(D. Mass. 1995) (court could review adequacy of notice but not Fourth Amendment objection to seizure that claimant could have raised if he had filed a claim); Concepcion v. United States, 938 F. Supp. 134 (E.D.N.Y. 1996) (court lacks jurisdiction to review 8th Amendment challenge to administrative forfeiture).

SEC. 2083. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORD KEEPING REQUIREMENTS.

31 U.S.C. §§ 5321 and 5322 impose civil and criminal penalties, respectively, for violations of the Bank Secrecy Act (BSA) and BSA regulations; Section 5324 creates additional criminal offenses for failing to file a report, filing a false or incomplete report, and structuring currency transactions in order to evade a reporting requirement under the BSA. Those statutes, however, do not specifically refer to reports required by GTOs issued under section 5326. This provision eliminates any possible doubt concerning the applicability of these provisions to GTOs by inserting specific references to section 5326 in the respective statutes.

SECTION-BY-SECTION ANALYSIS FOR TITLE III

SUBTITLE A--FEDERAL PROSECUTIONS TARGETING VIOLENT GANGS

SEC. 3001. INCREASED PENALTIES UNDER THE RICO LAW FOR CERTAIN GANG AND VIOLENT CRIMES.

This section would boost the penalty for certain crimes typically committed by gangs and other violent crime groups by eliminating an anomaly in the penalty provisions of the federal Racketeering Influenced and Corrupt Organizations statute (18 U.S.C. 1963(a)). Specifically, the amendment would increase the maximum penalty from twenty years to the greater of twenty years or the maximum term applicable to a racketeering activity on which the defendant is violation is based. This principle already applies under the RICO statute where the predicate racketeering activity carries a maximum life sentence. The present twenty-year maximum applicable to all other predicate racketeering offenses is anomalous in light of the fact that several of the predicate offenses that constitute "racketeering activity" themselves carry more than twenty-year (but less than life) maximum prison terms, e. g., 18 U.S.C. 1344 (bank fraud) and 21 U.S.C. 841 (b) (1) (B) (large-scale drug trafficking).

SEC. 3002. PENALTY ENHANCEMENTS RELATING TO VIOLENT CRIMES UNDER 18 U.S.C. 1959.

This amendment would resolve an anomaly in 18 U.S.C. 1959, the law punishing violent crimes in aid of racketeering. The statute presently and anomalously reaches threats to commit any crime of violence (with the requisite intent) but only the actual commission of five enumerated such crimes, all of which are serious felonies, e.g., murder and assault with a dangerous weapon. The proposal would eliminate the anomaly by confining the threat offense to only those serious felonies whose commission is also punishable under section 1959. Coverage of threats to commit minor violent offenses is not warranted in this context.

This proposal also would increase penalties for certain violent crimes in aid of racketeering in recognition of the serious nature of such crimes and to bring the penalties in line with other penalties for similar crimes in title 18. First, the amendment would increase from a maximum of ten years' imprisonment to a maximum of life imprisonment a conspiracy or attempt to commit murder or kidnapping, in violation of 18 U.S.C. 1959. That statute punishes various violent offenses committed in aid of racketeering activity. The present ten-year maximum penalty for a conspiracy or attempt to commit murder or kidnapping in aid of racketeering is clearly inadequate. The maximum penalty for a conspiracy to commit a murder within the special maritime and territorial jurisdiction of the United States is life imprisonment, 18 U.S.C. 1117, as is the maximum penalty for a conspiracy to commit kidnapping, 18 U.S.C. 1201(c). Such acts when performed with the additional intent of furthering racketeering activity deserve no lesser punishment. Moreover, an attempt warrants an equivalent sanction as a conspiracy. Second, the amendment would increase from five years to ten years the maximum penalty for committing or threatening to commit a crime of violence under paragraph (4). Finally, the amendment would increase from three years to ten years the maximum penalty for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon or assault resulting in serious bodily injury under paragraph (6).

SEC. 3003. ELIMINATION OF UNJUSTIFIED SCIENTER ELEMENT FOR CARJACKING.

This section would eliminate an unjustified and unique scienter element created for the offense of carjacking by the enactment of section 60003 (a) (14) of the Violent Crime Control and Law Enforcement Act. The carjacking statute, 18 U.S.C. 2119, essentially proscribes robbery of a motor vehicle. It punishes the taking of a motor vehicle that has moved in interstate or foreign commerce "from the person or presence of another by force and violence or by intimidation." The basic penalty is up to fifteen years' imprisonment but rises if serious bodily injury or death results.

Prior to the enactment of VCCLEA, the offense applied only if the defendant possessed a firearm. Section 60003(a)(14) of that law appropriately deleted the firearm requirement, as had been proposed in the Senate-passed bill, but in conference a new scienter element was added that the defendant must have intended to cause death or serious bodily injury. This unique new element will inappropriately make carjackings difficult or impossible to prosecute in certain situations. Robbery offenses typically require only what the carjacking statute formerly required by way of scienter (i.e., that property be knowingly taken from the person or presence of another by force and violence or by intimidation). The Hobbs Act, 18 U.S.C. 1951, the quintessential federal robbery law which carries a higher maximum penalty than the carjacking statute, essentially defines "robbery" in this manner. The new requirement of an intent to cause death or serious bodily harm will likely be a fertile course of argument for defendants in cases in which no immediate threat of injury occurs, such as where a defendant enters an occupied vehicle while it is stopped at a traffic light and physically removes the driver. Even when a weapon is displayed, the defendant may argue that although it was designed to instill fear, he had no intent to harm the victim had the victim in fact declined to leave the car.

Carjacking is one of the most serious types of robbery precisely because, unlike other personal property, a car is a place where people are accustomed to feel safe and where they and their family spend hours of their lives. To give defendants who take cars from the person or presence of their occupants by force and violence or intimidation a new legal tool with which to resist their prosecution is unjustified. This new element should be eliminated as soon as possible from Section 2119. The proposed amendment would do so.

SEC. 3004. ELIMINATION OF THE STATUTE OF LIMITATIONS FOR MURDER AND CERTAIN CLASS A FELONIES.

Subsection (a) and (b) make important changes in federal law and will enhance the ability of federal prosecutors to bring serious offenders to justice. The first proposal relates to the prosecution of certain murders. Current law provides that no statute of limitations shall apply for the commission of a federal crime punishable by death. 18 U.S.C. 3281. This statute should be amended to further eliminate the statute of limitations for any federal offense involving murder, even if the crime does not carry the death penalty. The rationale behind this proposal is straightforward. Most States have no statute of limitations for murder. Moreover, the act of killing another person is so serious that no murderer should go unpunished simply because the government was unable to develop a case for many years.

By virtue of the 1994 Crime Act, most murders committed during the course of a federal offense are now punishable by the death penalty -- and thus already have no statute of limitations. The 1994 Crime Act only applies, however, to murders committed on or after September 13, 1994. The proposed legislation will help bridge this gap by eliminating the statute of limitations for murders committed at an earlier point whose limitation period has not run as of the date the legislation is enacted. Furthermore, the Crime Act did not provide for the death penalty for murders committed in violation of the RICO statute. 18 U.S.C. 1961 et seq. The proposed legislation would bridge another important gap by eliminating the statute of limitations for RICO offenses when murders are committed in furtherance of a racketeering enterprise.

Subsection (c) relates to the prosecution of certain violent crimes and drug trafficking crimes. Current law provides that the general federal five-year statute of limitations applies to non-capital crimes of violence and drug trafficking crimes. 18 U.S.C. 3282. This proposal extends to 10 years the statute of limitations for all crimes of violence and drug trafficking crimes (except for cases involving murder) currently classified as Class A felonies. Pursuant to 18 U.S.C. 3559, Class A felonies are the most serious federal crimes, which carry a maximum sentence of life imprisonment or death.

This proposal is necessary for several reasons. First, evidence of gang-related and other violent crimes, as well as drug trafficking crimes, often develop years after the crimes were committed because the organizations, gangs, and racketeering enterprises that typically perpetrate such crimes enforce strict codes of silence -- through violence and threats of violence -- on their members. Thus, some violent crimes and drug trafficking offenses are not solved until imprisoned defendants begin cooperating after spending years behind bars, during which the five-year statutes of limitations may have lapsed. Second, society's interest in repose and fairness to prospective defendants is greatly outweighed by society's interest in punishing those individuals who commit crimes that are so serious that Congress has imposed a maximum sentence of life imprisonment or death. Under current law, theft of major art work carries a 20-year statute of limitations (18 U.S.C. 3294), and most white-collar crimes involving financial institutions (e.g., theft of money by a bank teller) carry a 10-year statute of limitations (18 U.S.C. 3293). Given that Class A crimes of violence and drug trafficking crimes generally are at least as harmful to society as these offenses, there is no reason for these Class A felonies to carry such a relatively short statute of limitations.

SEC. 3005. FORFEITURE FOR CRIMES OF VIOLENCE, RACKETEERING, AND OBSTRUCTION OF JUSTICE.

This section extends the forfeiture statutes to cover all crimes of violence plus the racketeering crimes set forth in Chapter 95 (18 U.S.C. 1951-60), including extortion, murder-forhire, and violent crimes in aid of racketeering, and the obstruction of justice offenses set forth in Chapter 73 (18 U.S.C. 1501-17). Presently, there is no forfeiture authority for such offenses except when they are included in a RICO prosecution.

SUBTITLE B--PROTECTING WITNESSES TO HELP PROSECUTE GANGS AND OTHER VIOLENT CRIMINALS

SEC. 3010. INTERSTATE TRAVEL TO ENGAGE IN WITNESS INTIMIDATION OR OBSTRUCTION OF JUSTICE.

This section would amend the Travel Act (18 U.S.C. 1952) to add witness bribery, intimidation, obstruction of justice, and related conduct in State criminal proceedings to the list of predicates under the Travel Act (18 U.S.C. 1952). Recent studies demonstrate that witness intimidation is one of the most serious impediments to the prosecution of violent street gangs and drug trafficking organizations in State courts. This amendment responds to the growing witness intimidation problem by authorizing federal prosecution of persons who travel in interstate commerce with the intent to bribe or intimidate a witness, obstruct a criminal proceeding, or engage in related conduct. An identical proposal passed the House by a lopsided vote in 1998 (H.R. 2181).

SEC. 3011. EXPANDING PRETRIAL DETENTION ELIGIBILITY FOR SERIOUS GANG AND OTHER VIOLENT CRIMINALS.

This section would make amendments to the pretrial detention statutes designed to enhance the ability, in appropriate circumstances, to use these statutes in prosecutions against gang members and against other violent criminals. Under the Bail Reform Act, 18 U.S.C. 3141 et seq., defendants charged with certain offenses can be detained pretrial if the court concludes there is clear and convincing evidence that no condition or combination of conditions of release will adequately assure the safety of any other person and the community. See, 18 U.S.C. 3142 (e) and (f) . The kinds of charges that permit such detention on grounds of the defendant's dangerousness include certain serious drug trafficking offenses and a "crime of violence." They also include any felony if the defendant has previously been convicted of two or more crimes of violence or serious drug trafficking offenses.

Subsection (a) would add a definition of the term "convicted" to include adjudications of juvenile delinquency. Thus, it would permit pretrial detention, upon the requisite showing, of persons charged with any felony (e.g., interstate transportation of a stolen automobile) who had two or more prior violent or drug convictions, including juvenile delinquency adjudications for such conduct. This should facilitate the use of pretrial detention when appropriate against young career offenders such as gang members.

Subsection (b) deals with the fact that, under the Bail Reform Act, 18 U.S.C. 3141 et seq., defendants charged with certain offenses can be detained pretrial if the court concludes there is clear and convincing evidence that no condition or combination of conditions of release will adequately assure the safety of any other person and the community. See 18 U.S.C. 3142(e) and (f). The kinds of charges that permit such detention on grounds of the defendant's dangerousness include certain serious drug trafficking offenses and a "crime of violence". The term "crime of violence" is defined in 18 U.S.C. 3156(a)(4). That definition reaches offenses (A) that have as an element the use or attempted or threatened use of physical force, (B) any other felony offenses that, by their nature, involve a substantial risk that physical force may be used in the course of their commission, and (C) any felony under chapters 109A and 110 (which proscribe sex offenses and child pornography).

It is not clear whether the offenses of possession of explosives or firearms by convicted felons qualify as "crimes of violence" under the second or (B) branch of the definition. What little case law exists suggests that they do. See, so holding, United States v. Sloan, 820 F. Supp. 1133, 1136-41 (S.D. Ind. 1993); United States v. Aiken, 775 F.Supp. 855 (D. Md. 1991). See also, United States v. Dodge, 846 F. Supp. 181 (D. Conn. 1994). The Sloan court noted that, although the Supreme Court held in Stinson v. United States, 508 U.S. 36 (1993), that a similar definition of "crime of violence" in the sentencing guidelines did not encompass the felon-in-possession statutes, because the Sentencing Commission had promulgated a policy statement to that effect, the bail statutes serve a very different purpose from sentencing enhancements and should be more broadly construed to protect the public from continued endangerment by convicted felons charged with a new offense of weapon possession. (Prior to the Commission's policy statement, the courts were divided as to whether a violation of 18 U.S.C. 922(a) was a crime of violence for sentencing purposes). This proposed amendment would codify the result reached in Sloan. It would not mandate pretrial detention but would permit the government to show, in the case of a convicted felon charged with violating the proscriptions against possession of explosives or firearms, that no one or more conditions of release would be adequate to safeguard society.

Subsection (c) amendment would make membership or participation in a criminal street gang, racketeering enterprise, or other criminal organization a factor to be considered by courts in making bail determinations. Presently, many other personal history and characteristics of the individual charged are required to be considered in making bail decisions, such as prior convictions, drug abuse, and whether the alleged offense was committed while on parole, probation, or other form of release pending criminal trial. Clearly, gang or organized crime group membership is a relevant factor that bears both on dangerousness and risk of flight and that courts should take into account in making bail determinations. The amendment is not intended to impinge on rights of freedom of association but rather to reach membership or participation in those organizations that exist, at least in part, for the purpose of committing crimes or depriving third parties of their lawful rights. See Madsen v. Women's Health Center, Inc., 114 S.Ct. 2516, 2530 (1994).

SEC. 3012. CONSPIRACY PENALTY FOR OBSTRUCTION OF JUSTICE OFFENSES INVOLVING VICTIMS, WITNESSES, AND INFORMANTS.

Increasingly typical of many criminal gangs is violence directed at silencing or retaliating against witnesses or potential witnesses and informants. 18 U.S.C. 1512 and 1513 set forth offenses and penalties that, generally speaking, adequately deter and punish such offenses. However, a conspiracy to engage in witness intimidation or retaliation in violation of these statutes is punishable only under the catchall conspiracy statute, 18 U.S.C. 371, which carries a maximum prison term of only five years. This is clearly inadequate to vindicate an offense that involves, for example, a conspiracy to kill a witness or potential witness in a federal criminal proceeding. Such a conspiracy, if perpetrated within the special maritime and territorial jurisdiction, would be punishable by up to life imprisonment. 18 U.S.C. 1117. This is consistent with the principle, recognized in some federal statutes and prevalent in modern State criminal codes, that a conspiracy warrants the same maximum penalty as the offense which was its object. For example, 21 U.S.C. 846 (drug conspiracies), 18 U.S.C. 1956(h)(money laundering conspiracies), and 18 U.S.C. 844(n) (explosives conspiracies). The proposed amendment in this section would apply this principle to 18 U.S.C. 1512 and 1513 and thus provide better protection from gang violence to witnesses and informants.

SUBTITLE C--PROTECTING VICTIMS' RIGHTS

Subtitle C would expand the rights and protections afforded to the victims of crime, particularly crimes committed by juvenile offenders and crimes committed against children. It should be noted that Title V, Subtitle C also addresses the rights and protections of crime victims.

SEC. 3021. ACCESS OF VICTIMS AND PUBLIC TO RECORDS OF CRIMES COMMITTED BY JUVENILE DELIQUENTS.

This section would amend 18 U.S.C. 5038(a) (6) to correct an oversight in current law. The new statutory language clarifies that communication is allowable with the victim about "the status or disposition of' the [juvenile] proceeding or in order to effectuate any other provision of [state or federal] law." This language clears up any ambiguity in current law by explicitly extending to victims of juvenile offenders the right to information about the juvenile proceeding that they might need or be entitled to under any other state or federal law, such as the victims' rights set out in 42 U.S.C. 10606. Thus, under this new language, victims of juvenile offenders would be treated like victims of adult offenders. For example, victims would be able: to know about the status of the proceedings and the release status of the offender; to consult intelligently with the prosecutor; and to make a knowledgeable victim impact statement at the time of the disposition. In addition, if state law allows victim compensation or grants any other rights, this provision allows communication about the federal delinquency proceeding in order to effectuate those provisions.

Also, under the amendments in this section, fingerprints and photographs of adjudicated delinquents found to have committed the equivalent of an adult felony offense or a violation of 18 U.S.C. 922(x) and 924(a) (6) (possession of a handgun by a juvenile) would be sent to the Federal Bureau of Investigation (FBI) and made available in the manner applicable to adult defendants.

The limited availability of juvenile criminal records is a serious concern in connection with violent and firearms offenses. In order to address this problem, the Department of Justice amended its regulations in 1992 to expand the ability of the FBI to receive and retain records from state courts for "serious and/or significant adult and juvenile offenses." 28 C.F.R. 20.32. The proposed bill would further alleviate this problem by making corresponding changes in the statutory rules for reporting offenses by juveniles who are prosecuted federally.

Further reporting, retention, disclosure and availability of records or information relating to a juvenile or a delinquency proceeding would be authorized if it would be permitted under the law of the state in which the delinquency proceeding took place. Juvenile records could also be used for analysis by the Department of Justice if so requested by the Attorney General.

Finally, the new section 5038(c) would be amended to allow the disclosure of "necessary docketing data." This is necessary because the nationwide military justice system cannot process traffic tickets without disclosing some docketing information.

SUBTITLE D--FEDERAL PROSECUTION OF SERIOUS AND VIOLENT JUVENILE OFFENDERS

SEC. 3031. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN DISTRICT COURTS.

Under current law, the decision to charge a juvenile as an adult for specified crimes is made by the United States district court as a result of a motion by the United States to transfer the juvenile for criminal prosecution. The list of offenses for which such transfer is permitted is very limited, and if the court grants the government's motion the juvenile can immediately appeal thereby delaying the ultimate trial and thwarting efforts to try the juvenile along with adult confederates.

There is virtually universal agreement among federal prosecutors that the present system is cumbersome and has frequently inhibited them from seeking adult prosecution. Prosecutors who have sought the transfer of juveniles to adult status have experienced many difficulties in the application of an outmoded statute or have encountered judges personally opposed to the transfer of juveniles, even in cases involving very serious crimes. Moreover, there is a presumption under present law in favor of a juvenile adjudication, and a district court's decision to decline transfer to adult status may be reversed only upon a finding of abuse of discretion. United States v. Juvenile Male #1, 47 F.3d 68 (2d Cir. 1995). The result is a juvenile justice system which fails to provide an effective deterrent to juvenile crime and fails adequately to protect the public.

The proposed statute would amend 18 U.S.C. 5032 to strengthen and simplify the process for prosecuting the most dangerous juveniles as adults in federal court. The legislation would bring federal law into conformity with that of many states by giving prosecutors, rather than the courts, sole discretion to prosecute as adults older juveniles (above the age of 16 when the offense occurred) alleged to have committed the most serious felonies such as murder, carjacking, and rape.

All other determinations to prosecute a juvenile as an adult would, as under current law, be subject to court review and approval. The proposed statute would likewise retain the minimum age of 13 in existing law for prosecution of a juvenile as an adult; but it would expand the list of offenses prosecutable down to the minimum age to include additional serious violent, gun or drug felonies. A number of states have similar statutes.

The legislation would also create a distinction between juveniles 16 years of age and older and those who are younger. Prosecution of juveniles 13 to 15 years of age at the time of the offense would require approval of the Attorney General or his or her designee at a level not lower than Deputy

Assistant Attorney General. This internal Justice Department approval requirement (which would not be litigable) has been used in other types of particularly sensitive cases and would ensure that careful scrutiny and uniform standards are used in determining whether to bring criminal charges against younger juveniles. Prosecutors would retain the discretion to proceed against anyone under age 18 as a juvenile delinquent. In those cases, the current requirements for prosecutorial certification would apply, thus assuring that most such cases are handled at the state or local level.

Under the amended statute, a juvenile could be prosecuted as an adult, with the approval of the court, for the following offenses:

(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony;

(B) an offense described in section 844 (d), (k), or (1), or paragraph (a) (6) or subsection (b), (g), (h), (j), (k), or (1), of section 924;

(C) a violation of section 922(o) that is an offense under section 924(a)(2);

(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);

(E) a conspiracy to violate an offense described in air of subparagraphs (A) through (D); and

(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).

To ensure the prosecution in one trial of all offenses charged, a juvenile tried as an adult for one of the designated offenses could also be prosecuted as an adult for any other offenses properly joined under the Federal Rules of Criminal Procedure. With these amendments, juveniles convicted as adults could receive sentences commensurate with their crimes and criminal histories.

