CONFORMING AMENDMENTS.**

9 Title XII of the Public Health Service Act (42 U.S.C.  
10 300d et seq.), as added by section 3 of Public Law 101-  
11 590 (104 Stat. 2915), is amended—

12 (1) in the heading for part C, by inserting "RE-  
13 GARDING PARTS A AND B" after "PROVISIONS";

14 (2) in section 1231, in the matter preceding  
15 paragraph (1), by striking "this title" and inserting  
16 "this part and parts A and B"; and

17 (3) in section 1232(a), by striking "this title"  
18 and inserting "parts A and B".

19 **Subtitle J—Certainty of**  
20 **Punishment for Young Offenders**

21 **SEC. 1198. SHORT TITLE.**

22 This subtitle may be cited as the "Certainty of Pun-  
23 ishment for Young Offenders Act of 1991".

1 **SEC. 1199. CERTAINTY OF PUNISHMENT FOR YOUNG OF-**  
2 **FENDERS.**

3 (a) IN GENERAL.—Title I of the Omnibus Crime  
4 Control and Safe Streets Act of 1968 (42 U.S.C. 3711  
5 et seq.), as amended by section 1161 of this Act. is  
6 amended—

7 (1) by redesignating part R as part S;

8 (2) by redesignating section 1801 as section  
9 1901; and

10 (3) by inserting after part Q the following:

11 **“PART R—ALTERNATIVE PUNISHMENTS FOR**  
12 **YOUNG OFFENDERS**

13 **“SEC. 1801. GRANT AUTHORIZATION.**

14 “(a) IN GENERAL.—The Director of the Bureau of  
15 Justice Assistance (referred to in this part as the ‘Direc-  
16 tor’) may make grants under this part to States, for the  
17 use by States and units of local government in the States,  
18 for the purpose of developing alternative methods of pun-  
19 ishment for young offenders to traditional forms of incar-  
20 ceration and probation.

21 “(b) ALTERNATIVE METHODS.—The alternative  
22 methods of punishment referred to in subsection (a)  
23 should ensure certainty of punishment for young offenders  
24 and promote reduced recidivism, crime prevention, and as-  
25 sistance to victims, particularly for young offenders who

1 can be punished more effectively in an environment other  
2 than a traditional correctional facility, including—

3 “(1) alternative sanctions that create account-  
4 ability and certainty of punishment for young of-  
5 fenders;

6 “(2) boot camp prison programs;

7 “(3) technical training and support for the im-  
8 plementation and maintenance of State and local  
9 restitution programs for young offenders;

10 “(4) innovative projects;

11 “(5) correctional options, such as community-  
12 based incarceration, weekend incarceration, and elec-  
13 tric monitoring of offenders;

14 “(6) community service programs that provide  
15 work service placement for young offenders at non-  
16 profit, private organizations and community organi-  
17 zations;

18 “(7) demonstration restitution projects that are  
19 evaluated for effectiveness; and

20 “(8) innovative methods that address the prob-  
21 lems of young offenders convicted of serious sub-  
22 stance abuse, including alcohol abuse, and gang-re-  
23 lated offenses, including technical assistance and  
24 training to counsel and treat such offenders.

1 **"SEC. 1802. STATE APPLICATIONS.**

2       “(a) IN GENERAL.—(1) To request a grant under  
3 this part, the chief executive of a State shall submit an  
4 application to the Director in such form and containing  
5 such information as the Director may reasonably require.

6       “(2) Such application shall include assurances that  
7 Federal funds received under this part shall be used to  
8 supplement, not supplant, non-Federal funds that would  
9 otherwise be available for activities funded under this part.

10       “(b) STATE OFFICE.—The office designated under  
11 section 507 of title I of the Omnibus Crime Control and  
12 Safe Streets Act of 1968 (42 U.S.C. 3757)—

13               “(1) shall prepare the application as required  
14 under section 1802; and

15               “(2) shall administer grant funds received  
16 under this part, including, review of spending, proc-  
17 essing, progress, financial reporting, technical assist-  
18 ance, grant adjustments, accounting, auditing, and  
19 fund disbursement.

