

9/24/98

105th CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. _____ (for himself) introduced the following bill; which was read twice and referred to the Committee on _____.

A BILL

To empower Federal and State law enforcement officials to identify, arrest and incarcerate violent criminals and to enforce conditions of probation, parole and pretrial release which prohibit the possession or use of firearms or other deadly weapons and 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, TABLE OF CONTENTS.

- (a) **SHORT TITLE.**—This act may be cited as the “Armed Criminal Act of 1997”.
- (b) **TABLE OF CONTENTS.**—The table of contents is as follows:

Sec. 1.	Short Title, Table of Contents.
Sec. 2.	Findings.
Sec. 3.	Definition.
Sec. 4.	Applicability.
Sec. 101.	Mandatory Prison Terms for Carrying, Using, or Discharging a Firearm In Violation of Federal Probation, Parole or Pretrial Release; Possession of Firearm by Felon and Others.

- Sec. 102. Delegation of Authority to Enforce Conditions of Probation, Parole or Pretrial Release.
- Sec. 103. National Crime Information Center.
- Sec. 104. Required Conditions for Violent Felons on Federal Probation.

SEC. 2. FINDINGS.

The Congress finds that—

- (a) A small percentage of criminals are responsible for the vast majority of violent crime, many of whom are on probation or parole;
- (b) Every day 14 people are murdered, 48 women are raped, and 578 people are robbed by persons who have been caught, convicted and then released on probation or parole;
- (c) 30% of all murders are committed by persons on probation or parole;
- (d) 22% of all police officers killed are killed by persons on probation or parole; 53% of the killers had a prior conviction history;
- (e) Probation and parole are generally granted to subjects under conditions designed to promote rehabilitation of the offender and public safety;
- (f) Those conditions normally include a prohibition on the purchase, use or possession of any dangerous weapon including firearms;
- (g) The Congress also finds that juvenile crime to be a national priority because:
 - (1) The number of juveniles arrested for violent crimes has increased nearly 60 percent over the last ten years;
 - (2) From 1982 to 1993 the number of murder cases involving juveniles increased 128 percent. Adult arrests for murder over the same period increased 8.6 percent. In 1992, there were 2,580 persons under 18 arrested for murder—33 were 12 years or younger, 271 were 13 or 14;
 - (3) From 1988 to 1992 juveniles involved in aggravated assaults increased 80 percent to 77,900 in 1992. Homicides increased 55 percent to 2,500, robberies went up 52 percent to 32,900, and rapes rose 27 percent to 5,400. Overall, juvenile court cases increased 26 percent to almost 1.5 million cases;
 - (4) From 1988 to 1992 transfers of juveniles to adult court increased 68 percent to 11,700 cases;
 - (5) Of 1,471,200 juvenile court cases in 1992, personal offenses were up 56 percent to 301,000; property offenses were up 56 percent to 842,000; public order offenses were up 21 percent to 255,900;
 - (6) Young people 12 to 18 are the most frequent victims of violent crime; they are raped, robbed, or assaulted at 5 times the rate of adults age 35 or older. One juvenile in 13 was a victim of violent crime in 1992—up 23 percent since 1987; and

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(7) In 1992 there were 6.6 million violent crimes in the United States—23 percent of the victims were juveniles. The juvenile victimization rate was 74.2 cases per 1,000 juveniles compared to the 13.9 cases per 1,000 people 35 or older.

SEC. 3. DEFINITION.

(a) **PROBATION AND PAROLE.**—The terms “probation” and “parole” mean a situation where a person who has been convicted of a crime has conditions placed on his or her behavior in lieu of incarceration.

SEC. 4. APPLICABILITY.

(a) **PREEMPTION.**—This Act shall preempt and supersede other Federal or State laws only to the extent any such law is inconsistent with this Act. Any issue arising under this Act that is not governed by the provisions of this Act shall be governed by applicable Federal or State law.

(b) **SEVERABILITY.**—If any provision of this Act or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and the application of any provision to any other person or circumstance shall not be affected thereby.