The existing statute excludes younger juveniles in Indian country charged with certain crimes from prosecution unless the tribal government opts to have the provision apply. The proposal would continue this provision.

Except for the handful of most serious offenses committed by older juveniles, the bill provides that, if the government wishes to prosecute a juvenile as an adult it must (as under present law) file a motion with the appropriate district court seeking transfer of the juvenile to adult prosecution status. The criteria by which the court must decide the motion, set forth in the proposed statute, are identical to those in current law, except that the "mental condition" of the juvenile is also made a factor under the bill. In addition, in an effort to overcome the problems sometimes caused under present law by courts taking an inordinate amount of time to decide transfer motions, the bill provides that the court must hear and determine the motion on an "expedited basis." The procedure for appellate review of the court's ruling would be similar to that presently used after a motion to suppress evidence. If the trial court determined that the juvenile should be tried as a juvenile delinquent, the government would have the right to seek an expedited appeal. In the event the court determined that the juvenile should be tried as an adult, then the case would proceed to trial as an adult prosecution and the juvenile could appeal in the event of a guilty verdict. This too is designed to expedite the transfer motion process.

Juveniles under the age of 16 charged as adults, but who have not previously been adjudicated delinquent of a serious violent felony, and who are charged with certain limited offenses would be sentenced under the sentencing guidelines but would not be subject to mandatory minimums.

Proposed section 5032 (a) (4) would provide that federal juvenile proceedings are normally open to the public but may be closed in the interests of justice or for good cause shown. It also includes a provision allowing victims, their relatives and guardians to be included when the public is otherwise excluded, unless the same two tests applied for exclusion of the public also independently require exclusion.

SEC. 3032. CUSTODY PRIOR TO APPEARANCE BEFORE JUDICIAL OFFICER.

This section make minor changes to clarify that the procedures applicable to the arrest of a juvenile prior to the formal filing of charges apply whether or not it is anticipated that the juvenile will be charged as a juvenile or as an adult.

SEC. 3033. TECHNICAL AND CONFORMING AMENDMENTS TO SECTION 5034.

This section amends 18 U.S.C. 5034 to clarify that it applies to juvenile proceedings only.

SEC. 3034. SPEEDY TRIAL.

This section would provide that for a juvenile in custody juvenile delinquency proceedings must begin within 45 days, rather than the current 30 days. Exclusions in the Speedy Trial Act (18 U.S.C. 3161(h)) would also be made applicable for the first time in juvenile delinquency proceedings. This additional time is necessary, particularly in cases involving both adult and juvenile defendants such as in the prosecution of gangs, to protect witnesses and critical evidence by ensuring that the trial of a juvenile does not proceed before the case against the adults. The time within which a disposition hearing must be held after an adjudication of delinquency would also be increased from 20 to 40 days. Within the 40 days, the probation office would prepare a predisposition report which would include victim impact information. Forty days is consistent with federal court practice generally and will provide the time necessary to prepare a comprehensive report.

SEC. 3035. DISPOSITION; AVAILABILITY OF INCREASED DETENTION, FINES AND SUPERVISED RELEASE FOR JUVENILE OFFENDERS.

This section would amend section 18 U.S.C. 5037 to make fines and supervised release -- not presently sentencing options -- available for adjudicated delinquents in addition to probation and detention. The maximum period of official confinement for an adjudicated delinquent would be increased to ten years or through age 25 to give judges increased sentencing flexibility for juveniles who are adjudicated delinquent. The maximum period for probation would be increased to the same period applicable to an adult. To strengthen the accountability of juveniles to victims, mandatory restitution would also apply to adjudicated delinquents.

SEC. 3036. TECHNICAL AMENDMENTS.

This section makes technical and conforming amendments to 18 U.S.C. 5031 and 5034.

SUBTITLE E--INCARCERATION OF JUVENILES IN THE FEDERAL SYSTEM

Sections 3041 and 3042 relate to the detention and commitment of juvenile offenders and would provide greater protection than current law. Specifically, section 3041 would amend 18 U.S.C. 5035, to provide that juvenile offenders even if being prosecuted as adults may only be detained prior to disposition in a juvenile or other suitable facility where they would not have regular contact with adults convicted of a crime or awaiting trial on criminal charges. Present law only mandates such housing restrictions for juveniles alleged to be delinquent.

Section 3042's amendments to 18 U.S.C. 5039 would permit juveniles 18 years of age or older and adjudicated delinquent to be placed with adults in community-based facilities in order to provide transition services as they move from incarceration to the community and to allow such older adjudicated delinquents to be housed in their home communities. These changes would also help protect younger juveniles 13 or 14 years old, from 19 or 20 year-olds who, although adjudicated delinquent, may be as dangerous as adults.

SUBTITLE G - CONTINUATION OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Sections 3061 and 3062 continues the existence of the "Office of Juvenile Justice and Delinquency Prevention" and its operations under the terms of the Juvenile Justice and Delinquency Prevention Act of 1999. The redesigned Office of Juvenile Justice and Delinquency Prevention responds to the changing nature of juvenile and youth crime and delinquency and represents a more focused, efficient, and effective office. Fundamental protections safeguarding juveniles and youth within the juvenile justice system are maintained, while operations under the terms of the Juvenile Justice and Delinquency Prevention Act of 1999 are streamlined to better coordinate and integrate juvenile and youth crime initiatives with other Department of Justice activities, particularly activities within the Office of Justice Programs, the National Institute of Justice, and the Bureau of Justice Statistics, as well as with states, units of local government, Indian tribal governments, and local communities.

SEC. 3061. CONTINUATION OF THE OFFICE.

Section 3061 continues the existence of the "Office of Juvenile Justice and Delinquency Prevention" by the terms of the Juvenile Justice and Delinquency Prevention Act of 1999, under the general authority and the "supervision and direction" of the Assistant Attorney General for the Office of Justice Programs, United States Department of Justice. The words "supervision and direction" are used to describe the line of authority and reporting relationship between the Administrator of the Office of Juvenile Justice and Delinquency Prevention and the Assistant Attorney General for the Office of Justice Programs in the same way the words "supervision and direction" are used to describe the line of authority and reporting relationship between the Secretary of the Department of Health and Human Services and the Assistant Secretary of Health as cited at 42 United States Code, section 202.

This section continues the Department of Justice's efforts in maintaining coordination and cooperation among those federal agencies whose jurisdictions involve the health, welfare, education or general well-being of youths and/or juveniles.

This section provides the Administrator with the authority to transfer funds to any Federal agency to develop or demonstrate new methods and to supplement effective or needed programs.

There are numerous transitional elements that provide for the continuity between the Office of Juvenile Justice and Delinquency Prevention which operated under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and the Office of Juvenile Justice and Delinquency Prevention redesigned under the terms of the Juvenile Justice and Delinquency Prevention Act of 1999.

SEC. 3062. AUTHORIZATION OF APPROPRIATIONS.

Section 3062 provides for the authorization of appropriations to carry out the functions of the redesigned Office of Juvenile Justice and Delinquency Prevention.

SUBTITLE H - JUVENILE CRIME AND DELINQUENCY ASSISTANCE

Subtitle H of Title V maintains and establishes numerous federal grant programs and initiatives: the "Juvenile Justice and Delinquency Prevention Formula Grant Program," the "Indian Tribal Grant Program," the "Incentive Grant Program," the "Developing, Testing, and Demonstrating Promising Programs" program, the "At-Risk Children Grants Program," and two initiatives that provide additional funding for research, statistics, evaluation, and training, and technical assistance.

SEC. 3071. FORMULA GRANT ASSISTANCE.

Section 3071 amends the Omnibus Crime Control and Safe Streets Act of 1968 by maintaining but revising the formula grant program. This federal grant program has fewer state planning requirements, specifically allocates ten percent of all appropriated grant funds to be set aside and used for research activities (including program evaluations, data collection efforts, and studies to identify initiatives that reduce juvenile and youth crime and violence), and specifically allocates two percent of all appropriated grant funds to be set aside and used for providing training and technical assistance to states and local communities for the implementation of initiatives and programs that have demonstrated a high likelihood of success.

Under a new formulation, all states receive 50 percent of their allocation. To receive the remaining funds a state must continue to follow established practices and procedures for protecting juveniles within the juvenile justice system. These provisions are reflected in the Department of Justice's regulations at 28 CFR Part 31, which govern this section. Should a state fail to meet the requirements of this section, the unallocated funds may be redistributed within the state.

SEC. 3072. INDIAN TRIBAL GRANTS.

Section 3072 establishes for the first time a direct federal grant program whereby funding goes directly from the Office of Juvenile Justice and Delinquency Prevention to Indian tribal governments without utilizing state pass-through procedures. Grant funds under this section shall be used for initiatives designed to reduce, control, and prevent juvenile and youth crime on Indian lands. This method of direct funding is expected to better address and respond to the needs and concerns of Indian tribes as well as increase funding for these tribes. Also included is language amending the Violent Crime Control and Law Enforcement Act of 1994 to substantially increase funding targeted for correctional facilities on Indian tribal lands.

SEC. 3073. AT-RISK CHILDREN GRANT PROGRAMS.

The "At-Risk Children Grant Program" is a new federal grant program administered by the Office of Juvenile Justice and Delinquency Prevention that provides federal assistance to states for their distribution to local units of government and locally-based organizations to combat truancy, school violence, and juvenile crime and delinquency by providing funding for local crime and delinquency prevention and intervention strategies. Programs and initiatives funded with these grants are designed to address youth within the juvenile justice system who, with some focused supervision, direction, and discipline, can go forward to lead crime-free, productive lives. This program is an expansion of what is currently known as Title V of the Juvenile Justice and Delinquency Prevention Act of 1974.

Grants awarded pursuant to this part may be used for: supporting locally based efforts for assisting high-risk juveniles and juveniles within the juvenile justice system; preventing and reducing truancy and school drop-outs; enforcing juvenile curfews; supporting school safety programs, juvenile mentoring, violence reduction programs, intensive supervision services, jobs and life skills training, family strengthening interventions, early childhood services, after-school programs for juveniles, tutoring programs, recreation and parks programs, parent training initiatives, health services, alcohol and substance abuse services, restitution and community services activities, leadership development, accountability and responsibility education, and other such efforts designed to prevent or reduce truancy, school violence, and juvenile crime and delinquency.

Local units of government that participate under this part must utilize a local planning board to develop a three-year plan.

SEC. 3074. DEVELOPING, TESTING, AND DEMONSTRATING PROMISING PROGRAMS.

Section 3074 establishes new federal discretionary grant programs for states, units of local government, and Indian tribal governments that are administered by the Office of Juvenile Justice and Delinquency Prevention to develop, test, and demonstrate initiatives and programs that have a high probability of preventing, controlling, and/or reducing juvenile crime. These grants were developed to motivate states, units of local government, and Indian tribal governments to independently generate innovative initiatives to combat juvenile crime and youth violence.

This section replaces the current multiple discretionary categorical grant programs currently established by the Juvenile Justice and Delinquency Prevention Act of 1974, by consolidating several categorical grant programs into a single, flexible, and broad program.

SEC. 3075. INCENTIVE GRANT PROGRAM.

This section establishes new federal formula grant programs for states, units of local government, and Indian tribal governments to develop and advance initiatives to prevent, control, reduce, evaluate, adjudicate, or sanction juvenile or youthful crime.

The state agency that receives a formula grant is eligible to apply for a grant under this part. Every applicant must submit assurances to the Administrator of the Office of Juvenile Justice and Delinquency Prevention that they have or will have within one year of submittal of an application:

(1) implemented a system of accountability-based graduated sanctions; and/or

(2) implemented a system of information collaboration and dissemination regarding acts of juvenile delinquency and adjudication of the same.

Grants authorized under this section may be used to:

* achieve paragraphs (1) and/or (2) above;
* advance initiatives that prevent or intervene in the unlawful possession, distribution, or sale of a firearm by or to a juvenile;
* implement initiatives that facilitate the collection, dissemination, and use of information regarding juvenile crime;
* implement new initiatives that assist state and local jurisdictions in tracking, intervening with, and controlling serious, violent, and chronic juvenile offenders;
* implement comprehensive program services in juvenile detention and correction facilities;
* implement procedures designed to prevent and reduce juvenile disproportionate minority confinement; or
* for any other purposes related to juvenile crime reduction, control, and prevention as determined by the Administrator of the Office.

SEC. 3076. TRAINING AND TECHNICAL ASSISTANCE.

This section provides for specific federal grant funding for much-needed technical and training assistance for individuals in the fields of juvenile justice and juvenile and youth crime and delinquency. Funding under this section will enable more communities to implement effective programs and initiatives that reduce, control, and prevent juvenile and youth crime delinquency. Though this is a new federal grant program, training and technical assistance have been established functions of the Office of Juvenile Justice and Delinquency Prevention. In further recognition of the importance of high quality and focused research, statistical analysis, evaluation, training, and technical assistance, Title V includes specific provisions within each funded program setting aside a percentage of grant funds appropriated for the above-mentioned functions. These monies are in addition to funding appropriated for these functions in sections 409 and 410 of Title V. Specifically, sections 403, 404, 405, 406, 407, and 408 of Title V of this Act provide that 2 percent of all funds appropriated for each funded program shall be set aside for training and technical assistance consistent with Title V. Similarly, sections 403, 404, 405, 406, 407, and 408 provide that 10 percent of all funds appropriated for each funded program shall be set aside for research, statistics and evaluation activities consistent with Title V.

SUBTITLE I - MISSING AND EXPLOITED CHILDREN

Section 3081 authorizes appropriations for the Missing and Exploited Children program of such sums as are necessary for fiscal years 2000 through 2005, and also directs annual set-asides of 10 percent of funds appropriated for research, statistics, and evaluation, and 2 percent for training. Section 3082 makes minor, technical corrections to the legislation.

SUBTITLE J - CERTAIN PUNISHMENT AND GRADUATED SANCTIONS

SEC. 3091. CERTAIN PUNISHMENT AND GRADUATED SANCTIONS FOR YOUTH OFFENDERS.

This section creates a new discretionary grant program for state, local and tribal governments to develop and implement innovative punishment alternatives to incarceration and probation for young offenders. Its purpose clause, subsection (a), states the intent to help ensure strengthened accountability and responsibility, and reduced recidivism among young offenders.

Subsection (b) gives the Attorney General authority to make such grants in order to:

(1) provide juvenile courts with a range of sentencing options for first time juvenile offenders such as vandals, as well as status offenders (truants, curfew violators, etc.), so they will face at least some level of consequences when they first come in contact with the juvenile court system; and

(2) increase sentencing alternatives available to juvenile court judges so that these offenders receive increasingly significant consequences as the seriousness of their unlawful conduct increases, as well as for each additional offense.

Subsection (c) requires grant funds to be used for some or all of the following seven purposes:

(1) Police accountability, or victim mediation conferences, in which law enforcement officers bring offenders and their families together with victims to agree upon appropriate reparations, including restitution and community service;

(2) Correctional options, such as community-based programs, weekend incarceration, and electronic monitoring of offenders;

(3) Additional offender supervision by probation officers, the courts, prosecutors, public defenders, and correctional agencies;

(4) Methods that address the problems of young offenders adjudicated delinquent of serious violent and gang-related offenses;

(5) Teen courts, or peer juries, to promote community-based programs that work with young offenders referred by law enforcement that ensure accountability for misdemeanor offenses, such as truancy, alcohol and tobacco-related offenses, and graffiti offenses;

(6) Juvenile gun courts to reduce the strain on juvenile courts and produce swift, certain, and appropriate punishment; and

(7) All forms of restitution programs for young offenders.

Subsection (d) authorizes $40 million for fiscal year 2000 and such sums as are necessary for fiscal years 2001 through 2004.

SECTION-BY-SECTION ANALYSIS OF TITLE IV

SUBTITLE A--INVESTIGATING AND PUNISHING VIOLENT CRIMES AGAINST U.S. NATIONALS ABROAD

SEC. 4001. EXTORTION AGAINST U.S. NATIONALS ABROAD IN FURTHERANCE OF ORGANIZED CRIME.

This section provides additional discretionary authority for investigations and prosecutions of organized crime groups who perpetrate criminal acts against U.S. nationals abroad. With the expanded role of federal law enforcement, specifically the Federal Bureau of Investigations, in the investigation of international organized criminal groups, additional legislation is needed to counteract crimes occurring abroad. Statutes now in effect are narrow and generally address these kinds of issues only when they are related to international terrorism matters. This provision broadens the scope of other current statutes so that they can be of assistance in targeting violent criminal acts committed against U.S. nationals by members of organized criminal groups. The same safeguards are required that have been established in statutes relating to international terrorism, i.e., such a prosecution cannot be brought without the approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General. In proposed subsection (g), the statute places a monetary limitation in extortion cases, and defines an organized criminal group by reference to the RICO statute. These limitations have been included to preclude any expectation that the United States will devote resources to investigate and prosecute cases which are of primarily local (versus international) impact or those which the foreign nation is adequately addressing.

SEC. 4002. MURDER AND SERIOUS ASSAULT OF A STATE OR LOCAL OFFICIAL ABROAD.

This section provides additional discretionary authority to investigate and prosecute murders and serious assaults of state and local officials that occur abroad when the state and local officials are involved in a federally-sponsored training or assistance program. As the United States expands its efforts to fight international crime and bring peace and stability to nations the world over, the role of state and local officials -- law enforcement, judges, and others -- in federally-sponsored training and other forms of assistance programs is also increasing. The scope of these programs is broad, and includes programs designed to bolster law enforcement, promote trade and tourism, and improve education. As with United States military personnel, these officials may become targets of violent acts committed abroad. Insofar as these officials are often involved in training designed to assist a host country in improving its criminal justice system or other public-sector infrastructures, the host country may lack the resources and skills to effectively investigate and prosecute such crimes. Because these officials are acting under the auspices of the federal government, the United States has a strong interest in prosecuting those criminals who attack and kill them. As with other provisions of law that allow extraterritorial jurisdiction over crimes, this provision requires that the Attorney General approve any prosecutions under this section.

SUBTITLE B--STRENGTHENING THE BORDERS OF THE UNITED STATES

CHAPTER 1--VIOLENCE COMMITTED ALONG U.S. BORDER

SEC. 4011. FELONY PUNISHMENT FOR VIOLENCE COMMITTED ALONG THE U.S. BORDER.

This section will establish a specific criminal penalty of up to ten years for "portrunning," that is, intentionally evading border inspections by driving through ports of entry without stopping, causing injury to or putting at risk of injury federal officers and civilians alike. The section provides strict sanctions where the "portrunning" involves a crime of violence against customs officers, immigration officers, or other persons charged with enforcing laws along U.S. borders, or is accompanied by an attempt to smuggle contraband or controlled substances. It also would enhance the criminal penalty under 18 United States Code 111 for persons who knowingly disregard or disobey the lawful authority of a federal officer charged with enforcing laws along the border and thereby recklessly endanger the safety of any person or property.

Drug, alien, and other smuggling activity has always been associated with a potential for violence along the southwest border. Increasingly, smugglers have taken to violent and dangerous means to evade apprehension at our borders, endangering law enforcement officers and innocent members of the public. Such activity includes over a thousand recent incidents of "portrunning." Currently, there is no specific federal jurisdiction over crimes of violence committed in the course of evading our border controls, and state law has to be used, where applicable, to prosecute violators that injure civilians. This section will correct that problem by creating specific sanctions, such that the federal government will be able to prosecute "portrunners," as well as those committing crimes of violence at our borders, more easily and effectively under federal law.

CHAPTER 2--STRENGTHENING MARITIME LAW ENFORCEMENT ALONG U.S. BORDERS

The Coast Guard is authorized to enforce, or assist in the enforcement of, all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States (14 USC 2). Coast Guard commissioned, warrant, and petty officers are also deemed to be customs officers (14 USC 143; 19 USC 1401). The Coast Guard may board and examine any vessel subject to the jurisdiction of the United States (14 USC 89). To carry out this broad grant of authority, statutory sanctions are needed against the master, operator, or person in charge of a vessel who fails to obey the order of a federal law enforcement officer to heave to, or who otherwise obstructs the exercise of law enforcement authority.

Under existing law, a civil penalty can be imposed for failure to heave to a vessel upon the command of a customs officer (19 USC 1581(d)). However, the penalty only applies to violations involving vessels at those places where a customs officer is authorized to stop and board. In addition, a criminal and civil penalty can be imposed for failure to stop a vessel when hailed by a customs officer or other government authority within 250 miles of the territorial sea of the United States (19 USC 1590(g)(8)). However, these penalties may be imposed only on vessels caught with prohibited or restricted merchandise. As a last resort, to compel vessels to heave to, the Coast Guard is authorized, after firing warning shots, to fire into and disable a vessel which has failed to stop (14 USC 637).

Appropriate sanctions are required to facilitate and enhance the Coast Guard's interdiction of vessels smuggling contraband. The Coast Guard requires an intermediate measure -- short of firing into a vessel -- to compel a vessel to comply with a lawful order to heave to. Without such sanctions drug smugglers can delay or sometimes prevent the legitimate exercise of Coast Guard law enforcement boarding authority.