20 **"SEC. 1803. REVIEW OF STATE APPLICATIONS.**

21       “(a) IN GENERAL.—The Bureau shall make a grant  
22 under section 1801(a) to carry out the projects described  
23 in the application submitted by such applicant under sec-  
24 tion 1802 upon determining that—

25               “(1) the application is consistent with the re-  
26 quirements of this part; and

1           “(2) before the approval of the application, the  
2       Bureau has made an affirmative finding in writing  
3       that the proposed project has been reviewed in ac-  
4       cordance with this part.

5       “(b) APPROVAL.—Each application submitted under  
6       section 1802 shall be considered approved, in whole or in  
7       part, by the Bureau not later than 45 days after first re-  
8       ceived unless the Bureau informs the applicant of specific  
9       reasons for disapproval.

10       “(c) RESTRICTION.—Grant funds received under this  
11       part shall not be used for land acquisition or construction  
12       projects, other than alternative facilities described in sec-  
13       tion 1801(b) for young offenders.

14       “(d) DISAPPROVAL NOTICE AND RECONSIDER-  
15       ATION.—The Bureau shall not disapprove any application  
16       without first affording the applicant reasonable notice and  
17       an opportunity for reconsideration.

18       **“SEC. 1804. LOCAL APPLICATIONS.**

19       “(a) IN GENERAL.—(1) To request funds under this  
20       part from a State, the chief executive of a unit of local  
21       government shall submit an application to the office desig-  
22       nated under section 1802(b).

23       “(2) Such application shall be considered approved,  
24       in whole or in part, by the State not later than 45 days  
25       after such application is first received unless the State in-

1 forms the applicant in writing of specific reasons for dis-  
2 approval.

3       “(3) The State shall not disapprove any application  
4 submitted to the State without first affording the appli-  
5 cant reasonable notice and an opportunity for reconsider-  
6 ation.

7       “(4) If such application is approved, the unit of local  
8 government is eligible to receive such funds.

9       “(b) DISTRIBUTION TO UNITS OF LOCAL GOVERN-  
10 MENT.—A State that receives funds under section 1801  
11 in a fiscal year shall make such funds available to units  
12 of local government with an application that has been sub-  
13 mitted and approved by the State within 45 days after  
14 the Bureau has approved the application submitted by the  
15 State and has made funds available to the State. The Di-  
16 rector shall have the authority to waive the 45-day re-  
17 quirement in this section upon a finding that the State  
18 is unable to satisfy such requirement under State statutes.

19 **“SEC. 1805. ALLOCATION AND DISTRIBUTION OF FUNDS.**

20       “(a) STATE DISTRIBUTION.—Of the total amount ap-  
21 propriated under this part in any fiscal year—

22               “(1) 0.4 percent shall be allocated to each of  
23 the participating States; and

24               “(2) of the total funds remaining after the allo-  
25 cation under paragraph (1), there shall be allocated

1 to each of the participating States an amount which  
2 bears the same ratio to the amount of remaining  
3 funds described in this paragraph as the number of  
4 young offenders of such State bears to the number  
5 of young offenders in all the participating States.

6 “(b) LOCAL DISTRIBUTION.—(1) A State that re-  
7 ceives funds under this part in a fiscal year shall distribute  
8 to units of local government in such State for the purposes  
9 specified under section 1801 that portion of such funds  
10 which bears the same ratio to the aggregate amount of  
11 such funds as the amount of funds expended by all units  
12 of local government for criminal justice in the preceding  
13 fiscal year bears to the aggregate amount of funds expend-  
14 ed by the State and all units of local government in such  
15 State for criminal justice in such preceding fiscal year.

16 “(2) Any funds not distributed to units of local gov-  
17 ernment under paragraph (1) shall be available for ex-  
18 penditure by such State for purposes specified under sec-  
19 tion 1801.

20 “(3) If the Director determines, on the basis of infor-  
21 mation available during any fiscal year, that a portion of  
22 the funds allocated to a State for such fiscal year will not  
23 be used by such State or that a State is not eligible to  
24 receive funds under section 1801, the Director shall award  
25 such funds to units of local government in such State giv-

1 ing priority to the units of local government that the Di-  
2 rector considers to have the greatest need.

3       “(c) FEDERAL SHARE.—The Federal share of a  
4 grant made under this part may not exceed 75 percent  
5 of the total costs of the projects described in the applica-  
6 tion submitted under section 1802(a) for the fiscal year  
7 for which the projects receive assistance under this part.

