Racial Profiling
Q&A
April 10, 2000

Q: A GAO report released today indicates that minorities, especially African American women, were disproportionately singled out for strip searches by the U.S. Customs Service inspectors at airports between 1997 and 1998. The report also indicates that these searches were not justified by a higher rate of discovery of contraband among minority groups. What is the federal government doing to address this problem?

A: Without question, the findings of the GAO report were deeply troubling. As the President has said before, no person should ever be targeted by law enforcement because the color of his or her skin. Stopping or searching individuals on the basis of race is not effective law enforcement policy, and it is not legitimate as a strategy for public protection. Simply put, racial profiling is wrong.

The GAO report is based on information that was collected prior to sweeping reforms made by U.S. Customs Commissioner Raymond Kelly eighteen months ago. Upon his appointment to the post, Commissioner Kelly made it clear that racial profiling would not be tolerated by the U.S. Customs Service, and tightened up search procedures that include closer supervision of searches and increased training for inspectors. Current statistics compiled for the first six months of FY 2000 indicate that these reforms are working. For instance, Customs has reduced the number of the most intrusive searches by more than one half, while actual seizures of illegal drugs increased by five percent.

Q: Will the Administration support Senator Richard Durbin's proposed legislation to require U.S. Customs to document searches of individuals and to submit the information to Congress? What else is the Administration doing to the problem of racial profiling in law enforcement?

A: We support Senator Durbin's efforts to work with the Administration to address the problem of racial profiling, and look forward to reviewing his legislation. As you know, the President has spoken out repeatedly and forcefully against racial profiling. And he has recognized that in this highly charged issue, it is crucial to get the hard facts. To help ensure that federal law enforcement officers act in accordance with their broad policies against racial profiling, President Clinton in June of 1999 signed a Presidential directive to federal agencies to gather data about when and where racial profiling occurs. This data is currently being collected by the federal agencies. Having this data will arm us to combat this problem in the most thorough and effective manner possible – so that we can act on the basis of facts and not anecdote.

March 16, 2000

Cosponsor H.R. 3981 the Law Enforcement Trust and Integrity Act
Help Forge a Partnership Between Police and Community Groups on Police Misconduct

Dear Colleague:

We are writing to invite you to cosponsor legislation supported by both police and civil rights organizations aimed at curbing outrages like the Los Angeles Rampart Division perjury scandal and tragedies such as the Amadou Diallo shooting. H.R. 3981, The Law Enforcement Trust and Integrity Act of 2000, takes a comprehensive approach at addressing the issue of police accountability and building trust between police departments and their communities.

The purpose of the legislation is to build trust between law enforcement entities, officials and the people they serve. Specifically, H.R. 3981 provides incentives for local police organizations to voluntarily adopt performance-based standards to ensure that incidents of misconduct will be minimized through appropriate management, training and oversight protocols and that if such incidents do occur, that they will be properly investigated. The bill also provides police officers -- the vast majority of whom are decent people who are concerned about their communities -- with the tools necessary to work with their communities and to enhance their professional growth and education.

H.R. 3981 makes 12 concrete steps toward improving law enforcement management and misconduct prosecution tools and has been endorsed by a broad range of legal, community-based and law enforcement groups nationwide, including: the NAACP; Urban League; LULAC; NCLR; National Asian Pacific Legal Consortium; National Lawyer's Guild; ACLU; NOBLE; National Black Police Association; and the United Methodist Church.

1. Accreditation of Local Law Enforcement Agencies – Authorizes the Department of Justice to work cooperatively with independent accreditation, law enforcement and community-based organizations to further develop and refine accreditation standards that can serve as models for police departments around the country in trying to balance proper law enforcement with respect for liberties. This section also authorizes the Attorney General to make grants to law enforcement agencies for the purpose of developing such standards and obtaining appropriate certification.

2. Law Enforcement Agency Development Programs – Authorizes the Attorney General to make grants to States and local governments to develop pilot programs such as civilian review boards, early warning and detection programs which have been proven effective in many jurisdictions.

3. Administrative Due Process Procedures – Requires the Attorney General to study the prevalence and impact of any law, rule or procedure which interferes with prompt and thorough investigations of abuse.

4. Enhanced Funding of Civil Rights Division – Authorizes appropriations for expenses for ongoing investigations of pattern-and-practice-of-abuse investigations pursuant to 42 U.S.C. 14141, and authorizes appropriations for expenses related to programs managed by the Community Relations

Service.

5. Enhanced Authority in Pattern and Practice Investigations – Amends 42 U.S.C. 14141 to provide private cause of actions, but limits the provision only to declaratory and injunctive relief when there is a pattern and practice of discrimination.

6. Deprivation of Rights Under Color of Law – Amends section 242 of Title 18 of the United States Code to provide the needed statutory clarification requested by the Department of Justice to expressly define excessive use of force and non-consensual sexual conduct as deprivations of rights under color of law.

7. Study of Deaths in Custody – Amends section 20101(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C.A. 13701) to require assurances that States will follow guidelines established by the Attorney General for reporting deaths in custody.

8. National Task Force on Law Enforcement Oversight – Requires the Department of Justice to establish a task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.

9. Immigration Enforcement Review Commission – Creates a commission to investigate civil rights complaints against the INS and Customs Services, with authority to make policy and disciplinary recommendations.

10. Federal Data Collection on Racial Profiling – Requires the Justice, Treasury and Interior Departments to collect data concerning the personal characteristics (race, ethnicity and gender) of individuals targeted for investigation (e.g., detention, traffic stop or warrantless search) by federal law enforcement agencies and requires the Justice Department to prepare a "master report" analyzing the findings and recommending improved policies and procedures.

11. Whistleblower Protection – The bill establishes civil and criminal penalties for retaliation against law enforcement officers who in good faith disclose, initiate or advocate on behalf of a civilian complainant in actions alleging police misconduct and creates private cause of action for retaliation.

12. Sexual Abuse in Correctional Facilities – Amends chapter 109A of Title 18 to increase penalties and expand jurisdiction for sexual abuse offenses in correctional facilities.

The catalogue of high-profile incidents of police misconduct grows with each passing day. With the Rampart perjury scandal, Amadou Diallo shooting and Abner Louima assault, it should now be clear to all members, and the nation at-large, that police misconduct is an issue that we must address in a bipartisan manner. That's why we have been working with both civil rights and police organizations to develop a proposal that we can all support.

To be an original cosponsor of H.R. 3981, or if you would like additional information, please contact Keenan Keller at the Judiciary Committee (x56906).

Very truly yours,

John Conyers, Jr.

Law Enforcement Trust and Integrity Act of 2000
H.R. 3981
Section by Section Description

Section 1: Short Title – This section sets forth the short title of the Act, the "Law Enforcement Trust and Integrity Act of 2000."

Title I: Law Enforcement Accreditation – Requires Attorney General to perform an initial analysis of existing law enforcement accreditation standards and to recommend areas for the development of additional national standards for accreditation of law enforcement agencies in conjunction with law enforcement accreditation organizations, law enforcement associations, labor and community-based organizations; Authorizes the Attorney General to make grants to law enforcement agencies for the purpose of obtaining accreditation from certified professional law enforcement accreditation organizations.