Such sanctions are necessary to address the following scenario. The operator of a vessel fails to heave his vessel to in order to delay a Coast Guard boarding. After a lengthy pursuit, the vessel is finally boarded and no contraband is found. Or the operator of a vessel avoids being boarded by failing to heave his vessel to and fleeing; he eventually enters the territorial waters of a safe haven country. In either case, the vessel may have initially been carrying contraband -- which has been jettisoned -- or may have been acting as a decoy to divert Coast Guard assets away from other vessels carrying contraband. The use of such tactics by drug smugglers not only thwarts Coast Guard drug law enforcement efforts, but diverts Coast Guard assets from their other missions.

Sanctions are also required to deter non-forcible acts of obstruction during a Coast Guard boarding. While forcibly obstructing a federal law enforcement officer is a crime (18 USC 111, 113), no statute provides penalties, criminal or civil, for non-forcible acts of obstruction during a Coast Guard boarding. Such penalties are needed as a deterrent to prevent confrontational situations from escalating from non-physical obstructions of boardings to physical assaults on Coast Guard boarding officers.

Sanctions are also required as a means to compel persons on board vessels to provide truthful information regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. False information concerning a vessel's nationality or registration can delay the determination as to whether the United States has jurisdiction over a vessel, or hinder attempts to obtain consent from a foreign country for the United States to exercise jurisdiction. This offers drug smugglers the opportunity to jettison contraband and destroy evidence. Truthful information concerning the vessel's destination, origin, ownership, cargo, or crew facilitates the ability of the boarding team to determine whether the vessel may be engaged in drug smuggling. This information is also important for the successful prosecution of drug smuggling cases.

Sections 4021 - 4023 of this title address these gaps in current United States drug interdiction law by increasing the authority of federal law enforcement officers over the movement of vessels. Criminal penalties are provided by section 4021 for failure to obey the order of a federal law enforcement officer to heave to a vessel. These same sanctions are imposed against persons on board vessels who fail to comply with an order in connection with the boarding of a vessel, impede or obstruct a boarding, or provide certain false information during a boarding. These provisions are bolstered by section 4022, which provides civil penalties for failure to support maritime law enforcement, and by section 4023, which clarifies the authority of Customs officers in foreign countries.

SEC. 4021. SANCTIONS FOR FAILURE TO HEAVE TO, OBSTRUCTING A LAWFUL BOARDING, AND PROVIDING FALSE INFORMATION.

This section makes several changes to enhance enforcement of federal law involving vessels. Proposed subsection (a)(1) provides that it shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to fail to obey an order to heave to that vessel on being ordered to do so by an authorized federal law enforcement officer. Paragraph (2) would provide that it shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to: (A) fail to comply with an order of an authorized federal law enforcement officer in connection with the boarding of the vessel; (B) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any federal law; or (C) provide false information to a federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. Nothing in this section is a limitation on 18 United States Code 1001, which makes it a crime to give a false statement to a government agent.

Proposed subsection (b) provides that this section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any federal law enforcement officer under any law of the United States to order a vessel to heave to. This section is necessary to establish that this statute in no way limits the potential actions of federal law enforcement officers that exist under other statutes.

Proposed subsection (c) specifies that a foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section in an international agreement, or, on a case-by-case basis, by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

Proposed subsection (d) defines the terms used in this section, including "vessel of the United States;" "vessel subject to the jurisdiction of the United States;" to "heave to;" and "Federal law enforcement officer."

Proposed subsection (e) sets forth penalties for violation of this section. Any person who intentionally violates the provisions of this section shall be subject to: (1) imprisonment for not more than five years; and (2) a fine as provided in this title.

Proposed subsection (f) authorizes the seizure and forfeiture of a vessel that is used in violation of this section. Existing customs laws and duties shall apply to such seizures and forfeitures. This subsection further provides that any vessel that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section. This provision gives added force to the prohibitions contained in the section, and provides additional incentives to would-be portrunners to comply with the law.

SEC. 4022. CIVIL PENALTIES TO SUPPORT MARITIME LAW ENFORCEMENT.

This section amends chapter 17 of title 14, United States Code, by adding a new section 675. Proposed subsection (a) authorizes the Secretary of Transportation to impose a civil penalty of not more than $15,000 upon the master, operator or person in charge of a vessel, who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel issued under the authority of section 2237 of title 18, United States Code. The Secretary is authorized to impose a civil penalty of not more than $25,000 for intentional violations. This order is to be communicated according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood. Proposed subsection (b) provides that any vessel used in violation of this subtitle is also liable in rem.

SEC. 4023. CUSTOMS ORDERS.

Section 4023 adds a new subsection (i) to section 581 of the Tariff Act of 1930 (19 United States Code 1581) that defines "authorized place" as that term is used in section 581. Authorized place is defined as the following: with respect to a vessel or vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches. This amendment clarifies the law enforcement authority of customs officers in foreign countries.

CHAPTER 3--SMUGGLING OF CONTRABAND AND OTHER ILLEGAL PRODUCTS

SEC. 4031. SMUGGLING CONTRABAND AND OTHER GOODS FROM THE UNITED STATES.

Under existing law, there is no general criminal statute covering illegal exports. Congress long ago created such a statute for importation activity conducted contrary to law, 18 United States Code § 545, and this amendment is intended to create a parallel provision for exportation activity conducted contrary to law.

The amendment is needed because, although there are currently many provisions of federal law that prohibit or restrict the exportation of certain items, specific criminal sanctions do not exist for all of the export restrictions. Examples of export prohibitions that already exist but lack a criminal sanction include 7 United States Code § 136, et seq., which deal with insecticides and pesticides, 15 United States Code § 45, which covers unfair deceptive practices including unlawful textile exports, and 42 United States Code § 7522, which deals with air pollution and motor vehicle emissions.

This amendment is primarily intended to cover those export prohibitions that lack criminal sanctions. The amendment is not intended to affect in any fashion the ability of the United States to bring prosecutions under other provisions of law, where applicable, that also cover illegal exports.

The provision also amends the money laundering statute, 18 United States Code § 1956, to make a violation of this new provision a predicate under the money laundering statute. The intent of this change is to make this provision as powerful a tool as possible to combat illegal export smuggling. The definitional sections proposed are patterned after similar provisions in 18 United States Code § 545.

Subsection (d) provides for civil forfeiture of the goods involved in a violation of this provision. Subsection (d) would provide clear authority for civil forfeiture of merchandise exported contrary to federal law, and of property used to facilitate the receipt, purchase, transportation, concealment or sale of such merchandise prior to exportation. Subsection (d) would amend one of the principal customs forfeiture statutes, 19 U.S.C. 1595a, which already provides for, among other things, the civil forfeiture of merchandise introduced in the United States contrary to law. This subsection is necessary because, although Congress has already provided some authority under current law for the forfeiture of commercial goods (in 22 United States Code § 401), that statute is designed primarily to provide for the forfeiture of exported illegal war materials.

SEC. 4032. CONTROLLING ILLICIT LIQUOR TRAFFICKING.

In recent years, there has been a dramatic increase in illegal commerce in liquor. The majority of this illegal commerce is between the United States and Canada because the excise taxes in Canada are significantly higher than those in the United States. The Canadian government has formally requested the assistance of United States law enforcement agencies in this matter.

Intelligence gathered indicates that international organized crime is heavily involved in the illegal diversions to Canada. It is estimated that States have lost millions of dollars due to liquor diversion, while Canadian authorities estimate that Canada is losing more than one billion dollars a year in tax revenues from illegal diversion. Moreover, the monies obtained by diversion finance other illegal activities such as money laundering, alien smuggling, narcotics trafficking, and illegal firearms trafficking. It follows that the proceeds of diversion avoid federal and State income taxes as well. Although these diversion-related transactions involve violations of federal, State, and foreign laws, there is currently no comprehensive federal felony which could be applied to the various diversion schemes. Therefore, a statute is needed that provides a uniform and systematic approach to the problem of liquor diversion by providing both an adequate deterrent to this conduct, as well as an enforcement tool that will aid prosecutors.

Section 4032 will combat the problem of illicit liquor on three fronts. First, the act will broaden the jurisdiction of the U.S. Customs Service under 18 United States Code § 546 by prohibiting the smuggling of merchandise into foreign countries by means of vehicles or aircraft, in addition to the existing prohibition against smuggling via vessel. Second, it will make a violation of § 546 a predicate under the money laundering statute. Third, on a more minor note, it would remove an archaic requirement that the government must prove the foreign country has laws proscribing violations of U.S. customs revenues, an element of proof that involves courts and prosecutors in difficult and unnecessary litigation. Fourth, the bill will add a new section to title 18 of the United States Code. This provision would allow the United States to stop the illegal liquor trafficking as soon as the distilled spirits are shipped in violation of state law. It also allows the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) to attack the diversion schemes in their incipiency, if the illegal commerce involves a distillery or wholesaler of distilled spirits who is licensed and subject to record keeping requirements and inspection by ATF officers. The proposed legislation would thus allow ATF to cut off the flow of illicit liquor at the source.

Specifically, section 4032 would:

(1) Create federal felonies which would uniformly apply with respect to diversions of liquor from the United States to Canada. There is no current federal felony statute that ATF and the Department of Justice can utilize to uniformly prevent the diversion of liquor from the United States to Canada before such liquor enters Canada. The proposed legislation sets a minimum threshold of 360 liters (30 cases) of liquor, which is presumed to be more than is intended for personal use. The

transportation, shipment, or introduction of 360 or more liters into a State in violation of its laws therefore triggers a federal felony which would provide significant penalties for violations which occur in the United States; and

(2) Provide for the seizure and forfeiture of any conveyance, liquor, or monetary instrument involved in a violation of 18 United States Code § 1266, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 United States Code § 1266.

The proposed legislation is in harmony with the Twenty-First Amendment, which bars the transportation of distilled spirits from one State into another "for delivery or use therein" in violation of the laws of the recipient State, and with the Commerce Clause of Article I, which empowers Congress to "regulate Commerce with foreign Nations, and among the several States." In the Webb-Kenyon Act, which is a statutory reiteration of the Twenty-First Amendment, Congress clearly directed that the federal government assist states in the exercise of their police powers regulating the traffic or control of alcoholic beverages within their borders. Further, in the Federal Alcohol Administration Act, 27 United States Code § 203, Congress directed close federal regulation of the interstate and foreign commerce in liquor, protection of the revenue, and limitation of such commerce to qualified and licensed individuals. Finally, Congress has, through the enactment of the Interstate Transportation in Aid of Racketeering statute, 18 United States Code § 1952, and the Contraband Cigarette Trafficking Act, 18 United States Code § 2342, demonstrated its desire that the federal government maintain a strong federal enforcement presence with respect to illegal interstate trafficking in commodities such as liquor and tobacco.

This section would be especially helpful in maintaining a strong federal enforcement presence in the area of liquor diversion because states and foreign governments do not always have the resources, expertise, or jurisdiction to attack this problem when it transcends state and international boundaries.

SEC. 4033. CUSTOMS DUTIES.

The proposal amends 18 United States Code 542 to establish a five year sentence for violation of 18 United States Code 542 (entry of goods by means of false statements), thereby curing a problem that has arisen with respect to the embezzlement of customs duties by customs brokers. Section 545 of Title 18 (smuggling) provides for a five year sentence, while Section 542 of Title 18, which is Section 545's sister statute, currently only provides a two year sentence. Moreover, Section 542 has been interpreted to require that the government establish that a customs broker had the specific intent to deprive the government of duties in order to obtain a conviction for embezzling importers' funds that are earmarked for payment of customs duties. See United States v. Yip, 930 F.2d 142 (2nd Cir. 1991). Prior to this case, it was the government's position that it need only show that the broker's actions were willful. Restoration of that interpretation will remove a significant impediment to the successful prosecution of importers' agents who abscond with clients' funds. The legislation will render Section 542 consistent with Section 545 and will cure the defect associated with the Yip case by requiring that the government show only that the defendant's actions were willful and that they resulted in a deprivation of lawful duties.

SEC. 4034. FALSE CERTIFICATIONS RELATING TO EXPORTS.

This section creates a criminal statute that proscribes a false certification that exported goods qualify for preferential treatment under international agreements to which the United States is a signatory. Currently, there is no such general proscription. Under the North American Free Trade Agreement (NAFTA), the United States pledged to provide, at a minimum, the same legal consequences for exporters or producers who falsely certify goods as originating goods under the NAFTA, as would apply to importers who make false statements to Customs upon the importation of merchandise. See Article 504. This legislation will fill a gap that was inadvertently created when the NAFTA implementing legislation created a civil penalty for such an activity but failed to create a corresponding criminal penalty. The proposal will also proscribe similar activities that violate future trade agreements.

SUBTITLE C--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

CHAPTER 1--STRENGTHENING EXTRADITION TO ENSURE INTERNATIONAL CRIMINALS ARE BROUGHT TO JUSTICE

SEC. 4041. EXTRADITION FOR OFFENSES NOT COVERED BY A LIST TREATY.

The United States currently has extradition treaty relations with approximately 110 countries. Well over half of these treaty relationships were developed more than 20 years ago, when common international extradition practice was to negotiate "lists" or "schedules" of extraditable offenses with our extradition treaty partners based on the serious crimes common to the legal systems of the United States and each treaty partner at the time of the negotiation. As a result, the treaty relations of the United States with many countries do not include more modern offenses such as money laundering, bribery, counterfeiting, and some crimes of violence, including certain crimes against children. This section will amend existing extradition law to authorize the United States to extradite to treaty partners for modern crimes that may not be included in these older list treaties.

The statute allows the Attorney General to authorize the filing of a complaint under this provision for both list and certain serious non-list offenses as though all were covered by the existing treaty, and provides that the extradition process will be handled by judicial officers in the same manner as for list offenses. All provisions of the relevant treaty would apply as if the offense were a crime provided for by the treaty.

The proposal incorporates important safeguards before extradition may be ordered when a treaty exists but it fails to cover the crime for which extradition has been requested. A certification is required by the Attorney General that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State that, in the judgment of the Secretary, submission of the request would be consistent with the foreign policy interests of the United States and the facts and circumstances then known would not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable.

As provided in most of our extradition treaties, the proposal provides for provisional arrest in cases of urgency. Extradition under the statute would be possible only for enumerated serious offenses. In addition, the provision follows present practice under extradition treaties by vesting in the Secretary of State the final determination whether to surrender a fugitive and, if appropriate, to impose conditions upon such surrender.

SEC. 4042. EXTRADITION ABSENT A TREATY.

Except for a narrow provision of the Antiterrorism and Effective Death Penalty Act of 1996 permitting extradition of non-U.S. nationals who are charged with committing a crime of violence against U.S. citizens overseas (18 United States Code 3181(b)) and a provision of law providing for extradition from the United States to the war crimes tribunals for the Former Yugoslavia and Rwanda (18 United States Code 3181 Note), existing law permits the United States to extradite offenders to foreign nations only when there is a treaty or convention in force with that nation. However, the process of negotiating and ratifying new treaties is both time consuming and complex, and the United States cannot always predict when law enforcement needs will call for an extradition treaty with a particular country. At present, there are close to 70 countries in the world with which the U.S. has no extradition treaty at all.

This inability to surrender even escaped convicts to a large number of nations without a treaty means that criminals can, at least in some instances, find "safe haven" in the United States. It also impedes our ability to secure extradition without a treaty from non-treaty partners. There are countries in the world which can extradite in the absence of a treaty. However, such countries are usually willing to do so only when there exists at least the possibility of reciprocity. Consequently, this statute would create the legal authority for such reciprocal treatment, and open the door for the extradition of important fugitives back to the United States from countries with which our extradition treaty relationship is non-existent.

The proposal incorporates important safeguards before extradition may be ordered in the absence of a treaty. A certification is required by the Attorney General (delegable only to the Deputy Attorney General) that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State (delegable only to the Deputy Secretary of State) that, in the judgment of the Secretary, based on facts then known, submission of the request would be consistent with the foreign policy interests of the United States, the facts and circumstances -- including humanitarian considerations -- do not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable, and the country submitting the request is not doing so in order to try or punish the person based primarily on the person's race, religion, nationality, or political opinions.

The proposal provides for the provisional arrest of a person when there is probable cause to believe the person is extraditable. As in extradition pursuant to a treaty, a judicial officer may only find a person extraditable if it finds probable cause to believe that the person before the judicial officer is the person sought in the foreign state, and probable cause to believe that the person before the judicial officer committed the offense for which such person is sought, or was duly convicted of that offense in the requesting state.

Extradition under the statute would be possible only for enumerated serious offenses, mostly of a character punishable by more than ten years imprisonment in the United States such as drug trafficking, money laundering, and crimes of violence, including certain crimes against children. In addition, the provision maintains present law by vesting in the Secretary of State the final determination whether to surrender a fugitive. The Secretary's decision takes into account humanitarian considerations, and the Secretary may impose conditions upon the surrender and demand assurances of compliance as the Secretary believes appropriate. The statute further provides that the Secretary shall demand in every case that the person not be tried or punished for an offense other than for which the person has been extradited, and that the person not be subject to capital punishment unless the person was subject to the same punishment by the applicable laws in the United States.

SEC. 4043. TECHNICAL AND CONFORMING AMENDMENTS.

This section is necessary to reconcile the changes made to existing statutes by sections 4041 and 4042.

CHAPTER 2--STRENGTHENING IMMIGRATION LAWS TO EXCLUDE INTERNATIONAL CRIMINALS FROM THE UNITED STATES

SEC. 4051. EXCLUSION OF PERSONS FLEEING PROSECUTION IN OTHER COUNTRIES.

This section will add flight to avoid lawful prosecution as an additional ground of inadmissibility under the Immigration and Nationality Act and designate the country seeking to prosecute such individuals as the primary country of deportation. This section will be triggered if the crime for which prosecution is sought is a crime of moral turpitude, other than a purely political offense.

Individuals often seek refuge in the United States to avoid prosecution for crimes committed in other countries. Presently, if such persons are detected attempting to enter the United States, the United States must either find some other basis for exclusion (e.g., having been previously convicted of another crime), or embark on lengthy extradition proceedings, assuming there is an applicable extradition treaty, which is not always the case.

This section will provide an independent statutory basis to remove persons who enter or attempt to enter the United States for the purpose of avoiding lawful prosecution in another country and to return them to the country seeking their prosecution unless the Attorney General, in his/her discretion, determines that such return would be impracticable, inadvisable, or impossible. An additional ground of removal under INA section 237 is not necessary because such an alien fugitive found in the United States would be removable under section 237(a)(1)(A) as an alien inadmissible at the time of entry or adjustment of status. The provision is intended to reach situations where the person flees after a warrant has been issued or in anticipation of a warrant being issued. Nothing in this proposed new section would alter U.S. obligations to protect bona fide refugees. Persons covered by this section remain eligible to apply for withholding of deportation under INA section 241(b)(3), and asylum under section 208, to the extent those remedies would otherwise be available.

SEC. 4052. EXCLUSION OF PERSONS INVOLVED IN RACKETEERING AND ARMS TRAFFICKING.

This section will provide for inadmissibility of any individual whom a consular officer has reason to believe has or is engaged in certain RICO and arms trafficking offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the United States, regardless of whether a judgment of conviction has been entered or avoided due to flight, corruption, etc. This section treats serious criminals with the same standard applicable to drug traffickers and will make our ability to exclude aliens involved in such activities less dependent upon our ability to draw inferences about a person's intent to do something illicit in the United States. With only minor exceptions, the RICO offenses referenced constitute crimes involving moral turpitude that are already grounds for exclusion under the Immigration and Nationality Act.

The section will similarly exclude the spouse, son or daughter (regardless of age) of such persons if, within the previous five years, they benefitted from such illicit activity and reasonably should have known that the benefit was the result of illegal activity. This exclusion of close family members will increase pressure on aliens involved in racketeering and arms trafficking to abandon their illegal activity, and will ensure that such aliens cannot benefit by having their spouses, sons, or daughters travel to the United States with impunity.

The provision includes a waiver provision that allows the Attorney General to waive its applicability for offenses other than aggravated felonies. This provision has been added to provide the Attorney General flexibility to waive these provisions in the event that there is a law enforcement, humanitarian or other important national interest justifying such waiver.

SEC. 4053. EXCLUSION OF PERSONS INVOLVED IN INTERNATIONAL ALIEN SMUGGLING.

This section will address the problem of excluding international alien smugglers where there is evidence that they have assisted aliens to illegally enter countries other than the United States, but not the United States. Often there is a strong likelihood that such assistance was part of a scheme to illegally bring such aliens into the U.S. or could develop into a scheme to illegally bring such aliens into the U.S., but under current law the alien providing such assistance may not be excludable. This provision will allow consular officers and the Immigration and Naturalization Service to find such aliens ineligible for entry into the U.S. when the alien should have known that the illegal entry into another country would have assisted other aliens to enter the U.S. in violation of law.