8       **“SEC. 1806. EVALUATION.**

9       “(a) IN GENERAL.—(1) Each State and local unit of  
10 government that receives a grant under this part shall  
11 submit to the Director an evaluation not later than March  
12 1 of each year in accordance with guidelines issued by the  
13 Director and in consultation with the National Institute  
14 of Justice.

15       “(2) The Director may waive the requirement speci-  
16 fied in subsection (a) if the Director determines that such  
17 evaluation is not warranted in the case of the State or  
18 unit of local government involved.

19       “(b) DISTRIBUTION.—The Director shall make avail-  
20 able to the public on a timely basis evaluations received  
21 under subsection (a).

22       “(c) ADMINISTRATIVE COSTS.—A State and local  
23 unit of government may use not more than 5 percent of  
24 funds it receives under this part to develop an evaluation  
25 program under this section.”.

1 (b) CONFORMING AMENDMENT.—The table of con-  
2 tents of title I of the Omnibus Crime Control and Safe  
3 Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended  
4 by section 1162 of this Act, is amended by striking the  
5 matter relating to part R and inserting the following:

“PART R—ALTERNATIVE PUNISHMENTS FOR YOUNG OFFENDERS

“Sec. 1801. Grant authorization.

“Sec. 1802. State applications.

“Sec. 1803. Review of State applications.

“Sec. 1804. Local applications.

“Sec. 1805. Allocation and distribution of funds.

“Sec. 1806. Evaluation.

“PART S—TRANSITION; EFFECTIVE DATE; REPEALER

“Sec. 1901. Continuation of rules, authorities, and proceedings.”.

6 (c) DEFINITION.—Section 901(a) of the Omnibus  
7 Crime Control and Safe Streets Act of 1968 (42 U.S.C.  
8 3791(a)), as amended by section 1421 of this Act, is  
9 amended by adding after paragraph (24) the following:

10 “(25) The term ‘young offender’ means an indi-  
11 vidual 28 years of age or younger.”.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—

13 Section 1001(a) of title I of the Omnibus Crime Con-  
14 trol and Safe Streets Act of 1968 (42 U.S.C. 3793) is  
15 amended by adding after paragraph (11) the following:

16 “(12) There are authorized to be appropriated  
17 \$200,000,000 for each of the fiscal years 1992, 1993, and  
18 1994 to carry out the projects under part R.”.

## SUBTITLE B—RESTITUTION

*Section 521*

This section amends section 3663 of title 18 to permit the court to include, in any order of restitution, reimbursement to the victim for child care, transportation, and other costs incurred in the participation in the investigation or prosecution of the offense against the victim. This section also gives the court discretionary authority to suspend the eligibility for certain Federal benefits of a defendant who is delinquent in restitution payments.

This section also amends section 3663 of title 18 to authorize courts to order restitution to victims of sexual assault.

## SUBTITLE C—HIV TESTING

*Section 531*

This section adds a new section 2247 to title 18 to provide for HIV testing and penalty enhancement in sexual abuse cases. Under this section, a person charged with committing a sexual assault will be required to submit to testing for the human immunodeficiency virus, unless a judicial officer determines that the defendant's conduct created no risk of transmission of the virus. The section requires testing within twenty-four hours of arraignment, and follow-up testing six months and twelve months after arraignment, unless the defendant is acquitted or the charges against him or her are dismissed. The results of the defendant's tests will be provided to the defendant, the court, the prosecutor, and the victim. This section further directs the Sentencing Commission to include in its sentencing guidelines an enhancement for sexual assault offenders who know or have reasons to know they are HIV-infected and who engage in conduct creating a risk of transmission of the virus.

*Section 532*

This section amends section 503 of the Victims' Rights and Restitution Act of 1990 to direct any department conducting an investigation of a sexual assault to pay for the victim to have up to two tests for the human immunodeficiency virus within the twelve months following the assault.

## TITLE VI—CERTAINTY OF PUNISHMENT FOR YOUNG CRIME OFFENDERS

## PURPOSE

Title VI is a program intended to assist the States in developing alternatives to traditional modes of probation and incarceration for juvenile and young offenders (up to age 28). Such alternatives would enable probation and correctional systems to provide certainty of punishment for youthful offenders in forms designed to have a greater impact on certain young offenders than mere probation would. It would also allow overburdened corrections departments to punish young, non-violent offenders in settings other than

traditional incarceration where appropriate and consistent with the demands of public safety. This program would provide critical financial assistance to develop and test correctional options including, for example, community-based incarceration, weekend incarceration, boot-camp prisons, intensive probation, electronic monitoring, home confinement, vocational and educational options, restitution programs and other punishments targeted selectively at young offenders.