Title II: Law Enforcement Development Programs – Authorizes the Attorney General to make grants to States, units of local government, Indian Tribal Governments, or other public and private entities, and multi-jurisdictional or regional consortia to study law enforcement agency operations and to develop pilot programs focused on effective training, recruitment, hiring, management and oversight of law enforcement officers which would provide focused data for the development of additional accreditation standards.

Title III: Administrative Due Process Procedures – Requires the Attorney General to study the prevalence and impact of any law, rule or procedure that allows a law enforcement officer to delay for an unreasonable or arbitrary period of time the answer to questions posed by a local internal affairs officer, prosecutor, or review board on the investigative integrity and prosecution of law enforcement misconduct.

Title IV: Enhanced Funding To Combat Police Misconduct – Authorizes appropriations for expenses related to criminal and civil enforcement activities by the Civil Rights Division of the Justice Department, specifying the enforcement against pattern and practice discrimination described in section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C.A. 14141); Authorizes appropriations for expenses related to programs managed by the DOJ Community Relations Service.

Title V: Enhanced Authority in Pattern and Practice Investigations – Amends section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. A. 14141) to create a private cause of action for declaratory and injunctive relief relating to police pattern and practice discrimination.

Title VI: Deprivation of Rights Under Color of Law – Amends section 242 of Title 18 of the United States Code to expressly define excessive use of force and sexual assault as deprivations of rights under color of law; Makes expert witness fees available to the prevailing party in actions brought under section 1983.

Title VII: Study of Deaths in Custody – Amends section 20104(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C.A.) to require assurances that States will follow guidelines established by the Attorney General for reporting deaths of persons in custody and medical care given or withheld for persons in custody.

Title VIII: National Task Force on Law Enforcement Oversight – Requires Department of Justice to establish a task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct; Authorizes appropriations to support task force efforts.

Title IX: Immigration Enforcement Review Commission – Creates Commission to investigate civil rights complaints against the INS and Customs Services, with authority to make policy and disciplinary recommendations; Commission is also required to develop outreach office to educate and improve the relationship between the Services and local community groups.

Title X: Federal Data Collection on Racial Profiling – Requires Justice, Treasury and Interior Departments to collect data concerning the personal characteristics (race, ethnicity and gender) of individuals targeted for investigation (e.g., detention, traffic stop or warrantless search) by federal law enforcement agencies; requires each department to prepare a report concerning the data collected under this title, with the Justice Department preparing a "master report" analyzing the findings made by the other departments and recommending improved policies and procedures.

Title XI: Whistleblower Protection – Prohibits retaliation against law enforcement officers who in good faith disclose, initiate or advocate on behalf of a civilian complainant in actions alleging police misconduct; creates private cause of action for retaliation; establishes civil and criminal penalties for violations of this title.

Title XII: Sexual Abuse in Correctional Facilities – Amends chapter 109A of Title 18 to increase penalties and expand jurisdiction for sexual abuse offenses in correctional facilities.

March 16, 2000

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HR 3981 IH

106th CONGRESS

2d Session

H. R. 3981

To encourage greater community accountability of law enforcement agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 15, 2000

Mr. CONYERS (for himself, Mr. RANGEL, Mr. MEEKS of New York, Ms. JACKSON-LEE of Texas, Mr. SERRANO, Ms. CARSON, Mr. WYNN, Mr. OWENS, Mr. SCOTT, Mr. DAVIS of Illinois, Mr. TOWNS, Mr. GONZALEZ, Mr. UNDERWOOD, Mr. CUMMINGS, Mr. HINCHEY, Mr. ENGEL, Ms. WATERS, and Mr. NADLER) introduced the following bill; which was referred to the Committee on Judiciary

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A BILL

To encourage greater community accountability of law enforcement agencies, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `Law Enforcement Trust and Integrity Act of 2000'.

TITLE I--LAW ENFORCEMENT ACCREDITATION

SEC. 101. ACCREDITATION OF LAW ENFORCEMENT AGENCIES.

(a) STANDARDS-

(1) INITIAL ANALYSIS- The Attorney General shall perform an initial analysis of existing accreditation standards and methodology developed by law enforcement accreditation organizations nationwide, including but not limited to national, state, regional, and Indian tribal accreditation organizations.

(2) IN GENERAL- The Attorney General shall recommend additional areas for the development of national standards for the accreditation of law enforcement agencies in consultation with existing law enforcement accreditation organizations, professional law enforcement associations, labor organizations, community-based organizations, and professional civilian oversight organizations.

(3) DEVELOPMENT OF UNIFORM STANDARDS- After completion of the initial review and analysis under paragraph (2), the Attorney General shall recommend, in consultation with such organizations, the adoption of additional standards, including but not limited to standards relating to early warning programs, civilian review procedures, traffic stop documentation and procedures, administrative due process requirements, and training.

(4) CONTINUING ACCREDITATION PROCESS- The Attorney General shall adopt policies and procedures to partner with law enforcement accreditation organizations, professional law enforcement associations, labor organizations, community-based organizations, and professional civilian oversight organizations to continue the development of further accreditation standards consistent with paragraph (2) and to encourage the pursuit of accreditation of Federal, State, local, and Indian tribal law enforcement agencies by certified law enforcement accreditation organizations.

(b) ACCREDITATION GRANTS- The Attorney General may make funds available to State, local, and Indian tribal law enforcement agencies under this title to assist in gaining or maintaining accreditation from certified law enforcement accreditation organizations.

SEC. 102. DEFINITIONS.

In this title:

(1) The term `law enforcement accreditation organization' means a professional law enforcement organization involved in the development of standards of accreditation for law enforcement agencies at the national, State, regional, or Indian tribal level (such as the Commission on Accreditation of Law Enforcement Agencies (CALEA)).

(2) The term `law enforcement agency' means a State, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal laws.

(3) The term `community-based organization' means a grassroots organization that monitors the issue of police misconduct and that has a national presence and membership (such as the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), the National Council of La Raza, the National Urban League, the National Congress of American Indians, and the National Asian Pacific American Legal Consortium (NAPALC)).

(4) The term `professional law enforcement association' means a law enforcement membership association that works for the needs of Federal, State, local, or Indian tribal law enforcement groups and with the civilian community on matters of common interest (such as the Hispanic American Police Command Officers Association (HAPCOA), National Asian Pacific Officers Association (NAPOA), National Black Police Association (NBPA), National Latino Peace Officers Association (NLPOA), National Organization of Black Law Enforcement Executives (NOBLE), Native American Law Enforcement Association (NALEA), International Association of Chiefs of Police (IACP), and Fraternal Order of Police (FOP)).

(5) The term `professional civilian oversight organization' means a membership organization formed to address and advance the cause of civilian oversight of law enforcement and whose members are from Federal, State, regional, local, or Indian tribal organizations that review issues or complaints against law enforcement entities or individuals (such as the National Association for Civilian Oversight of Law Enforcement (NACOLE)).