CHAPTER 3--ADDITIONAL TOOLS TO DENY SAFE HAVEN TO INTERNATIONAL CRIMINALS

SEC. 4061. TEMPORARY TRANSFER OF PERSONS IN CUSTODY FOR PROSECUTION.

This section addresses two situations. In the first, a person wanted to stand trial in the United States is already in detention -- perhaps serving a long sentence -- in another country. Some of our most modern extradition treaties permit the defendant to be "temporarily surrendered," that is, temporarily transferred to the United States for purposes of trial, and then returned to the foreign country to complete service of sentence. However, the majority of treaties do not, and absent such a treaty provision, any transfer must wait until the defendant's foreign sentence has expired, which delay significantly jeopardizes the prospects for an effective prosecution and which may deny to victims and defendant the benefits of a speedy trial. This provision ameliorates that problem.

In proposed subsection (a) it provides independent, discretionary statutory authority for the Attorney General to request the temporary surrender for purposes of trial of defendants in custody who have been found extraditable to the United States, to maintain their custody while in the U.S., and to return them expeditiously at the conclusion of trial, so that they may serve out the remainder of their foreign sentence (or if in pretrial custody, to proceed to trial in the foreign jurisdiction).

In the second situation, a defendant wanted in a foreign country is in custody in the United States either pending trial or post-trial. New subsection (b) gives the Attorney General authority -- where the Attorney General and the Secretary of State agree -- to temporarily surrender a defendant incarcerated in the U.S. to a foreign country to which the defendant has been found extraditable by the appropriate judicial officer in the manner prescribed by applicable federal extradition law. This provision will not only allow us to assist a foreign country in assuring a prompt trial of the offender, but also, by allowing us to make assurances of reciprocity, enhance the prospects of foreign countries being willing to send incarcerated defendants to the U.S. under the circumstances contemplated in proposed subsection (a).

Because new subsection (b) applies to persons in pretrial as well as post-trial detention, the statute is drafted to make clear that a temporary transfer for prosecution of a person in pre-trial detention pursuant to this provision interrupts that person's pretrial detention status. The statute provides that, during the period of such interruption, a person who had been in pretrial detention prior to their temporary transfer not challenge the conditions of their confinement in the foreign country to which they have been transferred based on the terms of this statute. Because pretrial detention is a creature of statute, see 18 United States Code § 3142, this provision accomplishes that end by limiting that existing provision of law to make clear it does not apply to persons while in the foreign country temporarily pursuant to this provision.

Because there may be new conditions that arise during the interruption in pretrial detention status but which are not -- for the reason discussed above -- properly the subject of a motion to revisit conditions of release, it is contemplated that a pretrial detainee who is temporarily transferred could bring a motion pursuant to 18 United States Code § 3142(f), and receive a new hearing to assess their conditions of confinement, immediately upon their return to the United States.

Similarly, although it is not mandated by the statute, it is contemplated that a prisoner under sentence in the United States who was temporarily transferred to a foreign country and is returned back to the United States pursuant to this provision could, upon his or her return, bring an appropriate motion under 18 United States Code §§ 2241 or 2255.

Further, although 18 United States Code § 3142(i)(2) requires that any pretrial detention order state that such persons be "committed to the custody of the Attorney General for confinement in a corrections facility," the impact of that provision is necessarily altered to the extent that the Attorney General is empowered by this provision to interrupt the pretrial detention and temporarily transfer pretrial detainees to a foreign country.

Finally, because such confinement is an interruption in that person's U.S. custody, it is contemplated that a person transferred to a foreign country under this provision would not be entitled to receive credit under 18 United States Code § 3585(b) for any time spent in custody in that foreign country.

The intent of these provisions and associated comments is to make clear that a person transferred under this provision is not, by virtue of this statute, in U.S. custody while in the foreign country. Rather, but for the fact that they are eventually returned to the United States, such persons are treated the same way as any other person not in custody or pretrial detention who is picked up by legal authorities in the United States and is extradited to a foreign country pursuant to existing treaties and extradition statutes.

Proposed subsection (c) addresses those situations in which the defendant is willing to be transferred and to forego formal extradition proceedings. This may often be the case since a temporary transfer for prosecution may enable the defendant to defend the foreign case while any exculpatory evidence is most readily available. In those situations, the Attorney General may exercise the transfer authorities under proposed subsections (a) and (b) without a prior finding of extraditability if the defendant to be transferred and all the governments involved consent.

Proposed subsection (d) makes it clear that the return of the person at the conclusion of the proceedings for which he was transferred does not require extradition or immigration proceedings, nor is a person being temporarily transferred to the U.S. able to use his transfer for trial as an avenue for obtaining asylum. This provision is necessary to prevent temporary transferees from frustrating the statute's purpose and remaining in the United States despite an agreement between the United States and the prisoner's country of origin.

The statute requires that, before a decision is made to request a transfer under new subsections (a) and (b), the Attorney General shall make a determination, in consultation with the Secretary of State, that such a transfer would be consistent with the United States' international obligations. This will ensure that any humanitarian concerns, such as the possibility that the person may be subjected to persecution or torture upon transfer or return to the foreign country, mat be considered prior to the transfer.

Lastly, as to any defendant temporarily transferred to a foreign country pursuant to this provision who was in custody pretrial, it is contemplated that such transfer would constitute "delay resulting from trial with respect to other charges against the defendant," for purposes of the Speedy Trial Act, 18 United States Code § 3161(h)(D). Thus, any time spent in the foreign country answering charges there would be excluded by Courts applying the Speedy Trial Act in computing the time within which an information or indictment must be filed, or in computing the time within which the trial of any such offense must commence.

SEC. 4062. TRANSFER OF PRISONERS TO SERVE SENTENCES IN COUNTRY OF ORIGIN.

This section amends the prisoner transfer statute to permit consent verification hearings to be conducted by telephone, where the offender and the Attorney General agree to this procedure.

Consent verification hearings are not lengthy proceedings, but conducting them in person can cause significant logistical and financial burdens. Magistrate-Judges and court-appointed counsel must travel to the prisoner, and sometimes hearings must be delayed as all the parties attempt to find an open date on their calendar. Permitting these hearings to be conducted by telephone in appropriate cases will permit the hearings to be held more expeditiously and with less expense.

SEC. 4063. TRANSIT OF FUGITIVES FOR PROSECUTION IN FOREIGN COUNTRIES.

It is not uncommon that international fugitives being transferred from one country to face trial in another may need to transit a third country such as the United States. Indeed, the international airports of the U.S. are logical transit points between other continents. It is important that the practical necessity of transit not serve to frustrate international cooperation in the rendition of fugitives, and this proposal is intended to assure that the U.S. can cooperate effectively with law enforcement partners overseas when they must pass through the U.S. as they escort a prisoner to stand trial.

Many U.S. extradition treaties provide for, and indeed set out obligations regarding, transit. However, those treaties do not provide an adequate framework of authority to deal with the full range of circumstances and issues pertaining to international transit of prisoners. First, the person may be in transit to a country with which we do not have a current extradition treaty, or with which we have an old treaty that does not address transit. Such a situation might arise, for example, where a Russian organized crime figure was being extradited to Russia, with which we have no treaty, from a country in South America, and transit through the U.S. were required. While the Attorney General's parole authority under the immigration laws may provide some basis for holding transitting prisoners, it was not developed with this situation in mind and, of course, it can have no application where the prisoner is a U.S. citizen.

Second, fugitives are not always returned through a formal extradition process, the process generally necessary to invoke the transit provisions of a treaty. Instead, a country may have exercised lawful authority to deport or exclude a fugitive. In those situations, clear statutory authority to accommodate a foreign request to permit transit will be extremely helpful.

Third, even where a treaty transit provision is applicable, such provisions generally deal with mechanisms, often diplomatic communications, through which the treaty partners seek and grant transit requests, but not with the underlying basis for maintaining the custody of the person. For these reasons, a clear statement of statutory authority for the Attorney General to permit the transit and maintain the custody of the person is warranted.

The language of this provision makes it clear that the decision of the Attorney General to exercise the transit authority is a discretionary matter and not subject to judicial review. Of course, the discretionary nature of the authority set out in this section is not in anyway intended to derogate any obligations of the United States to grant transit in accordance with the provisions of our extradition or other relevant treaties. In exercising this discretion, the Attorney General would consult with the Secretary of State. Such coordination between the State and Justice Departments is common with respect to treaty provisions regarding transit. Moreover, such consultations will be extremely useful in the event there are foreign policy reasons or international human rights concerns that might argue against the granting of transit in a particular case.

Finally, it is not intended that prisoners, by virtue of the practical necessity of their transitting the United States on the way to face trial, should thereby be subject to the same documentation requirements, and be afforded the full range of rights and remedies otherwise applicable to aliens in the United States, under the Immigration and Nationality Act of 1952. This concern is specifically addressed in the final sentence of the new section, which provides that such transitting prisoners are required to have only such documents as required by the Attorney General, shall not be considered to be admitted or paroled into the United States, and shall not be entitled to apply for asylum or any other right or remedy under that Act.

SUBTITLE D--SEIZING AND FORFEITING THE ASSETS OF INTERNATIONAL CRIMINALS

SEC. 4071. BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND.

Each year, billions of dollars worth of illegal drugs and other contraband are sold in the United States. A substantial portion of this illicit trade is controlled by, or linked to, international crime groups. Like most criminal organizations, these groups must either launder their ill-gotten gains in the United States or smuggle bulk currency out of the United States. In addition, a substantial amount of illegal firearms, child pornography, instrumentalities of terrorism, and other dangerous articles are smuggled out of the United States. There is ample evidence demonstrating that criminal organizations -- including international drug cartels -- use the U.S. mail to smuggle money and contraband out of the United States, in part because of the current restrictions on searches of outbound U.S. mail. For example, a 4 lb. letter-class package -- which under current law may not be searched without a warrant -- can hold approximately $100,000 in $100 bills.

This proposal would enhance the ability of Customs investigators to search outbound U.S. mail for money, firearms, drugs, and other contraband under prescribed conditions. Section 4072 would authorize searches of letter-class outbound mail upon reasonable suspicion it contained a monetary instrument (checks or cash), drugs, firearms, weapons of mass destruction, information related to national defense, or several other categories of dangerous materials. The proposal further would authorize suspicionless searches of outbound non-letter class packages. Such authority was endorsed by the Gore Commission on aviation security and terrorism.

The statute would not be used by Customs to engage in the wholesale opening of letter class mail containing monetary instruments in small amounts. Moreover, the statute is not a vehicle to allow Customs to read letters in outbound mail, even when those letters accompany monetary instruments. As the statute sets forth, any correspondence found inside such a letter or package could not be read without first obtaining a warrant based upon probable cause. Individuals could gain further privacy protection by not sending correspondence and monetary instruments in the same letter.

There is substantial support in federal law and court decisions supporting broad authority for Customs searches at U.S. borders, including authority to search outbound mail. See, e.g., 31 United States Code 5317 (authorizing Customs searches at the border of persons, conveyances, envelopes, and other items) (emphasis added); United States v. Ramsey, 431 U.S. 606 (1977); United States v. Oriakhi, 57 F.3d 1290 (4th Cir. 1995); United States v. Smith, 29 F.3d 270 (7th Cir. 1994). Despite this authority, Treasury regulations and Customs practice are more circumscribed than the Fourth Amendment might otherwise permit. Section 4072 is designed to provide broader authority to search outbound mail in a manner that balances the need to halt the smuggling of drugs, firearms, child pornography, other dangerous articles and monetary instruments through the use of outbound mail against the privacy concerns associated with letter-class mail of domestic origin. The current proposal is not designed to codify the outer reach of Customs search authority under the Fourth Amendment.

SEC. 4072. FORFEITURE OF PROPERTY USED TO VIOLATE FEDERAL EXPLOSIVES LAWS.

The unlawful use of explosive materials is widely recognized as a serious violent crime problem. This section would authorize the civil and criminal forfeiture of any conveyance, chemicals, laboratory equipment or any other device made, possessed, used or intended to be used to commit a violation of the federal explosives law (except for record keeping and storage offenses). Currently, only the explosive material can be forfeited. The enhanced forfeiture authority would deprive criminals of the materials used to continue their illegal trade in explosive materials.

SEC. 4073. ADMINISTRATIVE SUMMONS AUTHORITY UNDER THE BANK SECRECY ACT.

This section will amend 31 United States Code § 5318(b)(1) to expand the situations in which an administrative summons will be sufficient to obtain information from financial institutions subject to the Bank Secrecy Act (BSA). At present, the Secretary of the Treasury is permitted to examine information maintained at financial institutions under the requirements of the BSA, but is permitted to summon information or individuals only "in connection with investigations for the purpose of civil enforcement of violations of" the BSA, it regulations, or certain related statutes. BSA policy requires the government to focus on the efficacy of compliance systems rather than attempt to identify particular BSA violations. Restriction of summons authority to investigations for the purpose of civil enforcement of BSA violations could hamper the ability of the Secretary to review the adequacy of compliance systems. In addition to existing civil enforcement authority, this amendment will enable the Secretary to review the adequacy of BSA compliance systems. Subpoena requests will remain subject to the account holder rights specified in the Right to Financial Privacy Act.

SEC. 4074. EXEMPTING FINANCIAL ENFORCEMENT DATA FROM UNNECESSARY DISCLOSURE.

This section will amend the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) to exempt from disclosure information collected by the Department of the Treasury's Office of Foreign Assets Control in the administration of economic sanctions programs. IEEPA and TWEA currently do not exempt information submitted, obtained, or considered in connection with any transaction that is prohibited under these titles, including license applications, licenses or other authorizations, information or evidence obtained in the course of any investigation, and information obtained or furnished in connection with international agreements, treaties, or obligations. As a result, the agency devotes considerable time and resources to searching and indexing documents pursuant to Freedom of Information Act (FOIA), requests and then preparing the justification for withholding those documents from release due to certain FOIA exemptions. This information is ordinarily withheld on the grounds that it is proprietary information. However, the process of applying that FOIA exception involves a considerable expenditure of law enforcement resources and delay. Therefore, this information should be exempt on the ground that it is necessary for the purposes of IEEPA and TWEA.

These amendments would provide such information with the same statutory protection provided for similar information obtained or submitted under the Export Administration Act (EAA), which is placed outside the scope of searches required to be performed under FOIA requests. The Department of Commerce, Bureau of Export Administration, also favors this amendment to IEEPA, since it has been acting under IEEPA during periods when the EAA has lapsed and this amendment would ensure identical treatment of these documents under either statute.

SEC. 4075. CIVIL PENALTIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.

This provision will increase the monetary limits of the civil penalty authorities provided for in the International Emergency Economic Powers Act (IEEPA). IEEPA currently provides for civil penalties of up to $10,000 per violation of IEEPA prohibitions. This limitation no longer constitutes an effective deterrent for flagrant violations of IEEPA and is significantly less than the penalty limitations provided for in the Trading with the Enemy Act for violations of economic sanctions imposed under that statute. The ineffectiveness of the civil penalty cap is particularly apparent in situations where the IEEPA violation relates to transactions (and profits) valued at many times the maximum penalty amount. This section will raise the IEEPA civil penalty authority to $50,000 per violation.

SEC. 4076. ATTEMPTED VIOLATIONS OF THE TRADING WITH THE ENEMY ACT.

This section will amend the Trading with the Enemy Act (TWEA) to provide that criminal and civil penalties may be imposed not only against any person who violates a license, order, or regulation issued under TWEA, but also against a person who attempts to violate such a license, order, or regulation. Last year, Congress added an "attempt" provision to the International Emergency Economic Powers Act (IEEPA), but did not add a similar provision to its companion statute, TWEA. TWEA lacks an attempt provision similar to those found in other export administration statutes, for example, the Export Administration Act. Recent executive orders imposing economic sanctions and regulations implementing such orders typically include language prohibiting attempted violations. Current case law in the federal circuit courts of appeal supports promulgation of regulations prohibiting attempts to violate statutes not explicitly containing attempt language. In spite of these factors, the absence of an attempt provision in TWEA makes prosecution of attempted violations more problematic. To clarify existing law, and to insulate prosecutions of attempted violations from any possibility of attack based on the scope of the President's authority, these amendments expressly prohibit attempts to violate TWEA.

SUBTITLE E--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

CHAPTER 1--COMPUTER AND HIGH-TECH CRIME

SEC. 4081. ENHANCED AUTHORITY TO INVESTIGATE COMPUTER FRAUD AND ATTACKS ON COMPUTER SYSTEMS.

This section would add certain violations relating to computer crime to the list of serious criminal activity for which 18 United States Code 2516 permits court authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Violations of 18 United States Code 1030 can include computer fraud and attacks on computer systems, such as those controlling the public telecommunications networks, air traffic control, and the electric power network. In computer attack cases, since the evidence of the crime may lie largely in cyberspace,
interceptions of wire and electronic communications may be the primary or only available avenue of investigation. Moreover, in computer cases where the activities originate from a business or university, voicetaps may be the only way to complete the identification of the criminal actually using the terminal involved. The statute limits wiretap authority to investigation of felony offenses.

SEC. 4082. JURISDICTION OVER CERTAIN FINANCIAL CRIMES COMMITTED ABROAD.

This section clarifies the extraterritorial jurisdiction of 18 United States Code 1029 (access device fraud). It expressly recognizes United States jurisdiction over access device fraud -- including credit card fraud, debit card fraud and telecommunications fraud -- in cases where the fraud causes an effect on an entity within the jurisdiction of the United States, even if the defendant has never physically entered the United States. Such a clarification is of great importance to the United States' ability to protect its financial system. The modern financial system relies substantially on access devices to access and utilize a vast array of accounts and systems, including credit and debit card accounts, accounts in banks and other financial institutions, electronic funds, and telecommunications systems. Increasingly, U.S. financial, corporate and government entities have implemented access device payment systems to conduct transactions reaching billions of dollars per day. The dramatic increase in electronic and computerized access to such systems from outside the United States has enhanced the vulnerabilities of these systems to criminal activities internationally. By recognizing that the United States has the authority to protect its access device systems against both foreign and domestic threats, this section ensures the security and integrity of United States based payment systems in the same way that 18 United States Code § 470 ensures the integrity of United States currency. Together, this section and 18 United States Code § 470 will enhance the United States' ability to protect its financial system and combat transnational financial crimes that target that system.

CHAPTER 2--ALIEN SMUGGLING

SEC. 4091. FORFEITURE FOR ALIEN SMUGGLING.

These amendments to the Immigration and Nationality Act will enhance the ability of the Immigration and Naturalization Service (the Service) to address the problem of alien smuggling by broadening the authority to obtain forfeiture of property used in or derived from smuggling operations.

Under current law, the Service may obtain forfeiture of conveyances (vehicles, boats, aircraft) used to smuggle, transport, or harbor aliens. This section would amend section 274(b) of the INA, 8 United States Code 1324(b), to broaden this forfeiture authority. The amendment makes subject to civil and criminal forfeiture all property, both real and personal, used or intended to be used to smuggle aliens. Also subject to forfeiture is any property, real or personal, which constitutes, is derived from, or is traceable directly or indirectly to the proceeds of the smuggling, transportation, or harboring of aliens. Innocent owners of property are protected by the proposed uniform innocent owner statute, to be codified at 18 United States Code § 983.

SUBTITLE F--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST INTERNATIONAL CRIME

SEC. 4101. STREAMLINED PROCEDURES FOR EXECUTION OF MLAT REQUESTS.

This section expands the authority of U.S. district courts to execute, or order execution of, foreign requests for assistance in criminal matters made pursuant to mutual legal assistance treaties (MLATs), conventions, and executive agreements such as an "antitrust mutual assistance agreement" (See, e.g., 15 United States Code § 6201 et seq.), or in accordance with 28 U.S.C. § 1782. This section applies only when the execution of such a request requires or appears to require the use of compulsory measures in more than one district. On such occasions, this section permits a judge or judge magistrate in any district involved in a multidistrict execution, or in the District of Columbia, to execute the entire request.

The U.S. generally relies on 28 U.S.C. § 1782 -- which authorizes the practice of appointing a "commissioner" to execute a foreign request for assistance -- to provide the framework for executing foreign requests for assistance, whether made by letter rogatory, letter of request, request pursuant to an MLAT, or other similar form of request. Section 1782 calls for execution of the foreign request in the district where the witness resides or is found, or where the evidence is located. Consequently, the Attorney General -- the authority to whom foreign requests in criminal matters are generally sent for execution -- often transmits the same request to each district in which a witness or evidence may be located for execution of that portion directly connected to the district.

This practice of transmitting a request to each and every district in which assistance requested may be found is inefficient and prone to creating delay. A majority of requests entail execution in multiple districts. Execution of a multiple district request requires substantial coordination by U.S. authorities (e.g., often documents located in different districts must be produced and analyzed before testimony from witnesses located in other districts can be profitably taken) and duplication of efforts by U.S. authorities (e.g., a judge or magistrate judge, prosecutor, and assisting agent or agents in each district must become familiar with and involved in executing the same request). In addition to the profligate expenditure of U.S. resources, the practice often results in delay, rendering the U.S. unable to provide foreign law enforcement authorities, and especially foreign treaty partners, with the level of service that the U.S. would like to receive with respect to U.S. requests. Another problem often encountered with multidistrict requests is that a U.S. Attorney's Office designated to execute a portion of a request is unable to devote the necessary resources at the time requested. If timing is critical, and it often is, execution of the request in a district involved in another aspect of the execution, or in the District of Columbia, is a reasonable solution.