SEC. 101. MANDATORY PRISON TERMS FOR CARRYING, USING, OR DISCHARGING A FIREARM IN VIOLATION OF FEDERAL PROBATION, PAROLE OR PRETRIAL RELEASE; POSSESSION OF FIREARM BY FELON AND OTHERS.

(a) Sections 924(c)(2) and 924(c)(3) of Title 18, United States Code, are amended to read as follows:

“(2)(A)(i) A person, including a juvenile, who in violation of a condition of probation, parole, or pretrial release for a serious violent felony (including a crime of violence that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person was prosecuted in a court of the United States—

“(I) knowingly purchases or possesses a firearm or other deadly weapon, shall, in addition to the sentences otherwise imposed or reinstated for the violation of a condition of probation, parole, or pretrial release or for the violation of any other law, be sentenced to and serve not less than 5 years of imprisonment;

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“(II) knowingly uses a firearm or other deadly weapon shall, in addition to the sentences imposed or reinstated for the violation of a condition of probation, parole, or pretrial release or for the violation of any other law, be sentenced to and serve not less than 10 years of imprisonment;

“(III) discharges a firearm or uses another deadly weapon with the intent to injure another person, shall, in addition to the sentences imposed or reinstated for the violation of a condition of probation, parole, or pretrial release or for the violation of any other law, be sentenced to and serve not less than 30 years of imprisonment;

“(IV) except that if the firearm is a machine gun or destructive device or is equipped with a firearm silencer or firearm muffler, the person shall, in addition to the sentences imposed or reinstated for the violation of a condition of probation, parole or pretrial release or for the violation of any other law, be sentenced to life imprisonment.

“(ii) **Mandatory Arrest**—A person, including a juvenile, who is on probation, parole, or pretrial release shall be arrested and charged under this subsection if the investigating officer has probable cause to believe that such person has violated this subsection. A person, including a juvenile, who the investigating officer has probable cause to believe has violated section 922(g) shall also be arrested and charged under that section.

“(iii) **No Bail or Pretrial Release**—A person, including a juvenile, who has been charged under this subsection with purchasing, possessing, using or discharging a firearm or other deadly weapon in violation of a condition of probation, parole or pretrial release, or is charged with violating section 922(g) shall be presumed to be a danger to the community and held without bail or pretrial release.

“(iv) **No Plea Bargain**—If the evidence available to the United States Attorney clearly indicates a violation of this subsection or section 922 (g) then the United States Attorney shall seek a conviction and sentence consistent with this subsection or in the case of a person charged under section 922(g), consistent with section 924(a)(2).

“(v) **Mandatory Sentence**—A person, including a juvenile, convicted under this subsection shall be sentenced by the court consistent with this subsection unless the court finds in a written declaration in open court that section 3553(f), as amended, applies. A person, including a juvenile, sentenced under this subsection shall serve the sentence imposed under this subsection consecutively to any period of imprisonment imposed or reinstated due to the violation of a condition of probation, parole, or pretrial release or imposed for violating any other law. A sentence under this subsection shall not be imposed in lieu of reinstating, or sentencing the defendant to, any period of imprisonment due to the violation of a condition of probation, parole, or pretrial release or violation of any other law. Notwithstanding any other provision of

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law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment.

"(vi) A juvenile convicted of a violation of this subsection shall serve his or her sentence in a secure juvenile facility until reaching 18 years of age at which time he or she shall be transferred to a adult facility to serve the remainder of the sentence.

"(3) For purposes of this subsection:

"(A) The term serious violent felony means—

"(i) A crime of violence; or

"(ii) A serious violent felony (as defined in section

3559(c)(2)(F)).

"(B) The term crime of violence means an offense that is a felony

and—

"(i) Has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(ii) That by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

"(C) The term juvenile means any person under 18 years of age.

(b) The language after Section 922(g)(9) of Title 18, United States Code, is amended to read as follows:

"to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive or possess any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

SEC. 102. DELEGATION OF AUTHORITY TO ENFORCE CONDITIONS OF PROBATION, PAROLE OR PRETRIAL RELEASE.