(6) The term `Indian tribe' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) The term `State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

TITLE II--LAW ENFORCEMENT DEVELOPMENT PROGRAMS

SEC. 201. LAW ENFORCEMENT GRANTS.

(a) GRANT AUTHORIZATION- The Attorney General may make grants to States, units of local government, Indian tribal governments, or other public and not-for-profit private entities, or to any multijurisdictional or regional consortia of such entities, to study and implement effective management, training, recruiting, hiring, and oversight policies and programs for law enforcement agencies.

(b) PROJECT GRANTS TO STUDY LAW ENFORCEMENT AGENCY MANAGEMENT- Grants made under subsection (a) shall be used for the study of management and operations standards for law enforcement agencies, including standards relating to administrative due process, residency requirements, compensation and benefits, use of force, racial profiling, early warning programs, civilian review boards or analogous procedures, or research into the effectiveness of existing programs, projects, or other activities designed to address misconduct by law enforcement officers.

(c) PROJECT GRANTS TO DEVELOP PILOT PROGRAMS- Grants made under subsection (a) shall also be used to develop pilot programs and implement effective programs in the areas of training, hiring and recruitment, and oversight that are designed to improve management and address misconduct by law enforcement officers. These programs shall include the following characteristics:

(1) TRAINING- Law enforcement policies, practices, and procedures addressing training and instruction to comply with accreditation standards in the areas of--

(A) the use of lethal and nonlethal force;

(B) responding to and reporting instances of law enforcement misconduct, including but not limited to use of excessive force or racial profiling;

(C) tactical and defensive strategy;

(D) arrests, searches, and handcuffing;

(E) professional verbal communications with civilians;

(F) police interactions with youth, the mentally ill, and monolingual, multi-cultural communities;

(G) proper traffic, pedestrian, airport, and other enforcement stops; and

(H) community relations.

(2) RECRUITMENT, HIRING, RETENTION, AND PROMOTION OF DIVERSE LAW ENFORCEMENT OFFICERS- Policies, procedures, and practices for--

(A) the hiring and recruitment of diverse law enforcement agencies representative of the communities they serve;

(B) the development of valid, job-related educational and psychological standards; and

(C) initiatives to encourage residency and continuing education.

(3) OVERSIGHT- Complaint procedures, including the establishment of civilian review boards or analogous procedures for jurisdictions across a range of sizes and agency configurations, complaint procedures by community-based organizations, early warning programs, and administrative due process requirements inherent to complaint procedures for members of the public and law enforcement.

(4) VICTIM SERVICES- Counseling services, including psychological counseling, for individuals and communities traumatized by law enforcement misconduct.

(d) AMOUNTS-

(1) Except as provided in paragraph (2), of the amounts appropriated for the purposes of this title--

(A) 4 percent shall be available for grants to Indian tribal governments;

(B) 20 percent shall be available for grants to community-based organizations;

(C) 10 percent shall be available for grants to professional law enforcement associations; and

(D) the remaining funds shall be available for grants to applicants in each State in an amount that bears the same ratio to the amount of remaining funds as the population of the State bears to the population of all of the States.

(2) Of the amounts appropriated for the purposes of this title, five percent shall be set aside for use by the Attorney General for research, statistics, and evaluation activities consistent with this title.

(e) TECHNICAL ASSISTANCE-

(1) The Attorney General may provide technical assistance to States, units of local government, Indian tribal governments, and to other public and private entities, in furtherance of the purposes of this section.

(2) The technical assistance provided by the Attorney General may include the development of models for State, local, and Indian tribal governments, and other public and private entities, to reduce law enforcement misconduct. Any development of such models shall be in consultation with community-based organizations and professional law enforcement associations.

(f) USE OF COMPONENTS- The Attorney General may use any component or components of the Department of Justice in carrying out this title.

(g) MATCHING FUNDS-

(1) IN GENERAL- Except in the case of an Indian tribal government or nonprofit organization, the portion of the costs of a program, project, or activity provided by a grant under subsection (a) may not exceed 75 percent.

(2) WAIVERS- The Attorney General may waive, wholly or in part, the requirement under paragraph (1) of a non-Federal contribution to the costs of a program, project, or activity.

(h) APPLICATIONS-

(1) APPLICATION- An application for a grant under this title shall be submitted in such form, and contain such information, as the Attorney General may prescribe by guidelines.

(2) ASSURANCES- An application for a grant under this title shall contain assurances that the applicant shall maintain a common set of core data elements that conform to the Law Enforcement Management and Administrative Statistics (LEMAS) program of the Bureau of Justice Statistics.

(3) APPROVAL- A grant may not be made under this title unless an application has been submitted to, and approved by, the Attorney General.

(i) PERFORMANCE EVALUATION-

(1) MONITORING COMPONENTS- Each program, project, or activity funded under this title shall contain a monitoring component, which shall be developed pursuant to guidelines established by the Attorney General. Such monitoring component shall include systematic identification and collection of data about activities, accomplishments, and programs throughout the life of the program, project, or activity and presentation of such data in a usable form.

(2) EVALUATION COMPONENTS- Selected grant recipients shall be evaluated on the local level or as part of a national evaluation, pursuant to guidelines established by the Attorney General. Such evaluations may include independent audits of police behavior and other assessments of individual program implementations. In selected jurisdictions that are able to support outcome evaluations, the effectiveness of funded programs, projects, and activities may be required.

(3) PERIODIC REVIEW AND REPORTS- The Attorney General may require a grant recipient to submit biannually to the Attorney General the results of the monitoring and evaluations required under paragraphs (1) and (2) and such other data and information as the Attorney General deems reasonably necessary.

(j) REVOCATION OR SUSPENSION OF FUNDING- If the Attorney General determines, as a result of monitoring under subsection (i) or otherwise, that a grant recipient under this title is not in substantial compliance with the terms and requirements of the approved grant application submitted under subsection (h), the Attorney General may revoke or suspend funding of that grant, in whole or in part.

(k) DEFINITIONS- In this title:

(1) The terms `law enforcement accreditation organization', `law enforcement agency', `community-based organization', and `professional law enforcement association' have the meaning given such terms in section 102 of this Act.

(2) The term `private entity' means a private security organization engaged in the prevention, detection, or investigation of violations of criminal laws and/or organizational policy (such as airport security or department store security).

(3) The term `civilian review board' means an administrative entity that--

(A) is independent and adequately funded;

(B) has investigatory authority and staff subpoena power;

(C) has representative diversity;

(D) has policymaking authority;

(E) provides advocates for civilian complainants;

(F) has mandatory police power to conduct hearings; and

(G) conducts statistical studies on prevailing trends of unusual complaints.

(4) The term 'Indian tribe' means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

(l) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as may be necessary to support enhancements to the Law Enforcement Management and Administrative Statistics (LEMAS) program of the Bureau of Justice Statistics for the collection of information from grant recipients pursuant to subsection (b), and to support the national evaluation pursuant to subsection (i)(2).

TITLE III--ADMINISTRATIVE DUE PROCESS PROCEDURES

SEC. 301. ATTORNEY GENERAL TO CONDUCT STUDY.