This proposal provides an alternative to the current practice of executing foreign requests for assistance only in each and every district in which a witness or evidence is located. Placing authority in a U.S. district court for a district otherwise involved in the execution of a multidistrict request, or in the U.S. District Court for the District of Columbia, should dramatically improve:

(1) the efficient use of U.S. resources to execute foreign requests that involve multiple districts, and

(2) the execution of requests involving multiple districts in a timely manner.

Providing the U.S. District Court for the District of Columbia as an alternative venue also permits the Attorney General, with requests that require substantial allocation of resources or coordination, to provide attorneys to undertake execution in the District of Columbia in conjunction with the United States Attorney's Office for the District of Columbia.

Finally, this proposal recognizes that executing foreign requests in criminal matters by requiring witnesses to appear in different districts from those in which they are located may create some hardships for witnesses, just as it does in domestic criminal investigations and prosecutions where the U.S. prosecutor subpoenas witnesses to appear anywhere in the U.S. (i.e., wherever in the U.S. the investigation or prosecution is taking place). This proposal contemplates the same possibility of travel to comply with a commissioner's order as in a domestic criminal investigation or prosecution; however, it provides a procedure to balance the hardship against the exigencies of the request. Upon notice to either the court or the commissioner executing the request, the court will decide whether to transfer execution involving the complaining witness to that witness' district by balancing the (1) inconvenience to the witness against the (2) negative impact upon execution of the request.

SEC. 4102. TEMPORARY TRANSFER OF INCARCERATED WITNESSES.

U.S. mutual legal assistance treaties generally provide a mechanism for the U.S. to send and receive persons in custody who are needed as witnesses. Current section 3508 of Title 18 was enacted in 1988 to provide authority, in the absence of such a treaty, for the Attorney General to request such persons to appear at criminal proceedings in the U.S., to maintain their custody while here, and to assure their expeditious return to the country of their incarceration once their presence at the U.S. proceeding was no longer necessary.

This proposal amends section 3508 to permit the United States, as a matter of comity and reciprocity, to send persons in custody in the U.S. abroad to appear in foreign judicial proceedings. Such transfers, when based solely on the statutory authority set out in this section, would require the consent of the person in custody as well as of the foreign state. Moreover, in the case of State prisoners, consent of the appropriate State authorities would be required as well.

These provisions carry forward the language of the current statute which makes it clear that the return of persons transferred shall occur as soon as the person's presence is no longer required and shall not require formal extradition proceedings.

Proposed subsection (e) has been added to make it clear that persons who have consented to their transfer to the United States for purposes of appearing in a U.S. proceeding, may not transform the transfer process into a vehicle for gaining entry into the United States for purposes of seeking asylum.

New subsection (f) has been added to ensure that any decision by the Attorney General to transfer or a return a prisoner to foreign country (made after consultation with the Secretary of State) is consistent with U.S. international obligations, including those related to humanitarian concerns, and is not subject to judicial review.

In such instances, the U.S. may have been misled with respect to the person's ostensible motives in consenting to the transfer and providing the testimony, and the failure to promptly return a prisoner has immediate and direct consequences upon the foreign affairs of the United States. For example, it may significantly strain law enforcement relations between the United States and the country in which the person was incarcerated. The considerable complications which may unfold if a transferred witness can make an asylum claim are suggested by the chain of events at issue in Wang Zong Xiao v. Reno, 81 F.3d 808 (9th Cir. 1996).

For persons in the United States in pretrial detention, it is contemplated, for purposes of interpreting the bail statute, that they remain in U.S. custody while in the foreign country. However, those witnesses who are transferred with their consent also should be required to waive their right to challenge the conditions of their confinement while in the foreign country to prevent them from bringing a motion pursuant to 18 U.S. Code § 3142(f)(2) while they are abroad.

Finally, it is contemplated that a decision by the Attorney General to exercise their authority under this provision is adequate to support a finding by a court, pursuant to 18 United States Code § 3161(h)(8)(A), that the time the witness spends abroad should be excluded from calculation under the Speedy Trial Act because "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."

SEC. 4103. TRAINING OF FOREIGN LAW ENFORCEMENT AGENCIES.

By its very nature antiterrorism assistance requires that foreign law enforcement officials be provided training and advice to combat terrorism effectively. For this reason, assistance provided with funds specifically appropriated for the Department of State's antiterrorism program under Chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (the "Act") has always been authorized to be provided notwithstanding section 660 of the Act, which prohibits, with certain exceptions, the use of Foreign Assistance Act funds for police training or advice.

This provision would ensure that foreign assistance funds that are otherwise available for combatting terrorism could similarly be used notwithstanding the section 660 restriction, regardless of whether they were specifically appropriated to carry out chapter 8 of Part II of the Act. It will thus provide a significant tool for the United States in the international fight against terrorism. At the same time, adoption of this provision will clarify an issue raised in connection with recent amendments (Section 121 of P.L. 104-164) to the Foreign Assistance Act authorities that govern the antiterrorism assistance (ATA) program. In those amendments, in place of the previous provision in the ATA authorities that specifically authorized the provision of assistance notwithstanding section 660, a broader and very important authority was provided that authorizes antiterrorism assistance "notwithstanding any other provision of law that restricts assistance to foreign countries." In the context of this particular provision, the Administration has interpreted that phrase to encompass the restrictions on assistance embodied in section 660 of the Foreign Assistance Act, and this amendment will clarify this point.

SEC. 4104. DISCRETIONARY AUTHORITY TO USE FORFEITURE PROCEEDS.

This proposal amends the statute governing both the Justice Department's forfeiture fund to provide for disbursements to indemnify foreign governments, in certain circumstances, against adverse judgments that may result from the foreign government's repatriation to the United States of assets forfeitable pursuant to U.S. law.

The proposal permits use of the funds to indemnify foreign governments that repatriate forfeitable property to the U.S. in the event they are sued domestically by third parties challenging the legality of the repatriation. The indemnification would be limited to the amount of a judgment within five years of the date that the property was repatriated to the United States and not to exceed the amount of funds deposited to the funds, plus interest earned on the fund, less any awards and equitable shares paid by the fund to the foreign government or those acting at its direction in connection with a particular case. The provision relating to the Justice Department forfeiture fund was Section 410(e) of the "Forfeiture Act of 1996" previously submitted to Congress. Under current U.S. law, there is no provision allowing the return of forfeited property to a foreign country or other entity, such as a foreign bank, that suffers foreign legal liability as the result of assisting a United States forfeiture action. This amendment authorizes the Attorney General to return the forfeited property plus interest in such circumstances. Without assurances that the property plus interest can be returned, a number of foreign jurisdictions have been unwilling to seize or repatriate property on behalf of the United States.

SUBTITLE G--STREAMLINING THE INVESTIGATION AND PROSECUTION OF INTERNATIONAL CRIMES IN U.S. COURTS

SEC. 4111. REIMBURSEMENT OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN INTERNATIONAL CRIME CASES.

This proposal authorizes the Attorney General to designate funds to defray unusual expenses incurred by state and local jurisdictions in international extradition cases, including the costs of transporting the fugitive back to the United States and the cost of translating the extradition documents into the language of the foreign state.

State and local prosecutors are sometimes forced to abandon efforts to extradite serious offenders who have fled abroad because the prosecutors lack the resources to pay the costs of international extradition. Because extradition in cases involving violent offenders or career criminals is a national priority, this provision would authorize the Attorney General to allocate funds to pay the costs of such extraditions in serious cases if the state or local authorities certify that the financial assistance is needed. The Marshals Service spent about $900,000 last year transporting federal fugitives back to the U.S., and it estimates that transportation of all state and local fugitives could cost twice that amount. The Marshals Service currently retrieves fugitives from abroad for state and local jurisdictions, on a reimbursable basis.

This provision is not intended to shift the entire financial burden that may be involved in international cases from states and localities to the federal government. Rather, it provides authority to assist state and localities in meeting extraordinary expenses that could not reasonably be anticipated in the local jurisdiction's ordinary budget process.

SEC. 4112. SAFE CONDUCT FOR FOREIGN WITNESSES TESTIFYING IN U.S. COURTS.

This section will provide an independent statutory basis for a discretionary grant of "safe conduct" for witnesses in foreign countries whose testimony in the United States is needed in connection with a state or federal criminal matter. Some foreign witnesses are reluctant to travel to the United States to testify, absent an assurance that they will not be arrested or subject to process once here. To address this problem, most U.S. mutual legal assistance treaties contain "safe conduct" provisions. Absent such a treaty provision, however, the extent to which such safe conduct may be granted is unclear. Accordingly, this provision provides clear authority to facilitate the appearance of foreign witnesses by granting safe conduct. However, the decision to grant safe conduct is to be a matter solely within the discretion of the Attorney General, and there is no intent to create any right whatsoever on the part of a witness or party to demand such a grant of safe conduct. To the extent the "safe conduct" provisions of a mutual legal assistance treaty are inconsistent with the section (e.g., by providing a different duration of the period of safe conduct), the treaty provisions will control.

SEC. 4113. PROHIBITING FUGITIVES FROM BENEFITTING FROM TIME SERVED ABROAD.

This proposal is designed so that defendants who become fugitives either by fleeing the United States, or by remaining outside the United States (in the event they are sought based on an assertion of extraterritorial jurisdiction), in order to avoid trial and punishment do not inappropriately benefit from their actions. Because U.S. prison time is now credited to fugitives after their return to the U.S. for the time during which fugitives pursue tactics in foreign countries designed to delay their return and trial in the United States, the current law unwittingly encourages fugitives to file every frivolous challenge to their rendition which is available, in order to delay the case and perhaps weaken the prosecution's case. This proposal is needed because the time consuming and complex nature of the international extradition process which involves foreign sovereigns, foreign legal laws and processes, and foreign languages, typically creates substantially longer delays than the delays that occur in the comparable domestic situation. Nationwide federal jurisdiction and interstate compacts typically result in the swift rendition of interstate fugitives.

SEC. 4114. SUSPENSION OF STATUTE OF LIMITATIONS FOR COLLECTION OF EVIDENCE LOCATED ABROAD.

Currently, ascertaining the length of time tolled is guesswork, and often the fact that "final action" has been taken in a foreign country is not known to U.S. authorities until later, sometimes causing the statute to expire without the evidence in hand, the primary purpose of the tolling. This proposal will clarify that the time tolled runs from the date of making an official request for assistance to the date of receiving the results of that request by the authority requesting assistance.

SEC. 4115. CLARIFICATION OF DISCRETIONARY NATURE OF PAYMENTS TO INFORMANTS.

This provision clarifies that the authority to make payments to informants is entirely discretionary and does not create any right relating to the failure to make such payments that is enforceable in a court of law, court of equity, or otherwise.

SEC. 4116. ENHANCED TOOLS TO INVESTIGATE ILLICIT ARMS TRAFFICKING.

The prohibitions under current law on the shipment of items controlled under the Arms Export Control law to various countries preclude law enforcement agencies from obtaining authorization to engage in undercover transactions designed to detect illicit arms trafficking with those countries. This provision would provide an exception to the current provision when such transactions are undertaken for the purpose of investigating possible violations of U.S. law. It in no way affects other licensing or interagency approval requirements applicable to such shipments. Nor does it affect internal agency guidelines controlling the review and conduct of undercover investigations.

SUBTITLE H – TERRORISM

SEC. 4121. EXPANSION OF THE BIOLOGICAL WEAPONS STATUTE.

This proposal fills a gap in existing federal law by placing additional controls on dangerous biological agents and toxins while preserving the ability to conduct legitimate scientific research that requires their use.

Subsection (a) contains the Congressional findings and purpose for Section 4121.

Subsection (b)(1) adds several new criminal provisions and civil penalties to Section 175 of title 18, United States Code, the biological weapons statute.

In accordance with the Biological Weapons Convention, proposed Subsection 175(c)(1) would create a ten year criminal penalty for any person who knowingly possesses any biological agent, toxin, or delivery system of a type or in an amount that cannot be reasonably justified by any prophylactic, protective or other peaceful purpose. As such, proposed Subsection 175(c)(1) strengthens the implementation of the treaty obligation of the United States under Article IV of the Biological Weapons Convention to control within the territory of the United States biological agents, toxins, and delivery systems by establishing further measures to ensure their possession is for, and is consistent with, a purpose permitted by the Convention. The subsection contains a narrow exception to criminal liability for "possession" of a naturally occurring biological agent or toxin that has not been cultivated or collected and which remains in its natural, wild state. This narrow exception merely recognizes the fact that these agents and toxins exist naturally in the environment, and that persons should not be held criminally liable for possessing them so long as the agent or toxin is not cultivated by humans and is not being exploited, harvested, or utilized in any way.

Proposed Subsection 175(c)(2)(A) would establish a misdemeanor offense for any person who, with conscious disregard of an unreasonable risk to public health and safety, handles a biological agent, toxin, or delivery system, knowing it to be such, in a manner that grossly deviates from accepted norms. Proposed Subsection 175(c)(2)(B) creates higher penalties when the mishandling causes bodily injury or results in death to any individual. A possible death penalty is not provided when a death resulted from a violation of Section 175(c)(2) because, unlike the death penalty provision being proposed in subsection (d) for a violation of Section 175(a) when death resulted from the violation of that provision, a violation of proposed Subsection 175(c)(2) does not require that the biological agent, toxin, or delivery system be possessed for use as a weapon. The Government can also act against violations of these new provisions by utilization of the seizure, forfeiture, and injunctive authorities provided the Attorney General under Sections 176 and 177 of title 18, United States Code. The publication by the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) entitled "Biosafety in Microbiological and Biomedical Laboratories" (BMBL), Third

Edition, May 1993, describes appropriate procedures for the safe handling of biological agents and botulinum toxins, and that publication (or any successor edition) should be consulted for guidance. See also, 62 Fed. Reg. 18134, 18135 (1997) (describing the security levels for the Equine morbilli virus, the Sabia virus and the Junin virus). In addition, toxins must be handled under the requirements established by the Occupational Safety and Health Administration (OSHA) pursuant to 29 C.F.R. § 1910.1450, the "Occupational Exposure to Hazardous Chemicals in Laboratories." Nothing contained in proposed Subsection 175(c)(2) limits any requirement mandated under any other federal law or regulation.

Proposed Subsection 175(d) creates criminal and civil penalties for falsely reporting the possible violation of Section 175(a) or (c) of title 18, United States Code, when the person knows such information to be false. Because the expert resources available to the Government to deal with biological weapons and the unsafe handling of biological agents and toxins are quite limited, the false reporting of such crimes dangerously impairs the Government's ability to deal with real situations. Moreover, such false reports adversely affect interstate and foreign commerce, can cause needless worry or even panic in the general public, and encourage copycat episodes.

Proposed Subsection 175(e) creates six provisions relating to those biological agents and toxins ("select agents") which the Secretary of Health and Human Services has determined to have the potential to pose a severe threat to public health and safety. The list, published pursuant to Section 511(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132), is found in Appendix A to 42 C.F.R. Part 72. See also, the definition of "select agent" in proposed Section 178(6) infra, which defines select agent to exclude a biological agent or toxin occurring in its natural environment, so long as the agent or toxin is not cultivated by humans and is not being exploited, harvested, or utilized in any way.

Proposed paragraph (e)(1) generally requires that any person who is not registered pursuant to 42 C.F.R. § 72.6(a) or exempted under 42 C.F.R. § 72.6(h)(i.e., not a "registered entity"), must report their possession of a select agent to the appropriate federal agency (i.e., the "designated agency") within the time limit specified. That agency is authorized to prescribe regulations concerning the nature and manner of the required notice. (Persons who meet the definition of a registered entity shall report as otherwise directed by the designated agency.) Proposed paragraph (e)(2) creates a three year felony for any person who willfully fails to make the required report. Proposed paragraph (e)(3) creates a $5,000 civil penalty for any person who fails to make the required report. Proposed paragraph (e)(4) creates a misdemeanor offense for a person who possesses a select agent and who has failed to file the report with the designated agency. The government need not prove that the defendant knew the substance was a select agent, but the government must prove that the defendant was aware that the substance he possessed was a biological agent or toxin. Any person who files a false report with the designated agency would be subject to prosecution under 18 U.S.C. § 1001. Proposed paragraph (e)(5) prohibits anyone from knowingly transferring a select agent to any other person who is not a registered entity. It does not encompass authorized transfers in the workplace of select agents between employees of the same registered entity or between employees of any person who has filed the report required by paragraph (e)(1).

Proposed paragraph (e)(6) deals with the possession of select agents by "restricted individuals." The restricted individuals are similar, although not identical, to those who, under Section 922(g) of title 18, United States Code, are precluded from lawfully possessing a firearm. Subparagraphs (6)(A) and (B) make it a crime for a restricted individual to knowingly possess a biological agent or toxin which is a select agent. This criminal prohibition, like the criminal prohibition under 18 U.S.C. §§ 922(g) and 924(a)(2), is a general intent statute. Thus, it is unnecessary to prove that the defendant knew that his possession of the select agent was in violation of the law. He merely has to know that he was in possession of a biological agent or toxin; but he need not specifically know that it was designated as a select agent. The prohibition is not triggered by a restricted individual merely working for a registered entity or for a person who has filed the report required by Subsection 175(e)(1), provided that such individual does not possess a select agent.

Subparagraph(6)(C) mandates that employers of individuals who will possess select agents in the course of their employment require such individuals to complete a form in which the individual affirms or denies the existence of each of the restrictions found in proposed paragraph (8) of section 178 of title 18, United States Code. New employees must complete the form prior to being given access to select agents. Existing employees must complete the form within 90 days after the enactment of the provision. The form is to be retained by the employer for at least five years after the employee terminates his employment with the employer. Subparagraph (6)(D)(i) makes it a five-year felony to wilfully and knowingly falsify or conceal a material fact or make any materially false, fictitious, or fraudulent statement or representation in completing the form required under subparagraph (6)(C).

Subparagraph (6)(D)(ii) creates an exemption to the prohibition on possession by a restricted individual of a select agent in the workplace of his employer if the basis for the prohibition relates solely to subparagraphs (A) (under indictment for a crime punishable by imprisonment for a term exceeding one year) or (B)(i) (convicted of a crime punishable by imprisonment for a term exceeding one year but not more than 5 years) of proposed Section 178(8) of title 18, United States Code, and a determination is made to waive the prohibition in accordance with the rules and procedures established pursuant to proposed Subsection 175(f) of title 18, United States Code.

Subparagraph (6)(D)(iii) creates an exemption to the prohibition on possession by a restricted individual of a select agent in the workplace of his employer if the basis for the restriction relates solely to subparagraphs (B)(ii) (convicted of a crime punishable by imprisonment for a term exceeding five years) or (G) (dishonorable discharge from the Armed Forces of the United States) of proposed Section 178(8) of title 18, United States Code, the restriction is more than five years old (not counting periods of custody) and a determination is made to waive the prohibition in accordance with the rules and procedures established pursuant to subsection 175(f) of title 18, United States Code. Subparagraph (6)(D)(iv) defines the term "employer" to mean any person who is a registered entity or has filed the report required by Subsection 175(e)(1) and employs a restricted individual.

Subparagraph (6)(E) deals with lawfully admitted aliens (other than those who are lawfully admitted for permanent residence) who are nationals of a country listed by the Secretary of State as supporting international terrorism. Presently, the Secretary has listed these seven countries: Cuba, Iraq, Iran, Libya, North Korea, Sudan, and Syria. Such an alien may seek a waiver of the restriction found in proposed 18 U.S.C. §§ 175(e)(6)(A) and 178(8)(F) from the agency designated to carry out the functions of subparagraph (6)(E). The designated agency may grant a waiver if that agency determines, in consultation with the Attorney General, that the possession of the select agent by such alien is in the public interest.

Proposed Subsection 175(f) authorizes the agency, which is designated by the President to carry out this subsection, to establish the rules and procedures governing waivers of the provisions of Subsection 175(e)(6)(A) with respect to possession of select agents by restricted individuals in the course of employment. Such rules and procedures are to be issued after consultation with appropriate federal agencies, with representatives of the scientific and medical community, and with other appropriate public and private entities and organizations (including consultation concerning employment practices in working with select agents). The rules and procedures shall address, among other matters as found appropriate by the designated agency, whether (or the circumstances under or the extent to which) the determination to grant a waiver shall be reserved to the Government, or may be made by the employer (either with or without consultation with the Government).