(a) The Federal government hereby grants its authority to enforce conditions of probation, parole, or pretrial release for persons under its continuing supervision to duly appointed Federal, State and local probation, parole and sworn law enforcement officials when those officials have been notified by official means of the individual's probation, parole, or pretrial release status. Such persons shall include those convicted or awaiting trial in courts in the District of Columbia, the Virgin Islands, Puerto Rico and any other area under the authority of the United States but not within a state. An official

operating under the authority delegated by this section shall for all purposes be considered a probation or parole officer.

(b) A probation, parole or sworn law enforcement official may rely on official documents, transmissions, or other official communications regarding an individual's status and the conditions of probation, parole, or pretrial release imposed upon that individual.

(c) Public school officials are authorized under this section to enforce conditions of probation, parole, or pretrial release imposed upon a student. Such public school officials may exercise this authority only when officially notified in writing of the student's status and the conditions of probation, parole, or pretrial release imposed upon that student.

(d) Upon request by a State, the Attorney General shall order a probation officer to supervise any person who is on probation or parole under State law and has traveled to a different State after the imposition of such probation or parole. Any person so supervised shall be under Federal jurisdiction during the period of supervision and shall, during that period be subject to all laws of the United States which pertain to probationers or parolees, as the case may be.

SEC. 103. NATIONAL CRIME INFORMATION CENTER.

(a)(1) The Attorney General shall direct the FBI's National Crime Information Center to make the name, photograph, criminal background and criminal justice status of all persons on Federal probation, parole or pretrial release available to all member law enforcement agencies. Such information shall include any conditions of probation, parole, or pretrial release imposed on such probationer, parolee, or person on pretrial release.

(2) The Attorney General shall direct the National Crime Information Center to make available such information regarding all criminals convicted or awaiting trial in courts in the District of Columbia, the Virgin Islands and Puerto Rico.

(3) The Attorney General shall direct the National Crime Information Center to solicit such information from all State and local law enforcement, judicial and corrections agencies and make such information available to all member law enforcement agencies.

SEC. 104. REQUIRED CONDITIONS FOR VIOLENT FELONS ON FEDERAL PROBATION.

After the second subsection (4) of paragraph (a) in Section 3563 of Title 18, United States Code, the following is added:

"(5) for a crime which meets the definition in section 924(c)(3)(A), as amended, or for a person previously convicted of a crime which meets the definition in

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section 924(c)(3)(A), as amended, that the defendant refrain from possessing, carrying, or using a firearm or other deadly or dangerous weapon or device.

“(6) for a crime which meets the definition in section 924(c)(3)(A), as amended, or for a person previously convicted of a crime which meets the definition in section 924(c)(3)(A), as amended, that the defendant submit to a search requested by probation or law enforcement personnel.

“(7) for a crime which meets the definition in section 924(c)(3)(A), as amended, or for a person previously convicted of a crime which meets the definition in section 924(c)(3)(A), as amended, that the defendant attempt to register a current address with and provide DNA samples, photographs and a complete criminal history to the nearest law enforcement agency and to update such law enforcement agency within 10 days of any change in the defendant's circumstances and in the case of a defendant who moves to a new jurisdiction the defendant shall register with the new jurisdiction.”

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ARMED CRIMINAL COMPREHENSIVE ACTION PROGRAM (ACCAP)

Zero Tolerance for Violent Felons with Guns

- I. Require Conditions for Violent Felons on Probation or Parole:
 - A. Not carry a deadly weapon
 - B. Submit to search of person, vehicle, home
- II. Require dissemination of names of probationers and parolees to law enforcement with conditions of probation and parole.
- III. Delegate the authority to enforce conditions of probation and parole to all uniformed law enforcement officers.
- IV. Require all violent felons on probation or parole to register with police and give criminal history, photo, and DNA samples.
- V. Provide information technology to disseminate this information to police on patrol.
- VI. Provide positive identification technology for patrol officers.
- VII. Provide search technology to allow discovery of weapons without invasive search.
- VIII. Establish a criminal analysis unit to direct police patrols to high crime areas and criminal suspects.
- IX. Train officers in the use of information technology, search technology, and use of crime analysis.
- X. Mandate arrest and charge by police when weapon is found on covered individuals.
- XI. Mandate pre-trial detention.
- XII. Mandate prosecution (no discretion).
- XIII. Mandate sentences with departures based on guidelines.