(a) STUDY-

(1) IN GENERAL- The Attorney General shall conduct a nationwide study of the prevalence and effect of any law, rule, or procedure that allows a law enforcement officer to delay for an unreasonable or arbitrary period of time the answer to questions posed by a local internal affairs officer, prosecutor, or review board on the investigative integrity and prosecution of law enforcement misconduct.

(2) INITIAL ANALYSIS- The Attorney General shall perform an initial analysis of New York City's 48-Hour Rule to determine whether, at a threshold level, the effect of this type of rule or procedure raises material investigatory issues that could impair or hinder a prompt and thorough investigation of possible misconduct, including criminal conduct, that would justify a wider inquiry.

(3) DATA COLLECTION- After completion of the initial analysis under paragraph (2), and considering material investigatory issues, the Attorney General shall gather additional data nationwide on rules similar to New York City's 48-Hour Rule from

a representative and statistically significant sample of jurisdictions, to determine whether such rules and procedures raise such material investigatory issues.

(b) REPORTING-

(1) INITIAL ANALYSIS- Not later than 1 year after the date of the enactment of this title, the Attorney General shall submit to Congress a report containing the results of its initial analysis, make such report available to the public, and identify the jurisdictions for which the study is to be conducted.

(2) DATA COLLECTED- Not later than 2 years after the date of the enactment of this title, the Attorney General shall submit to Congress a report containing the results of the data collected under this title and cause a copy of such report to be published in the Federal Register.

(c) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE IV--ENHANCED FUNDING TO COMBAT POLICE MISCONDUCT

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2001, in addition to any other sums authorized to be appropriated for this purpose--

(1) $5,000,000 for additional expenses related to the enforcement of section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141), criminal enforcement (18 U.S.C. 242 and 245), and administrative enforcement by the Department of Justice's Office of Civil Rights;

(2) $3,300,000 for additional expenses related to conflict resolution by the Department of Justice's Community Relations Service; and

(3) such sums as may be necessary to collect data on the use of excessive force by law enforcement in accordance with section 210402 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141).

TITLE V--ENHANCED AUTHORITY IN PATTERN AND PRACTICE INVESTIGATIONS

SEC. 501. UNLAWFUL CONDUCT.

Section 210401(a) of the Violent Crime and Law Enforcement Act of 1994 (42 U.S.C. 14141(a)) is amended--

(1) by inserting `criminal or' before `juvenile justice'; and

(2) by inserting `adults or' before `juveniles'.

SEC. 502. PRIVATE CAUSE OF ACTION RELATING TO POLICE PATTERN OR PRACTICE.

Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14141) is amended--

(1) in subsection (b) by striking `paragraph (1)' and inserting `subsection (a)'; and

(2) by adding at the end the following:

`(c) CIVIL ACTION BY AGGRIEVED PERSON- A person who is aggrieved by a violation of subsection (a) may, in a civil action, obtain declaratory and injunctive relief with respect to the violation. The court in an action under this subsection may award the prevailing party (other than the United States) a reasonable attorney's fee, including litigation expenses and expert witness fees, as part of the costs. Fees may be awarded to a prevailing defendant only when a plaintiff's civil action is shown to be frivolous, unreasonable, or without foundation. The Attorney General may intervene as a party in a civil action brought under this subsection.'.

TITLE VI--DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

SEC. 601. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.

Section 242 of title 18, United States Code, is amended--

(1) by inserting `(a)' before `Whoever'; and

(2) by adding at the end the following:

`(b)(1) Whoever, under color of any law, statute, ordinance, regulation, custom, or Indian tribal law, in any State, territory, commonwealth, possession, district, or Indian country, intentionally--

`(A) subjects, or attempts to subject, any person to force exceeding that which is reasonably necessary to carry out a legitimate law enforcement duty; or

`(B) engages in or causes any unwanted sexual act, or unwanted sexual contact, with or by any other person, or attempts to do so,

`shall be punished as prescribed under paragraph (2).

`(2)(A) The punishment for an offense under this subsection is a fine under this title, or imprisonment under subparagraph (B), or both.

`(B) The imprisonment for an offense under this subsection shall be--

`(i) if death results from the act committed in violation of this subsection, imprisonment for any term of years or for life;

`(ii) if bodily injury results from the act committed in violation of this subsection, or if such act involves a sexual act, or such act includes the use, threatened use, or attempted use of a firearm or dangerous weapon, imprisonment for not more than 10 years; and

`(iii) in any other case, imprisonment not to exceed 2 years.

`(3) As used in this subsection--

`(A) the term `sexual act' has the meaning set forth in subparagraphs (A) through (C) of section 2246(2);

`(B) the term `sexual contact' has the meaning given such term in section 2246(3); and

`(C) the term `bodily injury' has the meaning given such term in section 1515(a)(5).

`(4) No prosecution of a case described in this subsection shall be undertaken, except upon certification in writing by the Assistant Attorney General for Civil Rights that, in that official's judgment, a prosecution by the United States is in the public interest and necessary to secure substantial justice.'.

SEC. 602. AVAILABILITY OF EXPERT WITNESS FEES IN 42 U.S.C. 1983 ACTIONS.

Section 722 of the Revised Statutes of the United States (42 U.S.C. 1988) is amended by striking `or 1977A' and inserting `, 1977A, or 1979'.

TITLE VII--STUDY OF DEATHS IN CUSTODY

SEC. 701. STUDY.

Section 20104(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13704(a)) is amended--

(1) in paragraph (2), by striking `or' after the semicolon;

(2) in paragraph (3)(B), by striking the period and inserting `; or'; and

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

`(4) such State has provided an assurance that it shall follow guidelines that may be established by the Attorney General in reporting, on a quarterly basis, information regarding the death of any person who is in the process of arrest, has been arrested, has been incarcerated or is en route to be incarcerated at any municipal or county jail, State prison, or other State or local correctional facility (including any juvenile facility) that, at a minimum, includes--

`(A) the name, gender, race, ethnicity, immigration status, national origin, and age of the deceased;

`(B) the date, time, and location of death; and

`(C) a brief description of the circumstances surrounding the death.

`(5) such State has provided an assurance that it shall follow guidelines that may be established by the Attorney General in reporting, on a quarterly basis, information regarding the medical treatment given to or withheld from any person who was injured while in the process of arrest, incarceration, or en route to be incarcerated at any municipal or county jail, State prison, or other State or local correctional facility (including any juvenile facility).'.

TITLE VIII--NATIONAL TASK FORCE ON LAW ENFORCEMENT OVERSIGHT

SEC. 801. NATIONAL TASK FORCE ON LAW ENFORCEMENT OVERSIGHT.

(a) ESTABLISHMENT- There is established within the Department of Justice a task force to be known as the Task Force on Law Enforcement Oversight (hereinafter in this title referred to as the `Task Force').