Proposed Subsection 175(g)(1)(A) requires that the court order any person convicted of a violation of Section 175(a), (c), or (e) of title 18, United States Code, to reimburse the United States for any expenses incurred by the United States incident to the seizure, storage, handling, transportation, and destruction or other disposition of any property seized in connection with an investigation of the commission of such offense by that person. Proposed Subsection 175(g)(1)(B) requires that the court order any person convicted of a violation of Section 175(d)(1) of title 18, United States Code, to reimburse the United States for any expenses incurred by the United States incident to the investigation of the commission by that person of such offense, including the cost of any response by any federal military or civilian agency to protect public health or safety during the course of such investigation. Proposed Subsection 175(g)(2) makes the owner or possessor of any biological agent, toxin, or delivery system seized and forfeited under the authority of chapter 10 of title 18, United States Code, liable for the expenses incurred by the United States relating to the seizure and forfeiture, including the handling, storage, transportation, and destruction or other disposition of the seized property. Proposed Subsection 175(g)(3) makes any person ordered to reimburse the United States for any expenses under this chapter jointly and severally liable for such expenses with any other person ordered under this subsection to reimburse the United States for the same expenses.

Subsection (b)(2) clarifies confusing language in Section 176(a) of title 18, United States Code.

Subsection (b)(3)(A) establishes a timetable for the President to designate the appropriate federal agency to prescribe the regulations required under new Section 175(e)(1)of title 18, United States Code, the appropriate federal agency to grant the waivers for certain aliens pursuant to proposed Subsection 175(e)(6)(E), and the appropriate federal agency to promulgate the rules and procedures under proposed Subsection 175(f) of title 18, United States Code. Subsection (b)(3)(B) establishes the timetable for the agencies designated to prescribe the regulations required under Sections 175(e)(1), 175(e)(6)(E), and 175(f) of title 18, United States Code. Subsection (b)(3)(C) grants the agency, which is designated to prescribe the regulations required by Section 175(e))(1) of title 18, United States Code, the authority to inspect the facilities where any select agent reported under Section 175(e)(1) is kept to determine whether it is being handled in a safe manner, being held for a peaceful purpose, and is of a type and quantity that are reasonable for that purpose. Any agency designated by the President pursuant to Subsection (b)(3)(A) may also inspect any form required by subparagraph (C) and any documents relating to a determination made pursuant to subparagraph (D) of Section 175(e)(6) of title 18, United States Code.

Subsection (b)(3)(D) creates an exemption from the Freedom of Information Act (5 U.S.C. § 552(a)) for any information provided to the Secretary of Health and Human Services pursuant to regulations issued under Section 511(f) of the Antiterrorism and Effective Death Penalty Act of 1996 (42 C.F.R. § 72.6) (i.e., the "select agent" regulation) and for any information provided to the federal agency responsible for administering Section 175(e)(1) of title 18, United States Code. The effective date for this exemption is made retroactive by Subsection (b)(3)(E)(i) to the effective date for the select agent regulation (i.e., October 24, 1996) in order to clearly protect the information already provided to the Secretary of Health and Human Services by those entities that have registered as transfer agents. However, the Secretary of Health and Human Services and the federal agency responsible for administering Section 175(e)(1) of title 18, United States Code, may disclose information that they have collected to protect the public health and enforce any provision of law. Information may also be disclosed to appropriate Congressional committees upon request.

Subsection (b)(3)(E) amends appropriate provisions of Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) to make specific reference to biological "toxins" in order to alleviate any possible confusion as to the scope of that section. These changes are made retroactive by Subsection (b)(3)(F)(ii) to the effective date of the Antiterrorism and Effective Death Penalty Act of 1996.

Subsection (b)(3)(G) makes the prohibitions for those restricted individuals who are eligible for a waiver inapplicable until the relevant regulations are effective or 270 days after the enactment of Section 4121, whichever is sooner. This delay is made in order to minimize the harm to those restricted individuals who would qualify for a waiver.

Subsection (c) proposes some revised definitions for the biological weapons statutes (18 U.S.C. §§ 175-177) as well as providing the definitions for "select agent," "registered entity," "restricted individual," and "designated agency."

The biological definitions proposed in Subsections (c)(1)(A), (B), and (C) represent the most accurate definitions of the statutory terms according to scientists from the Centers for Disease Control and Prevention and the National Institutes of Health.

With respect to the definition of "biological agent," it is more accurate to list the types of "microorganisms" that may be used in biological weapons, rather than making it appear, as does present law, that a virus is something different from a microorganism. In addition, the term "biotechnology" in the definitions (which is included in the enacted version) is removed because it is a slang expression.

The term "synthesized" component is added for a specific reason. A "bioengineered" component of a microorganism implies that the product undergoing engineering occurs in nature. It is also possible, however, for scientists to chemically synthesize molecules in a test tube. Scientists would not understand such a product to be "bioengineered," but it would constitute a biological agent that could be used in a weapon.

Further, the enacted version of "vector" is changed to delete the words "or biological product that may be engineered as a result of biotechnology" (because the term "recombinant" means just that), and to add the words "or synthesized." As a result, the definition for "vector" should read: "The term 'vector' means a living organism or molecule, including a recombinant or synthesized molecule, capable of carrying a biological agent or toxin to a host."

With respect to the definition of "toxin", the term "product" is added because the term "toxic material" is not all inclusive. An organism may contain toxic material as it exists in nature. However, it is also possible to create a toxic product from a naturally occurring organism. For instance, ricin is manufactured from castor beans. It is the intent of the definition to include toxic products that may be manufactured from plants, animals, microorganisms, etc., in addition to the toxic material that the organism naturally contains.

The term "select agent" is defined to mean a biological agent or toxin that is on the list established by the Secretary of Health and Human Services pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (a "select agent" defined in 42 C.F.R. 72.6(j) which is not exempted under 42 C.F.R. 72.6(h)or Appendix A to part 72). As such, it does not include a select agent if the agent is merely part of a clinical specimen intended for diagnostic, reference or verification purposes. Nor does it include a select agent that is in its naturally occurring environment provided that such biological agent or toxin has not been cultivated, collected or otherwise extracted from its natural source. The term "registered entity" is defined to mean a registered facility, or a certified laboratory exempted from registration, pursuant to the regulations promulgated by the Secretary of Health and Human Services under section 511(f) of the Antiterrorism and Effective Death Penalty Act of 1996 (42 C.F.R. 72.6(a), 72.6(h)). Such certified laboratories are exempt if they utilize a select agent only for diagnostic, reference, verification, or proficiency testing purposes.

The term "restricted individual" is defined to include an individual:

(1) under indictment for a crime punishable by imprisonment for a term exceeding one year (a waiver may be possible);

(2) convicted of a crime punishable for a term exceeding one year (a waiver may be possible);

(3) who is a fugitive from justice (no waiver is possible);

(4) who is an unlawful user of a controlled substance (no waiver is possible);

(5) who is an alien who is illegally or unlawfully in the United States (no waiver is possible);

(6) who is an alien (other than an alien lawfully admitted for permanent residence) and a national of a country which is on the Secretary of State's list of countries supporting international terrorism (a waiver from the designated agency may be possible); or

(7) who has been discharged from the Armed Forces of the United States under dishonorable conditions (a waiver may be possible).

The definitions for "alien" and "lawfully admitted for permanent residence" contained in the Immigration and Nationality Act (INA) are incorporated by reference. Finally, the term "designated agency" is defined to mean the agency designated by the President to promulgate reporting requirements for the possession of select agents, the agency responsible for the granting of waivers to certain aliens who are nationals of a country listed by the Secretary of State as supporting international terrorism, and the agency responsible for the implementing the other waiver provision. The President may designate the same agency to carry out two or more of these responsibilities.

Subsection (d) adds a possible death penalty for violations of Section 175(a) of title 18, United States Code, if death results from the commission of the offense. Under current law, 18 U.S.C. § 2332a, there is a death penalty when the use of, the attempted use of, or the conspiracy to use a biological weapon results in a death.

SEC. 4122. RAIL AND MASS TRANSPORTATION ANTI-TERRORISM AND VIOLENCE.

Subsection (a) provides that the section may be cited as the "Rail and Mass Transportation Anti-Terrorism and Violence Prevention Act of 1999."

Subsection (b) provides that the purpose of the section is to protect the passengers and employees of railroad carriers and mass transportation systems, and other persons while on railroad or mass transportation property, and the movement of freight by railroad, from terrorist attacks and other acts of violence.

Subsection (c) proposes to amend existing 18 U.S.C. § 1992, dealing with wrecking trains, to create criminal sanctions for violent attacks against railroads, railroad employees and railroad passengers similar to sanctions currently provided for attacks against airlines, vessels on the high seas, motor carriers, and pipelines. See 18 U.S.C. § 32 and § 884(g)(1) (destruction of aircraft or aircraft facilities); 18 U.S.C. § 33 (destruction of motor vehicles or motor vehicle facilities); 18 U.S.C. §§ 2271-8, 2280, 2281 (violence against maritime navigation); and 49 U.S.C. § 60123 (damaging pipelines).

The need for strong criminal legislation to deter attacks against railroads is highlighted by the following examples of incidents that have occurred in recent years: on April 15, 1999, someone set on fire a railroad trestle spanning the Nisqually River east of Olympia, Washington, forcing the rerouting of passenger and freight trains; on March 20, 1999, children discovered a pipe bomb next to a Union Pacific Railroad signal control box in Antioch, California; on February 20, 1999, two Amtrak trains in Havre, Montana were evacuated in response to a false phone threat that radioactive materials had been placed on board the trains; on July 5, 1998, someone removed railroad spikes and track couplers from track near Marienville, Pennsylvania, causing a tourist train with 30 people on board to derail – no one was hurt; on December 16, 1997, vandals hit four locations along a nearly 30-mile stretch of Burlington Northern Santa Fe Railway track in south-central Kansas, cutting wires, tearing railroad signals and lights off railroad-highway grade crossing gates -- the damage was discovered before an accident occurred; on August 12, 1997, a man carrying a loaded shotgun and several knives was caught pouring gasoline into sinks in several Amtrak passenger car restrooms; on April 1, 1996, fire damage to a railroad trestle nearly resulted in the destruction of an Amtrak passenger train between Santa Fe, New Mexico and Las Vegas, Nevada (arson is suspected); on October 9, 1995, the intentional derailment of an Amtrak passenger train near Hyder, Arizona resulted in one death and 78 injuries; on May 21, 1993, the intentional derailment of an Amtrak passenger train near Opa-Locka, Florida resulted in the injury of six of the train's passengers and crewmembers; and on August 12, 1992, the intentional derailment of an Amtrak passenger train at Newport News, Virginia resulted in the injury of 70 of the train's passengers and crewmembers. Vandalism has also resulted in runaway railroad cars, freight train derailments, which in at least one case resulted in a hazardous material spill, and the burning of railroad equipment.

The requisite federal jurisdictional showing has been reduced to maximize the deterrent effect of the statute. The existing wrecking trains statute is limited to acts of violence, committed within the United States, against trains, engines, motor units or cars used, operated or employed in interstate or foreign commerce by any railroad or against various fixed facilities used in the operation of a railroad in interstate or foreign commerce. The amendment expands the coverage of the statute to include acts of violence against foreign-based dispatching centers and their foreign-based employees that control train operations in the United States. In addition, the statute is expanded to include acts of violence against any railroad carrier operating in the United States if the person committing the act travels, communicates, or transports materials across State lines in aid of the commission of such acts.

Subsection (a) of § 1992 incorporates the existing statutory prohibitions, with some modifications, and adds additional prohibitions. The first paragraph is similar to the existing section, which prohibits wrecking, derailing, or disabling railroad equipment, but adds a prohibition against setting fire to such equipment.

The second paragraph is similar to the existing section, which prohibits the placement of any explosive substance in, upon or near railroad equipment or other railroad property with the intent to derail, disable, or wreck a train or other railroad equipment, with certain exceptions. First, paragraph two is limited to acts against railroad equipment; acts against other railroad property is covered in paragraph three. Second, a prohibition against the placement of a biological agent or toxin for use as a weapon is added. The terms 'biological agent,' 'for use as a weapon,' and 'toxin' are defined in subsection (c). Third, to be consistent with existing federal criminal laws, the term "explosive substance" has been replaced with the term "destructive substance," which is defined as any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature. Fourth, a prohibition against the placement of a destructive device is added. The term "destructive device" is defined in subsection (c). Fifth, the intent to derail, disable, or wreck railroad equipment requirement is replaced with a requirement that the placement of the biological agent or toxin, destructive substance, or destructive device on the equipment be unauthorized, and with intent to endanger the safety of any passenger or employee of the railroad carrier, or with a reckless disregard for the safety of human life.

The third paragraph is similar to the existing section with the following exceptions. First, the activity must be unauthorized. Second, a prohibition against the placement of a destructive device, or a biological agent or toxin for the use as a weapon is added. The terms 'biological agent,' 'for use as a weapon,' and 'toxin' are defined in subsection (c). Third, the term "explosive substance" has been replaced with the term "destructive substance." Fourth, railroad signals are no longer covered by this paragraph but are covered in paragraph four. Fifth, the intent to derail, disable, or wreck requirement is replaced with a requirement of "knowing or having reason to know" such activity would likely derail, disable, or wreck railroad equipment.

The fourth paragraph makes punishable damaging or otherwise impairing a railroad signal system, including a train control system, a centralized dispatching system, or highway-railroad grade crossing warning signal. The existing statute is limited to acts of violence against signals, and would not cover, for example, an instance of an individual willfully damaging a computer located in a centralized dispatching facility in Fort Worth, Texas, for the purpose of creating a false proceed signal in Butte, Montana.

The fifth paragraph makes punishable acts which disable or incapacitate a dispatcher, locomotive engineer, conductor, or other person while they are employed in dispatching, operating or maintaining railroad equipment. There is no parallel provision in the existing statute; however, section 1991 of Title 18 of the United States Code does cover entering a train to commit murder, robbery, or violence. Despite the fact that the acts covered by the fifth paragraph are less likely to occur in the railroad context than in other modes of transportation, the provision is, nevertheless, a necessary one. For example, it is possible that an individual could gain access to a locomotive engine and incapacitate a locomotive engineer in order to wreck the train. Alternatively, an individual might incapacitate a dispatcher, in order to reroute trains onto a collision course. These and similar acts would be covered by this provision.

The sixth paragraph makes punishable an act, including the use of a dangerous weapon with the intent to cause death or serious bodily injury to an employee or passenger or any other person on the property of a railroad carrier. Examples of acts that would be covered include gas attacks, and killing or seriously injuring railroad employees in a dispatching center or passengers in a station. There is no parallel provision in the existing statute.

The seventh paragraph makes punishable causing the release of hazardous materials on railroad property, including bulk and non-bulk freight, with the intent to endanger the safety of any person, or with a reckless disregard for the safety of human life. There is no parallel provision in the existing statute. However, 49 U.S.C. § 5104(b) prohibits the tampering with a package, container or freight car used to transport hazardous materials; a person knowingly violating this section can be fined under title 18, imprisoned for not more than 5 years, or both. 49 U.S.C. § 5124.

The eighth paragraph makes punishable conveying or causing to be conveyed false information, knowing the information to be false, concerning any act which would be prohibited by subsection (a), such as bomb threats or other similar acts. There is no parallel provision in the existing statute.

The ninth paragraph makes punishable attempts, threats, and conspiracies to do any of the acts described in paragraphs (1) through (7), or in the case of a threat or conspiracy, such act would be committed, on, against, or affecting a railroad carrier engaged in or affecting interstate or foreign commerce, or if in the course of committing such acts, that person travels or communicates across a State line in order to commit such acts, or transports materials across a State line in aid of the commission of such acts. The existing statute is limited to attempts to do acts proscribed by the statute.

Subsection (b) of § 1992 explains the penalty for willfully committing any of the acts described in subsection (a) of § 1992 is a fine or imprisonment of not more than twenty years, or both; this is similar to the penalty provision in the existing statute. A person convicted of any crime prohibited by subsection (a) is also subject to:

> imprisonment of not less than thirty years or for life if the railroad train involved carried high-level radioactive waste or spent nuclear fuel at the time of the offense--this is in the existing statute;
>
> life imprisonment if the railroad train involved was carrying passengers at the time of the offense--there is no comparable provision in the existing statute; and
>
> life imprisonment or death if the offense has resulted in the death of any person--this is in the existing statute.

Subsection (c) of § 1992 prohibits acts involving the propelling of objects, biological agents or toxins for use as a weapon, destructive substances, or destructive devices, at any locomotive or car of a train, and makes such acts punishable by a fine or imprisonment for not more than five years, or both. If the offense results in the death of any person, the act is punishable by imprisonment for not more than twenty years. There is no parallel provision in the existing section. Railroads have reported instances of trains being shot at, and cinder blocks and other dangerous objects being thrown at locomotives; these activities jeopardize railroad employees and passengers.

Subsection (d) of § 1992 provides definitions for certain of the terms used in the section. For example, "railroad carrier" is defined as that term is traditionally defined in the railroad safety laws (49 U.S.C. § 20102(2)), as a person providing transportation by railroad. The term "railroad" is defined as in 49 U.S.C. § 20102(1), to include transportation by means of conventional trains, new high-speed rail systems, magnetically levitated trains, as well as commuter or other short-haul railroad passenger service, but to exclude rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Use of the term "serious bodily injury" from 18 U.S.C. § 1365 is intended to help exclude minor altercations, such as a fist fight between two passengers, from coverage. "High-level radioactive waste" and "spent nuclear fuel" are defined are those terms are used in the Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101(12),(23)).

Subsection (d) modifies the analysis of chapter 97 of title 18, United States Code, to reflect the new title to § 1992.

Subsection (e) creates a new § 1993 of title 18 to make punishable acts of terrorism and other violence against mass transportation systems. Currently, there are no federal laws specifically addressing terrorism of mass transportation systems. Section 1993 is designed to parallel, to the extent applicable, acts of terrorism or other violence against railroad carriers (amendment to 18 U.S.C. § 1992 in section three of the bill). There are three principal differences between the two sections.

First, in § 1993, the phrase "rail grade crossing warning signal" is used, whereas "highway-railroad grade crossing warning signal" is used in § 1992. Omitting the term "highway" makes it clear that this provision covers only tampering with signals for fixed rail mass transportation systems such as subways and light rail, rather than covering all mass transportation signal systems, which would include, for example, highway traffic signalsor aids to navigation.

Second, § 1993 defines "mass transportation" as that term is defined in 49 U.S.C. § 5302(a)(7), including subways, buses, and ferries, but is expanded to include schoolbus, charter, and sightseeing transportation.

Third, § 1993 does not have a prohibition similar to the prohibition in § 1992(a)(8) dealing with the release of a hazardous material. Railroads, unlike mass transportation vehicles or ferries, regularly transport large quantities of hazardous materials which could pose substantial safety risk to the public.

The need for strong criminal legislation to deter attacks against mass transportation systems is underscored by the following incidents: on August 1, 1997, New York police and federal agents arrested three men and seized five powerful bombs (the men apparently intended to blow up subways); during the last two weeks of February 1997, there were several bomb threats against the ferry in Seattle (no bombs were discovered); on September 16, 1996, an improvised explosive device was discovered by a maintenance worker in a trash receptacle at Grand Central Station in New York (the device was safely exploded by the bomb squad); on November 26, 1995, two armed bandits squirted gasoline through the change tray of a subway token booth in Brooklyn and then ignited the gasoline causing the occupied booth to explode, resulting in the death of the toll booth clerk; in December 1994, a lone passenger boarded a subway in Manhattan carrying an incendiary device which exploded, causing numerous injuries; on December 7, 1993, a lone gunman with an automatic weapon opened fire on board a rush hour Long Island RailRoad train, resulting in six fatalities and 17 injured commuters; and on February 26, 1993, a massive truck bomb exploded in the parking garage under New York's World Trade Center, resulting in six deaths and 1,000 injuries, and causing damage to the subway running beneath the building.

Subsection (f) is a conforming amendment.

SECTION-BY-SECTION ANALYSIS FOR TITLE V

SUBTITLE A - VIOLENCE AGAINST WOMEN

SEC. 5001. REAUTHORIZATION OF STOP GRANTS.

(a) This section provides for the reauthorization of the STOP Grant program through FY 2005.

(b)(1)This section adds women with disabilities to the populations (racial, cultural, ethnic and language minorities) already designated for improved victim service delivery under the program.

(c)(1) Adds developing, implementing, or supporting public education campaigns against domestic violence and sexual assault as a purpose area for receiving STOP funds, so long as funding of such education efforts does not detract from provision of direct services to victims of violent crimes.

(c)(2) This section increases the set-aside for Indian tribal governments from 4 percent to 5 percent. It also establishes a 2 percent set-aside from overall STOP funds for state domestic violence and state sexual assault coalitions.

(c)(3) This section adds the definition of 'courts' and includes court components (such as court intake programs) in that definition. It also defines 'State domestic violence coalitions" and "State sexual assault coalitions," which would be eligible for the 2 percent set-aside.

(d) This section provides for reallocation of funds that remain unobligated at the end of the two year project period under the law enforcement, prosecution, and courts set-asides. States may use these funds to support other nonprofit, nongovernmental victim services projects. The section provides for the Attorney General to promulgate guidelines to implement this reallocation.

(e) This section expands the definition of permissible services from strictly assisting victims through the legal process services to allow a more holistic, one-stop approach to victims services, including not only legal but also economic, health care or social services.