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BACKGROUND INFORMATION

Criminal Disarmament Project

Mission: Deter violent felons from carrying deadly weapons by making as certain as is humanly possible that should they carry a weapon, they will be detected, arrested, detained, prosecuted, convicted, and sentenced and serve a minimum of five full years of confinement.

- literature on certainty of punishment as a deterrent
- length of sentence as a deterrent
- number of parolees, probationers, violent felons in general population
- crime rate among this population
- study on carrying weapons by parolees
- number of guns in circulation
- literature on Drug Courts
- get studies of failure to enforce gun laws
- studies on failure to enforce conditions of probation or parole

POLITICS & POLICY

Prosecutor's Strategy Scrambles Gun-Control Alliances

By DAVID S. CLOUD

Staff Reporter of THE WALL STREET JOURNAL

RICHMOND, Va.—David Schiller says he can make a federal case out of just about anything involving guns. He's right.

For the past two years, Mr. Schiller has used his powers as an assistant U.S. attorney to transfer mundane arrests by local police here to the federal court system. His zealous pursuit of almost anyone caught violating even the most obscure federal gun law has sent 200 people to prison, which Mr. Schiller's supporters say helps explain a dramatic drop in the city's homicide rate.

Now this seemingly simple idea—federalizing firearms cases—is scrambling alliances in the national gun-control debate. Mr. Schiller's campaign, dubbed Project Exile, is backed by both the National Rifle Association and some ardent gun-control advocates, including a few big-city mayors. Congress wants to implement Project Exile in other cities, but the Clinton administration is loath to divert money and attention from its own antigun initiatives to be backed by its nemesis, the NRA.

The battle over Project Exile heats up as Congress returns from its summer recess to finish work on next year's budget. Supporters will lobby hard for more money, and some Republicans see a chance to embarrass the president if the administration opposes a get-tough solution on one of Mr. Clinton's pet issues.

A career prosecutor, the 43-year-old Mr. Schiller didn't mean to get in the middle of a political storm, but his relentless evangelizing has made him a minic celebrity here and a thorn in the side of Justice Department officials in Washington.

'Lone Ranger'

"Some people think Schiller's nuts," says Richmond defense attorney David Boone. "Is he overzealous? Absolutely, but he's like the Lone Ranger: He's on a mission."

For years, Congress has been expanding the reach of federal gun laws, making it relatively easy to bring these cases. But few prosecutors took the bait until Mr. Schiller started using the little-noticed laws to prosecute not only well-armed drug dealers, but middle-aged wife-beaters who happen to keep a gun in the closet. The mandatory federal sentences are stiffer than those generally given in state courts.

Has it made a difference? Throughout the 1990s, Richmond was one of the country's most violent cities, but now things are improving. There have been 39 gun-related homicides in Richmond so far this year, 49 fewer than last year at this time. Violent crime has been falling nationwide, but Mr. Schiller claims to be altering criminal behavior on the street. "What we're finding is that a lot of dopers are now being arrested without any guns on them," he says.

Mr. Schiller and his boss, U.S. Attorney Helen Fahey, have gone to Washington repeatedly to plead with senior Justice Department officials for more prosecutors and agents, but with little success. "We could do more cases if we had more help," says Ms. Fahey, a Clinton appointee.

Kent Markus, Attorney General Janet Reno's top aide on gun violence until leaving last month to teach law, dismisses Pro-

crime and high-level drug trafficking. "I don't think there's any empirical evidence" that Richmond's falling murder rate is related to Project Exile, says Mr. Markus.

Mixed Views in Richmond

Richmond officials applaud Mr. Schiller's efforts, but worry about the long-term social consequences of such draconian measures. "There's got to be solutions other than Exile," said Police Chief Jerry Oliver, a supporter of the program. "As an African-American male I'm dismayed at what we have to do to maintain safety."