#### BACKGROUND

Title VI is the result of a review by the Subcommittee on Crime and Criminal Justice that highlighted the need for alternatives to traditional modes of probation and incarceration which will both ensure that juvenile and young offenders receive punishment for their crimes and reduce the rate at which these youths return to criminal activity after their release. The review highlighted an extremely serious problem in the Nation's correctional systems. This crisis is reflected in the overpopulation of correctional systems (there are an estimated 1 million inmates nationwide, more than double the prison population of a decade ago) as well as in the recidivism rates of these systems, rates which are as high as 60 percent.

Because prisons are already overflowing, many youthful violators receive unrestricted probation or suspended sentences for their first offenses—and sometimes even for second and third offenses. This lack of meaningful and effective punishment reinforces criminal behavior and leads to recidivism and lack of respect for the criminal justice system. Yet with average prison construction costs of up to \$40,000 per inmate, States simply cannot afford to produce enough traditional prison cells to guarantee that young criminals are punished for their transgressions.

At the same time, when youthful offenders are imprisoned, the testimony at the hearings indicated that correctional systems often simply warehouse these individuals at incredible costs ranging from \$43 to \$113 per inmate per day, then release them to society as more adept and perhaps more savage criminals. There is a desperate need for a range of punishments that can be used as stronger alternatives to simple probation for the youthful offender. Such punishments would send the message that crime will not be permitted. They would also offer the opportunity for early intervention that can turn the offender from being a career criminal. States across the country have begun to formulate these types of programs, including community service, restitution, intensive supervision, home detention, work programs, and military-style boot camps. Hampered by a lack of resources, however, the States have been unable to develop these ideas fully, or to implement them on a scale commensurate with the enormous need for them. Title VI would address this crisis by providing \$200 million for grants to States to aid in the development of such alternative sanctions.

The Subcommittee held a hearing on this issue on June 26, 1991. Testimony was heard from Derrick Thomas, a member of the Kansas City Chiefs football team, who successfully participated in one such program as a juvenile. Mr. Robert Weaver, a representa-

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#### Section 601

Short Title:  
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tive of that program, the American Marine Institute, described a number of correctional options run by his organization. Judge Bryant Culpepper from Macon, Georgia and David Jordan of the Georgia Department of Corrections described the range of options available in the Georgia system. Juvenile restitution programs were described by Richard Rhyme of the Youth Restitution Program in Madison, Wisconsin; Judge Albert Kramer of Quincy, Massachusetts; and Peter Schneider of the Pacific Institute for Research and Evaluation. Commissioner Helen Corrothers of the United States Sentencing Commission and an expert on correctional options also testified. Michael Quinlan of the United States Bureau of Prisons submitted a written statement.

This title was Title IV of the Subcommittee print. At Committee markup of H.R. 3371, an amendment was adopted that limits the Federal share of expenses under this program to 75 percent. Another amendment changed the funding formula from state population based to based upon ratios of young offender populations.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 601*

Short Title: Certainty of Punishment for Young Crime Offenders Act of 1991.

##### *Section 602*

This section amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 by adding redesignating Part S as Part T, and section 1901 as 2001; and, inserting a new Part S, which will contain the following provisions.

Section 1901 will authorize a program of grants to States and local governments for the purpose of developing alternative methods of punishment to traditional forms of incarceration and probation. Such methods, which are to be targeted at young offenders, include boot camps, community-based incarceration, electronic monitoring, restitution projects, and other innovative methods.

Section 1902 will provide for States to make application to the Director of the Bureau of Justice Assistance (the "Director") for grants, and require each such application to contain assurances that any Federal funds received by the State will not supplant non-Federal funds that would otherwise be spent for the purposes of this Title.

Section 1903 will provide for review of grant applications by the Director.

Section 1904 will provide for the distribution of grant funds received by States to local governments.

Section 1905 will establish the allocation of grant funds among States, and within each recipient State between the State and its local governments. The formula for dividing grants among States will be as follows: 0.4 percent of the funds appropriated in any fiscal year shall be allocated to each participating State, with the remaining funds to be allocated among the participating States according to their populations of young offenders. Each recipient State will then be required to distribute to local governments a portion of the funds it receives. This distribution must be propor-

tionate to the ratio of funds spent on criminal justice by local governments in the State in the fiscal year preceding the distribution to the total amount of funds spent in that year on criminal justice by the State and its local governments combined.