(b) COMPOSITION- The Task Force shall be composed of individuals appointed by the Attorney General, who shall appoint at least 1 individual from each of the following:

(1) the Special Litigation Section of the Civil Rights Division;

(2) the Criminal Section of the Civil Rights Division;

(3) the Coordination and Review Section of the Civil Rights Division;

(4) the Employment Litigation Section of the Civil Rights Division;

(5) the Disability Rights Section of the Civil Rights Division;

(6) the Office of Justice Programs;

(7) the Office of Community Oriented Policing Services (COPS);

(8) the Corruption/Civil Rights Section of the Federal Bureau of Investigation;

(9) the Community Relations Service; and

(10) the unit within the Department of Justice assigned as a liaison for civilian review boards.

(c) POWERS AND DUTIES- The Task Force shall--

(1) coordinate investigative, prosecutorial, and enforcement efforts of Federal, State, local, and Indian tribal governments in cases related to law enforcement misconduct; and

(2) consult with professional law enforcement associations (as defined in section 102), labor organizations, and community-based organizations (as defined in section 102) to coordinate the process of the detection and referral of complaints regarding incidents of alleged law enforcement misconduct.

(d) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated $5,000,000 for each fiscal year to carry out this section.

TITLE IX--IMMIGRATION ENFORCEMENT REVIEW COMMISSION

SEC. 901. CREATION OF IMMIGRATION ENFORCEMENT REVIEW COMMISSION.

There is established a commission to be known as the Immigration Enforcement Review Commission (hereinafter in this title referred to as the `Review Commission'). The Review Commission shall be comprised of a Board of Commissioners, an Investigations Office, and a Community Outreach Office. In the execution of its duties, the Review Commission shall comply with the requirements established in this title. The Immigration and Naturalization Service and the Customs Service (hereinafter in this title referred to as the `Services') shall cooperate fully with the Review Commission and its employees in carrying out the duties of the Review Commission under this title, and shall provide to the Commission such records as the Commission considers appropriate.

SEC. 902. DUTIES OF REVIEW COMMISSION.

The Review Commission shall be responsible for investigating complaints of civil rights abuses against any of the Services, employees of any of the Services, divisions of any of the Services, or any facilities where detainees are held in custody of any of the Services. Based upon its findings, the Review Commission shall make recommendations to the Services to discipline employees of any of the Services responsible for committing abuses. The Review Commission shall also make policy recommendations to the Services as appropriate.

SEC. 903. BOARD OF COMMISSIONERS.

(a) COMPOSITION OF THE BOARD OF COMMISSIONERS- The Board of Commissioners (hereinafter in this title referred to as the `Board') shall be composed of 7 members who shall be appointed by the President, in consultation with community-based organizations and professional law enforcement associations, by and with the advice and consent of the Senate. The President shall designate 1 member to serve as Director of the Board. Not more than 4 members may be of the same political party. The members of the Board shall be full-time employees.

(b) APPOINTMENTS AND TERMS OF OFFICE-

(1) Except as provided in paragraph (2), the term of each Commissioner shall be 6 years.

(2) Of the members first appointed, 4 shall be appointed to terms of 3 years. Not more than 2 members appointed under this paragraph may be of the same political party.

(3) A member appointed to fill a vacancy occurring before the expiration of the term for which that member's predecessor was appointed shall be appointed only for the remainder of that term.

(4) No person shall serve as a member of the Board for more than 2 terms.

(c) COMPENSATION- Each member of the Board shall receive compensation at the annual rate of basic pay in effect for level V of the Executive Schedule.

(d) ELIGIBILITY- A member of the Board may not have been employed by any of the Services within the period beginning 5 years before appointment, or employed by any law enforcement agency within the period beginning 1 year before appointment.

SEC. 904. ADMINISTRATIVE PROVISIONS.

(a) INVESTIGATIONS OFFICE- The Review Commission shall employ such investigative personnel as the Board considers advisable, in accordance with the civil service and classification laws. Investigators shall be charged with the responsibility of investigating all complaints brought to the Review Commission's attention.

(b) COMMUNITY OUTREACH OFFICE- The Board shall appoint a Director of Community Outreach. The Director of Community Outreach shall establish local community task forces to improve the working relationship between the Services and local community groups and organizations.

(c) REVIEW COMMISSION FACILITIES- The Review Commission shall establish a headquarters and 3 regional offices. The Review Commission may not maintain offices in a facility under the control or operation of any of the Services, or any facility in which any of the Services occupies space.

(d) PERSONNEL LIMITATION- An employee of the Review Commission may not have been employed by any of the Services within the period beginning 5 years before appointment or employed by any law enforcement agency within the period beginning 1 year before appointment.

(e) REGULATIONS- The Review Commission is authorized to promulgate such rules and regulations as may be necessary to carry out this title including procedures for the filing, investigation, and resolution of complaints.

SEC. 905. OPERATIONS OF REVIEW COMMISSION.

(a) COMPLAINT FORMS-

(1) Complaint forms shall be made available at each facility of any of the Services and shall be available upon request from the Review Commission.

(2) The complaint forms shall be written in languages reflecting the languages of the immigrant population.

(b) FILING OF COMPLAINTS-

(1) Complaints may be filed in person, by mail, by telephone, by facsimile, or by any other reasonable means. Complaints may be filed by any person, including anonymously, and may be filed on behalf of third parties. Complaints need not be filed on the official complaint forms.

(2) The Review Commission shall establish and operate a multilingual, 24-hour, toll-free

hotline to receive complaints.

(3) Whenever possible, upon receipt of a complaint, the Review Commission shall provide to the complainant information which describes the review procedures of the Review Commission. Such information shall be available in languages reflecting the languages of the immigrant population.

(c) PUBLIC OUTREACH-

(1) The Review Commission shall educate members of the public about its functions and shall receive and actively seek out suggestions from the public to improve the functioning of the Review Commission.

(2) The Review Commission shall develop outreach materials, which shall include a description of the Review Commission, its duties, and its complaint procedures. Such materials shall be made available to the public in languages reflecting the languages of the immigrant population.

(3) The Review Commission shall oversee the display and dissemination of outreach materials at each facility of any of the Services.

(d) SERVICE EMPLOYEES' DUTY TO INFORM COMMISSION-

(1) When a complaint of agent misconduct is brought to the attention of an employee of any of the Services, that employee shall promptly inform the complainant of proper procedures for filing a complaint.

(2) An employee of any of the Services who witnesses or otherwise obtains actual knowledge of the use of force that is unreasonable in light of the facts and circumstances and involves another employee of any of the Services, shall report such incident to the Review Commission within 24 hours of the acquisition of knowledge of such incident.

(3) The Review Commission may promulgate regulations requiring employees of any of the Services to report to the Commission other violations of the Services' operating procedures.

(e) INVESTIGATION OF COMPLAINTS- Each complaint shall be investigated by an investigator who shall

complete and submit a written report to the Board of Commissioners within 60 days of the assignment, unless the Board authorizes an extension. The Services shall grant investigators access to information, documents, or other items relevant to the matter under investigation. The Board may issue subpoenas. Each employee of any of the Services shall cooperate fully with Review Commission investigations, subject to the protections afforded by the Constitution. Employees of the Services shall be advised of their constitutional rights and the procedural rights afforded under this title.