The NRA embraced Project Exile as the embodiment of its antigun-control doctrine: Get tough on crime, not guns. "It says with deadly accuracy that guns are for the law-abiding," asserts NRA Executive Director Wayne LaPierre, who is lobbying lawmakers to expand the program to dozens of cities. "That hasn't been said anywhere else in the country, and it is changing criminal behavior in Richmond."

Mr. Schiller disagrees with the NRA on gun control and worries that its backing for his program could overshadow its accomplishment. But the group's support was key to getting the program off the ground. At first, Richmond's conservative business community was lukewarm about it, Mr. Schiller says, because of early NRA hostility. When he asked for an endorsement, he says the NRA denounced him as an antigun zealot from the "Clinton-Reno empire."

A subsequent appeal through a friend of a friend of Mr. Schiller's brought a closer look from Mr. LaPierre. Since then, the NRA has spent more than \$25,000 promoting the program, including a sizable gift to a nonprofit foundation that publicizes Project Exile's harsh consequences on radio, television and billboards. For balance, Mr. Schiller also sought out Handgun Control Inc., whose chairwoman, Sarah Brady, called Project Exile's results "impressive," though not a panacea.

Odd Partnerships

Other odd alliances are forming as well. In June, NRA President Charlton Heston joined forces with Philadelphia Mayor Ed

worries that trying Project Exile in a city with seven times more people than Richmond is impractical and might swamp the courts.

Nevertheless, last month the Senate approved an amendment by Pennsylvania Republican Arlen Specter requiring the Justice Department to spend \$1.5 million on five prosecutors and 10 investigators to prosecute gun cases in Philadelphia, which averages over 400 murders a year. New Jersey Sen. Frank Lautenberg, a pro-gun-control Democrat, secured \$800,000 for a similar effort in nearby Camden.

The NRA bought a full-page ad in USA Today earlier this month, prodding President Clinton to support the Philadelphia appropriation: "Instead of giving us another press conference about more gun-control laws," it said, "give us one city. Let

us try crime fighting our way—the Project Exile way."

The ad annoyed Mr. Rendell, whose White House lobbying efforts received polite but noncommittal response. Still, he says, "If it stops only six murders a year, I've got to be for it." The White House may distrust the NRA, but I've got to over look that."

In Richmond, Mr. Schiller works on shoestring. He has merchants pass out black cards warning, "An illegal gun gets you 5 years in federal prison." He handed out laminated cards to the police explaining the basics of federal gun statutes. For example, it's a federal crime to carry a weapon while possessing illegal drugs. "Most suspects will deny dealing but readily admit using," the card reads. "That's all we need to make a federal gun case."

Just ask Shuler Cox, 49 years old. He was arrested with a small amount of crack cocaine and marijuana—and a .45-caliber semiautomatic in his car. A federal judge convicted him of drug and gun charges. Now, despite an otherwise clean record, he's facing seven years in a federal penitentiary. "When I turned 17, I got into the drug scene, and I just thought that having a weapon by my side wouldn't let nobody get to me," explains Mr. Cox, who nevertheless claims the gun wasn't his and is appealing.

On the other hand, some dangerous offenders are now off the streets. Melvin "Bug" Smith, a 22-year-old member of a gang called the "Bottom Group," was pulled over on a routine traffic stop and ended up getting 16 years for drug and firearm convictions. Once he was behind bars, witnesses came forward and implicated him in five murders. He was indicted on those charges by state prosecutors earlier this month.

IMPORTANT:

Always ask if the suspect uses drugs, i.e., cocaine, heroin, marijuana.

Most suspects will deny dealing but readily admit using and that's all we need to make a federal gun case.

Federal Gun Possession Crimes:

Carrying during drug possession
Convicted felon (state or federal)
Fugitive who has fled another state
Under indictment for a felony
Subject to a restraining order
Drug user or addict
Mental defective
Illegal alien
Dishonorably discharged
Prior misd. domestic violence
Obliterated serial number
Sawed-off weapon
Stolen gun (if defendant knows)

Cue cards for cops

Skylar