SEC. 5002. ROLE OF THE COURTS.

(a)(1) This section establishes State, local and tribal courts as eligible grantees under the STOP program.

(a)(2) This section changes the allocation of STOP funds to reflect the inclusion of courts and adjusts the percentages available to police and prosecutors, victim services, and courts. Under the new formula, not less than 25 percent each goes to police and prosecutors, not less than 30 percent goes to victim services, and not less than 10 percent goes to courts.

(b) This section reauthorizes State Justice Institute grants (previously authorized under the Equal Justice for Women in the Courts Act, Subtitle D of VAWA), which are intended to promote and provide training for judges and other court personnel. The section also makes various definitional changes related to the program.

(c) This section provides that the Federal Judicial Center include educational and training programs related to violence against women (as set forth in the Equal Justice for Women in the Courts Act) in its program offerings.

SEC. 3003. GRANTS TO ENCOURAGE ARREST POLICIES.

(a)This section provides for reauthorization of the Grants to Encourage Arrest Policies program through 2004.

(b)(1)Additionally, it allows developing, implementing, or supporting public education campaigns against domestic violence and sexual assault as a purpose area for receiving funds under this program, so long as funding of such educational efforts does not detract from provision of direct victim services.

(b)(2) It also reserves at least 5% of the program funding for programs for Indian women.

SEC. 5004. REAUTHORIZATION OF RURAL DOMESTIC VIOLENCE AND CHILD ABUSE GRANTS.

(a) This section reauthorizes the program through 2004.

(b) This section provides that at least 5 percent of funds available be used for grants to Indian tribal governments.

SEC. 5005. EDUCATIONAL INSTITUTIONS AND VIOLENCE AGAINST WOMEN.

(a)(1)(A) This subparagraph expands the definition of relationships that can be addressed by the program to include dating relationships. The original statute was limited to marital and cohabitational relationships, which would exclude most college women from the program designed to address violence against them.

(a)(1)(C) This subparagraph amends the definition of eligible funding recipients to include private, nonprofit organizations or public, nonprofit organizations acting in a nongovernmental capacity. This change is necessary to allow programs to serve both private and public colleges and universities. The original statutory language precluded their participation.

(a)(1)(D) This subparagraph provides full definitions for 'campus domestic violence,' 'campus stalking,' and 'campus sexual assault,' which were missing from the original statute.

(a)(2) This subparagraph expands the covered population to include faculty and other members of the campus community.

(b) This section reauthorizes the program through fiscal 2005.

SEC. 5006. TEN PERCENT SET-ASIDE OF VAWA GRANT FUNDS FOR TRAINING AND TECHNICAL ASSISTANCE.

This section allows the Attorney General to dedicate up to ten percent of the funding for VAWA grant programs to provide technical assistance and training to grant recipients.

SEC. 5007. PROTECTION FOR VICTIMS OF TRAFFICKING.

Subsection (a) sets forth new 18 USC 1589: Trafficking and Criminal Exploitation of Workers

I. <u>What Section 1589 Does</u>.

This section compensates for deficiencies in the law. First, 18 U.S.C. Section 1589(a) extends to those who recruit, harbor, provide, transport, employ, purchase, sell, or secure any person, knowing that the victim will be subjected to involuntary servitude or peonage or to unlawfully exploitative labor conditions. Subsection (a) addresses the need to fill gaps in the existing provisions of Title 18, concerning trafficking in persons, involuntary servitude and slavery and criminal exploitation of workers.

This subsection reaches those who maintain or transport persons into an exploitative labor relationship through a pattern, plan or scheme to defraud the victim. The current involuntary servitude and peonage statutes (Title 18, U.S.C., Sections 1581 and 1584), as interpreted by United States v. Kozminski, 487 U.S. 931 (1988), only permit prosecution where the perpetrator uses force, threat of force, or legal coercion to obtain or maintain a condition of involuntary servitude.

Subsection (b) of section 1589 defines "unlawfully exploitative labor conditions with the intent to extend the reach of criminal prosecution to certain egregious factual scenarios that federal prosecutors regularly encounter without existing remedies: the use of fraud, deceit and manipulation coupled with a pattern of unfair and abusive labor practices. In addition, this definition requires that the exploitation involves labor or series which obtained or maintained through any scheme or artifice to defraud, or by means of any plan or pattern. . ."

In addition, the section authorizes criminal prosecution of those who profit from the victim's forced labor, knowing that the victim is held in a condition of involuntary servitude or peonage (as codified in Title 18). Thus, subsection (a) would enable the United States to prosecute those who hide behind labor contractors or other contracting relationships to avoid culpability for involuntary servitude, while still profiting from the fruits of these inhumane conditions.

This statute does not apply to labor performed where the employer is a municipal, local, state, or federal government, and the relationship is penological, rather than pecuniary. Because prisoners' labor is not categorically excluded from the minimum wage protection of the Fair Labor Standards Act, language that will have such an effect is included. This language reflects the test set forth in Hale v. Arizona, 993 F.2d 1387 (9th Cir.) (en banc), cert. denied, 510 U.S. 946, 114 S.Ct. 386 (1993).

II. Background.

A. Present Statutory Scheme — Involuntary Servitude and Slavery.

Title 18 U.S.C. §§ 1581 et seq. set out a variety of substantive crimes covering involuntary servitude, peonage, and the slave trade. The most commonly used statutes in this series are involuntary servitude (§ 1584) and peonage (§ 1581). An additional provision, section 1583, penalizes those who kidnap someone for slavery or entice someone to travel for the purpose of enslavement. Additionally, Title 18 U.S.C. § 241 provides for a sentence of up to ten (10) years for those who conspire to violate a person's Thirteenth Amendment right to be free from involuntary servitude. The following statutory language apples through these provisions:

- Title 18, section 1584 of the United States Code (involuntary servitude) provides:

  Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 10 years, or both.

- Title 18, section 1581 of the United States Code (peonage) provides:

  (a) Whoever holds or returns any person to a condition of peonage shall be fined under this title or imprisoned not more than 10 years, or both.

  (b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be liable for the penalties imposed in subsection (a).

- Title 18, section 1583 of the United States Code (enticement into slavery) provides:

  Whoever kidnaps or carries away any other person with the intent that such other person be sold into involuntary servitude, or held as a slave, or

  Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he maybe made or held as a slave, or sent out of the country to be so made or held

  Shall be fined under this title or imprisoned not more than 10 years or both.

- Title 18, section 241 of the United States Code (conspiracy against rights) provides in pertinent part:

  If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States ... They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

B. Deficiencies in the Present Statutory Scheme.

In the attempt to vigorously enforce federal law related to the problems of involuntary servitude, trafficking, and unlawful exploitation of workers, the limitations of the current law have become apparent:

- Existing federal criminal law is limited primarily to the slavery statute which requires a showing that the defendant used force, threat of force or threat of legal coercion to enslave the victim(s). Existing federal law does not address the situation where a person is subjected to other forms of purposeful coercion that wrongfully keep the victim from leaving his or her labor or service. In addition, the criminal provisions of the Fair Labor Standards Act and other labor statutes, which are currently the most likely alternatives to slavery prosecutions, are weak criminal tools, carrying only a six-month or one-year maximum sentence. Mere enforcement of the civil wage and hour laws similarly provides an inadequate deterrent to what is often egregious misconduct;

- The high standard of proof in involuntary servitude prosecutions also curtails our efforts to prosecute traffickers (those who transport people for the purpose of worker exploitation). In most instances, the trafficker does not use force or threat of force; thus, traffickers rarely are charged as co-conspirators in a slavery case. Current law does not punish trafficking unless the victim is an illegal alien or is being trafficked for the purposes of the sex trade. Illegal alien transportation is an inapposite fit for these situations because the alien smuggling statute contemplates the workers as "contraband" rather than as "victims" of these heinous crimes;

- Present criminal law does not cover the use of farm labor contractors and other types of employment relationships which are designed to provide a liability shield between the direct oppressor and the economic beneficiary of the slave labor. In order to combat worker exploitation, it is necessary to punish those who knowingly benefit or profit from slavery or use contractors and others so that they can turn a blind eye to horrible conditions. Without such a statutory tool, these defendants will simply be able to hire another labor provider to replace those who are apprehended and prosecuted, and the cycle of worker exploitation will continue.

Unless we address these gaps in the law, our enforcement efforts will be severely curtailed. Abusive employers will escape prosecution because their activities, though they may shock the conscience, do not rise to the high levels required by the current criminal statutes as interpreted by the Supreme Court.

Subsection (b) of section 5007 adds the worker exploitation statute created by subsection (a) to the table of sections for chapter 77 of title 18, United States Code.

Subsection (c) directs the United States Sentencing Commission to review its sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons and to ensure that they are sufficiently stringent to deter such offenses and adequately reflect the heinous nature of such offenses. It also directs the Sentencing Commission to consider conforming the sentencing guidelines applicable to worker exploitation offenses to those applicable to peonage, involuntary servitude, and slave trade offenses and to consider providing enhancements for trafficking offenses involving a large number of victims, a pattern of continued and flagrant violations, the use or threatened use of a dangerous weapon, or the death or bodily injury of a person or persons.

Subsection (d) creates a new nonimmigrant classification at section 101(a)(15)(T) of the Immigration and Nationality Act to benefit aliens who assist with certain criminal and civil law enforcement investigations and prosecutions.

Subparagraph (1) describes the purpose of this subsection.

Subparagraph (2) establishes the new nonimmigrant visa classification and sets forth the eligibility requirements. The classification is available to an alien who the Attorney General determines: (1) possesses material information concerning criminal or other unlawful activity; (2) is willing to supply or has supplied such information to Federal or State law enforcement officials; (3) whose presence in the United States would be helpful to a properly authorized Federal or State investigation or prosecution of the criminal or other unlawful activity; and (4) has suffered substantial physical or mental abuse as a result of the criminal or other unlawful activity. In addition, the Attorney General may grant nonimmigrant T visas to the spouse, children, and parents of such an alien, if accompanying or following to join the alien.

Subparagraph (3) describes the conditions for admission under the nonimmigrant T classification. It sets an annual numerical limit of 1,000 T visas; limits the program to 5 years; and provides that the period of admission under the classification may not exceed 3 years. In order to qualify and maintain lawful status, the nonimmigrant may not be convicted of a crime punishable by a term of imprisonment of 1 year or more after the date of admission; must execute a waiver of the right to contest deportation; and abide by any other conditions set by the Attorney General. Finally, subparagraph (3) provides that nonimmigrants under the T classification may not change to any other nonimmigrant status.

Subparagraph (4) describes the terms under which a T nonimmigrant may adjust to lawful permanent resident status. Such a nonimmigrant is eligible for adjustment if the Attorney General determines that: (1) the alien's continued presence in the United States is justified on humanitarian grounds or is otherwise in the national interest; and (2) the alien is not inadmissible under 212 (a)(3)(A)(i)(I) (entry sought to engage in espionage or sabotage), (3)(A)(ii) (entry sought to engage in unlawful activity), (3)(A)(iii) (entry sought to oppose, control, or overthrow the United States Government by force, violence, or other unlawful means), (3)(C) (entry would have potentially serious adverse foreign policy consequences), or (3)(E) (alien participated in Nazi persecutions or genocide). Subparagraph (4) also provides that the Attorney General shall record the alien's permanent resident status and that the Secretary of State shall reduce the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the corresponding fiscal year.

Subparagraph (5) provides that this provision is the exclusive means of adjustment of status for T nonimmigrants.

SEC. 5008. BATTERED IMMIGRANT WOMEN.

Subsections (a) and (b). Subsection (a) sets out several Congressional findings regarding battered immigrant women and their access to the protections of the Violence Against Women Act. Subsection (b) describes the purposes of section 5008.

Subsection (c). Amends the Immigration and Nationality Act to ensure that changes in an abusers immigration status can only positively effect a VAWA self-petition. For example, if an abuser is deported, the self-petition will not be revoked or denied. Similarly, if the abuser naturalizes, the self-petition may be converted to that of a self-petitioner married to a U.S. citizen thereby making the self-petitioner immediately eligible for permanent residency.

Subsections (d), (e) and (f). These subsections do several things. First, they allow the Attorney General to make a finding of good moral character and waive inadmissibility or removal for VAWA self-petitions and suspensions/cancellations of removal, notwithstanding a disqualifying criminal conviction, if the alien can show a connection between the crime or reason for inadmissibility and the battery or extreme cruelty. This waiver does not apply to certain inadmissibility and removal grounds, such as terrorist acts and polygamy. Second, this subsection allows an alien to include her children in a VAWA petition for suspension of deportation or cancellation of removal.

Subsection (g). Extends VAWA self-petitioning and cancellation of removal to the alien spouses of bigamists, provided they were unaware of the bigamy and whose marriage is not legitimate solely because of the United States citizen or lawful permanent resident's bigamy. In addition, this subsection extends VAWA self-petitioning to battered immigrant spouses and children of members of the U.S. Uniformed Forces and State Department employees living abroad. This subsection also reinstates the ability of VAWA self-petitioners to adjust their status in the United States.

Subsection (h). Allows to Attorney General to reopen a removal or deportation proceeding if the motion to reopen is based on the alien's VAWA application and if the alien can show exigent circumstances for not filing an application for relief under VAWA in the first instance. The Attorney General's decision in this area is nonreviewable.

Subsection (i). Provides an exception for battered immigrants to the stop-time rule and the physical presence requirement where the battered alien can show a connection to the battery or extreme cruelty.

Subsection (j). Clarifies that none of the provisions in Section 5008 and the Immigration and Nationality Act should be interpreted as discouraging crime victim cooperation with law enforcement and prosecutors.

Subsections (k) through (n). Extends VAWA self-petitioning and suspension/cancellation of removal to sons or daughters who are over 21, but where the abuse happened prior to the son or daughter reaching the age of 21. This prevents VAWA-eligible children from "aging out" of the "children" category when they turn 21 years old.

Subsection (o). Allows agencies that receive funds from the Legal Services Corporation (LSC) to do two things: (1) use their non-federal (non-LSC) funds to represent battered immigrants regardless of their immigration status, and (2) use their LSC funds to represent immigrants in filing VAWA self-petitions.

Subsection (p). Requires the Attorney General to report to Congress on the processing times of VAWA self-petitions and on whether INS District Offices are putting battered immigrants into removal proceedings so that they have the opportunity to apply for suspension of deportation or cancellation of removal.

Subsection (q). Ensures that battered aliens with old affidavits of support (i.e., affidavits that were executed prior to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)) receive the same exemption from the deeming provisions of IIRIRA as battered aliens with affidavits of support executed after the passage of PRWORA.

Subsection (r) is intended to reduce an abuser's control over a battered immigrant's immigration case.

SEC. 5009. REAUTHORIZATION AND AMENDMENT OF PROGRAMS UNDER THE FAMILY VIOLENCE PREVENTION AND SERVICES ACT.

This section reauthorizes and amends programs under the Family Violence Prevention and Services Act, title III of the Child Abuse Amendments of 1984.

Subsection (a) amends section 305(a) of the Act to authorize the Secretary of Health and Human Services to appoint more than one employee to carry out the provisions of the Act.

Subsection (b) authorizes appropriations of $102,300,000 for FY 2000 and such sums as necessary for each of FYs 2001 through 2005 for State demonstration grants, information and technical assistance centers, and State domestic violence coalitions, and sets aside 1.5 percent of the appropriation for the Secretary's use for monitoring, administration, and stewardship of certain portions of the program.

Subsection (c) eliminates the separate authorization of appropriations for the State domestic violence coalitions (for which appropriations are also authorized under section 310).

Subsection (d) authorizes appropriations of $1,200,000 for FY 2000 and such sums as necessary for each of FYs 2001 through 2005 for the National Domestic Violence Hotline.

Subsection (e) authorizes appropriations of such sums as necessary for each of FYs 2000 through 2005 for the program of demonstration grants for community initiatives.

Subsection (f) adds a new section to the Act, **"SEC. 319. CULTURALLY APPROPRIATE SEXUAL ASSAULT PREVENTION AND TREATMENT SERVICES FOR UNDERSERVED POPULATIONS."** This section authorizes the Secretary to provide, directly or by grant or contract, for culturally appropriate sexual assault prevention and treatment services for underserved populations, including ethnic minority populations, rural communities, American Indians and Alaskan Natives, and people with disabilities. It authorizes appropriations of $1,500,000 for FY 2000, and such sums as necessary for each of FYs 2001 through 2005.

Subsection (g) adds a new section with the following provisions:

"SEC. 320. MONITORING VIOLENCE AGAINST WOMEN."

NATIONAL SURVEY OF VIOLENCE AGAINST WOMEN. Subsection (a) authorizes the Secretary, in cooperation with the Justice Department, to conduct a biennial survey of violence against women.

MONITORING DOMESTIC VIOLENCE AND SEXUAL ASSAULT THROUGH EXISTING DATA. Subsection (b) authorizes the Secretary to develop programs to use existing data, from public health agencies, social service agencies and organizations, criminal justice agencies, agencies and organizations concerned with domestic violence, and sexual assault agencies and organizations, to monitor domestic violence and sexual assault in a State or a local community.

AUGMENTATION OF EXISTING DATA SOURCES. Subsection (c) authorizes the Secretary to study and evaluate the use, for purposes of studying violence against women, of existing sources of information other than data that are routinely collected by State and local governments.

AUTHORIZATION OF APPROPRIATIONS. Subsection (d) authorizes appropriations of $1,500,000 for FY 2000,$3,000,000 for FY 2001, and such sums as necessary for each of FYs 2002 through 2005.

Subsection (h) adds a new section to the Act, **"SEC. 321. DEMONSTRATION PROGRAM FOR PREVENTING AND TREATING VIOLENCE AGAINST WOMEN."** The section would authorize the Secretary to provide for innovative and comprehensive ways to conduct activities designed to prevent domestic violence and sexual assault; to deliver services to victims, their families, and the perpetrators; and to provide access to help for victims, their families, and the perpetrators. The section authorizes appropriations $2,500,000 for FY 2000, and such sums as necessary for each of FYs 2001 through 2005.

SUBTITLE B – CHILDREN EXPOSED TO VIOLENCE

SEC. 5011. CHILD ABUSE MURDERS.

This section amends the federal murder statute, 18 U.S.C. 1111, to include child abuse among the predicate offenses for felony murder, and to classify child murders committed as part of a pattern or practice of abuse as first-degree murder. These changes will help to ensure that child abusers who kill their victims will receive penalties that reflect the heinousness of their crimes, and that juries in cases involving fatal abuse of children will be adequately informed about broader patterns of abusive conduct.

1. Felony murder. 18 U.S.C. 1111(a) currently classifies as first-degree murder any murder "committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery." The amendments in this section add "child abuse" to this list of felony-murder predicates. Certainly acts of child abuse with lethal consequences are as deserving of such treatment as killings occurring in the course of such offenses as burglary or robbery. A number of states have similarly included child abuse crimes as predicate offenses for felony murder. See Ariz. Rev. Stat. § 13-1105 (first degree murder);

D.C. Code § 22-2401 (first degree murder); Fla. Stat. Ann. § 782.04 (first degree murder); Idaho Code § 18-4003 (first degree murder); Kan. Stat. Ann. §§ 21-3401, -3436 (first degree murder); Miss. Code Ann. § 97-3-19 (capital murder); N.D. Cent. Code § 12.1-16-01 (murder); Or. Rev. Stat. § 163.115(1)(b) (murder); Tenn. Code Ann. § 39-13-202 (first degree murder); Utah Code Ann. § 76-5-203 (murder); Wyo. Stat. Ann. § 6-2-101 (first degree murder).

Under the amendments, "child abuse" is defined for felony murder purposes as "intentionally, knowingly, or recklessly causing death or serious bodily injury to a child." As with other felony murder predicates under 18 U.S.C. 1111, such as robbery or sexual abuse, the commission of child abuse (as defined) together with the resulting death of the victim would suffice to establish liability for first degree murder. See United States v. Thomas, 34 F.3d 44, 48-49 (2d Cir. 1994). The amendments define "serious bodily injury" by cross-reference to 18 U.S.C. 1365. The amendments define "recklessly causing death or serious bodily injury" to encompass situations in which the perpetrator was aware of and disregarded a grave risk of death or serious bodily injury.

2. Pattern of abuse murders. The section also amends 18 U.S.C. 1111(a) to classify as first-degree murder "murder . . . perpetrated as part of a pattern or practice of assault or torture against a child or children." This covers both cases involving a pattern of abuse against the murdered child, see, e.g., Estelle v. Maguire, 502 U.S. 62 (1991), and cases involving a pattern of abuse against a number of children, see, e.g., United States v. Woods, 484 F.2d 127 (4th Cir. 1973).