(f) DISPOSITION OF COMPLAINTS-

(1) When the Board receives a written report on a complaint from an investigator, the Board shall designate a panel of 3 of its members (hereinafter in this title referred to as a `Panel') to review the report.

(2) A Panel shall conduct hearings on the complaint if--

(A) the alleged abuse is of a serious nature, as defined by the regulations prescribed under authority of this title; or

(B) the Panel, by majority vote, decides to hold a hearing.

(3) The Panel shall issue a written finding on the complaint based on the report alone or on the report and a hearing, if one is held.

(4) The Panel shall forward its finding to both the complainant and the employee. The complainant and the employee shall have 30 days in which to review the Panel's official finding. During the 30-day period, either the complainant or the employee may take one of the following actions:

(A) If no hearing was held, request that the Panel conduct a hearing. A hearing shall be held if one member of the Panel votes to hold a hearing.

(B) Regardless of whether a hearing was held, request an en banc review of the Panel's decision. An en banc review will be granted if a majority of the Board votes to conduct such review.

(5) If neither party makes a request pursuant to subparagraphs (A) or (B) of paragraph (4), or if such a request is denied, then the Board, promptly, shall report its finding to the appropriate Service.

(6) All findings made by the Board of Commissioners sitting en banc shall be reported directly to the appropriate Service with copies to the complainant and the employee.

(g) HEARINGS-

(1) Both the complainant and the subject employee shall have the right to be represented by counsel or other representative at Board hearings, to present witnesses, and to cross-examine witnesses.

(2) Any finding of a violation on the part of an employee by the Board must be established by a preponderance of the evidence.

(3)(A) Except as provided in subparagraph (B), hearings shall be open to the public and transcripts of hearings shall be available to the public.

(B) For good cause the Board of Commissioners may close to the public all or any part of a hearing and may seal all or any part of the transcript of a hearing.

(4) Unless mandated by unusual circumstances, a hearing shall be conducted in one location within the United States that is generally convenient to the complainant and any potential witnesses.

(h) DISCIPLINARY RECOMMENDATIONS-

(1) When a finding of a violation may constitute a criminal offense, the Board shall inform the appropriate Federal or State authorities so that appropriate prosecutorial action may be considered. Prosecutorial action shall not relieve the Board of its duties under this title.

(2) When a complaint has been substantiated, the Board shall recommend disciplinary action against the subject employee. The Board's recommendations shall be based on a schedule of sanctions determined by the Commission. If the Service does not adopt the recommendations of the Board, it shall provide a written explanation of the grounds for refusal to do so within 30 days of the Board's recommendation. The Commission's recommendations and the Service's explanation shall be made public.

(3) Nothing in this title shall affect the authority of the Services to discipline their employees.

(i) EARLY WARNING PROGRAM- The Review Commission shall conduct a periodic review of all complaints in order to determine whether particular Service employees have been the subject of repeated complaints or have otherwise demonstrated they may be having difficulty dealing appropriately with members of the public. The results of this review shall be presented to the Services. The Review Commission shall make recommendations to the Services with respect to so identified Service employees including, but not limited to, recommendations of training or counseling.

(j) RECORDS OF COMPLAINTS AND STATISTICAL SUMMARIES- The Review Commission shall maintain records of complaints, including a summary of reports made pursuant to the Early Warning Program under subsection (i). The Review Commission shall compile and publish, at least annually, a statistical summary of all complaints received and the dispositions of such complaints.

SEC. 906. RETALIATION.

(a) RETALIATION PROHIBITED- Retaliation is prohibited and shall constitute the basis for a complaint to the Commission.

(b) DEFINITION- For the purposes of this title, the term `retaliation' means any action or threat of action against a person, including a Service employee, because such person filed a complaint, testified, assisted, or participated in any manner in an investigation or hearing related to the complaint procedures established by this title.

SEC. 907. LIMITATION ON USE OF TESTIMONY.

No testimony or other information gathered as part of a complaint, investigation, or hearing under this title may be used in any proceeding under the Immigration and Nationality Act.

SEC. 908. FUNDING.

Funds authorized to be appropriated for the Office of the Inspector General of the Department of Justice and the Office of the Inspector General of the Department of the Treasury are authorized to be available to carry out this title.

TITLE X--FEDERAL DATA COLLECTION ON RACIAL PROFILING

SEC. 1001. DATA COLLECTION.

(a) IN GENERAL- The Attorney General, the Secretary of the Treasury, and the Secretary of the Interior shall collect data that is sufficiently detailed to permit an analysis of investigatory actions carried out by Federal law enforcement agencies including, but not limited to, the Immigration and Naturalization Service, the Drug Enforcement Administration, the Customs Service, and the National Park Service by race, ethnicity, and gender.

(b) INVESTIGATORY ACTIONS INCLUDED- For purposes of subsection (a), investigatory actions include traffic stops, pedestrian stops, inspections and interviews of entrants into the United States that are more extensive than those customarily carried out, requests for consent to search, and warrantless searches. Data shall also be collected on the type of search conducted and on the results of the searches included in the data collection.

(c) REPORTS-

(1) DEPARTMENT REPORTS- Not later than 1 year after the date of the enactment of this section--

(A) each official referred to in subsection (a) shall prepare a report on the data collected pursuant to that subsection, including a description of any civilian complaints received alleging bias based on the race, ethnicity, or gender of the complainant in law enforcement activities, the process for investigating and resolving such complaints, and the outcomes of any such investigations; and

(B) each official referred to in subsection (a) other than the Attorney General shall transmit such report to the Attorney General.

(2) MASTER REPORT- The Attorney General shall promptly--

(A) analyze each report prepared under paragraph (1);

(B) prepare, in consultation with the heads of relevant agencies, a master report containing those analyses, which shall include the training programs, policies, and practices regarding the use of race, ethnicity, and gender in the law enforcement activities of those agencies and the recommendations of the Attorney General for improving those programs, policies, and practices; and

(C) transmit such master report to the President.

(3) PROTECTION OF INDIVIDUAL IDENTITIES- The reports prepared under paragraph (1) and the master report prepared under paragraph (2) shall not include any information likely to reveal the identity of any individual.

TITLE XI--WHISTLEBLOWER PROTECTION

SEC. 1101. PROHIBITION AGAINST DISCRIMINATION OR RETALIATION.

(a) IN GENERAL- No person shall retaliate or discriminate in any manner against any local, State, Indian tribal, or Federal law enforcement officer because the officer acting in good faith--

(1) engaged in any disclosure of information relating to the unlawful behavior of any fellow officer in the line of duty;

(2) advocated on behalf of a civilian with respect to the treatment received from a law enforcement officer; or

(3) initiated, cooperated, or otherwise participated in any investigation or proceeding of any law enforcement agency relating to a pattern and practice of officer misconduct.

(b) ATTEMPTS- No person shall retaliate or discriminate in any manner against any law enforcement officer because the officer has attempted or has an intention to engage in an action for which a protection against discrimination or retaliation is provided under subsection (a).