This section further provides that the Federal share of a project financed by a grant made pursuant to this Part may not exceed 75 percent of the total cost of the project.

Section 1906 requires each recipient State and local government to submit to the Director an annual evaluation of the projects funded by grants made pursuant to this Part. This section also limits the amount of a grant that can be spent on producing such evaluations to 5 percent.

#### *Section 603*

This section amends § 303 of the Omnibus Crime Control and Safe Streets Act of 1968 by defining "young offender" as an individual 28 year of age or younger.

#### *Section 604*

This section authorizes to be appropriated for the grant program \$200 million for each of the fiscal years 1992, 1993, and 1994.

## **TITLE VII—DRUG TESTING OF ARRESTED INDIVIDUALS**

### **PURPOSE**

This title creates a grant program that will assist States in developing, implementing and maintaining programs for voluntary drug-testing of arrested individuals prior to arraignment and while on pre-trial release. This program provides Federal leadership and resources to help States design such drug testing programs.

### **BACKGROUND**

The link between drug abuse and crime is clear. A substantial number of arrested individuals have substance abuse problems. Whether or not a criminal defendant is a substance abuser is an important factor for the court to consider when making decisions about pre-trial release conditions. Drug testing is also an important monitoring tool for defendants in the community on pre-trial release to ensure that they are complying with the conditions of that release. It will help ensure that defendants do not commit additional crimes while on release and that they appear for scheduled court dates. It also helps identify individuals with substance abuse problems so that they can be directed toward appropriate treatment programs.

The impetus for this title is the successful drug-testing program in place in Washington, DC. That program, run by the Pre-trial Services Agency, tests arrested individuals and makes the information available to the court before arraignment or presentment to assist the court and counsel in making judgments regarding appropriate conditions of pre-trial release. Under this program criminal defendants are asked if they would be willing to submit to drug testing. They are advised that they have the right to refuse but

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#### *Section 701*

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1 amount paid for that prisoner. The total amount returned  
2 to each State under this paragraph in each fiscal year  
3 shall be used by that State to provide the aftercare treat-  
4 ment required by paragraph (2).

5 (f) POWERS OF THE DIRECTOR.—(1) The Director  
6 shall have the exclusive right to determine whether or not  
7 a State or Federal prisoner satisfies the eligibility require-  
8 ments of this section, and whether the prisoner is to be  
9 accepted into the regional prison program. The Director  
10 shall have the right to make this determination after the  
11 staff of the regional prison has had an opportunity to  
12 interview the prisoner in person.

13 (2) The Director shall have the exclusive right to de-  
14 termine if a prisoner in the regional treatment program  
15 is complying with all of the conditions and requirements  
16 of the program. The Director shall have the authority to  
17 return any prisoner not complying with the conditions and  
18 requirements of the program to the sending State at any  
19 time. The Director shall notify the sending State whenever  
20 such prisoner is returned that the prisoner has not suc-  
21 cessfully completed the treatment program.

22 **SEC. 1406. BOOT CAMPS.**

23 (a) IN GENERAL.—Not later than 1 year after the  
24 date of the enactment of this Act, the Attorney General  
25 shall establish within the Bureau of Prisons 10 military-

1 style boot camp prisons (referred to in this section as  
2 "boot camps"). The boot camps will be located on closed  
3 military installations on sites to be chosen by the Director  
4 of the Bureau of Prisons, after consultation with the Di-  
5 rector of National Drug Control Policy, and will provide  
6 a highly regimented schedule of strict discipline, physical  
7 training, work, drill, and ceremony characteristic of mili-  
8 tary basic training as well as remedial education and  
9 treatment for substance abuse.

10 (b) CAPACITY.—Each boot camp shall be designed to  
11 accommodate between 200 and 300 inmates for periods  
12 of not less than 90 days and not greater than 120 days.  
13 Not more than 20 percent of the inmates shall be Federal  
14 prisoners. The remaining inmates shall be State prisoners  
15 who are accepted for participation in the boot camp pro-  
16 gram pursuant to subsection (d).