In this context as well, there is substantial precedent at the state level for similar provisions. A number of states define homicidal offenses which essentially consist of killing a child where the fatal conduct was part of a broader pattern of abuse. See Alas. Stat. § 11.41.100 (liability for first-degree murder based in part on "a pattern or practice of assault or torture of a child" where "one of the acts of assault or torture results in the death of the child"); Del. Code Ann. title 11, § 633 (defining offense of murder by abuse or neglect in the second-degree in part as causing the death of a child where the person "has engaged in an act or previous pattern of abuse and/or neglect of such child"); Minn. Stat. § 609.185 (liability for first-degree murder based in part on causing "the death of a minor while committing child abuse, when the perpetrator has engaged in a past pattern of child abuse upon the child"); Or. Rev. Stat. § 163.115(1)(c) (murder by abuse defined in part as causing the death of a child or a dependent person where the offender "has previously engaged in a pattern or practice of assault or torture of the victim or another child . . . or . . . dependent person"); Wash. Rev. Code § 9A.32.055 (homicide by abuse defined in part as causing the death of a child where the person has "previously engaged in a pattern or practice of assault or torture" of the victim).

Provisions of this type reflect the fact that fatal child abuse offenses do not take place in a vacuum. The perpetrators of such crimes frequently have histories of abusive conduct committed against the victim of the killing and/or other children. If, for example, an abuser has effectively engaged in the slow killing of a child over time through a continuing course of abuse, the heinousness of his conduct is not less than that of a person who engages in a single homicidal act with premeditation.

The inclusion of an explicit provision covering a "pattern or practice of assault or torture" also has evidentiary value, because the charging of the offense in these terms allows the disclosure at trial of all acts comprising the pattern or practice. This can provide necessary context for understanding the general abusive situation in which a child murder took place and the behavioral pattern of the abuser which led to its commission. See United States v. Woods, 484 F.2d 127, 133 (4th Cir. 1973) ("when the crime is one of infanticide or child abuse, evidence of repeated incidents is especially relevant because it may be the only evidence to prove the crime"); Karp, Evidence of Propensity and Probability in Sex Offense Cases and Other Cases, 70 Chi. Kent L. Rev. 15, 30 (1994) (noting precedent for and value of provisions that "give the trier information about broader patterns of criminal behavior of which the particular incident is part").

The proposed amendments to 18 U.S.C. 1111 define "pattern or practice of assault or torture" as "assault or torture committed on at least two occasions." Hence, at least one act of assault or torture, in addition to the fatal act, is required. This is similar to Alas. Stat. § 11.41.100 and Or. Rev. Stat. § 163.115(1)(c), which specify that a total of two acts (including the fatal act) is sufficient to constitute a pattern or practice for purposes of the pattern-of-abuse murder provisions. The effect is to establish liability for first-degree murder whenever the perpetrator's conduct involved: (1) murdering a child through assault or torture, and (2) the commission of assault or torture on at least one other occasion against that child or another child or children. The terms "assault" and "torture" are defined by cross-reference to existing federal law provisions which use these concepts (18 U.S.C. 113 and 2340 respectively). See generally United States v. Juvenile Male, 930 F.2d 727, 728-29 (9th Cir. 1991) (regarding meaning of assault).

The amendments define "child" for purposes of both the felony murder and the pattern-of-abuse murder provisions as a person below 18 who is under the perpetrator's care or control or who is at least six years younger than the perpetrator. The limitations in the definition reflect the fact that the proposed provisions are focused on the problem of child abuse murders, and are not designed to reach every homicide in which the victim happens to be a juvenile. Some state provisions attempt to draw this line by setting a lower age ceiling than 18 under their child murder provisions. However, children in their mid-teens remain legally and practically under the control of their parents and caretakers, and hence remain particularly vulnerable to abuse – including potentially lethal abuse – by such persons.

Rather than excluding such older victims of lethal child abuse, the proposal requires either that the affected child or children be under the perpetrator's care or control, or that there be at least a six-year age difference. As a practical matter, in most fatal child abuse cases, some type of relationship of care or control exists between the perpetrator and the victim or victims, either generally or on the particular occasion(s) when abuse occurs. The alternative ground – which categorically covers cases involving a significant age difference (at least six years) --moots questions that otherwise could arise about whether a relationship of care or control exists in marginal or ambiguous situations. It also ensures coverage of cases in which there is no relationship of care or control, but which are appropriate in any event for coverage by special child murder provisions. For example, where the specified age difference exists, there would be no question about the applicability of the proposed provisions to a mother's sexual partner who is generally uninvolved with her child though present in the household, and who fatally assaults the child on a particular occasion; to a predatory child abuser who fatally attacks a child he does not know; or to a parent who has lost custody of his child but returns on a particular occasion and kills the child.

SEC. 5012. SENTENCING ENHANCEMENT FOR CRIMES COMMITTED IN THE PRESENCE OF CHILDREN.

Subsection (a) directs the United States Sentencing Commission to review and, if appropriate, amend its guidelines and its policy statements for person convicted of crimes of violence that are committed in the presence of a child.

Subsection (d) directs the Sentencing Commission to submit a report to Congress, no later than June 1, 2000, on issues relating to the exposure of children to crimes of violence.

SEC. 5013. AMENDMENTS RELATING TO CHILD VICTIMS' AND CHILD WITNESSES' RIGHTS.

This section makes the child victim-witness protection features of the law applicable to a child victim of, or witness to, any type of crime, provided the child was not a defendant or conspirator. It also extends the privacy protections of section 3509, which are currently limited to persons under the age of 18, to persons who were under the age of 18 at the time of the offense in question but who are at the age of majority at the time the privacy protections are to be applied. In addition, this section strengthens the privacy protections of section 3509 by (1) applying the relevant restrictions to any evidence or other items, not just documents and (2) clarifying that prosecutors, defense counsel, jurors, and others subject to the privacy protections continue to be subject to the restrictions even after their role in the case is over. This section also amends the disclosure provisions of section 3509 to permit disclosure to a victim-witness assistance program.

In addition, this proposal amends section 3509 of title 18, United States Code, which concerns child victims" and child witnesses' rights and authorizes the use of closed-circuit television testimony and videotaped depositions of children under certain circumstances. The current law also contains provisions protecting the privacy of child victims and witnesses. The proposed amendments expand the reach of the statute to a broader class of child victims and witnesses and make a number of other improvements aimed at further protecting children. The statute applies "throughout the judicial process." This term is usually interpreted as meaning following indictment and through all levels of appeal. However, some provisions might be applicable during grand jury proceedings to ensure that discovery will not reveal the minor's identity beyond those to whom disclosure is necessary. In particular, the privacy protections of subsection (d) should be applied to the grand jury process.

Subsections (a) - (c) make the child victim-witness protection features of the law applicable to a child victim of, or witness to, any type of crime, provided the child was not a defendant or charged conspirator. Current law is overly limited in two respects. First, the definition of "child," 18 U.S.C. §3509(a)(2), is limited to a victim of a crime of physical abuse, sexual abuse, or exploitation or to a witness to a crime committed against another person. 18 U.S.C. §3509(a)(2) (emphasis added). Children who are witnesses to narcotics transactions would not be covered under the current statute. Second, the availability of an alternative to live in-court testimony is limited to a proceeding involving an alleged offense against a child. 18 U.S.C. §3509(b)(1)(A) and (2)(A). The proposed amendment in subsection (b) seeks to expand the current statute to child victims of or witnesses to any crime. Finally, the provision permitting appointments of guardians ad litem, 18 U.S.C. § 3509(h), is currently limited to victims of or witnesses to offenses involving abuse or exploitation.

The amendments are necessary because child witnesses to a variety of offenses may have the same difficulty testifying in open court as child victims. As written the current law would not apply to victims of child pornography where the pictures are not discovered and the defendant not prosecuted until the child reaches the age of majority. Moreover, certain categories of crime, such as prostitution and contacts made with individuals using the Internet, may be construed narrowly with respect to a child's victim status. A child's ability to testify could be greatly enhanced through the use of closed-circuit television or videotaped depositions.

The defendant's right to confrontation of witnesses is protected despite the proposed broadening of the statute's coverage to all classes of crime and to child witnesses because the use of alternatives to live in-court testimony is dependent upon a judicial finding that the child is unable to testify for any of several specified reasons, such as fear or a substantial likelihood that the child would suffer emotional trauma from testifying. 18 U.S.C. §3509(b)(1)(B) and (2)(B).

Subsection (d) expands current law by assuring that its privacy protections relating to persons under 18 years of age extend to persons who were below that age at the time of the offense. The law authorizes a prosecutor, law enforcement agent, defense attorney, or juror to disclose documents identifying the child only to persons who, by reason of their participation in the proceeding, have reason to know the information. A minor who turns 18 before the defendant is prosecuted should have his or her childhood victim or witness status protected by this and other privacy protections of the law including closed courtrooms, confidentiality of information, filing under seal, protective orders, disclosure of information, and closed courtrooms. In some cases, members of the press or other witnesses have revealed the names of juvenile prostitutes or youth who had been the subjects in child pornography after the youth testified in open court. The rehabilitation and counseling of these youth was thereby impaired and the purposes of § 3509 compromised. In one particularly egregious case, the defendant repeatedly changed lawyers and submitted numerous motions resulting in a delay until the victim had reached majority; the defendant then claimed that the provisions of 18 U.S.C. § 3509 should not apply.

Like subsection (d), subsection (e) addresses the privacy provisions of the current child victim-witness law in several ways. First, this subsection assures that not only documents but any evidence or other items that disclose the name or any other information that either clearly identifies a child directly or indirectly by identifying the child's family are subject to the law's privacy protections. Wherever practicable, disclosure of information that would clearly identify the child directly or indirectly by identifying the child's family should be avoided. This section also assures that prosecutors, defense counsel, jurors, and others subject to restrictions on disclosure of information continue to be subject to these restrictions after their status as such has ended. Thus, for example, a juror would continue to be subject to the existing restrictions on disclosure after being discharged from the jury. Finally, section 3 amends the disclosure provisions of section 3509 to clarify that disclosure is permissible to a victim or witness assistance program. Current law specifies that disclosure is not prohibited to certain persons, such as a multidisciplinary child abuse team or a guardian ad litem, as well as others when the court finds that disclosure is necessary to the welfare of the child. 18 U.S.C. §3509(d)(4). The addition of a victim-witness assistance program to the list of entities specifically authorized to receive information will assure that a child who seeks benefits from a victim-witness assistance program will be able to seek expeditious disclosure of records to the program.

Subsection (f) amends section 3509(i), which concerns adult attendants. The amendment specifies that the current requirement for the adult attendant's image to be recorded on videotape during the child's testimony or deposition applies only when an alternative to live in-court testimony is used for the child. There is no need for videotaping the adult attendant if the child has given live in-court testimony. By comparison, if the child has been deposed on videotape or has testified through closed circuit television, it would be important that the fact finder to be able to ascertain whether the adult attendant provided answers to the child or engaged in any other problematic conduct.

SEC. 5014. TECHNICAL CORRECTIONS TO FORFEITURE STATUTES FOR SEXUAL EXPLOITATION OF MINORS.

Subsections (a) - (c) would amend the Criminal Forfeiture, Civil Forfeiture, and Civil Remedy statutes that apply to crimes of exploitation of minors to include 18 U.S.C. § 2425 (use of interstate facilities to transmit information about a minor).

H.R. 3494 was passed by Congress and signed by the President on October 30, 1998. It created a new crime: Section 2425, Use of the interstate facilities to transmit information about a minor. The purpose of the transmitted information must be "to entice, encourage, offer, or solicit any person to engage in sexual activity with a minor under the age of 16." In the same legislation, Congress amended the Criminal Forfeiture (2253), Civil Forfeiture (2254), and Civil Remedy (2255) statutes which apply to crimes of exploitation of minors. Because Section 2425 had not yet been enacted it was inadvertently omitted from the forfeiture provisions. This proposal would bring the new statute into agreement with the remainder of the statutes involving sexual exploitation of minors. For example, someone who uses a computer to post a child's name for these purposes, should forfeit the computer.

SEC. 5015. AMENDMENT TO RESTITUTION STATUTES.

Subsection (a) of this section would expand the permissible limits of restitution orders for victims of sex crimes first, by allowing for the same range of services for victims of crimes under chapter 117 as for other sexual exploitation crimes under chapters 109A and 110, and second, allowing for the same range of services when the sex or exploitation offense does not necessarily result in bodily injury to the victim. It also provides for restitution to victims prior to disbursement of forfeited property to law enforcement or other agencies. Subsection (b) amends the criminal forfeiture statute which provides for forfeiture for certain crimes committed under chapters 110 and 117.

Chapters 109A (sexual abuse) and 110 (child pornography) include provisions for mandatory restitution to victims. The victims in chapter 117 are similarly situated and in need of the restitution suggested in this proposal. The victims include youth lured through communications by computer to engage in sexual activity or to meet a defendant who intends to molest the minor. Other victims may be individuals trafficked for prostitution. The victims may be separated from their home environments, may be deprived of their courses of education (including junior and senior high school programs), and psychologically damaged by their experiences. However, unlike victims of crimes committed under chapters 109A and 110, it might not be possible to provide restitution to all victims of sexual exploitation crimes under chapter 117. For instance, it might not be possible to provide services for victims of sexual exploitation crimes committed by Americans in foreign countries under 18 U.S.C. § 2423(b) or for victims of trafficking once they are returned to their home countries under 18 U.S.C. § 2421. Therefore, the enactment of a mandatory restitution provision might not be advisable. However, it is clear that the provisions of 18 U.S.C. § 3663 do not now provide for the breadth of restitution for services needed by these victims as a result of the actions of the defendant(s). Subsection (a) of the proposal would allow for and serve to encourage such restitution. Subsection (b) provides for restitution to victims prior to disbursement of forfeited property to local or federal law enforcement and other agencies.

SUBTITLE C – VICTIMS ASSISTANCE.

SEC. 5021. ASSISTANCE FOR FEDERAL LAW ENFORCEMENT VICTIM SERVICES.

This section expands the grants authority of the Office for Victims of Crimes (OVC) Director to include assisting federal law enforcement agencies in providing services to victims of non-federal crime; providing financial support to U.S. citizens who are victims of crime outside the United States, and establishing a fellowship or internship within OVC to allow OVC to better utilize the expertise and experience of the victims community in program development, training, and technical assistance.

Paragraph (C). The paragraph is needed to cover a gap in OVC's current authority. At this time, OVC may provide funding to federal law enforcement agencies through 10603(c)(1)(B). However, this authority is limited to situations where a federal law enforcement agency is working only with victims of federal crime. In cases where the federal agency is assisting persons who are not federal crime victims, OVC is currently generally unable to assist the agency.

Paragraph (D). The paragraph is intended to give OVC the ability to provide services to victims of crimes that occur outside the United States. Currently, most State compensation programs are not able to assist these victims, and OVC can currently assist them only if the victims are victims of a "federal" crime.

Paragraph (E). The paragraph is intended to give OVC the ability to establish a fellowship program to bring victims rights advocates or service providers into OVC to serve as fellows or interns to assist OVC in program development, training and technical assistance, and providing services to the field.

SEC. 5022. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

The Office for Victims of Crime (OVC) in the Department of Justice administers the Victims of Crime Act Funding (VOCA), which consists of fines, special assessments, and forfeited bail paid by convicted defendants in federal courts. None of OVC's funds are appropriated. Each year, the first $10 million of the fund goes to support Children's Justice Act programs at the state and local level. Ninety percent of the remaining funds are provided to the states, the District of Columbia, and the territories to fund victim assistance services and to supplement state victims compensation programs. The remainder of the fund is used by OVC to fund demonstration projects, and to provide training and technical assistance to local, state, and federal agencies working with crime victims and private victims assistance organizations. Each year, VOCA funds are used to support more than 3,000 victim services agencies, including rape crisis programs, support services for homicide survivors, domestic violence shelters, children's advocacy centers, and criminal justice-based victim advocates. Each year, VOCA funds are also used to provide millions of dollars in direct compensation to victims of crime for otherwise uncompensated crime-related expenses, such as funerals, medical bills, lost wages, counseling, and emergency needs. A 1996 amendment to the Victims of Crime Act of 1984 authorized OVC to set aside a reserve fund that could be used for victims of terrorism and mass violence.

When Congress passed the 1996 amendment, they were acting in response to Oklahoma City and were not able to envision the range of terrorism crimes against American citizens abroad and the complexities of providing funding and services to these victims. It was envisioned that this assistance would be accomplished by providing funding to other agencies, but that plan has not worked in cases of terrorism against Americans overseas, and OVC has had to take on direct service responsibilities in cases of terrorism and mass violence.

As currently written, section 1404B [42 U.S.C. 10603b] contains deficiencies that have made it difficult or impossible for the terrorism funds to be used to assist victims in cases such as the bombing of Khobar Towers in Saudi Arabia in 1996, the bombings of the U.S. Embassies in East Africa in 1998, and the bombing of Pan Am 103 in 1988. The deficiencies are related to where and when the terrorism crimes occurred, and the limited types of agencies to which OVC can provide funding assistance.

Limited use of the terrorism funds to provide assistance to the victims of the bombings of U.S. embassies in East Africa was justified by the fact that embassies are considered U.S. territory for the purposes described under the Special Maritime Jurisdiction Act. The victims who were American citizens had residencies in many states. Because it is impossible to predict where the next act of terrorism or mass violence will occur, it is impossible and impractical to try to maintain adequate staffing in FBI Field Offices or U.S. Attorney's Offices for responding to victims of these crimes.

Under the current statute, the terrorism fund cannot be used at all for assistance to the families of American victims of the bombing of Pan Am 103 because the crime occurred prior to the enactment of the current provision in 1996. Even if it had occurred after the enactment of the current provision, OVC would be limited to providing funds to state compensation and assistance programs because the location where the crime occurred (airspace over Scotland) is not considered within the territory of the United States under the Special Maritime Jurisdiction Act. Providing funds to our state compensation and assistance programs would be inadequate for assisting the victims of Pan Am 103. While the bombing of Pan Am 103 is defined as a federal crime under the Special Aircraft Jurisdiction Act, it still falls outside the purview of the current statute that governs OVC's terrorism reserve fund.

Experience demonstrates that crimes involving mass violence quickly overwhelm the ability of communities, and even states, to respond to the immediate and longer-term needs of crime victims and their families. The 1996 amendment to VOCA gives OVC the authority to use the terrorism reserve funds to provide supplemental funds to state victim compensation and assistance programs or a U.S. Attorney's Office. This works well if the terrorism crime occurs within the boundaries of the U.S. where funding and services can be easily centralized and when the majority of the victims are from the same state.

The complex needs and logistics of assisting Americans who are victims of terrorism abroad, whether they are private citizens or U.S. Government employees traveling or working abroad, require the ability of a central agency to move quickly and manage systems, funds, and direct services to individual victims. Terrorism against American citizens abroad is a federal crime and federal criminal justice agencies have mandatory responsibilities for the victims of these crimes.

An act of terrorism against Americans abroad creates other unique issues due to where the crime occurred and the residency status of the victims. Americans who are victimized abroad, particularly in multiple casualty crimes, may not be able to access traditional services available to people victimized in the United States. Even when Americans victimized abroad are eligible for state program assistance, the extent of victims compensation and assistance depends upon the state in which the victim claims legal residency. State-run programs vary greatly in the types of services covered and the amount of compensation available, and it can take months or years to receive payment.

Victims of the same crime can receive unequal treatment and services. For example, two U.S. government employees working in the U.S. Embassy in Kenya received injuries that left them with permanent disabilities. Both spent seven months at Walter Reed receiving medical services. Both live and work abroad for the U.S. government, maintaining state residencies for tax purposes. One victim was eligible for a $50,000 payment, plus lifetime rehabilitation assistance, from her home state victims compensation program, while the other was eligible for a maximum of only $15,000 in compensation from his state program. Since the Act severely limits the ability of OVC to provide these funds to any agency other than a state compensation program or a U.S. Attorney's Office, it is difficult to provide timely and practical assistance to victims of crimes in which no U.S. Attorney's Office is yet involved or in cases where there are multiple victims who reside in multiple states or who work and reside abroad.

This section will amend section 1404B [42 U.S.C. 10603b] of the Victims of Crime Act of 1984 to enable the Office for Victims of Crime to respond more effectively to victims of terrorism and mass violence both in the United States and abroad.

The proposed revision of section 1404B would enable OVC to broaden the range of agencies and organizations that would be able to receive funds directly. These agencies and organizations would include the Red Cross, medical and mental health providers, the FBI or other federal law enforcement agencies, the Department of Defense, and a host of private organizations in a position to provide immediate assistance to victims wherever they are located.

The proposed revision would not require the use of additional or appropriated funds, but would simply broaden OVC's ability to effectively utilize its reserve fund for the purposes intended by Congress. This would in no way impact the amount of funds currently going to state programs or eligible victim services organizations, since the funds would come out of the reserve fund and not formula or matching grants funds.

The amount of funds required for assistance to victims would vary by the number of victims, the extent of injuries, the availability of other assistance (medical and life insurance, workers compensation, etc.), and the types of services needed by victims. Victims of federal crimes have rights and services, especially when there are criminal proceedings against the defendants. The level of assistance needed would depend upon location of the trial, the number of eligible victims, and the level of participation allowed under law. Following the Oklahoma City bombing, as part of the Anti-Terrorism and Effective Death Penalty Act of 1996, Congress amended the Victims of Crime Act to authorize OVC to create a