(c) RESTRICTIONS ON REPORTING PROHIBITED- No person shall by contract, policy, or procedure prohibit or restrict any law enforcement officer from engaging in any action for which a protection against discrimination or retaliation is provided under subsection (a).

(d) CONFIDENTIAL INFORMATION- This section does not protect disclosures that would violate Federal, State, or Indian tribal law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by State, Indian tribal or Federal law.

(e) GOOD FAITH ACTION- A law enforcement officer with respect to the conduct described in paragraph (1) of subsection (a) shall be considered to be acting in good faith for purposes of that subsection if the officer reasonably believes that--

(1) the information is true; and

(2) the information disclosed by the law enforcement officer--

(A) evidences a violation of any law, rule, or regulation, or of a generally recognized professional or legal standard; or

(B) relates to services or conditions which potentially endangers 1 or more officers or civilians.

SEC. 1102. CONFIDENTIALITY OF COMPLAINTS TO GOVERNMENT AGENCIES.

The identity of a law enforcement officer who complains in good faith to a government agency or department about the unlawful practices of a law enforcement agency shall remain confidential and shall not be disclosed by any person except upon the knowing written consent of the law enforcement officer. This section shall not preempt any right of confrontation protected by the Constitution or by Federal, State, or Indian tribal law.

SEC. 1103. ENFORCEMENT.

(a) PRIVATE CAUSE OF ACTION-

(1) Any law enforcement officer who believes that he or she has been retaliated or discriminated against in violation of section 1101 may file a civil action in any Federal, State, or Indian tribal court

of competent jurisdiction against the person believed to have violated section 1101.

(2) If the court determines that a violation of section 1101 has occurred, the court shall award such damages which result from that violation, including compensatory damages, reinstatement, reimbursement of any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation, as well as punitive damages, attorneys' fees, and costs (including expert witness fees). The court shall award interest on the amount of damages awarded at the prevailing rate.

(3) The court may issue temporary, preliminary, and permanent injunctive relief restraining violations of section 1101, including the restraint of any withholding of the payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due and the restraint of any other change in the terms and conditions of employment, and may award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(4) An action may be brought under this subsection not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(b) CIVIL PENALTY- Any person who violates a provision of section 1101 shall be subject to a civil penalty of not to exceed $10,000 for each violation. In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be--

(1) deducted from any sums owing by the United States to the person charged; or

(2) ordered by the court, in an action brought for a violation of section 1101 brought by the

law enforcement officer who suffered retaliation or discrimination.

(c) CRIMINAL PENALTY- Any person who willfully and repeatedly violates a provision of section 1101 and such violation is related to--

(1) a pattern or practice of such violations;

(2) a quality of services that would likely lead to serious injury or death to civilians or law enforcement officers; or

(3) retaliation against a law enforcement officer that could lead to serious injury or death;

shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both.

SEC. 1104. BURDEN OF PROOF.

(a) ON COMPLAINANT- In any civil action brought under this title, the complainant shall have the initial burden of making a prima facie showing that behavior described in subsections (a) through (c) of section 1101 was a contributing factor in the adverse action or inaction alleged in the complaint. A prima facie case shall be established if the complainant can show that--

(1) the respondent knew of the complainant's protected activities at the time that the alleged unfavorable action or inaction was taken; and

(2) the discriminatory action occurred within a period of time such that a reasonable person could conclude that an activity protected under section 1101 was a contributing factor in the discriminatory treatment.

(b) ON RESPONDENT- Once the complainant establishes a prima facie case, the burden shifts to the respondent to demonstrate, by clear and convincing evidence, that it would have taken the same adverse action or inaction in the absence of such behavior.

SEC. 1105. DEFINITIONS.

For purposes of this title:

(1) The term `discrimination or retaliation' includes a threat, intimidation, or any adverse change in a law enforcement officer's wages, benefits, or terms or conditions of employment. In the case of a law enforcement officer who is not an employee of the law enforcement agency, such term includes any adverse action taken against the worker or the worker's employer, including the cancellation of or refusal to renew a contract with the law enforcement officer or the employer.

(2) The term `person' includes an institution, Federal, State, Indian tribal, or local governmental entity, or any other public or private entity.

SEC. 1106. NOTICE.

(a) IN GENERAL- Each law enforcement agency shall post and keep posted, in conspicuous places on the premises of the law enforcement agency where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Attorney General, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge under section 1101.

(b) PENALTY- Any law enforcement agency that willfully violates this section may be assessed by the Attorney General a civil penalty not to exceed $100 for each separate offense.

SEC. 1107. NONPREEMPTION.

Nothing in this title preempts any other law, and nothing in this title shall be construed or interpreted to impair or diminish in any way the authority of any State to enact and enforce any law which provides equivalent or greater protections for law enforcement officers or the disclosure of unsafe practices in a law enforcement agency.

SEC. 1108. EFFECTIVE DATE.

This title shall apply to acts of retaliation or discrimination occurring on or after the first day of the first month that begins after the date of the enactment of this title.

TITLE XII--SEXUAL ABUSE IN CORRECTIONAL FACILITIES

SEC. 1201. INCREASED PENALTIES AND EXPANDED JURISDICTION FOR SEXUAL ABUSE OFFENSES IN CORRECTIONAL FACILITIES.

Chapter 109A of title 18, United States Code, is amended--

(1) by inserting after `in a Federal prison,' each place it appears the following: `or in the custody of the Attorney General or the Bureau of Prisons, or in confinement in any institution or facility by direction of the Attorney General,';

(2) in section 2243(b), by striking `one year' and inserting `three years';

(3) in section 2244(a)(4), by striking `six months' and inserting `two years'; and

(4) in section 2244(b), by striking `six months' and inserting `two years'.

END

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Customs Review Finds Flaws

By Michael A. Fletcher
Washington Post Staff Writer
Thursday, June 29, 2000; Page A29

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An independent panel assembled to assess widespread complaints that U.S. Customs Service inspectors single out minorities for intrusive searches offered recommendations yesterday for improving search procedures, but it left unaddressed the central question of whether agents engage in racial profiling.

The four-member Personal Search Review Commission spent a year observing the work of Customs officials at 14 of the nation's busiest airports and offered 20 recommendations on matters from agency staffing levels to the need to inform passengers of the factors that could prompt a search.

"Some people are probably not going to like it that we did not say there was racial profiling," said Constance Berry Newman, former undersecretary of the Smithsonian Institution, who chaired the commission. "But whether you say it exists or not, you are in the same place that you would be anyway. The important thing is that there is a public perception [of unfairness] and these recommendations should help address that."

But Sen. Richard J. Durbin (D-Ill.) and Rep. John Lewis (D-Ga.) criticized the panel's report in a joint statement yesterday for failing "to devote sufficient attention to racial profiling." The lawmakers urged passage of their proposed legislation to require Customs personnel to document the reasons why a passenger is being searched before a search begins.

A General Accounting Office report requested by Durbin and released in April found that African American women returning on flights from abroad were disproportionately singled out for strip-searches by Customs Service inspectors. Black women were nearly twice as likely to be strip-searched on suspicion of smuggling drugs as white men and women and three times as likely as African American men, the GAO said.