17 (c) FEDERAL PRISONERS.—Section 3582 of title 18,  
18 United States Code, is amended by adding at the end the  
19 following new subsection:

20 "(e) BOOT CAMP PRISON AS A SENTENCING ALTER-  
21 NATIVE.—(1) The court, in imposing sentence in the cir-  
22 cumstances described in paragraph (2), may designate the  
23 defendant as eligible for placement in a boot camp prison.  
24 The Bureau of Prisons shall determine whether a defend-  
25 ant so designated will be assigned to a boot camp prison.

1       “(2) A defendant may be designated as eligible for  
2 placement in boot camp prison if—

3               “(A) the defendant—

4                       “(i) is under 25 years of age;

5                       “(ii) has no prior conviction for which he  
6 or she has served more than 10 days incarceration;  
7 ation; and

8                       “(iii) has been convicted of an offense in-  
9 volving a controlled substance punishable under  
10 the Controlled Substances Act or the Controlled  
11 Substances Export and Import Act, or any  
12 other offense if the defendant, at the time of  
13 arrest or at any time thereafter, tested positive  
14 for the presence of a controlled substance in his  
15 or her blood or urine; and

16               “(B) the sentencing court finds that the defend-  
17 ant’s total offense level under the Federal sentencing  
18 guidelines is level 15 or less.

19       “(3) If the Director of the Bureau of Prisons finds  
20 that an inmate placed in a boot camp prison pursuant to  
21 this subsection has willfully refused to comply with the  
22 conditions of confinement in the boot camp, the Director  
23 may transfer the inmate to any other correctional facility  
24 in the Federal prison system.

1       “(4) Successful completion of assignment to a boot  
2 camp shall constitute satisfaction of any period of active  
3 incarceration, but shall not affect any aspect of a sentence  
4 relating to a fine, restitution, or supervised release.”.

5       (d) STATE PRISONERS.—(1) The head of a State cor-  
6 rections department or the head's designee may apply for  
7 boot camp placement for any person who has been convict-  
8 ed of a criminal offense in that State, or who anticipates  
9 entering a plea of guilty of such offense, but who has not  
10 yet been sentenced. Such application shall be made to the  
11 Bureau of Prisons and shall be in the form designated  
12 by the Director of the Bureau of Prisons and shall contain  
13 a statement certified by the head of the State corrections  
14 department or the head's designee that at the time of sen-  
15 tencing the applicant is likely to be eligible for assignment  
16 to a boot camp pursuant to paragraph (2). The Bureau  
17 of Prisons shall respond to such applications within 30  
18 days so that the sentencing court is aware of the result  
19 of the application at the time of sentencing. In responding  
20 to such applications, the Bureau of Prisons shall deter-  
21 mine, on the basis of the availability of space, whether a  
22 defendant who becomes eligible for assignment to a boot  
23 camp prison at the time of sentencing will be so assigned.

1       (2) A person convicted of a State criminal offense  
2 shall be eligible for assignment to a boot camp if he or  
3 she—

4           (A) is under 25 years of age;

5           (B) has no prior conviction for which he or she  
6 has served more than 10 days incarceration;

7           (C) has been sentenced to a term of imprison-  
8 ment that will be satisfied under the law of the sen-  
9 tencing State if the defendant successfully completes  
10 a term of not less than 90 days nor more than 120  
11 days in a boot camp;

12          (D) has been designated by the sentencing  
13 court as eligible for assignment to a boot camp; and

14          (E) has been convicted of an offense involving  
15 a controlled substance (as defined in section 102 of  
16 the Controlled Substances Act (21 U.S.C. 802)), or  
17 any other offense if the defendant is eligible for as-  
18 signment to a boot camp under State law.

19       (3) If the Director of the Bureau of Prisons finds  
20 that an inmate placed in a boot camp prison pursuant to  
21 this subsection has willfully refused to comply with the  
22 conditions of confinement in the boot camp, the Director  
23 may transfer the inmate back to the jurisdiction of the  
24 State sentencing court.

1       (4) Any State referring a prisoner to a boot camp  
2 shall reimburse the Bureau of Prisons for the full cost  
3 of the incarceration of the prisoner, except that if the pris-  
4 oner successfully completes the boot camp program, the  
5 Bureau of Prisons shall return to the State 20 percent  
6 of the amount paid for that prisoner. The total amount  
7 returned to each State under this paragraph in each fiscal  
8 year shall be used by that State to provide the aftercare  
9 supervision and services required by paragraph (e).