The GAO report came after two years of criticism by minority women in Chicago and elsewhere who have complained of being unfairly subjected to humiliating treatment.

Customs has far-reaching authority to detain travelers and administer searches if inspectors suspect them of smuggling drugs or other contraband. Growing numbers of smugglers swallow drug-filled balloons or otherwise hide drugs in their bodies to bring them into the country. That, coupled with the increasing number of passengers who pass through Customs each year, has increased the pressure on inspectors.

In response to the complaints, Customs Service Commissioner Raymond W. Kelly appointed the review commission last year and began moving on a series of reforms to tighten oversight of the searches.

The changes have brought dramatic reductions in the number of personal searches done by the agency. Customs officials have reported that the number of searches was down 75 percent in the first six months of this fiscal year compared with the same period last year. Meanwhile, they said, the number of seizures has declined by just 20 percent.

Also, black women are now among the passengers least likely to be searched: They were half as likely as white males to be searched on suspicion of smuggling drugs and had approximately the same likelihood of undergoing a search as white females, Customs officials said.

"They're doing it smarter," Kelly said yesterday of his inspectors' search decisions. "[These changes] do not have to have a chilling effect" on drug seizures.

Sanford Cloud Jr., president of the New York-based National Conference for Community and Justice, applauded the commission's report. Cloud, who served as an independent adviser to Kelly, did his own investigation, interviewing Customs officials and reviewing records to assess the commission's work. Yesterday, he issued a report that agreed with the bulk of the review panel's recommendations.

"I did not sense there was any racial profiling going on," Cloud said. "But perception ends up being as important as reality. And the really glaring thing here was the lack of oversight and the lack of real racial diversity training. But that is beginning to change."

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PAGES: 3 **(EXCLUDES COVER SHEET)**

NOTES: Customs guidance

Background and Talking Points
Independent Commission Report on Personal Searched by U.S. Customs

Background
In response to allegations that arose that passengers were being selected for Customs searches based on race or gender, in April 1999 Customs Commissioner Raymond Kelly created a Personal Search Review Commission to review Customs search processes and issue a report on its findings. The Commission is chaired by Constance Newman, Undersecretary of the Smithsonian Institute.

Today, the Independent Commission is releasing their report. They will join Commissioner Kelly in a press conference to announce the findings and recommendations of the Personal Search Review Commission. The Commission did not attempt to determine whether in fact Customs has a problem in this area - they did not do a statistical analysis. Instead, they determined that Customs has a perception problem and thus needs to change it. The Commission commends Customs for the many steps they have taken to deal with this problem to date. The report is not critical of Customs. They do, however, offer recommendations to go further, primarily in the area of improving communication to the traveling public. In addition to the Commission's report, a second report is being released by Sanford Cloud Jr. (President of the National Conference for Community and Justice). Mr. Cloud was hired as an independent consultant to Customs and he reviewed the Commission's report and also issued his own recommendations.

Customs will announce that it is setting up an Assessment, Implementation and Monitoring (AIM) Committee to review both reports and to assess each recommendation for feasibility of action (depending on legal constraints and resource issues). The Justice Department has been notified and they are pleased that the AIM Committee is being established so that there will be an opportunity to assess the recommendations. (The press release and fact sheet are attached.)

Talking Points (if asked):

- Today, Customs Commissioner Kelly will join with the Personal Search Review Commission to announce the release of the Commission's report on the issue of personal searches by the Customs Service.

- We are grateful for the Commission's hard work in helping us deal with this important and difficult issue. I understand that the Commission was very supportive of the work that Customs has done to date and that they offer recommendations to improve on those efforts. We look forward to reviewing those recommendations.

- Customs has established an Implementation Committee to review the reports, assess the recommendations, and to oversee the implementation of the recommendations.

- We would be pleased to arrange for Treasury and Customs to provide you with a briefing on the findings and recommendations in the report as well as on our plans to implement the recommendations.

U.S. Customs Service
1300 Pennsylvania, N.W., Washington, D.C. 20229

NEWS

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INDEPENDENT COMMISSION ISSUES REPORT ON PERSONAL SEARCHES BY U.S. CUSTOMS

WASHINGTON, D.C. – U.S. Customs Commissioner Raymond W. Kelly today joined Constance Berry Newman (Undersecretary of the Smithsonian Institution), and Sanford Cloud Jr. (President and Chief Executive Officer of the National Conference for Community and Justice), in announcing the findings and recommendations of the Personal Search Review Commission.

Chaired by Undersecretary Newman, the Personal Search Review Commission is an independent body that was created in April 1999 after allegations arose that passengers were being selected for Customs searches based on race or gender. Commissioner Kelly asked the 4-member panel to conduct a thorough review of Customs search processes and issue a report on its findings.

Today's report, entitled "Report on Personal Searches by the United States Customs Service," represents the culmination of the Personal Search Review Commission's work. The report contains 20 findings and makes 20 recommendations to the Customs Service.

"It is our belief that if the Customs Service follows a series of recommendations in this report, the Service will address the real and perceived problems associated with the personal search process," Undersecretary Newman said.

Also released today was a report by Mr. Cloud, who served as Commissioner Kelly's Independent Advisor for the Personal Search Review Commission. His study contains an analysis of the independent commission's report and features his own findings and recommendations to the Customs Service.

According to Mr. Cloud: "The U.S. Customs Service has undertaken bold initiatives to provide fuller opportunities that are more inclusive and just in order to improve human relations within their agency and towards the public. These efforts can be further achieved if the recommendations provided by both the Personal Search Review Commission and myself are evaluated and implemented properly."

Commissioner Kelly thanked the Commission members and Mr. Cloud. "I appreciate the substantial time and effort that the Personal Search Review Commission spent on this controversial issue, which is critical to the Customs Service and the nation," he said.

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FACT SHEET

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ASSESSMENT, IMPLEMENTATION and MONITORING (AIM) COMMITTEE
(June 28, 2000)

What is the AIM Committee?

The AIM Committee is a permanent Customs working group whose purpose is look at how U.S. Customs can improve its policies and procedures for international air passenger processing.

Why was the committee formed?

Commissioner Raymond W. Kelly formed the committee to evaluate the recommendations in the reports of the Personal Search Review Commission and Independent Advisor Sanford Cloud.

What will the committee do?

The committee will review both reports to:

1. assess each recommendation for feasibility of action
2. determine how to implement the recommendations
3. determine the resources needed to implement the recommendations
4. provide an action plan to implement the recommendations
5. monitor the success of the implemented recommendations

The AIM committee will provide an action plan to Commissioner Kelly. The implementation of the recommendations will depend on the resources needed to implement them. Some may be implemented immediately; some may require additional manpower and funding.

Who are the members of the AIM committee?

Deputy Commissioner of Customs Charles W. Winwood chairs the committee. Members include the Assistant Commissioner, Office of Field Operations; Assistant Commissioner, Office of Training and Development; Assistant Commissioner, Office of Finance; Director of Public Affairs; Director of Passenger Processing; Special Assistant for Equal Employment Office; and the Port Director, Chicago.

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