10       (e) POST-RELEASE SUPERVISION.—(1) Any State  
11 seeking to refer a State prisoner to a boot camp prison  
12 shall submit to the Director of the Bureau of Prisons an  
13 aftercare plan setting forth the provisions that the State  
14 will make for the continued supervision of the prisoner fol-  
15 lowing release. The aftercare plan shall also contain provi-  
16 sions for educational and vocational training and drug or  
17 other counseling and treatment where appropriate.

18       (2) The Bureau of Prisons shall develop an aftercare  
19 plan setting forth the provisions that will be made for the  
20 continued supervision of Federal prisoners following re-  
21 lease. The aftercare plan shall also contain provisions for  
22 educational and vocational training and drug or other  
23 counseling and treatment where appropriate.

24       (f) AUTHORIZATION OF APPROPRIATIONS.—There  
25 are authorized to be appropriated \$150,000,000 for fiscal

1 year 1992, available until expended, of which not more  
2 than \$12,500,000 shall be used to convert each closed  
3 military base to a boot camp prison and not more than  
4 \$2,500,000 shall be used to operate each boot camp for  
5 one fiscal year. Such amounts shall be in addition to any  
6 other amounts authorized to be appropriated to the Bu-  
7 reau of Prisons.

## 8                   **Subtitle B—State Prisons**

### 9   **SEC. 1421. RESIDENTIAL SUBSTANCE ABUSE TREATMENT** 10                   **FOR PRISONERS.**

11           This section may be cited as the “Substance Abuse  
12 Treatment in State Prisons Act of 1991”.

13           (a) RESIDENTIAL SUBSTANCE ABUSE TREATMENT  
14 FOR PRISONERS.—Title I of the Omnibus Crime Control  
15 and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.),  
16 as amended by section 1201 of this Act, is amended—

17                   (1) by redesignating part T as part U;

18                   (2) by redesignating section 2001 as section  
19           2101; and

20                   (3) by inserting after part S the following:

### 21           **“PART U—RESIDENTIAL SUBSTANCE ABUSE** 22                   **TREATMENT FOR PRISONERS**

#### 23   **“SEC. 2001. GRANT AUTHORIZATION.**

24           “The Director of the Bureau of Justice Assistance  
25 (referred to in this part as the ‘Director’) may make

“(B) reasonable charges for room and board, as determined by regulations issued by the chief State correctional officer, in the case of a State prison.”.

#### SEC. 2907. COST SAVING MEASURES.

18 USC 4042  
note.

The Director of the Federal Bureau of Prisons (referred to as the “Director”) shall, to the extent practicable, take such measures as are appropriate to cut costs of construction. Such measures may include reducing expenditures for amenities including, for example, color television or pool tables.

#### SEC. 2908. REPORT BY SECRETARY OF LABOR.

18 USC 1761  
note.

The Secretary of Labor shall submit to the Congress not later than March 1, 1991, and not less often than annually thereafter, reports which describe in detail the extent and manner of compliance by State Prison Industry Enhancement Certification programs with the requirements set forth in 18 U.S.C. 1761(c).

## TITLE XXX—SHOCK INCARCERATION

#### SEC. 3001. SHOCK INCARCERATION PROGRAM.

(a) **IN GENERAL.**—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

##### “§ 4046. Shock incarceration program

“(a) The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

“(b) For such initial portion of the term of imprisonment as the Bureau of Prisons may determine, not to exceed 6 months, an inmate in the shock incarceration program shall be required to—

“(1) adhere to a highly regimented schedule that provides the strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training; and

“(2) participate in appropriate job training and educational programs (including literacy programs) and drug, alcohol, and other counseling programs.

“(c) An inmate who in the judgment of the Director of the Bureau of Prisons has successfully completed the required period of shock incarceration shall remain in the custody of the Bureau for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate), and under such conditions, as the Bureau deems appropriate.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 303 of title 18, United States Code, is amended by adding at the end the following:

“4046. Shock incarceration program.”.

#### SEC. 3002. AUTHORIZATION OF APPROPRIATIONS.

18 USC 4046  
note.

There are authorized to be appropriated for fiscal year 1990 and each fiscal year thereafter such sums as may be necessary to carry out the shock incarceration program established under the amendments made by this Act.